

FM AREA DIVERSION PROJECT

# Property Owner Information Packet for Cass County Commission

September 21<sup>st</sup>, 2020

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PROPERTY OWNER: Nancy Loberg

LAND AGENT: Pat Roberts with ProSource

OIN: 716



FM AREA  
**DIVERSION**  
PROJECT

# TABLE OF CONTENTS

WRITTEN CORRESPONDENCE TIMELINE.....	1
L.R.E.D CHECKLIST FOR COMPLIANCE WITH N.D. CENTURY CODE .....	2
NEGOTIATING SUMMARY .....	4
PARCEL EXHIBIT .....	6
OFFER TO PURCHASE .....	7
<i>Proof of Delivery</i> .....	8
FORMAL NEGOTIATIONS AND WRITTEN OFFER OF JUST COMPENSATION .....	9
<i>Proof of Delivery</i> .....	11
REQUEST FOR MEETING.....	12
<i>Proof of Delivery</i> .....	14
NOTICE OF INTENT TO TAKE POSSESSION OF RIGHT OF WAY .....	15
<i>Proof of Delivery</i> .....	17
REQUEST FOR APPROVAL TO TAKE POSSESSION OF NECESSARY RIGHT OF WAY AND TEMPORARY EASEMENT .....	18
INVITATION TO ATTEND PUBLIC MEETING.....	21
<i>Proof of Delivery</i> .....	24
AFFIDAVIT OF LAND AGENT .....	25
<i>Contact Log</i> .....	27
AFFIDAVIT OF DAN JACOBSON FOR CASS COUNTY COMMISSION.....	28

## Written Correspondence Timeline – Nancy Loberg

OIN 716	Sent	Received
Offer to Purchase	8/13/2019	9/4/2019
Formal Negotiations and Written Offer of Just Compensation	4/22/2020	4/23/2020
Request for Meeting	5/18/2020	5/19/2020
Notice of Intent to Take Possession of Right-of-Way	7/2/2020	7/3/2020
Request for Approval to Take Possession of Necessary Right-of-Way and Temporary Easement	7/30/2020	7/30/2020
Invitation to Attend Public Meeting	8/6/2020	8/7/2020
Commission Meeting Date	9/21/2020	

**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: Nancy Loberg
2. Land Agent: Patrick Roberts
3. Parcel No.: 53-0000-09122-010
4. OIN No.: 716

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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September 9, 2020

Owner	Nancy Loberg
Address	2503 Sheyenne Street West Fargo, ND
Property Address	Unassigned, Mapleton Township ND
Property Location	Diversion Channel
Property Type	A-1 Agriculture
Identification Numbers	OIN 716

