

FM AREA DIVERSION PROJECT

# Property Owner Information Packet for Cass County Commission

August 3<sup>rd</sup>, 2020

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PROPERTY OWNER: David & Annette Delaney

LAND AGENT: Ken Helvey

OIN: 1202



FM AREA  
**DIVERSION**  
PROJECT

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## Written Correspondence Timeline – David & Annette Delaney

OIN 1202	Sent	Received
Offer to Purchase	8/20/2019	9/10/2019
Formal Negotiations and Written Offer of Just Compensation	1/2/2020	3/13/2020
Request for Meeting	3/31/2020	4/3/2020
Notice of Intent to Take Possession of Right-of-Way	5/22/2020	5/26/2020
Request for Approval to Take Possession of Necessary Right-of-Way and Temporary Easement	6/26/2020	6/26/2020
Invitation to Attend Public Meeting	6/29/2020	7/1/2020
Commission Meeting Date	8/3/2020	

**CASS COUNTY COMMISSION**  
**CHECKLIST — COMPLIANCE WITH N.D. CENT. CODE § 61-16.1-09(2)**  
**FARGO-MOORHEAD AREA DIVERSION PROJECT**

A. Subject Property Information:

1. Landowner: David & Annette Delaney
2. Land Agent: Ken Helvey
3. Parcel No.: 67-0000-12719-020
4. OIN No.: 1202

B. Verification:

1. NDCC § 61-16.1-09(2)(b)(1)(a) requires the Cass County Joint Water Resource District (“CCJWRD”) to conduct 60 days of informal negotiations.
  - Did CCJWRD verify at least 60 days of informal negotiations with Landowner:  
\_\_\_\_\_
2. NDCC § 61-16.1-09(2)(b)(1)(b)[1] requires CCJWRD to send the landowner an appraisal and written offer for just compensation by certified mail or commercial delivery requiring a signed receipt or other evidence of constructive notice.
  - Did CCJWRD verify it sent Landowner an appraisal and written offer for just compensation: \_\_\_\_\_
  - Did CCJWRD verify service of the appraisal and offer by certified mail or commercial delivery, and that Landowner either signed for them or had constructive notice: \_\_\_\_\_
3. NDCC § 61-16.1-09(2)(b)(1)(b)[2] requires CCJWRD to send Landowner a written request for a meeting by certified mail or commercial delivery requiring a signed receipt [if the parties have not come to an agreement within 15 days of Landowner’s receipt or notice of CCJWRD’s offer].
  - Did CCJWRD verify it sent Landowner a written request for a meeting by certified mail or commercial delivery, and that Landowner either signed for the notice or had constructive notice: \_\_\_\_\_

4. NDCC § 61-16.1-09(2)(b)(1)(b)[3] requires CCJWRD to send Landowner a written notice of intent to take possession of the right of way, by certified mail or commercial delivery requiring a signed receipt [if the parties have not come to an agreement within 30 days of Landowner's receipt or notice of CCJWRD's invitation to a meeting].
  - Did CCJWRD verify it sent a written notice of intent to take possession of right away by certified mail or commercial delivery, and that Landowner either signed for the notice or had constructive notice: \_\_\_\_\_
5. NDCC § 61-16.1-09(2)(b)(2) requires all written communications to Landowner to include contact information for responding to CCJWRD and a description of the required negotiation timeline.
  - Did CCJWRD verify that all written communications to Landowner included contact information for responding to CCJWRD and a description of the required negotiation timeline: \_\_\_\_\_
6. NDCC § 61-16.1-09(2)(b)(3) prohibits a district from including or utilizing any reference to quick take eminent domain during negotiations.
  - Did CCJWRD verify it did not include or utilize any reference to quick take eminent domain during negotiations: \_\_\_\_\_

If the Commission answers in the affirmative to the above questions,

**RECOMMENDED MOTION:**

- I move to authorize the Cass County Joint Water Resource District to utilize quick take eminent domain under Section 61-16-1.09(2) of the North Dakota Century Code to take an easement for a right of way, and temporary easement (if any), regarding the OIN described above in A.4.

# FM Area Diversion Project Property Negotiation Summary

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July 27, 2020

Owner	David and Annette Delaney
Address	10615 81 <sup>st</sup> Street South, Horace, ND 58047
Property Location	Diversion Channel - Cass County, ND
Property Type	Residential
OIN	1202
Land Firm & Land Agent	SRF - Ken Helvey

## Property Need

The parcel is within the Diversion Channel associated with the Project. The Diversion Authority is required to obtain the parcel in Fee Total for the channel.

## Valuation and Negotiation Summary:

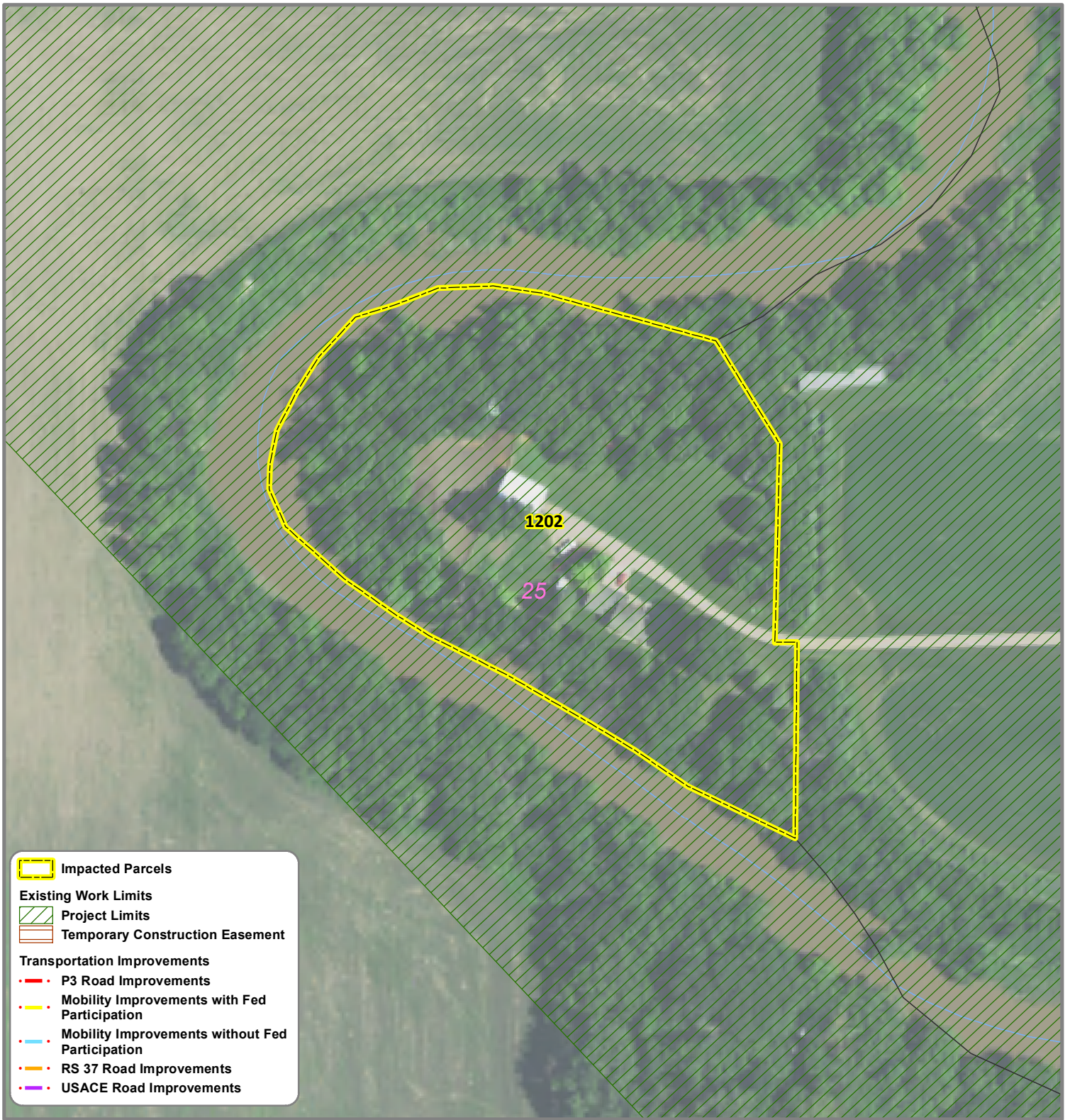
Appraisal Value / Date	\$275,000 dated July 19, 2019 (formal offer letter 1/2/20) 3.81 acres and Improvements Land/Site Taking \$9,500/acre = \$275,000
Counteroffer	N/A

## Negotiation Notes

- Ken Helvey, Lisa Kilde, and Jamie Wark have attempted to communicate with David and Annette by phone multiple times, as well as over one dozen attempts to contact by mail and email.
- The owners did not accept service of the Formal Offer by mail, hand delivery or process server. The Formal Offer had to be recorded.
- Landowners David and Annette have not responded or engaged in the negotiation for the acquisition of the property needed for the channel.
- Formal Offer letter sent on 01/02/2020

