

FM AREA DIVERSION PROJECT

# Property Owner Information Packet for Cass County Commission

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

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PROPERTY OWNER: Derek Flaten

LAND AGENT: Ken Helvey with SRF

OIN: 9742



FM AREA  
**DIVERSION**  
PROJECT

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## Written Correspondence Timeline – Derek Flaten

OIN 9742	Sent	Received
<b>Offer to Purchase</b>	11/22/2019	11/22/2019
<b>Formal Negotiations and Written Offer of Just Compensation</b>	4/22/2020	4/23/2020
<b>Request for Meeting</b>	5/18/2020	5/21/2020
<b>Notice of Intent to Take Possession of Right-of-Way</b>	7/2/2020	7/7/2020
<b>Request for Approval to Take Possession of Necessary Right-of-Way and Temporary Easement</b>	7/30/2020	7/30/2020
<b>Invitation to Attend Public Meeting</b>	8/6/2020	8/7/2020
<b>Commission Meeting Date</b>	<b>9/21/2020</b>	

**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: Derek Scott Flaten
2. Land Agent: Ken Helvey
3. Parcel No.: 53-0000-09083-020
4. OIN No.: 9742

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 14, 2020

Owner	Derek Flaten
Mailing Address	16660 38 <sup>th</sup> Street E, West Fargo, ND 58078
Property Location	Diversion Channel
Property Type	Agriculture/Residential
OIN	9742
Land Firm & Agent	SRF - Ken Helvey

### Property Need

The parcel is located within the Diversion Channel area associated with the Project. The Diversion Authority is required to obtain a portion of the parcel for the Diversion Channel.

### Valuation and Negotiation Summary:

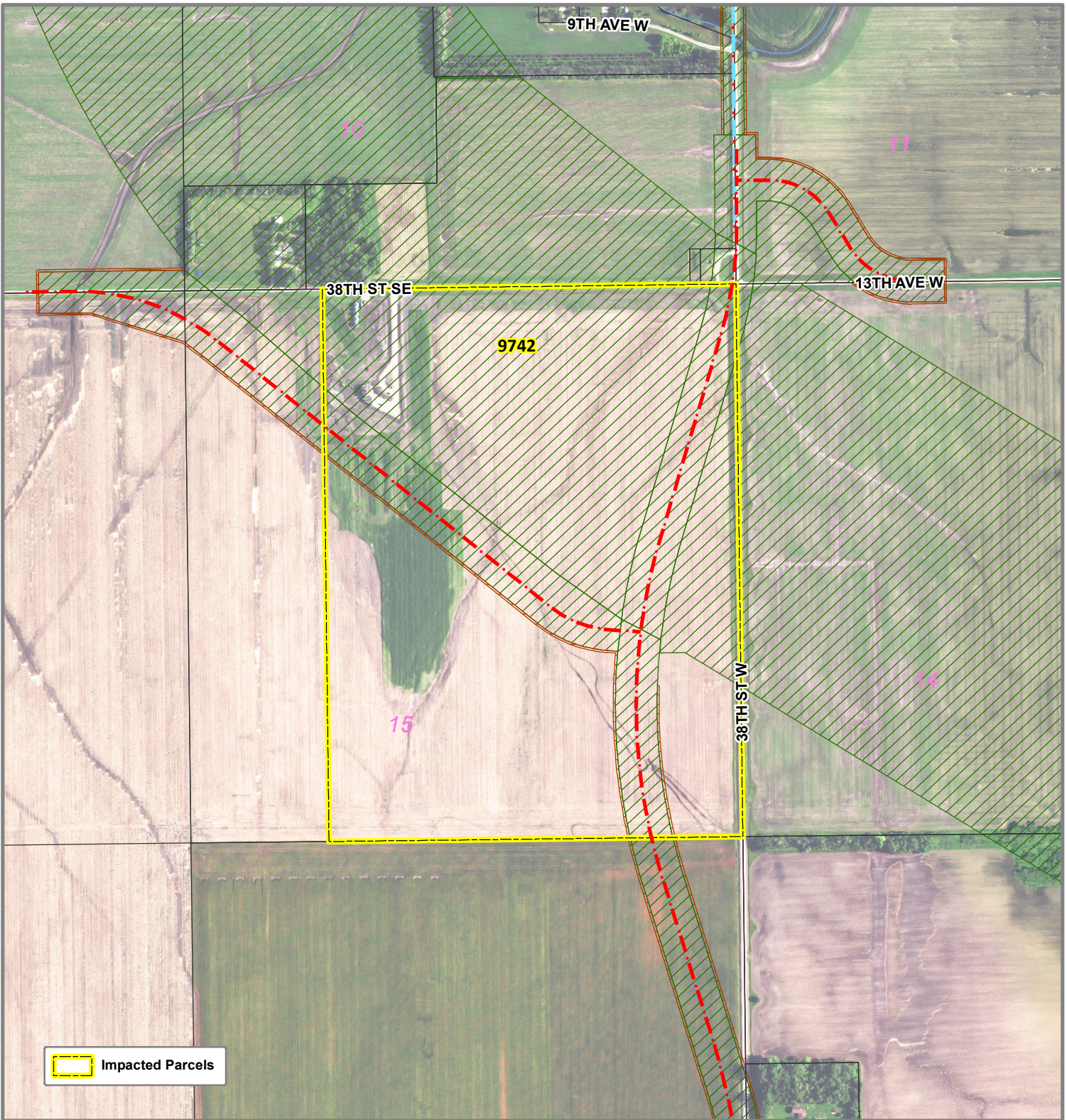
Appraisal Value / Date	\$1,504,810 (rd) – 7/2/19 63.27 acres land taking at \$7,636/acre – \$483,219.72 (2.66 road/waste acres - \$0) House - \$966,000 5.5 acres building site taking at \$10,000/acre – \$55,000 .8 acres TCE at \$170/5 years - \$680
Counteroffer	<b>\$2,654,613</b> See details below. <u>Board rejected this counteroffer at last meeting in August.</u> <b>New counter offer as of September 14<sup>th</sup>- \$2,700,000</b> <b>Will be presented at 9/24/2020 Board Meeting</b>