**Property Need:** Diversion Channel parcel

### Valuation and Negotiation Summary:

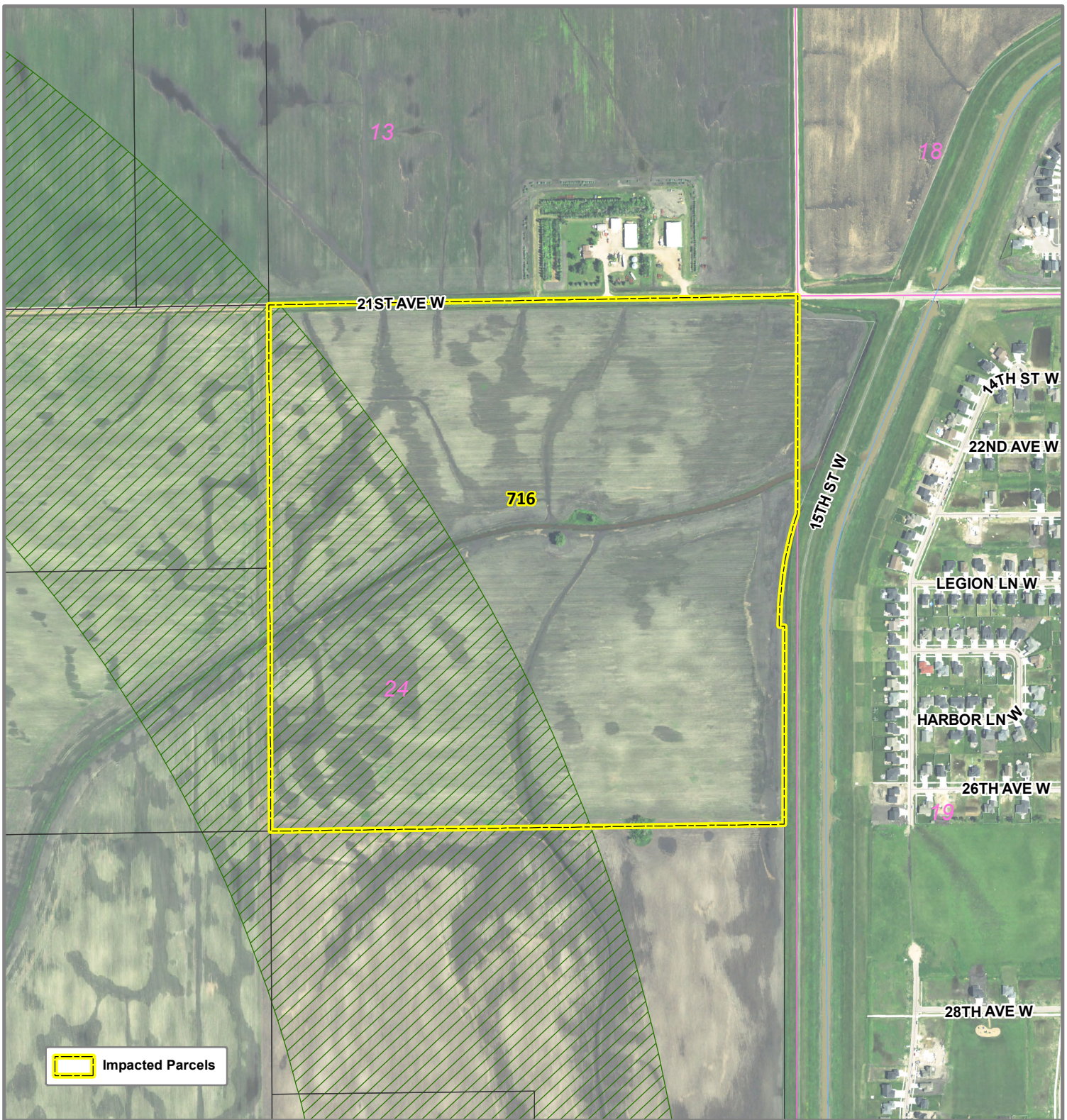
Appraisal Value / Date	\$522,600 April 9, 2019 (\$508,590 damages + \$14,010 TCE)
Updated offer	\$508,590 (No TCE needed)
Counter-offer under consideration	\$560,000 (+10% of appraised)

### Negotiation Notes

- Land agent is Patrick Roberts from ProSource.
- June 28, 2019. Received notification of appraisal approval by CCJWRD.
- July 2019. Calls made to contact number. No voicemail set up. No contact with property owner.
- July 2019 Mr. Stenger door knocks in an attempt to make contact. Speaks with care takers and leaves his business card with them.
- August 13, 2019 Approved mailing of introductory letter, informal offer letter, GIN and appraisal to Nancy. Mailing sent out.
- August 26, 2019 packet is delivered and signed for by POA JoAnn Gray.
- August 28 Call with POA and meeting set for September 4, 2019
- September 4, 2019 Meeting with JoAnn Gray and Lonna Danielson. Provide appraisal, offer letter and general information notice. Received signed acknowledgements and a copy of the power of attorney was emailed to me.
- Attempts at contact have been on-going to Lonna's cell phone. No response or counter-offer has been received from the landowner or POAs.
- April 7, 2020 Provided review of formal offer letter to be sent to Nancy Loberg. Review and confirmation of reduction in TCE making updated offer amount \$508,600.
- April 2020 Formal offer letter sent with offer amount of \$508,600 with no TCE needed. Still no contact with landowner.
- Continued calls to Lonna's cell phone.