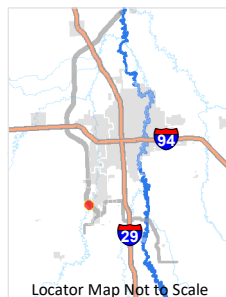
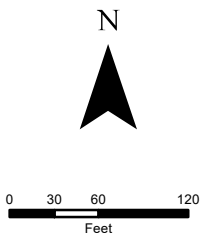
July 27, 2020





*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.*

Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced by: hrecords - AE2S, Inc. |  
 C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\IProject Wide\Individual Property Maps - General Inquiry\IndividualLayout8x10v105.mxd



**OIN: 1202**  
**DAVID T & ANNETTE R DELANEY**  
**Parcel ID: 67-0000-12719-020**  
**Cass County, ND**

FM AREA DIVERSION  
 Map Date: 7/1/2020





August 20, 2019

David T. and Annette R. Delaney  
10615 81st St. S.  
Horace, ND 58047

RE: **Offer to Purchase**  
**Parcel ID:** OIN 1202  
**Project Title:** Fargo Moorhead Diversion  
**PID:** 67-0000-12719-020

Dear Mr. and Mrs. Delaney,

The Cass County Joint Water Resource District (CCJWRD) and other partners are constructing a flood control improvement project in your area. The CCJWRD has hired the HMG Group to aid in the acquisition of right-of-way for the project. You are receiving this letter as the owner of property that must be acquired for the project. This letter conveys CCJWRD's offer to purchase all interests in the real property that are necessary for the project. The interests being purchased (the "Parcel") are listed on Exhibit A (Acquisition Summary) and shown on Exhibit B (Certificate of Survey), and the amount stated in this letter as the purchase amount is for all of those interests. If the Parcel includes interests that another person or entity may own (for example a mortgage lender or easement holder), the CCJWRD's offer is contingent on all parties with interest agreeing to the amount and allocation of the purchase funds.

To determine market value of the interest being acquired, CCJWRD retained the services of the independent property appraisal firm, Patchin Messner Valuation Counselors. The appraiser has determined that the market value of the interests being purchased is **\$275,000.00**. The CCJWRD has used the market value set forth in the appraisal as the basis for determining Just Compensation for the property interests being acquired from you. A copy of the appraisal is attached to this letter and provided to you. If the purchase amount is based on any conditions or exceptions (such as terms of the transfer of possession or retention of any interest); they will be included in Exhibit A. A summary of the appraisal is provided on Exhibit A (Appraisal Summary).

**The Cass County Joint Water Resource District hereby offers to pay you \$275,000.00 as Just Compensation for the property interests it must acquire from you.**

Separate from this agreement are relocation benefits provided as a part of the acquisition of your property.



David T. and Annette R. Delaney  
Offer to Purchase

OIN 1202

Once we agree on the basic terms of an agreement for you to sell, and the CCJWRD to buy the property interests described in this letter, a Purchase Agreement will be drafted and presented to you for approval. The Purchase Agreement will contain all of the pertinent terms and conditions of this offer, as well as several standard legal, property acquisition terms. The Purchase Agreement will be between you and the CCJWRD.

We appreciate your willingness to negotiate with the CCJWRD. We request counteroffers or acceptance of this offer within 30 days from the date of this letter. CCJWRD has flexibility regarding closing, rent and/or leaseback options. We also support 1031-1033 tax exchanges.

If you have any questions about the acquisition process, please contact the representative at 763-249-6785. The representative is here to help you understand the process and to assist in negotiating a fair direct purchase of the Parcel, however, we do not represent you. We are willing to meet with you in person as well as set up a time to discuss questions on the phone.

Upon receipt of this letter, please sign below. Your signature indicates only that you have received this Offer to Purchase, and the following documents:

- Copy of the appraisal for Parcel ID OIN 1202 by Patchin Messner Valuation Counselors.
- Exhibit A (Acquisition Summary)

Your signature DOES NOT indicate your acceptance or rejection of the offered amount. Nor does it affect your right to continue to negotiate with the CCJWRD.

On behalf of CCJWRD, we wish to thank you for your cooperation and assistance, and we look forward to working with you toward a mutually satisfactory completion of the acquisition process.

Sincerely,



Ken Helvey  
Principal

I acknowledge that on \_\_\_\_\_, 20 \_\_\_\_, I received this letter and all documents listed above.

\_\_\_\_\_  
David T. Delaney

\_\_\_\_\_  
Annette R. Delaney

Enclosures: Appraisal Report, Exhibit A

**EXHIBIT A**

**ACQUISITION SUMMARY  
Fargo Moorhead Diversion**

**Offer to Purchase**

**Parcel ID:** OIN 1202

**Project Title:** Fargo Moorhead Diversion

**PID:** 67-0000-12719-020

**Property Address:** 10615 81st St S, Warren Township

Recorded Fee Owner: David T. and Annette R. Delaney

Property Legal Description:

SEE ATTACHED APPRAISAL

Description of Property Interests to be Acquired: Fee Simple

Noted and Waived Exceptions, Reservations or Encumbrances: None

\*Unless otherwise noted, any offer to purchase is contingent on the following:


1. Demonstration of marketable title,
2. Conveyance of all interests identified, unless waived in writing by the Cass County Joint Water Resource District,
3. Execution of a purchase agreement signed by the Cass County Joint Water Resource District, or its designee.

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**APPRAISAL SUMMARY**


<b>Parcel Value</b>	<b>Area Size/ Description</b>	<b>Indicated Value</b>
<b>Land/Site Taking</b>	3.81 Acres & Improvements	\$ 275,000.00
<b>TOTAL (rounded)</b>		<b>\$ 275,000.00</b>

1202 LRK

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <input checked="" type="checkbox"/> <i>Annette Delaney</i> <input type="checkbox"/> Agent  <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)  <i>Annette Delaney</i></p> <p>C. Date of Delivery  <i>9/10/19</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes          If YES, enter delivery address below: <input type="checkbox"/> No</p>																
<p>1. Article Addressed to:</p> <div style="border: 1px solid black; padding: 5px;">           DAVID T AND ANNETTE R DELANEY            10615 81ST ST S            HORACE ND 58047         </div>																	
 9590 9402 4522 8278 7729 74	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®																
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™																
<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery																
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise																
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™																
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery																
<input type="checkbox"/> Insured Mail																	
<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)																	
<p>2. Article Number (Transfer from service label)</p> <div style="border: 1px solid black; padding: 5px;">           7015 1520 0001 9715 8192         </div>																	
PS Form 3811, July 2015 PSN 7530-02-000-9053	Domestic Return Receipt																

1202 LRK

7015 1520 0001 9715 8192

U.S. Postal Service™	
CERTIFIED MAIL® RECEIPT	
Domestic Mail Only	
For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a> ®.	
OFFICIAL USE	
HORACE, ND 58047	
Certified Mail Fee	\$3.50
Extra Services & Fees (check box, add fee as appropriate)	\$2.80
<input checked="" type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$2.05
<b>Total Postage and Fees</b>	<b>\$8.35</b>
<div style="border: 1px solid black; padding: 5px;">           DAVID T AND ANNETTE R DELANEY            10615 81ST ST S            HORACE ND 58047         </div>	
	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	



**CERTIFIED MAIL – RETURN RECEIPT REQUESTED – HAND DELIVERY**

January 2, 2020

Cass County  
Joint Water  
Resource  
District

David T. and Annette R. Delaney  
10615 81st Street S  
Horace, ND 58047  
**Certified No. 7018 0040 0000 5525 6915**

Greetings:

Dan Jacobson  
Chairman  
West Fargo, North Dakota

RE: Cass County Joint Water Resource District  
Fargo-Moorhead Area Diversion Project  
Formal Negotiations and Written Offer of Just Compensation  
OIN: 1202  
Parcel No.: 67-0000-12719-020

Rodger Olson  
Manager  
Leonard, North Dakota

Ken Lougheed  
Manager  
Gardner, North Dakota

Jacob Gust  
Manager  
Fargo, North Dakota

Keith Weston  
Manager  
Fargo, North Dakota

The Cass County Joint Water Resource District (the "District") is in the process of acquiring property interests necessary for the Fargo-Moorhead Area Diversion Project (the "Project"), and the District has been in discussions with you regarding right of way the District must acquire from you to accommodate the Project. The District directed me to provide you this letter as the District's formal offer to purchase right of way from you. More specifically, to accommodate the Project, the District must acquire right of way from you over property located in Cass County and identified as Parcel Identification Number 67-0000-12719-020. The legal description of the property to be acquired is:

That part of the Southeast Quarter of Section Twenty-five, in Township One Hundred Thirty-eight North of Range Fifty West of the Fifth Principal Meridian, described as follows, to-wit:

From the Southeast corner, existing iron monument of Section Twenty-five, Township One Hundred Thirty-eight North, Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota, bear North 00°00'00" East (assumed bearing) along the East line of said Section Twenty five, for a distance of 1915.31 feet to an iron monument; thence South 89°53'56" West along the centerline of the access road for a distance of 1582.54 feet to an iron monument the Point of Beginning of the tract of land herein described; thence South 89°53'56" West along said road centerline for a distance of 20.90 feet to an iron monument;

Carol Harbeke Lewis  
Secretary-Treasurer  
  
1201 Main Avenue West  
West Fargo, ND 58078-1301

701-298-2381  
FAX 701-298-2397  
[wrld@casscountynd.gov](mailto:wrld@casscountynd.gov)  
[casscountynd.gov](http://casscountynd.gov)

thence North 02°11'59" East for a distance of 188.35 feet to an iron monument; thence North 31°00'11" West for a distance of 115 feet, more or less, to the East Bank of the Sheyenne River; thence Westerly, Southwesterly and Southeasterly along the East Bank of the Sheyenne River to a point of intersection with a line that passes through the Point of Beginning and has a bearing of North 01°27'44" West; thence North 01°27'44" West along said line for a distance of 186 feet, more or less, to the Point of Beginning.