### Negotiation Notes

- SRF Land agent, Ken Helvey, has had contact with landowner regarding the offer to purchase many times. By phone, in person and by email.
- Landowner has always maintained the opinion that the appraisal was too far off.
- If counteroffer is not accepted owner may be getting their own appraisal.
- Landowner has presented a counteroffer for a total of \$2,654,613 (76% increase)
  - 66.43 acres x \$16,750/A - \$1,112,703
  - House and 5 acres – \$1,500,000
  - 41.23 acres x \$1,000/A damages to remainder – \$41,230
  - .8 acres TCE at \$170/5 years - \$680

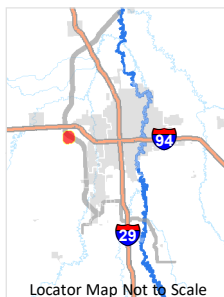
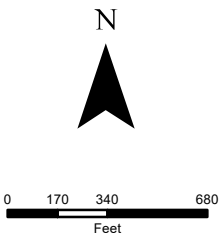
- SRF has proposed the following as a potential settlement:
  - Original Offer:  
 Appraised value of house and Land (5.5 acres) =\$1,021,000  
 63.27 acres x \$7,636= \$483,291 (excluded road waste)  
 .8 acres TCE= \$680  
 RHDP= \$179,000  
 TOTAL PACKAGE: \$1,683,889
  - Proposal SRF has suggested bringing to the Board (This proposal acquires extra land):  
 Appraised value of house and Land (5.5 acres) (15% increase) =\$1,174,150  
 65.93 acres x \$8,400= \$553,812 (10% increase on required acres) (Includes road waste)  
 48.58 acres at \$7,636 (buy remainder of parcel at appraised) = \$370,957  
 RHDP= Zero  
 TOTAL PACKAGE: \$2,098,919
- Mr. Flaten is not prepared to accept this proposal.
- Owner has received 90 Day Notice for December 4<sup>th</sup>, 2021
- **Owner has increased his counteroffer to \$2,700,000 as of September 14, 2020**





 Impacted Parcels

*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: 9742**  
**DEREK SCOTT FLATEN**  
**Parcel ID: 53-0000-09083-020**  
**Cass County, ND**

FM AREA DIVERSION  
 Map Date: 5/19/2020







November 22, 2019

Derek Scott Flaten  
1809 6th St W  
West Fargo, ND 58078

RE: **Offer to Purchase**  
**Parcel ID:** OIN 9742  
**Project Title:** Fargo Moorhead Diversion  
**PID:** 53-0000-09083-020

Dear Mr. Flaten,

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, Crown Appraisals. The appraiser has determined that the market value of the interests being purchased is **\$1,504,810.00**. 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 \$1,504,810.00 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.

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.

Derek Scott Flaten  
Offer to Purchase

OIN 9742

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 me at 763-249-6785 or by email at khelvey@srfconsulting.com We are 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 9742 by Crown Appraisals.
- Exhibit A (Acquisition Summary), Exhibit B (Certificate of Survey)

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  
Direct # 763-249-6785  
khelvey@srfconsulting.com  
One North Second Street, Fargo, ND 58102

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

---

Derek Scott Flaten

*Required Notice: For your information the contact information for Cass County Joint Water Resource District (CCJWRD) is Carol Harbeke-Lewis, Secretary-Treasurer, at 701-298-2381. The property, that is the subject of this written communication, must be acquired by CCJWRD before September 1, 2020.*

Enclosures: Appraisal Report, Exhibit A, Exhibit B

I:\Projects\7715-18\RW\_Parcels\9742 - Derek Flaten\OIN 9742 Flaten - Offer Letter.docx

**EXHIBIT A**

**ACQUISITION SUMMARY  
Fargo Moorhead Diversion**

**Offer to Purchase**

**Parcel ID:** OIN 9742

**Project Title:** Fargo Moorhead Diversion

**PID:** 53-0000-09083-020

**Property Address:** 16660 38th Street SE, Mapleton, ND

Recorded Fee Owner: Derek Scott Flaten

Property Legal Description:

SEE ATTACHED SURVEY

Description of Property Interests to be Acquired: Fee Simple and Temporary Easement

Noted and Waived Exceptions, Reservations or Encumbrances: None

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

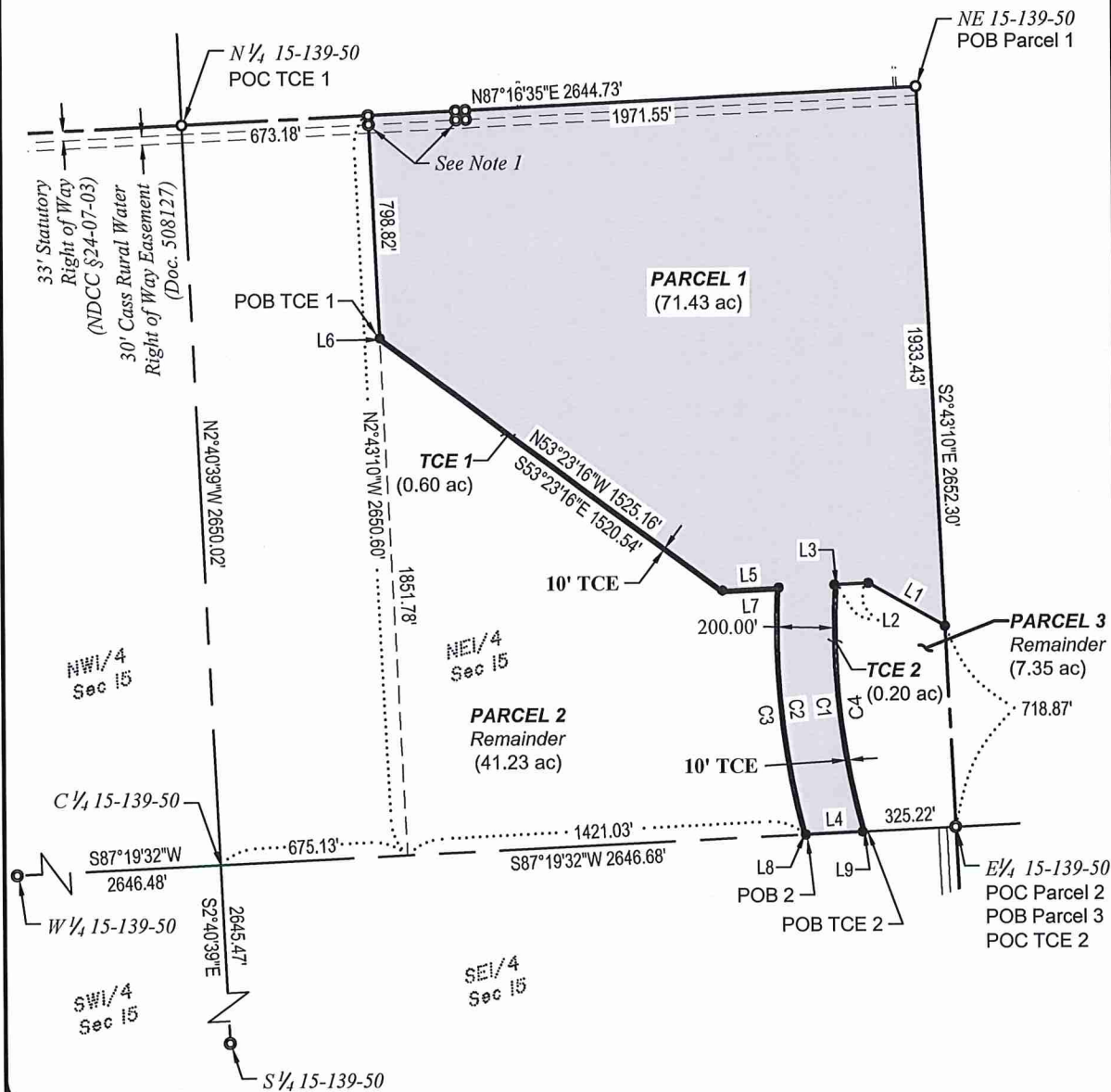
1. Demonstration of marketable title,
2. Conveyance of all interests identified, unless waived in writing by the Cass County Joint Water Resource District,
3. Execution of a purchase agreement signed by the Cass County Joint Water Resource District, or its designee.