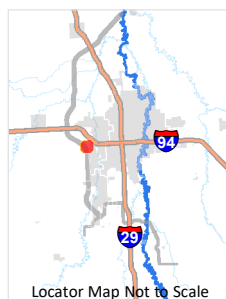
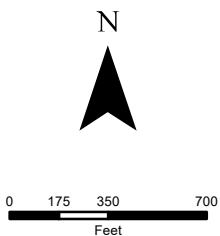
September 9, 2020

- May 20,2020 Text sent to Lonna for contact and feedback.
- August 6, 2020 Documents for the County Commission meeting sent to Nancy Loberg.
- August 17,2020 Received a voicemail at 7:31 PM from Lonna requesting I send documents that need a signature.
- August 19,2020 Called Lonna back and left her a voicemail. Also sent her a text and an email.
- August 20, 2020 Received a text back from Lonna advising that she and JoAnn (the other POA) would discuss the offer and get back to me in the evening. I texted later in the evening asking if any thoughts on next steps. No reply.
- August 21, 2020 Sent text to Lonna requesting any feedback. Received text back from Lonna advising she and Joann did not connect yet. Would hear from her early next week.
- August 23, 2020 Received a text from Lonna with some questions.
- August 24, 2020 Replied to text with answers and resent the email that I had sent on the 19th. Received an email over night from Lonna advising they would be willing to discuss an offer of +10% but had questions on the crop damage and what next steps would be. Tracking down answers to crop damage and timing of the taking.



*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\!Project Wide\Individual Property Maps - General Inquiry\IndividualLayout8x10v105.mxd



**OIN: 716**  
**NANCY LOBERG**  
**Parcel ID: 53-0000-09122-010**  
**Cass County, ND**

FM AREA DIVERSION  
 Map Date: 5/19/2020







August 13, 2019

*Delivered Via Certified US Mail*

Nancy Loberg  
2503 Sheyenne St  
West Fargo, ND 58078

RE: **Offer to Purchase**  
Fargo-Moorhead Area Flood Diversion Project  
**Property Address:** Unassigned, Mapleton Township ND  
Property ID(s): 716 PID(s): 53-0000-09122-010

Dear Nancy Loberg:

Cass County Joint Water Resource District (CCJWRD) will be acquiring your property located at Unassigned, Mapleton Township ND for the proposed construction of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project for the purpose of diversion of flood water from the Red River and its tributaries around Fargo-Moorhead. CCJWRD has hired ProSource Technologies LLC as the consultant to aid in the acquisition of your property.

CCJWRD hereby makes an approved offer to all interested parties who may have an interest in the real estate rights to be acquired the sum of \$522,600.00. This offer is based on an independent appraisal by Compass Land Consultants, Inc.

You will have reasonable time to consider this offer. You are not required to move for at least 90 days after you have signed the purchase agreement. This offer to purchase is not considered final until the CCJWRD Board officially accepts the purchase agreement.

If you accept the offer, the parcel will be acquired by direct purchase, and you will be paid upon satisfactory evidence of marketable title. If you do not accept the offer, CCJWRD wishes to continue negotiating with you regarding purchase of your property. Ultimately, the property may be acquired in an eminent domain proceeding if we cannot agree to the terms of the purchase within a reasonable time.

Your signature on page two (2) of this document is the only verification that this "Offer to Purchase" has been given to you. You also acknowledge that you have received the "Relocation Assistance" brochure, and a copy of the "Appraisal Report." Your signature does not affect your right to have the final amount determined through eminent domain proceedings in the event the direct purchase/negotiation method of acquisition is unsuccessful.

Page 2  
Nancy Loberg  
Offer to Purchase Letter

Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) provides for 1) The relocation advisory services; 2) payment for your moving expenses; and 3) replacement housing payment. You may be reimbursed or paid for your actual reasonable moving costs and related moving expenses. A notice of relocation eligibility letter will be provided to you that will further explain these services. The URA is a non-negotiable federal assistance program that provides funding for the above services.

I HEREBY ACKNOWLEDGE RECEIPT OF THE OFFER LETTER, THE GUIDE BOOK, AND COPY OF THE APPRAISAL REPORT.