Together with an easement for use of a private access road described as follows, to-wit:

A private access road 30 feet wide 15 feet either side of the following described line: From the Southeast corner, existing iron monument, of Section Twenty-five, Township One Hundred Thirty-eight North, Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota, bear North 00°00'00" East (assumed bearing) along the East line of said Section Twenty-five for a distance of 1915.31 feet to an iron monument the Point of Beginning of the line herein described; thence South 89°53'56" West along said private access road centerline for a distance of 1603.44 feet to an iron monument and there terminating.

Enclosed is an appraisal regarding the value of the right of way the District must acquire from you, as determined by a licensed North Dakota appraiser. As you can see from the appraisal, the appraiser indicated the value of the right of way the District must acquire from you is \$275,000.00. The District approved the appraisal and this letter is the District's offer to you in the amount of \$275,000.00 as just compensation to purchase right of way from you for the Project. If you are willing to accept the District's offer, please sign the enclosed *Purchase Agreement* and return it to the District in the enclosed self-addressed, stamped envelope.

You are encouraged to maintain contact with the land agent assigned to your property. **Ken Helvey** of SRF Consulting Group, Inc. can be reached at **(763) 249-6785** or **khelvey@srfconsulting.com**. Ken is your point of contact for getting answers to any questions you have about the Project and acquisition of right of way from you for the Project.

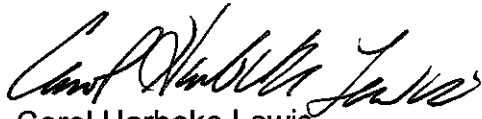
For your information, North Dakota law requires the District to provide you with a description of the District's negotiation timeline regarding your right of way. If you do not accept the District's offer of just compensation and do not return a signed purchase agreement within fifteen (15) days, the District will send you a written request to discuss the Project and required right of way to be acquired at an upcoming Cass County Joint Water Resource District meeting. Ultimately, the District must conclude all negotiations and complete all acquisitions by Fall 2020.

David T. and Annette R. Delaney  
January 2, 2020  
Page 3

We look forward to reaching a mutually acceptable agreement to resolve this matter.  
Thank you for your consideration.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis  
Secretary-Treasurer  
1201 Main Avenue West  
West Fargo, ND 58078  
(701) 298-2381  
[Lewisc@casscountynd.gov](mailto:LewisC@casscountynd.gov)

Enclosures

cc: Ken Helvey, Land Agent,  
Eric Dodds, Program Manager, AE2S  
Chris McShane, Ohnstad Twichell, P.C.  
Mary Scherling, Cass County Commission Chair  
Robert Wilson, Cass County Administrator  
Birch Burdick, Cass County State's Attorney  
Joel Paulsen, Executive Director, Diversion Authority





VIA CERTIFIED MAIL

March 20, 2020

David T. and Annette R. Delaney  
10615 81st Street S  
Horace, ND 58047  
**Certified No. 7018 0040 0000 5525 7424**

Cass County  
Joint Water  
Resource  
District

Greetings:

RE: Cass County Joint Water Resource District  
Fargo-Moorhead Area Diversion Project  
Formal Negotiations and Written Offer of Just Compensation  
OIN: 1202  
Parcel No. 67-0000-12719-020

Dan Jacobson  
Chairman

West Fargo, North Dakota

Rodger Olson  
Manager

Leonard, North Dakota

Ken Lougheed  
Manager

Gardner, North Dakota

Jacob Gust  
Manager

Fargo, North Dakota

Keith Weston  
Manager

Fargo, North Dakota

On January 2, 2020, I attempted to send you, by certified mail requiring signed receipt, a letter offering to purchase your property for the Fargo-Moorhead Area Diversion Project. Delivery of the January 2, 2020, letter has been unsuccessful despite numerous attempts.

On March 13, 2020, an *Affidavit Regarding Formal Offer* was recorded in the office of the Cass County Recorder. Attached is a copy of the recorded *Affidavit Regarding Formal Offer*. Also attached is the January 2, 2020, letter and all the documents attached to that letter.

For your information, North Dakota law requires the District provide you with a description of the District's negotiation timeline regarding your right of way. If you do not accept the District's offer of just compensation and do not return a signed Purchase Agreement within 15 days, the District will send you a written request to discuss the project and required right of way to be acquired at an upcoming Cass County Joint Water Resource District meeting. Ultimately, the District must conclude all negotiations and complete the acquisition of your property by the fall of 2020.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT

Carol Harbeke Lewis  
Secretary-Treasurer  
1201 Main Avenue West  
West Fargo, ND 58078  
(701) 298-2381  
[Lewisc@casscountynynd.gov](mailto:LewisC@casscountynynd.gov)

Carol Harbeke Lewis  
Secretary-Treasurer

1201 Main Avenue West  
West Fargo, ND 58078-1301

701-298-2381  
FAX 701-298-2397  
[wrld@casscountynynd.gov](mailto:wrld@casscountynynd.gov)  
[casscountynynd.gov](http://casscountynynd.gov)

Enclosures

cc: Ken Helvey, Land Agent  
Eric Dodds, Program Manager, AE2S  
Chris McShane, Ohnstad Twichell, P.C.  
Chad Peterson, Cass County Commission Chair  
Robert Wilson, Cass County Administrator  
Birch Burdick, Cass County State's Attorney  
Joel Paulsen, Executive Director, Diversion Authority

PAGE: 1 of 8  
Ohnstad Twichell, P.C.  
Recorded Electronically

AFFT

1585141  
3/13/2020 8:00 AM  
\$65.00



RECORDER'S OFFICE, CASS COUNTY, ND 3/13/2020 8:00 AM  
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.  
DEBORAH A. MOELLER, COUNTY RECORDER

by Teresa A. Kirby, Dep. **1585141**  
Recorded Electronically

**AFFIDAVIT REGARDING FORMAL OFFER**

STATE OF NORTH DAKOTA    )  
                                          ) ss.  
COUNTY OF CASS            )

[¶1] I, Carol Harbeke Lewis, do hereby state on oath:

[¶2] I am the Secretary-Treasurer of the Cass County Joint Water Resource District (“the District”) which is the entity responsible for acquiring the necessary right of way in North Dakota for the Fargo-Moorhead Area Flood Risk Management Project (the “Project”).

[¶3] The District is acquiring certain real property from David T. Delaney and Annette R. Delaney (“Landowner”) for construction, operation, and maintenance of the Project.

[¶4] The real property owned by Landowner where a Right of Way Easement must be acquired by the District for the Project is located in Cass County, North Dakota, and more fully described as follows:

That part of the Southeast Quarter of Section Twenty-five, in Township One Hundred Thirty-eight North of Range Fifty West of the Fifth Principal Meridian, described as follows, to-wit: From the Southeast corner, existing iron monument of Section Twenty-five, Township One Hundred Thirty-eight North, Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota, bear North 00°00'00” East (assumed bearing) along the East line of said Section Twenty-five, for a distance of 1915.31 feet to an iron monument; thence South 89°53'56” West along the centerline of the access road for a distance of 1582.54 feet to an iron monument the Point of Beginning of the tract of land herein described; thence South 89°53'56” West along said road centerline for a distance of 20.90 feet to an iron monument; thence North 02°11'59” East for a distance of 188.35 feet to an iron monument; thence North 31°00'11” West for a distance of 115 feet,

more or less, to the East Bank of the Sheyenne River; thence Westerly, Southwesterly and Southeasterly along the East Bank of the Sheyenne River to a point of intersection with a line that passes through the Point of Beginning and has a bearing of North 01°27'44" West; thence North 01°27'44" West along said line for a distance of 186 feet, more or less, to the Point of Beginning.

Together with an easement for use of a private access road described as follows, to-wit: A private access road 30 feet wide 15 feet either side of the following described line: From the Southeast corner, existing iron monument, of Section Twenty-five, Township One Hundred Thirty-eight North, Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota, bear North 00°00'00" East (assumed bearing) along the East line of said Section Twenty-five for a distance of 1915.31 feet to an iron monument the Point of Beginning of the line herein described; thence South 89°53'56" West along said private access road centerline for a distance of 1603.44 feet to an iron monument and there terminating.

(the "Necessary ROW Easement Property").