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**APPRAISAL SUMMARY**

<b>Parcel Value</b>	<b>Area Size/ Description</b>	<b>Per Unit</b>	<b>Indicated Value</b>
<b>Land/Site Taking</b>	63.27 Acres	\$ 7,636	\$ 483,129.72
<b>Road/Waste</b>	2.66 Acres	\$ 0.00	
<b>Building Site</b>	5.50 Acres	\$ 10,000	\$ 55,000.00
<b>House</b>		\$ 966,000	\$ 966,000.00
<b>Grain Bins</b>		\$ 0.00	\$ 0.00
<b>Temporary Easement</b>	.80 Acres	\$ 170 (x 5 years)	\$ 680.00
<b>TOTAL (rounded)</b>			<b>\$ 1,504,810.00</b>

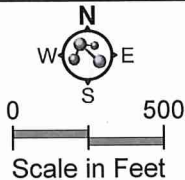
# CERTIFICATE OF SURVEY



### BASIS OF BEARING

<b>COORDINATE SYSTEM:</b> ND STATE PLANE - SOUTH ZONE	<b>DISTANCES:</b> MEASURED ON THE GROUND IN U.S. SURVEY FEET
<b>HORIZONTAL DATUM:</b> NAD83 (Conus)	<b>BASIS OF BEARINGS:</b> GRID NORTH
<b>VERTICAL DATUM:</b> NAVD 88 (GEOID 09)	

*Notes:*  
 1) Found monuments with plastic cap marked "3461 Gary Ness" on site of new house construction. Monuments appear very new. Found no record documents associated with these monuments.  
 2) See Sheet 2 for line and curve table data.



BEARINGS AND DISTANCES MAY VARY FROM PREVIOUS SURVEYS DUE TO DIFFERENT METHODS OF MEASUREMENT.

- |           |                          |
|-----------|--------------------------|
| — — — — — | SECTION LINE             |
| — — — — — | 1/4 LINE                 |
| — — — — — | 1/4 - 1/4 LINE           |
| — — — — — | EXIST. PARCEL LINE       |
| — — — — — | EXIST. EASE.             |
| — — — — — | NEW PARCEL LINE          |
| ▨         | NEW DIVERSION PARCEL     |
| ▨         | TEMP. CONST. EASE. (TCE) |
| ▨         | DEEDED R.O.W.            |

### LEGEND PRELIMINARY

- |     |                                      |
|-----|--------------------------------------|
| ■   | FND ORIGINAL MON.                    |
| △   | FND IRON MON. W/ ALUM. CAP           |
| ●   | FND IRON MON. W/ PLASTIC CAP         |
| ○   | FND IRON MON.                        |
| ●   | SET IRON MON. W/ PLASTIC CAP LS-8218 |
| ▲   | SET IRON MON. W/ ALUM. CAP LS-8218   |
| (M) | MEASURED                             |
| (R) | PREVIOUSLY RECORDED                  |



**DEREK FLATEN**

Part of the Northeast Quarter (NE 1/4),  
 Section 15, Township 13N, Range 10W, Cass County, ND

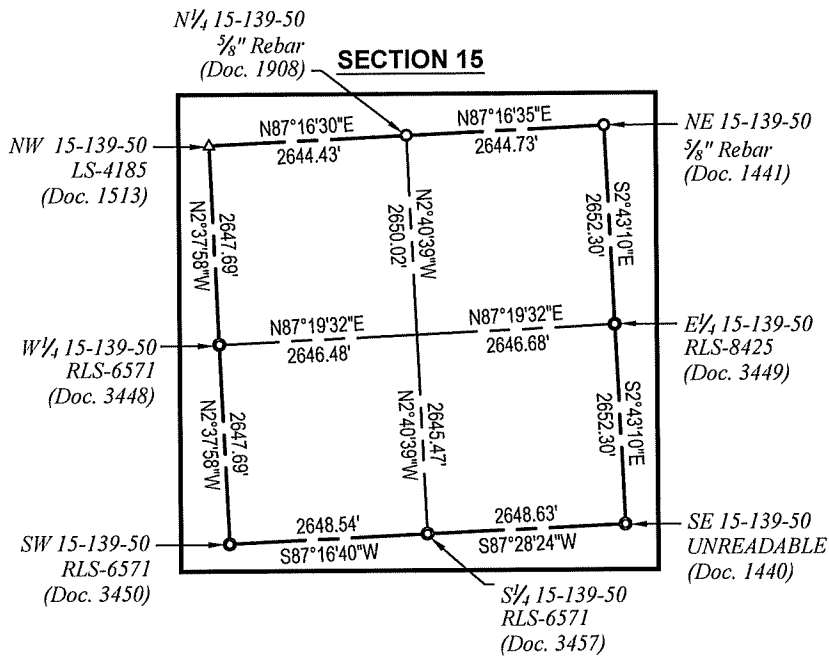
CERTIFICATE OF SURVEY

DRAWING TYPE COS	DATE OF SURVEY May 18, 2017
PROJECT NUMBER P10733-2016-005	SHEET 016 OF 022
PREPARED BY TML	DATE 09/21/2020
TML	9742