Name



Date

Name

Date



**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

**Cass County  
Joint Water  
Resource  
District**

April 22, 2020

Nancy Loberg  
2503 Sheyenne Street  
West Fargo, ND 58078  
**Certified No. 7019 1640 0002 0398 8309**

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  
Formal Negotiations and Written Offer of Just Compensation  
OIN: 716  
Parcel No.: 53-0000-09122-010

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 53-0000-09122-010. The legal description of the property to be acquired is:

That part of the Northeast Quarter (NE1/4) of Section 24, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Beginning at the Northwest Corner of the NE1/4; thence N87°00'20"E on the north line of said NE1/4 a distance of 54.10 feet; thence 3062.40 feet on the arc of a non-tangential curve, concave to the southwest, having a radius of 8600.00 feet, a central angle of 20°24'09", a long chord length of 3046.24 feet bearing S32°46'44"E to the south line of said NE1/4; thence S87°15'07"W on said south line a distance of 1602.97 feet to the Southwest Corner of said NE1/4; thence N02°13'10"W on the west line of said NE1/4 a distance of 2637.18 feet to the Point of Beginning.

Said parcel contains 56.51 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

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)

Nancy Loberg  
April 22, 2020  
Page 2

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 \$508,590.00, rounded to \$508,600.00. The District approved the appraisal and this letter is the District's offer to you in the amount of \$508,600.00 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. **Pat Roberts** of ProSource Technologies, LLC can be reached at (763) 786-1445 or [proberts@prosourcetech.com](mailto:proberts@prosourcetech.com). Pat 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.

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: Pat Roberts, 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

**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:  
 NANCY LOBERG  
 2503 SHEYENNE STREET  
 WEST FARGO ND 58079



9590 9402 3806 8032 1546 35

2. Article Number (Transfer from service label)

7019 1640 0002 0398 8309

**COMPLETE THIS SECTION ON DELIVERY**

**A. Signature**

X *N L*

- Agent
- Addressee

**B. Received by (Printed Name)**

*SFRUCU19*

**C. Date of Delivery**

*4/23/19*

- 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



**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

May 18, 2020

**Cass County  
Joint Water  
Resource  
District**

Nancy Loberg  
2503 Sheyenne Street  
West Fargo, ND 58078  
**Certified No. 7019 1640 0002 0398 8521**

Greetings:

Dan Jacobson  
Chairman  
West Fargo, North Dakota

RE: Cass County Joint Water Resource District  
Fargo-Moorhead Area Diversion Project  
Request for Meeting  
OIN: 716  
Parcel No.: 53-0000-09122-010

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 developing the Fargo-Moorhead Area Diversion Project (the "Project"). The District previously provided you a letter dated April 22, 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 to discuss the District's offer to purchase right of way from you. The District is meeting at 8:00 a.m., on May 28, 2020, and June 11, 2020. Over the next several months, District meetings will be conducted via conference call and District board members will not be attending in person. The requirements that a meeting room be available to the public and that a speakerphone or monitor be provided at a physical location under NDCC § 44-04-19 have been suspended indefinitely pursuant to Governor Burgum's Executive Order 2020-16; therefore, we request your attendance by telephone.

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

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 one of the meetings 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.

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

Nancy Loberg  
OIN 716  
May 18, 2020  
Page 2

Please continue to maintain contact and negotiate with the land agent assigned to your property. **Patrick Roberts** of ProSource Technologies, LLC. is your point of contact for getting answers to any questions you have about the Project. Pat can be reached at **(763) 786-1445** or [proberts@prosourcetech.com](mailto:proberts@prosourcetech.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@casscountynynd.gov](mailto:lewisc@casscountynynd.gov)

cc: Patrick Roberts, 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.