[¶5] SRF Consulting Group, Inc. has attempted to negotiate with Landowner to acquire the Necessary ROW Easement Property.

[¶6] On January 2, 2020, the District sent Landowner, by certified mail requiring signed receipt, an appraisal, along with a written offer for just compensation, and a purchase agreement, for the District to purchase the necessary permanent Right of Way easement interests in and to the Necessary ROW Easement Property for a total purchase price of \$275,000.00. Said written offer for just compensation and purchase agreement include a specific description of the exact location of the Necessary ROW Easement Property. A true and accurate copy of the return receipt noting it was not delivered because the mail unclaimed and unable to forward, is attached hereto as **Exhibit "A"**.

[¶7] On January 2, 2020 the District sent Landowner by UPS requiring signed receipt an appraisal, along with a written offer for just compensation, and a purchase agreement for the District to purchase the necessary permanent right of way easement interests in and to the Necessary ROW Easement Property for \$275,000.00. Said written offer for just compensation and

purchase agreement includes a specific description of the exact location of the Necessary ROW Easement Property. A true and accurate copy of the Return to Shipper label noting delivery by commercial carrier was unsuccessful is attached hereto as **Exhibit "B"**.

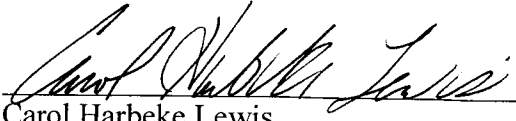
[¶8] A process server duly authorized by law to perform personal service was engaged to personally serve Landowner an appraisal, along with a written offer for just compensation, and a purchase agreement for the District to purchase the necessary easement interests in and to the Necessary ROW Easement Property for a total purchase price of \$275,000.00. Said written offer for just compensation and purchase agreement include a specific description of the exact location of the Necessary ROW Easement Property. Said process server unsuccessfully attempted to personally serve Landowner such written offer for just compensation, purchase agreement, and appraisal on February 21, 2020 at 10:40 a.m. and February 23, 2020 at 11:14 a.m. A true and accurate copy of said process server's Affidavit of Not Found is attached hereto as **Exhibit "C"**.

[¶9] I verify the above attempts at delivery upon Landowner have been unsuccessful and this Affidavit is prepared and is being recorded in the office of the Cass County Recorder in order to provide Landowner with constructive notice of the above-described written offer of just compensation, purchase agreement, and appraisal.

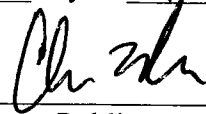
[¶10] True and accurate copies of said written offer of just compensation, purchase agreement, and appraisal may be obtained by the Landowner from Cass County Joint Water Resource District, at 1201 Main Avenue West, West Fargo, North Dakota, 58078, (701-298-2381).

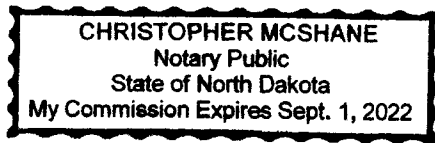
(Signatures appear on following page.)

Dated this 12<sup>th</sup> day of March, 2020.

  
\_\_\_\_\_  
Carol Harbeke Lewis

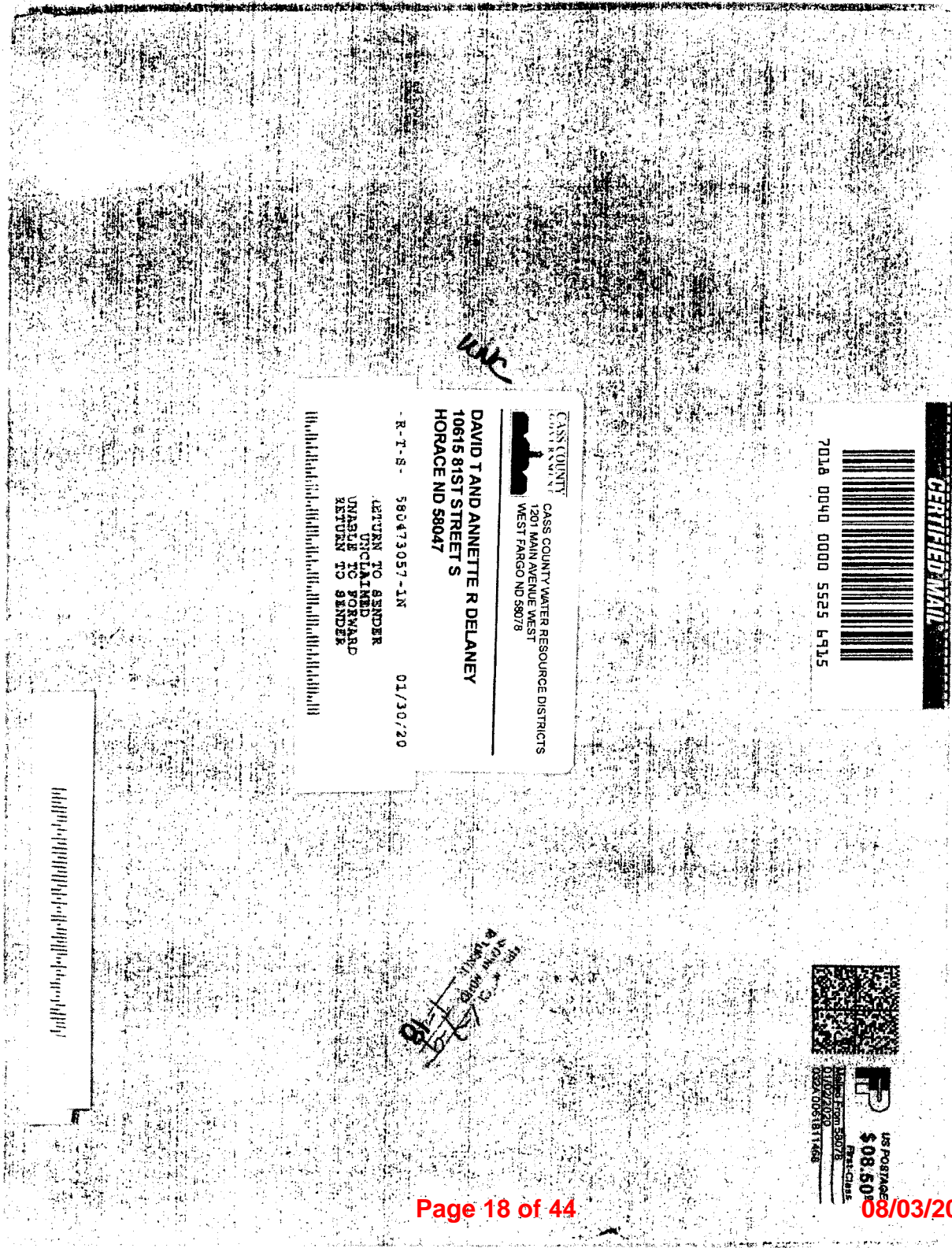
Subscribed and sworn to before me this 12<sup>th</sup> day of March, 2020.

  
\_\_\_\_\_  
Notary Public,



\_\_\_\_\_  
County, ND  
My Commission Expires:

EXHIBIT "A"



WAC

CERTIFIED MAIL

7018 0040 0000 5525 6915

CASS COUNTY  
WATER RESOURCE DISTRICTS  
1201 MAIN AVENUE WEST  
WEST PARKSD ND 58078

DAVID T AND ANNETTE R DELANEY  
10615 81ST STREET S  
HORACE ND 58047

- R-T-S - 580473057-1N 01/30/20  
RETURN TO SENDER  
UNCLAIMED  
UNABLE TO FORWARD  
RETURN TO SENDER

US POSTAGE  
\$08.50  
08/03/2020

US POSTAGE  
\$08.50  
08/03/2020





EXHIBIT "C"

**AFFIDAVIT OF NOT FOUND**

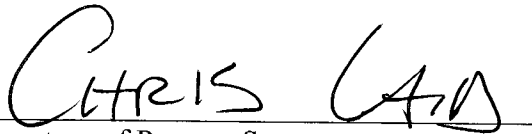
RE: Cass County Joint Water Resource District  
Fargo-Moorhead Area Diversion Project  
Formal Negotiations and Written Offer of Just Compensation  
OIN: 1202  
Parcel No.: 67-0000-12719-020

[¶1] I, Chris Laid, being first duly sworn, depose and say: That I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected I was authorized by law to perform said service:

[¶2] **Non-Service:** After due search, careful inquiry and diligent attempts, I have been unable to effect service of the following documents upon Annette R. Delaney:

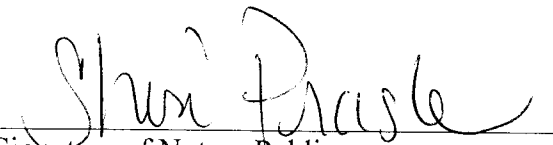
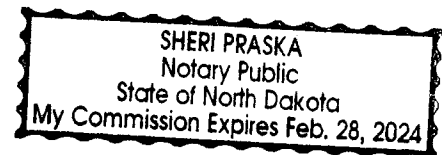
1. Letter dated January 2, 2020;
2. Appraisal Report; and
3. Purchase Agreement (Right of Way Easement).