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# CERTIFICATE OF SURVEY



LINE TABLE		
Line	Length	Bearing
L1	315.00'	N60° 37' 11\"W
L2	111.38'	S87° 19' 32\"W
L3	10.06'	S87° 19' 32\"W
L4	204.82'	S87° 19' 32\"W
L5	202.54'	S87° 19' 32\"W
L6	12.93'	S02° 43' 10\"E
L7	195.11'	N87° 19' 32\"E
L8	10.22'	N87° 19' 32\"E
L9	10.26'	N87° 19' 32\"E

CURVE TABLE					
Curve	Length	Radius	Delta	L.C.	L.C. Bearing
C1	891.71'	2700.00'	18°55'21\"	887.66'	S06° 07' 45\"E
C2	890.94'	2900.00'	17°36'09\"	887.44'	N05° 53' 04\"W
C3	880.86'	2910.00'	17°20'37\"	877.50'	S05° 58' 20\"E
C4	891.75'	2690.00'	18°59'38\"	887.67'	N06° 08' 32\"W

**PARENT PARCEL - FROM WARRANTY DEED DOC. NO. 1375105**

The East 120 Acres of the Northeast Quarter (NE1/4) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota.

**PARCEL 1 - LEGAL DESCRIPTION**

That part of the Northeast Quarter (NE1/4) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Beginning at the Northeast Corner of Section 15; thence South 02° 43' 10" East on the east line of the Northeast Quarter (NE1/4) a distance of 1933.43 feet; thence North 60° 37' 11" West a distance of 315.00 feet; thence South 87° 19' 32" West parallel with the south line of said NE1/4 a distance of 121.44 feet; thence 891.71 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2700.00 feet, a central angle of 18° 55' 21", and a long chord length of 887.66 feet bearing South 06° 07' 45" East to the south line of said NE1/4; thence South 87° 19' 32" West on said south line a distance of 204.82 feet; thence 890.94 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2900.00 feet, a central angle of 17° 36' 09", and a long chord length of 887.44 feet bearing North 05° 53' 04" West; thence South 87° 19' 32" West parallel with said south line of the NE1/4 a distance of 202.54 feet; thence North 53° 23' 16" West a distance of 1525.16 feet to the west line of the East 120 acres of said NE1/4; thence North 02° 43' 10" West on said west line a distance of 798.82 feet to the north line of said NE1/4; thence North 87° 16' 35" East on said north line a distance of 1971.55 feet to the Point of Beginning.

Said parcel contains 71.43 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.



**DEREK FLATEN**  
 Part of the Northeast Quarter (NE1/4),  
 Section 15, Township 139 North, Range 50 West, Cass County, ND  
**Page 11 of 51**  
 CERTIFICATE OF SURVEY

DRAWING TYPE COS	DATE OF SURVEY May 18, 2017
P10733-2016-005	SHEET
016	09/21/2020
PREPARED BY T.M.L.	742



# CERTIFICATE OF SURVEY

## TCE 1 - LEGAL DESCRIPTION

A 10-foot-wide temporary construction easement across the Northeast Quarter (NE1/4) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County County, North Dakota, further described as follows:

Commencing at the Northwest Corner of the Northeast Quarter (NE1/4) of Section 15; thence North 87° 16' 35" East on the north line of said NE1/4 a distance of 673.18 feet to the west line of the East 120 acres of said NE1/4; thence South 02° 43' 10" East on said west line a distance of 798.82 feet to the Point of Beginning; thence continuing South 02° 43' 10" East on said west line a distance of 12.93 feet; thence South 53° 23' 16" East a distance of 1520.54 feet; thence North 87° 19' 32" East parallel with the south line of said NE1/4 a distance of 195.11 feet; thence 880.86 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2910.00 feet, a central angle of 17° 20' 37", and a long chord length of 877.50 feet bearing South 05° 58' 20" East to said south line; thence North 87° 19' 32" East on said south line a distance of 10.22 feet; thence 890.94 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2900.00 feet, a central angle of 17° 36' 09", and a long chord length of 887.44 feet bearing North 05° 53' 04" West; thence South 87° 19' 32" West parallel with said south line of the NE1/4 a distance of 202.54 feet; thence North 53° 23' 16" West a distance of 1525.16 feet to the Point of Beginning.

Said easement contains 0.60 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

## TCE 2 - LEGAL DESCRIPTION

A temporary construction easement across the Northeast Quarter (NE1/4) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County County, North Dakota, further described as follows:

Commencing at the Southeast Corner of the Northeast Quarter (NE1/4); thence South 87° 19' 32" West on the south line of said NE1/4 a distance of 325.22 feet to the Point of Beginning; thence 891.75 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2690.00 feet, a central angle of 18° 59' 38", and a long chord length of 887.67 feet bearing North 06° 08' 32" West; thence South 87° 19' 32" West parallel with the south line of said NE1/4 a distance of 10.06 feet; thence 891.71 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2700.00 feet, a central angle of 18° 55' 21", and a long chord length of 887.66 feet bearing South 06° 07' 45" East to said south line of said NE1/4; thence North 87° 19' 32" East on said south line a distance of 10.26 feet to the Point of Beginning.

Said easement contains 0.20 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

## PARCEL 2 - LEGAL DESCRIPTION

That part of the Northeast Quarter (NE1/4) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southeast Corner of the Northeast Quarter (NE1/4); thence South 87° 19' 32" West on the south line of said NE1/4 a distance of 540.30 feet to the Point of Beginning; thence 890.94 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2900.00 feet, a central angle of 17° 36' 09", and a long chord length of 887.44 feet bearing North 05° 53' 04" West; thence South 87° 19' 32" West parallel with said south line of the NE1/4 a distance of 202.54 feet; thence North 53° 23' 16" West a distance of 1525.16 feet to the west line of the East 120 acres of said NE1/4; thence South 02° 43' 10" East on said west line a distance of 1851.78 feet to said south line of the NE1/4; thence North 87° 19' 32" East on said south line a distance of 1421.03 feet to the Point of Beginning;

Said parcel contains 41.23 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

## PARCEL 3 - LEGAL DESCRIPTION

That part of the Northeast Quarter (NE1/4) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Beginning at the Southeast Corner of the Northeast Quarter (NE1/4); thence North 02° 43' 10" West on the east line of said NE1/4 a distance of 718.87 feet; thence North 60° 37' 11" West a distance of 315.00 feet; thence South 87° 19' 32" West parallel with the south line of said NE1/4 a distance of 121.44 feet; thence 891.71 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2700.00 feet, a central angle of 18° 55' 21", and a long chord length of 887.66 feet bearing South 06° 07' 45" East to the south line of said NE1/4; thence North 87° 19' 32" East on said south line a distance of 335.48 feet to the Point of Beginning.