1. Article Addressed to:

NANCY LOBERG  
 2503 SNEYENNE STREET  
 WEST FARGO ND 58078



9590 9402 3806 8032 1543 21

2 Article Number (Transfer from service label)

7019 1640 0002 0398 8521

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X NC

- Agent
- Addressee

B. Received by (Printed Name)

SFRUCWIG

C. Date of Delivery

5/19/20

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





**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

**Cass County  
Joint Water  
Resource  
District**

July 2, 2020

Nancy Loberg  
2503 Sheyenne Street  
West Fargo, ND 58078  
**Certified No. 7020 0090 0000 7648 4137**

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: 716  
Parcel No. 53-0000-09122-010

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 April 22, 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 May 18, 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)

Nancy Loberg  
OIN 716  
July 2, 2020  
Page 2

You are encouraged to maintain contact with the land agent assigned to your property. **Patrick Roberts** of **ProSource Technologies, LLC** can be reached at **(763) 786-1445** or **proberts@prosourcetech.com**. Pat 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: Patrick Roberts, 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

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1. Article Addressed to:

NANCY LOBERG  
 2503 SNEYENNE STREET  
 WEST FARGO ND 58078



9590 9402 5989 0062 9059 79

2. Article Number (Transfer from service label)

7020 0090 0000 7648 4137

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

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X N L

Agent  
 Addressee

B. Received by (Printed Name)

SFRY CVIC

C. Date of Delivery

7/3/20

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)

Cass County  
Joint Water  
Resource  
District

July 30, 2020

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

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  
Request for Approval to Take Possession of Necessary Right of Way  
OIN: 716  
Parcel No. 53-0000-09122-010

Ken Lougheed  
Manager  
Gardner, 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 Nancy Loberg (the "Landowner"):

Jacob Gust  
Manager  
Fargo, North Dakota

Keith Weston  
Manager  
Fargo, North Dakota

- Letter dated April 22, 2020, enclosing the District's appraisal for the acquisition of the right of way from the Landowner and a proposed Purchase Agreement;
- Letter dated May 18, 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 July 2, 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.

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

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 in, on, 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:

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 Northeast Quarter (NE¼) of Section 24, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Beginning at the Northwest Corner of the NE¼; thence N87°00'20"E on the north line of said NE¼ a distance of 54.10 feet; thence 3062.40 feet on the arc of a non-tangential curve, concave to the southwest, having a radius of 8600.00 feet, a central angle of 20°24'09", a long chord length of 3046.24 feet bearing S32°46'44"E to the south line of said NE¼; thence S87°15'07"W on said south line a distance of 1602.97 feet to the Southwest Corner of said NE¼; thence N02°13'10"W on the west line of said NE¼ a distance of 2637.18 feet to the Point of Beginning.

Said parcel contains 56.51 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

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 a representative of the land firm which was the Landowner's main point of contact throughout the negotiation process. Prior to the public meeting, the land firm representative 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.

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.

Robert Wilson  
July 30, 2020  
Page 3

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: Patrick Roberts, 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, Ohnstad Twichell, P.C.  
Heather Worden, Administrative Assistant, Cass County Commission



August 6, 2020

**VIA UPS – DELIVERY CONFIRMATION**

**Board of County Commissioners**

Nancy Loberg  
2503 Sheyenne Street  
West Fargo, ND 58078

Chad M. Peterson  
Fargo, North Dakota

Re: Cass County Commission  
Fargo-Moorhead Area Diversion Project  
Invitation to Attend Public Meeting  
OIN: 716  
Parcel No.: 53-0000-09122-010  
**UPS Tracking No. 1Z RT8 7R1 25 1606 4103**

Rick Steen  
Fargo, North Dakota

Ken Pawluk  
Fargo, North Dakota

Duane Breitling  
West Fargo, North Dakota

Mary Scherling  
Stanley Township, North Dakota

**Greetings:**

As you know, the METRO FLOOD DIVERSION BOARD OF AUTHORITY (the "Authority") is proceeding with the Fargo Moorhead Area Diversion 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 easement necessary to accommodate the Project. You have been in negotiations with the District and its agents regarding the right of way easement 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 April 22, 2020, enclosing the District's appraisal for the acquisition of the right of way from you, along with a proposed Purchase Agreement;
- Letter dated May 18, 2020, inviting you to meet with the District for purposes of negotiating compensation for the right of way to be acquired; and
- Letter dated July 2, 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

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

purchase agreement, regarding the right of way the District must purchase from you 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 Northeast Quarter (NE $\frac{1}{4}$ ) of Section 24, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Beginning at the Northwest Corner of the NE $\frac{1}{4}$ ; thence N87°00'20"E on the north line of said NE $\frac{1}{4}$  a distance of 54.10 feet; thence 3062.40 feet on the arc of a non-tangential curve, concave to the southwest, having a radius of 8600.00 feet, a central angle of 20°24'09", a long chord length of 3046.24 feet bearing S32°46'44"E to the south line of said NE $\frac{1}{4}$ ; thence S87°15'07"W on said south line a distance of 1602.97 feet to the Southwest Corner of said NE $\frac{1}{4}$ ; thence N02°13'10"W on the west line of said NE $\frac{1}{4}$  a distance of 2637.18 feet to the Point of Beginning.