[¶3] I personally attempted to serve the above documents to Annette R. Delaney at 10615 81<sup>st</sup> Street South, Horace, ND 58047 on February 21, 2020 at 10:40 a.m. and February 23, 2020 at 11:14 a.m. The residence appeared to be occupied but no one answered the door. I was unable to locate the defendant within the County of Cass in the State of North Dakota.



Signature of Process Server

Subscribed and Sworn to me this 12 day of March, 2020



Signature of Notary Public

Notary Public for the State of North Dakota, County of Cass

**AFFIDAVIT OF NOT FOUND**

RE: Cass County Joint Water Resource District  
 Fargo-Moorhead Area Diversion Project  
 Formal Negotiations and Written Offer of Just Compensation  
 OIN: 1202  
 Parcel No.: 67-0000-12719-020

[¶1] I, Chris Laid, being first duly sworn, depose and say: That I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected I was authorized by law to perform said service:

[¶2] **Non-Service:** After due search, careful inquiry and diligent attempts, I have been unable to effect service of the following documents upon David T. Delaney:


1. Letter dated January 2, 2020;
2. Appraisal Report; and
3. Purchase Agreement (Right of Way Easement).

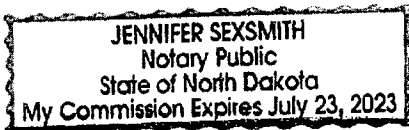
[¶3] I personally attempted to serve the above documents to David T. Delaney at 10615 81<sup>st</sup> Street South, Horace, ND 58047 on February 21, 2020 at 10:40 a.m. and February 23, 2020 at 11:14 a.m. The residence appeared to be occupied but no one answered the door. I was unable to locate the defendant within the County of Cass in the State of North Dakota.



Signature of Process Server

Subscribed and Sworn to me this 25<sup>th</sup> day of February, 2020

  
Signature of Notary Public



Notary Public for the State of North Dakota, County of Cass



**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

March 31, 2020

**Cass County  
Joint Water  
Resource  
District**

David T. and Annette R. Delaney  
10615 81st Street S  
Horace, ND 58047  
**Certified No. 7018 0040 0000 5525 7448**

Greetings:

Dan Jacobson  
Chairman  
West Fargo, North Dakota

Rodger Olson  
Manager  
Leonard, North Dakota

Ken Lougheed  
Manager  
Gardner, North Dakota

Jacob Gust  
Manager  
Fargo, North Dakota

Keith Weston  
Manager  
Fargo, North Dakota

RE: Cass County Joint Water Resource District  
Fargo-Moorhead Area Diversion Project  
Request for Meeting  
OIN: 1202  
Parcel No.: 67-0000-12719-020

As you know, the Cass County Joint Water Resource District (the "District") is in the process of developing the Fargo-Moorhead Area Diversion Project (the "Project"). The District previously provided you a letter dated January 2, 2020; a copy of the District's appraisal for the right of way needed from you; and a Purchase Agreement as the District's offer of just compensation to purchase the right of way from you. The District's letter specifically described the right of way the District must acquire from you for the Project. We have not received a signed Purchase Agreement from you, and we have not otherwise arrived at mutually acceptable terms regarding the District's purchase of right of way from you to accommodate the Project.

The District requests your attendance at a meeting, either by phone or in person, to discuss the District's offer to purchase right of way from you. The District is meeting at the Cass County Highway Department, 1201 Main Avenue West in West Fargo, North Dakota, at 8:00 a.m., on April 9, 2020, and April 23, 2020. Over the next several months, District meetings will be conducted via conference call originating at the Cass County Highway Department; however, District board members will not be attending in person. Therefore, if possible, we request your attendance by telephone.

The District hopes you will attend one of the above-mentioned meetings to discuss the Project and the right of way the District must acquire from you to accommodate the Project. If you would like to attend either meeting by phone, please contact me or Melissa Maertens at (701) 298-2381 at least 24 hours in advance of the meeting so the necessary arrangements can be made and the call-in information provided to you.

Carol Harbeke Lewis  
Secretary-Treasurer

1201 Main Avenue West  
West Fargo, ND 58078-1301

701-298-2381  
FAX 701-298-2397  
 [wrd@casscountynnd.gov](mailto: wrd@casscountynnd.gov)  
 [casscountynnd.gov](http:// casscountynnd.gov)

David T. and Annette R. Delaney  
OIN 1202  
March 31, 2020  
Page 2

Please continue to maintain contact and negotiate with the land agent assigned to your property. **Ken Helvey** of SRF Consulting Group, Inc. is your point of contact for getting answers to any questions you have about the Project. Ken can be reached at **(763) 249-6785** or **khelvey@srfconsulting.com**.

North Dakota law requires the District to provide you with a description of the District's negotiation timeline regarding your right of way. The District must conclude all negotiations and complete the acquisition of right of way necessary for construction of Project components on your property by Fall of 2020.

The District hopes you will attend one of the upcoming District meetings to discuss the Project and the required right of way. The District looks forward to meeting with you.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis  
Secretary-Treasurer  
1201 Main Avenue West  
West Fargo, ND 58078  
(701) 298-2381  
[lewisc@casscountynd.gov](mailto:lewisc@casscountynd.gov)

cc: Ken Helvey, Land Agent  
Eric Dodds, Program Manager, AE2S  
Chris McShane, Ohnstad Twichell, P.C.  
Chad Peterson, Chair, Cass County Commission  
Robert Wilson, Cass County Administrator  
Birch Burdick, Cass County State's Attorney  
Joel Paulsen, Executive Director, Diversion Authority

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:  
 AVID T & ANNETTE R DELANEY  
 10615 81ST ST S  
 HORACE ND 58047



9590 9402 3806 8032 1527 30

2. Article Number (Transfer from service label)

7018 0040 0000 5525 7493

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X BR2C19

- Agent
- Addressee

B. Received by (Printed Name)

AB

C. Date of Delivery

4/3

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt





**CERTIFIED MAIL – RETURN RECEIPT REQUESTED AND UPS DELIVERY**

Cass County  
Joint Water  
Resource  
District

May 22, 2020

David T. and Annette R. Delaney  
10615 81st Street S  
Horace, ND 58047  
**Certified No. 7019 1640 0002 0398 8613**

Dan Jacobson  
Chairman  
West Fargo, North Dakota

Greetings:

Rodger Olson  
Manager  
Leonard, North Dakota

RE: Cass County Joint Water Resource District  
Fargo-Moorhead Area Diversion Project  
NOTICE OF INTENT TO TAKE POSSESSION OF RIGHT OF WAY  
OIN: 1202  
Parcel No. 67-0000-12719-020

Ken Lougheed  
Manager  
Gardner, North Dakota

Jacob Gust  
Manager  
Fargo, North Dakota

Keith Weston  
Manager  
Fargo, North Dakota

As you know, the Cass County Joint Water Resource District (the "District") is in the process of developing the Fargo-Moorhead Area Diversion Project (the "Project"). On behalf of the District, I previously provided you a letter dated January 2, 2020, a copy of the District's appraisal for your right of way, and a Purchase Agreement as the District's offer of just compensation to purchase the right of way from you. In addition, I also provided you a letter dated March 31, 2020, to invite you to meet with the District for purposes of discussing the acquisition of your land. The parties have conducted the informal and formal negotiation procedures required by law but, unfortunately, the parties have not yet reached a mutually-acceptable agreement regarding compensation for the District's purchase of the right of way from you to accommodate the Project.

Carol Harbeke Lewis  
Secretary-Treasurer

This letter is the District's NOTICE OF INTENT TO TAKE POSSESSION OF RIGHT OF WAY. If we do not have an agreement, the District will be requesting approval from the Cass County Commission to take possession of a right of way easement over your property. Cass County will provide you with at least 30 days' notice of a public meeting, and will invite you to the meeting to discuss the District's request.

1201 Main Avenue West  
West Fargo, ND 58078-1301

This NOTICE does not preclude the parties from continuing negotiations. The District still hopes the parties can arrive at a mutually-acceptable agreement.

701-298-2381  
FAX 701-298-2397  
[wrđ@casscountynđ.gov](mailto:wrđ@casscountynđ.gov)  
[casscountynđ.gov](http://casscountynđ.gov)

David T. and Annette R. Delaney  
OIN 1202  
May 22, 2020  
Page 2

You are encouraged to maintain contact with the land agent assigned to your property. **Ken Helvey** of **SRF Consulting Group, Inc.** can be reached at **(763) 249-6785** or **khelvey@srfconsulting.com**. Ken is your point of contact for getting answers to any questions you have about the Project and acquisition of right of way from you for the Project.