Said parcel contains 7.35 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.



Plot3d By: Nick Gatterman Date: Thursday, November 7, 2019

**DEREK FLATEN**

Part of the Northeast Quarter (NE1/4),  
Section 15, Township 139 North, Range 50 West, Cass County, ND

CERTIFICATE OF SURVEY

File: W:\GIS\CH\DRILL-FIU\Downson Land Acquisitions\Management\Survey\Support\Survey Data\Drawings\159\42-Derek Flaten\9742-Derek Flaten.dwg Layout: 9742.1

DRAWING TYPE	DATE OF SURVEY
COS	May 18, 2017
P10733-2016-005	SHEET
016	2
PREPARED BY	DATE
TML	09/21/2020
	9742







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

April 22, 2020

**Cass County  
Joint Water  
Resource  
District**

Derek Scott Flaten  
16660 38th Street SE  
West Fargo, ND 58078  
**Certified No. 7018 0040 0000 5525 7264**

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: 9742  
Parcel No.: 53-0000-09083-020

Rodger Olson  
Manager  
Leonard, North Dakota

Ken Loughheed  
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 and a temporary easement from you. More specifically, to accommodate the Project, the District must acquire right of way and a temporary easement from you with respect to property located in Cass County and identified as Parcel Identification Number 53-0000-09083-020. The legal description of the property to be acquired is:

Right of Way:

That part of the Northeast Quarter (NE1/4) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Beginning at the Northeast Corner of Section 15; thence South 02° 43' 10" East on the east line of the Northeast Quarter (NE1/4) a distance of 1933.43 feet; thence North 60° 37' 11" West a distance of 315.00 feet; thence South 87° 19' 32" West parallel with the south line of said NE1/4 a distance of 121.44 feet; thence 891.71 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2700.00 feet, a central angle of 18° 55' 21", and a long chord length of 887.66 feet bearing South 06° 07' 45" East to the south line of said NE1/4; thence South 87° 19' 32" West on said south line a distance of 204.82 feet; thence 890.94 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2900.00 feet, a central angle of 17° 36' 09", and a long chord length of 887.44 feet bearing North 05° 53' 04" West; thence South 87° 19' 32" West parallel with said south line of the NE1/4 a distance of 202.54 feet; thence North 53° 23' 16" West a distance of 1525.16 feet to the west line of the East 120 acres of said NE1/4; thence North 02° 43' 10" West on said west line a distance of 798.82 feet to the north line of said NE1/4; thence North 87° 16' 35" East on said north line a distance of 1971.55 feet to the Point of Beginning.

Carol Harbeke Lewis  
Secretary-Treasurer

1201 Main Avenue West  
West Fargo, ND 58078-1301

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

Said parcel contains 71.43 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

Temporary Easement:

A 10-foot-wide temporary construction easement across the Northeast Quarter (NE1/4) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Northwest Corner of the Northeast Quarter (NE1/4) of Section 15; thence North 87° 16' 35" East on the north line of said NE1/4 a distance of 673.18 feet to the west line of the East 120 acres of said NE1/4; thence South 02° 43' 10" East on said west line a distance of 798.82 feet to the Point of Beginning; thence continuing South 02° 43' 10" East on said west line a distance of 12.93 feet; thence South 53° 23' 16" East a distance of 1520.54 feet; thence North 87° 19' 32" East parallel with the south line of said NE1/4 a distance of 195.11 feet; thence 880.86 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2910.00 feet, a central angle of 17° 20' 37", and a long chord length of 877.50 feet bearing South 05° 58' 20" East to said south line; thence North 87° 19' 32" East on said south line a distance of 10.22 feet; thence 890.94 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2900.00 feet, a central angle of 17° 36' 09", and a long chord length of 887.44 feet bearing North 05° 53' 04" West; thence South 87° 19' 32" West parallel with said south line of the NE1/4 a distance of 202.54 feet; thence North 53° 23' 16" West a distance of 1525.16 feet to the Point of Beginning.

Said easement contains 0.60 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

A temporary construction easement across the Northeast Quarter (NE1/4) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southeast Corner of the Northeast Quarter (NE1/4); thence South 87° 19' 32" West on the south line of said NE1/4 a distance of 325.22 feet to the Point of Beginning; thence 891.75 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2690.00 feet, a central angle of 18° 59' 38", and a long chord length of 887.67 feet bearing North 06° 08' 32" West; thence South 87° 19' 32" West parallel with the south line of said NE1/4 a distance of 10.06 feet; thence 891.71 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2700.00 feet, a central angle of 18° 55' 21", and a long chord length of 887.66 feet bearing South 06° 07' 45" East to said south line of said NE1/4; thence North 87° 19' 32" East on said south line a distance of 10.26 feet to the Point of Beginning.

Said easement contains 0.20 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.