Said parcel contains 56.51 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

The Commission invites you to attend the Commission's meeting on September 21, 2020 at 3:30 p.m. The District will also participate in the meeting, along with a representative of the land firm which 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.

If you wish to participate in the Commission's September 21, 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 **Patrick Roberts** and to continue discussions about the Project. **Patrick Roberts** of **ProSource Technologies, LLC** is your point of contact regarding the Project. You can reach **Patrick Roberts** at **(319) 899-0433** or [proberts@prosourcetech.com](mailto:proberts@prosourcetech.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



Loberg  
August 6, 2020  
Page 3

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: Patrick Roberts, 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, Ohnstad Twichell, P.C.  
Heather Worden, Administrative Assistant, Cass County Commission

# Proof of Delivery

Dear Customer,

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

**Tracking Number**

1ZRT87R12516064103

**Weight**

0.00 LBS

**Service**

UPS Next Day Air®

**Shipped / Billed On**

08/05/2020

**Delivered On**

08/07/2020 9:53 A.M.

**Delivered To**

2503 SHEYENNE ST  
WEST FARGO, ND, 58078, US

**Received By**

DRIVER RELEASE

**Left At**

Front Door

**Reference Number(s)**

RT87R18LHG3

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: 08/13/2020 11:28 A.M. EST

**AFFIDAVIT OF LAND AGENT**

STATE OF Minnesota )  
 ) ss.  
COUNTY OF Anoka )

[¶1] I, Patrick Roberts, do hereby state on oath:

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

[¶3] The District must acquire certain interest in real property from Nancy Loberg (“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, is more fully described as follows:

Right of Way  
OIN 716

That part of the Northeast Quarter (NE¼) of Section 24, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Beginning at the Northwest Corner of the NE¼; thence N87°00'20"E on the north line of said NE¼ a distance of 54.10 feet; thence 3062.40 feet on the arc of a non-tangential curve, concave to the southwest, having a radius of 8600.00 feet, a central angle of 20°24'09", a long chord length of 3046.24 feet bearing S32°46'44"E to the south line of said NE¼; thence S87°15'07"W on said south line a distance of 1602.97 feet to the Southwest Corner of said NE¼; thence N02°13'10"W on the west line of said NE¼ a distance of 2637.18 feet to the Point of Beginning.

Said parcel contains 56.51 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

The property described above is the “Necessary Property.”

[¶5] Affiant is familiar with the records maintained by ProSource Technologies, LLC with respect to the Necessary Property and has reviewed all such records prior to executing this affidavit.

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

[¶7] The District has instructed ProSource Technologies, LLC 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 Land Agent of ProSource Technologies, LLC, nobody from ProSource Technologies, LLC has referenced, mentioned, or threatened quick take eminent domain to Landowner during negotiations since August 1, 2017.

Dated this 19th day of August, 2020.



Patrick Roberts  
Land Agent

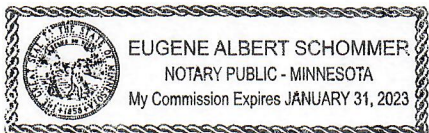
Subscribed to and sworn to before me this 19th day of August, 2020.