North Dakota law requires the District to provide you with a description of the District's negotiation timeline regarding your right of way. Ultimately, the District must conclude all negotiations and complete all acquisitions by Fall 2020.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis  
Secretary-Treasurer  
1201 Main Avenue West  
West Fargo, ND 58078  
(701) 298-2381  
[lewisc@casscountynynd.gov](mailto:lewisc@casscountynynd.gov)

cc: Ken Helvey, Land Agent  
Chris McShane, Ohnstad Twichell, P.C.  
Chad Peterson, Chair, Cass County Commission  
Robert Wilson, Cass County Administrator  
Birch Burdick, Cass County State's Attorney  
Eric Dodds, Program Manager, AE2S  
Joel Paulsen, Executive Director, Diversion Authority

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 DAVID T AND ANNETTE R DELANEY  
 10615 81ST STREET S  
 HORALE MO 58047



9590 9402 3806 8032 1542 15

2. Article Number (Transfer from service label)

7019 1640 0002 0398 8613

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X COLE RZAD

- Agent
- Addressee

B. Received by (Printed Name)

COLE RZAD

C. Date of Delivery

5/26

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt



SENT VIA EMAIL [wilsonro@casscountynd.gov](mailto:wilsonro@casscountynd.gov)

June 26, 2020

**Cass County  
Joint Water  
Resource  
District**

Robert Wilson  
Cass County Administrator  
Cass County Commission  
211 9th Street S  
Fargo, ND 58103

Greetings:

Dan Jacobson  
Chairman  
West Fargo, North Dakota

RE: Cass County Joint Water Resource District  
Fargo-Moorhead Area Diversion Project  
Request for Approval to Take Possession of Necessary Right of Way  
OIN: 1202  
Parcel No. 67-0000-12719-020

Rodger Olson  
Manager  
Leonard, North Dakota

Ken Lougheed  
Manager  
Gardner, North Dakota

Jacob Gust  
Manager  
Fargo, North Dakota

Keith Weston  
Manager  
Fargo, North Dakota

As you know, the Cass County Joint Water Resource District (the "District") is in the process of acquiring the right of way necessary for the Fargo Moorhead Diversion Area Project ("Project"). I previously copied you on the following three letters whereby the District sought to negotiate the acquisition of the right of way from David T. and Annette R. Delaney (the "Landowner"):

- Letter dated January 2, 2020, enclosing the District's appraisal for the acquisition of the right of way from the Landowner and a proposed Purchase Agreement;
- Letter dated March 31, 2020, inviting the Landowner to meet with the District for purposes of negotiating compensation for the right of way to be acquired; and
- Letter dated May 22, 2020, notifying the Landowner the District planned to submit a request to the Cass County Commission seeking immediate possession of the right of way necessary for the Project.

The District has conducted months of negotiations with the Landowner to arrive at a mutually acceptable agreement for the District's purchase. More specifically, the District engaged in both informal and formal negotiations with the Landowner, as required under N.D. Cent. Code § 61-16.1-09(2)(b), in an effort to reach agreement regarding fair compensation to the Landowner for the acquisition of the necessary right of way over, across, and through certain property owned by the Landowner in Cass County, North Dakota. The legal description of the necessary right of way is as follows:

Carol Harbeke Lewis  
Secretary-Treasurer

1201 Main Avenue West  
West Fargo, ND 58078-1301

701-298-2381  
FAX 701-298-2397  
[wrđ@casscountynd.gov](mailto:wrđ@casscountynd.gov)  
[casscountynd.gov](http://casscountynd.gov)

Right of Way Easement:

That part of the Southeast Quarter of Section Twenty-five, in Township One Hundred Thirty-eight North of Range Fifty West of the Fifth Principal Meridian, described as follows, to-wit:

From the Southeast corner, existing iron monument of Section Twenty-five, Township One Hundred Thirty-eight North, Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota, bear North 00°00'00" East (assumed bearing) along the East line of said Section Twenty five, for a distance of 1915.31 feet to an iron monument; thence South 89°53'56" West along the centerline of the access road for a distance of 1582.54 feet to an iron monument the Point of Beginning of the tract of land herein described; thence South 89°53'56" West along said road centerline for a distance of 20.90 feet to an iron monument; thence North 02°11'59" East for a distance of 188.35 feet to an iron monument; thence North 31°00'11" West for a distance of 115 feet, more or less, to the East Bank of the Sheyenne River; thence Westerly, Southwesterly and Southeasterly along the East Bank of the Sheyenne River to a point of intersection with a line that passes through the Point of Beginning and has a bearing of North 01°27'44" West; thence North 01°27'44" West along said line for a distance of 186 feet, more or less, to the Point of Beginning.

Together with an easement for use of a private access road described as follows, to-wit: A private access road 30 feet wide 15 feet either side of the following described line: From the Southeast corner, existing iron monument, of Section Twenty-five, Township One Hundred Thirty-eight North, Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota, bear North 00°00'00" East (assumed bearing) along the East line of said Section Twenty-five for a distance of 1915.31 feet to an iron monument the Point of Beginning of the line herein described; thence South 89°53'56" West along said private access road centerline for a distance of 1603.44 feet to an iron monument and there terminating.

As you may recall, in 2017, the North Dakota Legislature modified the process for water resource districts to acquire immediate possession of right of way necessary for water projects; the new process is set forth in Section 61-16.1-09(2)(b). The District has followed all of the necessary steps under the statute, but the parties have not reached a mutually acceptable agreement. Under the new acquisition process enumerated in Section 61-16.1-09(2)(b)(3), the District must next seek the County Commission's approval to proceed further, and to ultimately utilize quick take eminent domain to take possession of the right of way above to commence the Project.

More specifically, Section 61-16.1-09(2)(b)(3) requires the County Commission to hold a public meeting and to provide the Landowner no less than thirty days' notice of the meeting. The District will also attend the meeting, along with the land agent, Ken Helvey, who was the Landowner's main point of contact throughout the negotiation process. Prior to the public meeting, the land agent and the District will verify neither the District nor any of its agents referenced or threatened quick take eminent domain during the informal and formal negotiation process.

Robert Wilson  
June 26, 2020  
Page 3

While the District takes all landowners' rights very seriously, the District also has an obligation, as a member of the Metro Flood Diversion Authority, to acquire the right of way necessary for the Project, and construction of the Project will not be possible without acquiring the right of way identified above. As the District will explain and verify for the Commission in more detail through this process, the District provided the Landowner with the District's appraisal as the starting point for negotiations, then attempted to negotiate further with the Landowner over the course of several months. This step is not one the District takes lightly; quick take eminent domain is a serious undertaking, and the District has negotiated in good-faith with the Landowner to avoid this process. Despite the District's efforts to be fair, friendly, and flexible in both the informal and formal negotiations with the Landowner, unfortunately, the parties have not reached a mutually acceptable agreement for the acquisition of the right of way.

The District respectfully requests that the Cass County Commission proceed with the public meeting process under Section 61-16.1-09(2)(b)(3) regarding the Landowner and the right of way identified in this letter. Further, the District respectfully requests that the Cass County Commission ultimately approve the District's use of quick take eminent domain to take possession of the right of way identified above by quick take eminent domain so the Project may proceed. For your information, while the County conducts the process under Section 61-16.1-09(2)(b)(3), the District still hopes the parties can arrive at a mutually-acceptable agreement.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis  
Secretary-Treasurer  
1201 Main Avenue West  
West Fargo, ND 58078  
(701) 298-2381  
[lewisc@casscountynd.gov](mailto:lewisc@casscountynd.gov)

cc: Ken Helvey, Land Agent  
Chris McShane, Ohnstad Twichell, P.C.  
Birch Burdick, Cass County State's Attorney  
Joel Paulsen, Executive Director, Diversion Authority  
Eric Dodds, AE2S Program Manager  
Sharon Oliver, ROW Acquisition Coordinator, Ohnstad Twichell, P.C.  
Heather Worden, Administrative Assistant, Cass County Commission





June 29, 2020

**VIA UPS – DELIVERY CONFIRMATION**

**Board of County Commissioners**

David T. Delaney  
Annette R. Delaney  
10615 81st Street South  
Horace, North Dakota 58047

Chad M. Peterson  
Fargo, North Dakota

Re:

Rick Steen  
Fargo, North Dakota

Ken Pawluk  
Fargo, North Dakota

Duane Breitling  
West Fargo, North Dakota

Mary Scherling  
Stanley Township, North Dakota

Cass County Commission  
Fargo-Moorhead Area Diversion Project  
Invitation to Attend Public Meeting  
OIN: 1202  
Parcel No. 67-0000-12719-020  
**UPS Tracking No. 1ZRT87R14302921624**

Greetings David and Annette:

As you know, the METRO FLOOD DIVERSION BOARD OF AUTHORITY (the "Authority") is proceeding with the Fargo Moorhead Diversion Area Project ("Project"); the Cass County Commission (the "Commission") is a member of the Authority. The Cass County Joint Water Resource District (the "District") is also a member of the Authority, and the Authority previously directed the District to obtain the North Dakota right of way necessary to accommodate the Project. You have been in negotiations with the District and its agents regarding right of way the District must acquire from you for the Project. The District copied the Commission on the following three letters the District sent to you regarding the District's negotiations with you:

- Letter dated January 2, 2020, enclosing the District's appraisal for the acquisition of the right of way from you, along with a proposed Purchase Agreement;
- Letter dated March 31, 2020, inviting you to meet with the District for purposes of negotiating compensation for the right of way to be acquired; and
- Letter dated May 22, 2020, notifying you the District planned to submit a request to the Commission seeking immediate possession of the right of way necessary for the Project.