Enclosed is an appraisal regarding the value of the right of way and temporary easement 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 \$1,504,130.00, and the temporary easement is \$680.00 for a total purchase price of 1,504,810.00. The District approved the appraisal and this letter is the District's offer to you in the amount of \$1,504,810.00 as just compensation to purchase right of way and temporary easement 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 and temporary easement 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 and temporary easement. 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 and temporary easement 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: 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



**Delivery Service Invoice**

Invoice Date **April 25, 2020**  
Invoice Number 0000Y93E24170  
Shipper Number Y93E24

**Outbound**

**UPS Internet Shipping**

Pickup Date	Tracking Number	Service	ZIP Code	Zone	Weight	Billed Charge	
04/22	1ZY93E24A800027011	Ground Residential	58078	2	1	8.23	
		Residential Surcharge				4.10	
		Adult Signature Required				6.35	
		Fuel Surcharge				1.26	
		<b>Total</b>				19.94	
	<b>UserID:</b> CassCountyWRD						
	<b>Sender :</b> Cass County Water Resource Dis 1201 Main Avenue W WEST FARGO ND 58078						
		<b>Receiver:</b> Derek Scott Flaten 16660 38th Street SE WEST FARGO ND 58078					
	1ZY93E24A820014210	Ground Residential	55408	3	1	8.65	
		Residential Surcharge				4.10	
		Adult Signature Required				6.35	
		Fuel Surcharge				1.29	
		<b>Total</b>				20.39	
	<b>UserID:</b> CassCountyWRD						
	<b>Sender :</b> Cass County Water Resource Dis 1201 Main Avenue W WEST FARGO ND 58078						
		<b>Receiver:</b> Nikolaus Larsen 1805 Lake Street West MINNEAPOLIS MN 55408					
	<b>Total for Internet-ID:</b> CassCountyWRD						40.33
<b>Total UPS Internet Shipping</b>					<b>2 Package(s)</b>	40.33	
<b>Total Outbound</b>					<b>2 Package(s)</b>	40.33	

# Proof of Delivery

Dear Customer,

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

**Tracking Number**

1ZY93E24A800027011

**Weight**

1.00 LBS

**Service**

UPS Ground

**Shipped / Billed On**

04/22/2020

**Additional Information**

Adult Signature Required

**Delivered On**

04/23/2020 6:38 P.M.

**Delivered To**

WEST FARGO, ND, US

**Received By**

SIG ON FILE

**Left At**

Residential

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: 04/27/2020 1:47 P.M. EST



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

May 18, 2020

**Cass County  
Joint Water  
Resource  
District**

Derek Scott Flaten  
16660 38th Street SE  
West Fargo, ND 58078  
**Certified No. 7019 1640 0002 0398 8439**

Greetings:

Dan Jacobson  
Chairman  
West Fargo, North Dakota

RE: Cass County Joint Water Resource District  
Fargo-Moorhead Area Diversion Project  
Request for Meeting  
OIN: 9742  
Parcel No.: 53-0000-09083-020

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 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 and temporary easement from you. The District's letter specifically described the right of way and temporary easement 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 and temporary easement 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 and temporary easement 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.

The District hopes you will attend one of the above-mentioned meetings to discuss the Project and the right of way and temporary easement 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.

Carol Harbeke Lewis  
Secretary-Treasurer

1201 Main Avenue West  
West Fargo, ND 58078-1301

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

Derek Scott Flaten  
OIN 9742  
May 18, 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](mailto: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 and temporary easement. The District must conclude all negotiations and complete the acquisition of right of way and temporary easement 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 and temporary easement. 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: Nicholas Delaney, Rinke Noonan  
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





Quick Start ▾

# Tracking Details

< [Back to Results](#)

1ZY93E24A815167075

## Delivered

Delivered On

**Thursday**  
**05/21/2020**

Send Updates

File a Claim

# Proof of Delivery



Dear Customer,

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

**Tracking Number**

1ZY93E24A815167075

**Weight**

1.00 LBS

**Service**

UPS Ground

**Shipped / Billed On**

05/18/2020

**Additional Information**

Adult Signature Required

**Delivered On**

05/21/2020 6:32 P.M.

**Received By**

B sel



**Delivered To**

16660 38TH ST SE  
WEST FARGO, ND, 58078, US

**Left At**

Residential

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: 06/09/2020 5:09 P.M. EST

[Print this page](#)



**Hello, your package has been delivered.**

**Delivery Date:** Thursday, 05/21/2020

**Delivery Time:** 06:32 PM

**Left At:** RESIDENTIAL

**Signed by:** B sel



[Set Delivery Instructions](#)

[Manage Preferences](#)

[View Delivery Planner](#)

## CASS WATER RESOURCE DISTRICT

RESIDENTIAL

**Tracking Number:**

[1ZY93E24A815167075](#)

**Ship To:**

DEREK SCOTT FLATEN  
16660 38TH STREET SE  
WEST FARGO, ND 580786705  
US

**Number of Packages:**

1 **Page 23 of 51**

**09/21/2020**

**UPS Service:**

UPS Ground



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

July 2, 2020

**Cass County  
Joint Water  
Resource  
District**

Derek Scott Flaten  
16660 38th Street SE  
West Fargo, ND 58078  
**Certified No. 7020 00090 0000 7648 4120**

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

Greetings:

**RE: Cass County Joint Water Resource District  
Fargo-Moorhead Area Diversion Project  
NOTICE OF INTENT TO TAKE POSSESSION OF RIGHT OF WAY  
OIN: 9742  
Parcel No. 53-0000-09083-020**

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"). 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 temporary easement, and a Purchase Agreement as the District's offer of just compensation to purchase the right of way and temporary easement 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 and temporary easement from you to accommodate the Project.

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 and temporary 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.

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

Carol Harbeke Lewis  
Secretary-Treasurer

1201 Main Avenue West  
West Fargo, ND 58078-1301

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

Derek Scott Flaten  
OIN 9742  
July 2, 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 and temporary easement 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 and temporary easement. 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@casscountynd.gov](mailto:lewisc@casscountynd.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



**Hello, your package has been delivered.**

**Delivery Date:** Tuesday, 07/07/2020

**Delivery Time:** 09:43 AM

**Left At:** RESIDENTIAL

**Signed by:** FLATTEN



[Set Delivery Instructions](#)

[Manage Preferences](#)

[View Delivery Planner](#)

## CASS WATER RESOURCE DISTRICT

**Tracking Number:**

[1ZY93E24A824075362](#)

**Ship To:**

DEREK SCOTT FLATEN  
16660 38TH STREET SE  
WEST FARGO, ND 58078  
US

**Number of Packages:**

1

**UPS Service:**

UPS Ground

**Package Weight:**

1.0 LBS



# Proof of Delivery



Dear Customer,

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

**Tracking Number**

1ZY93E24A824075362

**Weight**

1.00 LBS

**Service**

UPS Ground

**Shipped / Billed On**

07/02/2020

**Additional Information**

Adult Signature Required

**Delivered On**

07/07/2020 9:43 A.M.