Notary Public, County of Washington

State of Minnesota

My Commission Expires: 1-31-23



(SEAL)

"EXHIBIT A"

OIN 716 Nancy Loberg - Contact Report	
Date	Notes
	Land agent is Patrick Roberts from ProSource.
6/28/2019	Received notification of appraisal approval by CCJWRD.
7/1/2019	Calls made to contact number. No voicemail set up. No contact with property owner.
7/15/2019	Mr. Stenger door knocks in an attempt to make contact. Speaks with care takers and leaves his business card with them.
8/13/2019	Approved mailing of introductory letter, informal offer letter, GIN and appraisal to Nancy. Mailing sent out.
8/26/2019	Packet is delivered and signed for by POA JoAnn Gray.
8/28/2019	Call with POA and meeting set for September 4, 2019
9/4/2019	Meeting with JoAnn Gray and Lonna Danielson. Provide appraisal, offer letter and general information notice. Received signed acknowledgements and a copy of the power of attorney was emailed to me.
	Attempts at contact have been on-going to Lonna's cell phone. No response or counter-offer has been received from the landowner or POAs.
4/7/2020	Provided review of formal offer letter to be sent to Nancy Loberg. Review and confirmation of reduction in TCE making updated offer amount \$508,600.
4/14/2020	Formal offer letter sent with offer amount of \$508,600 with no TCE needed. Still no contact with landowner.
	Continued calls to Lonna's cell phone.
5/20/2020	Text sent to Lonna for contact and feedback.
8/17/2020	Received a voicemail at 7:31 PM from Lonna requesting I send documents that need a signature.
8/19/2020	Called Lonna back and left her a voicemail. Also sent her a text and an email.
8/20/2020	Received a text back from Lonna advising that she and JoAnn (the other POA) would discuss the offer and get back to me in the evening. I texted later in the evening asking if any thoughts on next steps. No reply.
8/21/2020	Sent text to Lonna requesting any feedback. Received text back from Lonna advising she and Joann did not connect yet. Would hear from her early next week.
8/23/2020	Received a text from Lonna with some questions.
8/24/2020	Replied to text with answers and resent the email that I had sent on the 19th.
8/24/2020	Received an email over night from Lonna advising they would be willing to discuss an offer of +10% but had questions on the crop damage and what next steps would be. Tracking down answers to crop damage and timing of the taking.

**AFFIDAVIT OF DAN JACOBSON FOR CASS COUNTY COMMISSION**

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

[¶1] I, Dan Jacobson, do hereby state on oath:

[¶2] I serve as Chair of the Cass County Joint Water Resource District (“the District”).

[¶3] As a member of the FM Diversion Board of Authority, the District is responsible for acquiring the right of way in North Dakota necessary to accommodate the Fargo-Moorhead Area Diversion Project (the “Project”).

[¶4] The District has concluded acquisition of certain Right of Way in and to real property owned by Nancy Loberg (“Landowner”) is necessary for the Project.

[¶5] State and federal funds have been made available for the Project.

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

Right of Way  
OIN 716

That part of the Northeast Quarter (NE¼) of Section 24, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Beginning at the Northwest Corner of the NE¼; thence N87°00'20"E on the north line of said NE¼ a distance of 54.10 feet; thence 3062.40 feet on the arc of a non-tangential curve, concave to the southwest, having a radius of 8600.00 feet, a central angle of 20°24'09", a long chord length of 3046.24 feet bearing S32°46'44"E to the south line of said NE¼; thence S87°15'07"W on said south line a distance of 1602.97 feet to the Southwest Corner of said NE¼; thence N02°13'10"W on the west line of said NE¼ a distance of 2637.18 feet to the Point of Beginning.

Said parcel contains 56.51 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

[¶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 April 22, 2020. A copy of the offer (without the appraisal that was included) is attached as **Exhibit 1**.

[¶9] On May 18, 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 July 2, 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.

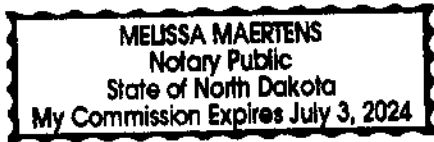
[¶13] I verify there have been no references, mention, or threats of quick take eminent domain by the District during negotiations since August 1, 2017.

Dated this 14 day of September, 2020.

*Dan Jacobson*

Dan Jacobson, Chair  
Cass County Joint Water Resource District

Subscribed to and sworn to before me this 14 day of September, 2020.



(SEAL)

*Melissa Maertens*

Notary Public, Cass County, State of North Dakota