Heather Worden  
Commission Assistant

The District informed the Commission that you and the District have not reached a mutually-acceptable agreement, and have not signed a purchase agreement, regarding the right of way the District must purchase from you

P.O. Box 2806  
211 9th Street South  
Fargo, North Dakota 58108  
701-241-5609  
www.casscountynd.gov

to accommodate the Project. With that in mind, the District recently requested approval from the Commission to utilize quick take eminent domain to take possession of the right of way the District must acquire from you. The legal description of the necessary right of way is as follows:

Right of Way Easement:

That part of the Southeast Quarter of Section Twenty-five, in Township One Hundred Thirty-eight North of Range Fifty West of the Fifth Principal Meridian, described as follows, to-wit:

From the Southeast corner, existing iron monument of Section Twenty-five, Township One Hundred Thirty-eight North, Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota, bear North 00°00'00" East (assumed bearing) along the East line of said Section Twenty five, for a distance of 1915.31 feet to an iron monument; thence South 89°53'56" West along the centerline of the access road for a distance of 1582.54 feet to an iron monument the Point of Beginning of the tract of land herein described; thence South 89°53'56" West along said road centerline for a distance of 20.90 feet to an iron monument; thence North 02°11'59" East for a distance of 188.35 feet to an iron monument; thence North 31°00'11" West for a distance of 115 feet, more or less, to the East Bank of the Sheyenne River; thence Westerly, Southwesterly and Southeasterly along the East Bank of the Sheyenne River to a point of intersection with a line that passes through the Point of Beginning and has a bearing of North 01°27'44" West; thence North 01°27'44" West along said line for a distance of 186 feet, more or less, to the Point of Beginning.

Together with an easement for use of a private access road described as follows, to-wit: A private access road 30 feet wide 15 feet either side of the following described line: From the Southeast corner, existing iron monument, of Section Twenty-five, Township One Hundred Thirty-eight North, Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota, bear North 00°00'00" East (assumed bearing) along the East line of said Section Twenty-five for a distance of 1915.31 feet to an iron monument the Point of Beginning of the line herein described; thence South 89°53'56" West along said private access road centerline for a distance of 1603.44 feet to an iron monument and there terminating.

The Commission invites you to attend the Commission's meeting on August 3, 2020 at 3:30 p.m. The District will also participate in the meeting, along with the District's land agent, **Ken Helvey**, who was your primary point of contact throughout the negotiation process. At the meeting, the Commission will ask the District to verify the District's compliance with Section 61-16.1-09(2) of the North Dakota Century Code. The Commission will ultimately vote on whether to approve the District's use of quick take eminent domain to take a right of way easement over your property.



Delaney  
OIN 1202  
June 29, 2020  
Page 3

If you wish to participate in the Commission's August 3, 2020 public meeting via conference call or Microsoft Teams, please contact Heather Worden at (701) 241-5609 or [wordenh@casscountynd.gov](mailto:wordenh@casscountynd.gov) as soon as possible so Ms. Worden can assist you with the necessary arrangements.

This Notice does not preclude you from continuing to work with the District regarding the right of way easement necessary for the Project. In fact, the Commission and the District encourage you to maintain contact with **Ken Helvey** and to continue discussions about the Project. **Ken Helvey** of **SRF Consulting Group, Inc.** is your point of contact regarding the Project. You can reach **Ken Helvey** at **(763) 249-6785** or **[khelvey@srfconsulting.com](mailto:khelvey@srfconsulting.com)**.

Finally, North Dakota law requires the Commission to provide you with a description of the District's timeline regarding your right of way. The District must complete the acquisition of right of way necessary for construction of Project components on your property by Fall of 2020.

Sincerely,

CASS COUNTY COMMISSION



Robert Wilson, Cass County Administrator  
Cass County Commission  
211 Ninth Street South  
Fargo, ND 58103  
(701) 241-5609

cc: Ken Helvey, Land Agent  
Birch Burdick, Cass County State's Attorney  
Joel Paulsen, Executive Director, Diversion Authority  
Chris McShane, Ohnstad Twichell, P.C.  
Eric Dodds, AE2S Program Manager  
Sharon Oliver, ROW Acquisition Coordinator, Ohnstad Twichell, P.C.  
Heather Worden, Administrative Assistant, Cass County Commission

---

FedEx Priority Overnight  
394332240152 0.15 lb (S) 36.80

Direct Signature Required  
Declared Value 100

Recipient Address:  
David T Delaney  
Annette R Delaney  
10615 81ST ST S  
HORACE, ND 58047-9778  
0000000000

Scheduled Delivery Date 6/30/2020

Pricing option:  
ONE RATE

Package Information:  
FedEx Envelope

---



Shipment Receipt

July 1, 2020

1ZRT87R14723820839

Where

Ship From

Cass County Government, Heather Worden  
211 9th St S, PO Box 2806, FARGO, ND 581082806  
wordenh@casscountynynd.gov, 18007425877

Ship To

David & Annette Delaney  
10615 81st Street South, HORACE, ND 58047  
Residential

What

Package 1 - 1ZRT87R14723820839

Weight  
1 lbs

Dimensions  
UPS Letter

Delivery  
Confirmation

Service Details - UPS Next Day Air

Estimated Delivery Friday July 3, 2020 , 10:30 AM

Additional Options

Saturday Delivery

Payment

Bill Shipping Charges To: Visa ending in 8140

Shipping Total

Shipping Fees

Residential Address Surcharge	\$4.50
<b>Package 1</b>	
UPS Next Day Air	\$30.04
Delivery Area Surcharge - Extended	\$5.40
Fuel Surcharge	\$1.96

Additional Option Fees

Saturday Delivery	\$16.00
<b>Package 1</b>	
Delivery Confirmation	\$2.00

Subtotals

<b>Shipping Fees</b>	\$41.90
<b>Additional Option Fees</b>	\$18.00
<b>Combined Charges</b>	\$59.90

Transportation Charges: for services listed as guaranteed, refunds apply to transportation charges only. See Terms and Conditions in the Service Guide for details. Certain commodities and high value shipments may require additional transit time for customs clearance.

Rate includes a fuel Surcharge, but excludes taxes, duties and other charges that may apply to the shipment. Your invoice may vary from the displayed reference rates

Note: This document is not an invoice.

All shipments are subject to the UPS Tariff/Terms and Conditions of Service ("UPS terms") in effect on the date of shipment, which are available at www.ups.com/terms. Pursuant to the UPS Terms, UPS's maximum liability for loss or damage to each domestic package or international shipment is limited to \$100, unless the shipper declares a greater value in the declared value field of the UPS shipping system used and pays the applicable charge (in which case UPS's maximum liability is the declared value). Special terms apply to some services and articles. Please review the UPS Terms for liability limits, exclusions from liability, maximum declared values, prohibited items, and other important terms of service. The shipper agrees that in the absence of a greater declared value, \$100 value is a reasonable limitation under the circumstances of the transportation. Claims not timely made (generally noticed within sixty days and filed within nine months, but filed within sixty days for international shipments) are deemed waived and will not be paid. See the UPS Terms for details. Under no circumstances will UPS be liable for any special, incidental, or consequential damages.

# Drop-Off Package Receipt: 1 of 1

THIS IS NOT A SHIPPING LABEL. PLEASE SAVE FOR YOUR RECORDS.

DROP-OFF LOCATION:  
The UPS Store #6740  
3155 Bluestem Drive  
West Fargo ND 58078

DROP-OFF DATE/TIME:  
Wed 1 Jul 2020 5:18 PM

ESTIMATED PICKUP DATE:  
UPS (Air) Wed 1 Jul 2020 1pkg

CUSTOMER:  
Not Provided  
ID Type: Not Provided

TOTAL PACKAGES: 1pkg

TRACKING NUMBER	CARRIER & SERVICE	WEIGHT
1ZRT87R14723820839	UPS Next Day	0 lb 3.0 oz

THIS RECEIPT LISTS EACH PACKAGE RECEIVED BY THE UPS STORE #6740 AND INDICATES THE INFORMATION FOR EACH PACKAGE HAS BEEN TRANSMITTED TO EACH CARRIER'S DATA SYSTEM. THIS RECEIPT IS NOT CONFIRMATION THE CARRIER HAS PICKED UP THE PACKAGE. TO VERIFY THE STATUS OF A PACKAGE, GO TO [HTTP://THEUPSSTORE.COM](http://THEUPSSTORE.COM). SELECT TRACKING, THEN ENTER TRACKING #. IF YOU SELECTED A NO PACKAGING OPTION FOR YOUR RETURNED ITEM, THE TRACKING # MAY NOT PROVIDE TRACKING RESULTS. PLEASE CONTACT THE VENDOR'S WEBSITE FOR MORE INFORMATION ON RETURN/REFUND STATUS. THE UPS STORE DOES NOT MAINTAIN RETURN/REFUND STATUS FOR VENDORS. YOU ACKNOWLEDGE THAT THE SHIPMENT SERVICES PROVIDED BY THE UPS STORE #6740 FOR THE LISTED PACKAGES ARE SUBJECT TO AND GOVERNED BY EACH CARRIER AGREEMENT, IF APPLICABLE, THE RATES AND SERVICE GUIDE FOR EACH CARRIER, AND THE TARIFF IN EFFECT AT THE TIME OF SHIPMENT.