**Received By**

FLATTEN

**Delivered To**

16660 38TH ST SE  
WEST FARGO, ND, 58078, US



**Left At**

Residential

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: 07/10/2020 3:32 P.M. EST

[Print this page](#)





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

Rodger Olson  
Manager  
Leonard, North Dakota

Ken Lougheed  
Manager  
Gardner, North Dakota

Jacob Gust  
Manager  
Fargo, North Dakota

Keith Weston  
Manager  
Fargo, North Dakota

Greetings:

RE: Cass County Joint Water Resource District  
Fargo-Moorhead Area Diversion Project  
Request for Approval to Take Possession of Necessary Right of Way  
and Temporary Easement  
OIN: 9742  
Parcel No. 53-0000-09083-020

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 and temporary easement from Derek Scott Flaten (the "Landowner"):

- Letter dated April 22, 2020, enclosing the District's appraisal for the acquisition of the right of way and temporary easement 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 and temporary easement 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 and temporary easement necessary for the Project.

Carol Harbeke Lewis  
Secretary-Treasurer

1201 Main Avenue West  
West Fargo, ND 58078-1301

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

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 and temporary easement 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 and temporary easement is as follows:

Right of Way Easement:

That part of the Northeast Quarter (NE¼) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Beginning at the Northeast Corner of Section 15; thence South 02° 43' 10" East on the east line of the Northeast Quarter (NE¼) a distance of 1933.43 feet; thence North 60° 37' 11" West a distance of 315.00 feet; thence South 87° 19' 32" West parallel with the south line of said NE¼ a distance of 121.44 feet; thence 891.71 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2700.00 feet, a central angle of 18° 55' 21", and a long chord length of 887.66 feet bearing South 06° 07' 45" East to the south line of said NE¼; thence South 87° 19' 32" West on said south line a distance of 204.82 feet; thence 890.94 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2900.00 feet, a central angle of 17° 36' 09", and a long chord length of 887.44 feet bearing North 05° 53' 04" West; thence South 87° 19' 32" West parallel with said south line of the NE¼ a distance of 202.54 feet; thence North 53° 23' 16" West a distance of 1525.16 feet to the west line of the East 120 acres of said NE¼; thence North 02° 43' 10" West on said west line a distance of 798.82 feet to the north line of said NE¼; thence North 87° 16' 35" East on said north line a distance of 1971.55 feet to the Point of Beginning.

Said parcel contains 71.43 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

Temporary Easement:

A 10-foot-wide temporary construction easement across the Northeast Quarter (NE¼) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Northwest Corner of the Northeast Quarter (NE¼) of Section 15; thence North 87° 16' 35" East on the north line of said NE¼ a distance of 673.18 feet to the west line of the East 120 acres of said NE¼; thence South 02° 43' 10" East on said west line a distance of 798.82 feet to the Point of Beginning; thence continuing South 02° 43' 10" East on said west line a distance of 12.93 feet; thence South 53° 23' 16" East a distance of 1520.54 feet; thence North 87° 19' 32" East parallel with the south line of said NE¼ a distance of 195.11 feet; thence 880.86 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2910.00 feet, a central angle of 17° 20' 37", and a long chord length of 877.50 feet bearing South 05° 58' 20" East to said south line; thence North 87° 19' 32" East on said south line a distance of 10.22 feet; thence 890.94 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2900.00 feet, a central angle of 17° 36' 09", and a long chord length of 887.44 feet bearing North 05° 53' 04" West; thence South 87° 19' 32" West parallel with said south line of the NE¼ a distance of 202.54 feet; thence North 53° 23' 16" West a distance of 1525.16 feet to the Point of Beginning.

Said easement contains 0.60 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

A temporary construction easement across the Northeast Quarter (NE¼) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County County, North Dakota, further described as follows:

Commencing at the Southeast Corner of the Northeast Quarter (NE¼); thence South 87° 19' 32" West on the south line of said NE¼ a distance of 325.22 feet to the Point of Beginning; thence 891.75 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2690.00 feet, a central angle of 18° 59' 38", and a long chord length of 887.67 feet bearing North 06° 08' 32" West; thence South 87° 19' 32" West parallel with the south line of said NE¼ a distance of 10.06 feet; thence 891.71 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2700.00 feet, a central angle of 18° 55' 21", and a long chord length of 887.66 feet bearing South 06° 07' 45" East to said south line of said NE¼; thence North 87° 19' 32" East on said south line a distance of 10.26 feet to the Point of Beginning.

Said easement contains 0.20 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 and temporary easement 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 and temporary easement necessary for the Project, and construction of the Project will not be possible without acquiring the right of way and temporary easement 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 and temporary easement.

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 and temporary easement 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 and temporary easement 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.

Robert Wilson  
July 30, 2020  
Page 5

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





August 6, 2020

**VIA UPS – DELIVERY CONFIRMATION**

**Board of County  
Commissioners**

Derek Scott Flaten  
16660 38<sup>th</sup> Street SE  
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: 9742  
Parcel No: 53-0000-09083-020  
**UPS Tracking No. 1Z RT8 7R1 25 0515 3724**

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 and temporary easement necessary to accommodate the Project. You have been in negotiations with the District and its agents regarding the right of way and temporary 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 and temporary easement 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 and temporary easement 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 and temporary easement necessary for the Project.

Heather Worden  
Commission Assistant

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

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 and temporary easement 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 and temporary easement the District must acquire from you. The legal description of the necessary right of way and temporary easement is as follows:

Right of Way Easement:

That part of the Northeast Quarter (NE $\frac{1}{4}$ ) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Beginning at the Northeast Corner of Section 15; thence South 02° 43' 10" East on the east line of the Northeast Quarter (NE $\frac{1}{4}$ ) a distance of 1933.43 feet; thence North 60° 37' 11" West a distance of 315.00 feet; thence South 87° 19' 32" West parallel with the south line of said NE $\frac{1}{4}$  a distance of 121.44 feet; thence 891.71 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2700.00 feet, a central angle of 18° 55' 21", and a long chord length of 887.66 feet bearing South 06° 07' 45" East to the south line of said NE $\frac{1}{4}$ ; thence South 87° 19' 32" West on said south line a distance of 204.82 feet; thence 890.94 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2900.00 feet, a central angle of 17° 36' 09", and a long chord length of 887.44 feet bearing North 05° 53' 04" West; thence South 87° 19' 32" West parallel with said south line of the NE $\frac{1}{4}$  a distance of 202.54 feet; thence North 53° 23' 16" West a distance of 1525.16 feet to the west line of the East 120 acres of said NE $\frac{1}{4}$ ; thence North 02° 43' 10" West on said west line a distance of 798.82 feet to the north line of said NE $\frac{1}{4}$ ; thence North 87° 16' 35" East on said north line a distance of 1971.55 feet to the Point of Beginning.