Powered by iShip(r)  
07/01/2020 03:18 PM Pacific Time



SEE NOTICE ON REVERSE regarding UPS Terms, and notice of Limitation of Liability. Where allowed by law, shipper authorizes UPS to act as forwarding agent for export control and customs purposes. If exported from the US, shipper certifies that the commodities, technology or software were exported from the US in accordance with the Export Administration Regulations. Diversion contrary to law is prohibited. RFD 672 0120



# Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

**Tracking Number**

1ZRT87R14723820839

**Weight**

1.00 LBS

**Service**

UPS Next Day Air®  
Saturday Delivery

**Shipped / Billed On**

07/01/2020

**Delivered On**

07/02/2020 10:00 A.M.

**Delivered To**

HORACE, ND, US

**Left At**

Front Door

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 07/02/2020 2:14 P.M. EST

AFFIDAVIT OF LAND AGENT

STATE OF North Dakota )  
 ) ss.  
COUNTY OF Cass )

[¶1] I, Ken Helvey, do hereby state on oath:

[¶2] I am employed by SRF Consulting Group, Inc. as Principal/Land Agent. The Cass County Joint Water Resource District (“the District”) hired SRF Consulting Group, Inc. to negotiate and acquire the necessary right of way for the Fargo-Moorhead Area Diversion Project (the “Project”).

[¶3] The District must acquire certain real property from David T. Delaney and Annette R. Delaney (“Landowner”) for construction, operation, and maintenance of the Project.

[¶4] Landowner’s real property where the District must acquire a Right of Way for the Project located in Cass County, North Dakota, more fully described as follows:

Right of Way  
GIN 1202

That part of the Southeast Quarter of Section Twenty-five, in Township One Hundred Thirty-eight North of Range Fifty West of the Fifth Principal Meridian, described as follows, to-wit:

From the Southeast corner, existing iron monument of Section Twenty-five, Township One Hundred Thirty-eight North, Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota, bear North 00°00’00” East (assumed bearing) along the East line of said Section Twenty five, for a distance of 1915.31 feet to an iron monument; thence South 89°53’56” West along the centerline of the access road for a distance of 1582.54 feet to an iron monument the Point of Beginning of the tract of land herein described; thence South 89°53’56” West along said road centerline for a distance of 20.90 feet to an iron monument; thence North 02°11’59” East for a distance of 188.35 feet to an iron monument; thence North 31°00’11” West for a distance of 115 feet, more or less, to the East Bank of the Sheyenne River; thence Westerly, Southwesterly and Southeasterly along the East Bank of the Sheyenne River to a point of intersection with a line that passes through the Point of Beginning and has a bearing of North 01°27’44” West; thence North 01°27’44” West along said line for a distance of 186 feet, more or less, to the Point of Beginning.

Together with an easement for use of a private access road described as follows, to-wit: A private access road 30 feet wide 15 feet either side of the following described line: From the Southeast corner, existing iron monument, of Section Twenty-five, Township One Hundred Thirty-eight North, Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota, bear North 00°00'00" East (assumed bearing) along the East line of said Section Twenty-five for a distance of 1915.31 feet to an iron monument the Point of Beginning of the line herein described; thence South 89°53'56" West along said private access road centerline for a distance of 1603.44 feet to an iron monument and there terminating.

The property described above is the "Necessary Property."

[¶5] Affiant is familiar with the records maintained by SRF Consulting Group, Inc. with respect to the Necessary Property and has reviewed all such records prior to executing this affidavit.

[¶6] SRF Consulting Group, Inc. has attempted to negotiate with Landowner to acquire the Necessary Property. Attached as **Exhibit A** is a log of all contacts SRF Consulting Group, Inc. has had with Landowner.

[¶7] The District has instructed SRF Consulting Group, Inc. to refrain from referencing, mentioning, or threatening quick take eminent domain during negotiations since August 1, 2017.


[¶8] I verify to the best of my knowledge as Principal/Land Agent of SRF Consulting Group, Inc., nobody from SRF Consulting Group, Inc. has referenced, mentioned, or threatened quick take eminent domain to Landowner during negotiations since August 1, 2017.

Dated this 22 day of July, 2020.

  
\_\_\_\_\_  
Ken Helvey  
SRF Consulting Group, Inc.

Subscribed to and sworn to before me this 22 day of July, 2020.



  
\_\_\_\_\_  
Notary Public, County of Cass  
State of North Dakota  
My Commission Expires: 2/28/2024

(SEAL)

"Exhibit A"

OIN 1202 - Delaney Contact Log	
Date	Contact Summary
2/2/2017	Dave talked to Annette briefly- she refused appraisal and meeting
2/28/2017	Dave emailed about appraisal - no reply
3/27/2017	Dave talked to Annette about ROPE- refused to sign
10/14/2016	Appraisal was made without doing an inspection- owner would not allow access or meet (date of inspection)
4/10/2017	Offer sent
Thru 8/1/17	Multiple attempts to conact made- no replies
8/1/2017	Called to request meeting- No reply
5/20/2019	Letter sent requesting meeting- no reply
5/29/2019	Letter sent requesting meeting and appraisal inspection- No Reply
5/31/2019	Called to request meeting- No reply
6/7/2019	Lisa called and left message- no reply
6/24/2019	Letter sent requesting meeting- no reply
5/16/2019	Appraisal was made without doing an inspection- owner would not allow access or meet (date of inspection)
8/20/2019	Offer sent- no reply
8/26/2019	Lisa called and left message- no reply
9/9/2019	Eligibility Notice sent- No reply
10/9/2019	Meeting request letter sent- no reply
11/6/2019	Meeting request letter sent- no reply
11/18/2019	Meeting request letter sent- no reply
12/5/2019	Meeting request letter sent- no reply
1/2/2020	Called to request meeting- No reply
1/31/2020	Called to request meeting- No reply
1/30/2020	Jamie called- No reply, visited home no one home
1/31/2020	Emailed request for meeting- no reply
2/7/2020	Jamie called- No reply, visited home no one home
3/2/2020	Called to request meeting- No reply
3/31/2020	Emailed request for meeting- no reply
4/20/2020	Letter- Sent copies of offer letters, Notice of Eligibility and other letters
4/21/2020	Called to request meeting- No reply
6/22/2020	Called to request meeting- No reply, also emailed
6/29/2020	CCJWRD 90 Day Notice sent
6/30/2020	Cass County Invite sent
7/2/2020	Cass County Invite re-sent as they didn't pick up the first try





thence North 01°27'44" West along said line for a distance of 186 feet, more or less, to the Point of Beginning.

Together with an easement for use of a private access road described as follows, to-wit: A private access road 30 feet wide 15 feet either side of the following described line: From the Southeast corner, existing iron monument, of Section Twenty-five, Township One Hundred Thirty-eight North, Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota, bear North 00°00'00" East (assumed bearing) along the East line of said Section Twenty-five for a distance of 1915.31 feet to an iron monument the Point of Beginning of the line herein described; thence South 89°53'56" West along said private access road centerline for a distance of 1603.44 feet to an iron monument and there terminating.

(the "Right of Way.")

[¶7] The District has fulfilled the required negotiation steps in accordance with subsection 2 of section 61-16.1-09 of the North Dakota Century Code.

[¶8] The District sent a written offer for just compensation to the landowner by certified mail, along with an appraisal and purchase agreement, on January 2, 2020. A copy of the offer (without the appraisal that was included) is attached as **Exhibit 1**.

[¶9] On March 31, 2020, the District sent Landowner a written request for a meeting, by certified mail; the District and Landowner have not reached an agreement regarding compensation, and more than fifteen days have passed since Landowner's receipt of the offer. A copy of the written request for a meeting with the landowner is attached as **Exhibit 2**.


[¶10] The District and Landowner have not reached an agreement regarding compensation, and more than thirty days have passed since Landowner's receipt of the request for a meeting.

[¶11] On May 22, 2020, the District sent Landowner a written notice of intent to take possession of the Right of Way, by certified mail. A copy of the notice of intent is attached as **Exhibit 3**.

[¶12] The District has retained land agents who are in direct contact with Landowner. The District instructed our land agents not to reference, mention, or threaten quick take eminent domain during negotiations. The land agents have verified they have not referenced, mentioned, or threatened quick take eminent domain during the course of negotiations with Landowner since August 1, 2017.

[¶13] I verify there have been no references, mention, or threats of quick take eminent domain by the District during negotiations since August 1, 2017.

Dated this 23 day of July, 2020.

  
\_\_\_\_\_  
Dan Jacobson, Chair  
Cass County Joint Water Resource District

Subscribed to and sworn to before me this 23rd day of July, 2020.

  
\_\_\_\_\_  
Notary Public, Cass County, State of North Dakota

(SEAL)