Said parcel contains 71.43 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

Temporary Easement:

A 10-foot-wide temporary construction easement across the Northeast Quarter (NE $\frac{1}{4}$ ) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Northwest Corner of the Northeast Quarter (NE $\frac{1}{4}$ ) of Section 15; thence North 87° 16' 35" East on the north line of said NE $\frac{1}{4}$  a

distance of 673.18 feet to the west line of the East 120 acres of said NE¼; thence South 02° 43' 10" East on said west line a distance of 798.82 feet to the Point of Beginning; thence continuing South 02° 43' 10" East on said west line a distance of 12.93 feet; thence South 53° 23' 16" East a distance of 1520.54 feet; thence North 87° 19' 32" East parallel with the south line of said NE¼ a distance of 195.11 feet; thence 880.86 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2910.00 feet, a central angle of 17° 20' 37", and a long chord length of 877.50 feet bearing South 05° 58' 20" East to said south line; thence North 87° 19' 32" East on said south line a distance of 10.22 feet; thence 890.94 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2900.00 feet, a central angle of 17° 36' 09", and a long chord length of 887.44 feet bearing North 05° 53' 04" West; thence South 87° 19' 32" West parallel with said south line of the NE¼ a distance of 202.54 feet; thence North 53° 23' 16" West a distance of 1525.16 feet to the Point of Beginning.

Said easement contains 0.60 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

A temporary construction easement across the Northeast Quarter (NE¼) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southeast Corner of the Northeast Quarter (NE¼); thence South 87° 19' 32" West on the south line of said NE¼ a distance of 325.22 feet to the Point of Beginning; thence 891.75 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2690.00 feet, a central angle of 18° 59' 38", and a long chord length of 887.67 feet bearing North 06° 08' 32" West; thence South 87° 19' 32" West parallel with the south line of said NE¼ a distance of 10.06 feet; thence 891.71 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2700.00 feet, a central angle of 18° 55' 21", and a long chord length of 887.66 feet bearing South 06° 07' 45" East to said south line of said NE¼; thence North 87° 19' 32" East on said south line a distance of 10.26 feet to the Point of Beginning.

Said easement contains 0.20 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 and temporary easement over your property.

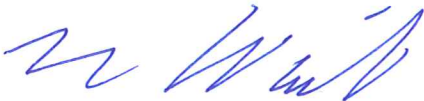
If you wish to participate in the Commission's September 21, 2020 public meeting via conference call or Microsoft Teams, please contact Heather Worden at (701) 241-5609 or [wordenh@casscountynd.gov](mailto:wordenh@casscountynd.gov) as soon as possible so Ms. Worden can assist you with the necessary arrangements.

This Notice does not preclude you from continuing to work with the District regarding the right of way and temporary 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 and temporary easement. 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: Nicholas R. Delaney, Rinke Noonan  
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, 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**

1ZRT87R12505153724

**Weight**

0.00 LBS

**Service**

UPS Next Day Air®

**Shipped / Billed On**

08/05/2020

**Delivered On**

08/07/2020 9:36 A.M.

**Delivered To**

16660 38TH ST SE  
WEST FARGO, ND, 58078, US

**Received By**

DRIVER RELEASE

**Left At**

Front Door

**Reference Number(s)**

RT87R148FH3

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 11:33 A.M. EST





Said parcel contains 71.43 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

Temporary Easement

OIN 9742

A 10-foot-wide temporary construction easement across the Northeast Quarter (NE1/4) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Northwest Corner of the Northeast Quarter (NE1/4) of Section 15; thence North  $87^{\circ} 16' 35''$  East on the north line of said NE1/4 a distance of 673.18 feet to the west line of the East 120 acres of said NE1/4; thence South  $02^{\circ} 43' 10''$  East on said west line a distance of 798.82 feet to the Point of Beginning; thence continuing South  $02^{\circ} 43' 10''$  East on said west line a distance of 12.93 feet; thence South  $53^{\circ} 23' 16''$  East a distance of 1520.54 feet; thence North  $87^{\circ} 19' 32''$  East parallel with the south line of said NE1/4 a distance of 195.11 feet; thence 880.86 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2910.00 feet, a central angle of  $17^{\circ} 20' 37''$ , and a long chord length of 877.50 feet bearing South  $05^{\circ} 58' 20''$  East to said south line; thence North  $87^{\circ} 19' 32''$  East on said south line a distance of 10.22 feet; thence 890.94 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2900.00 feet, a central angle of  $17^{\circ} 36' 09''$ , and a long chord length of 887.44 feet bearing North  $05^{\circ} 53' 04''$  West; thence South  $87^{\circ} 19' 32''$  West parallel with said south line of the NE1/4 a distance of 202.54 feet; thence North  $53^{\circ} 23' 16''$  West a distance of 1525.16 feet to the Point of Beginning.

Said easement contains 0.60 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

A temporary construction easement across the Northeast Quarter (NE1/4) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southeast Corner of the Northeast Quarter (NE1/4); thence South  $87^{\circ} 19' 32''$  West on the south line of said NE1/4 a distance of 325.22 feet to the Point of Beginning; thence 891.75 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2690.00 feet, a central angle of  $18^{\circ} 59' 38''$ , and a long chord length of 887.67 feet bearing North  $06^{\circ} 08' 32''$  West; thence South  $87^{\circ} 19' 32''$  West parallel with the south line of said NE1/4 a distance of 10.06 feet; thence 891.71 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2700.00 feet, a central angle of  $18^{\circ} 55' 21''$ , and a long chord length of 887.66 feet bearing South  $06^{\circ} 07' 45''$  East to said south line of said NE1/4; thence North  $87^{\circ} 19' 32''$  East on said south line a distance of 10.26 feet to the Point of Beginning.

Said easement contains 0.20 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 and in the possession of Ulteig Engineering, Inc. with respect to the Necessary Property and has reviewed all such records prior to executing this affidavit.

[¶6] Ulteig Engineering, Inc. has attempted to negotiate with Landowner to acquire the Necessary Property. Attached as **Exhibit A** is a log of all contacts documented in the records of Ulteig Engineering, Inc. that Ulteig Engineering, Inc. has had with Landowner during the above described timeframe.

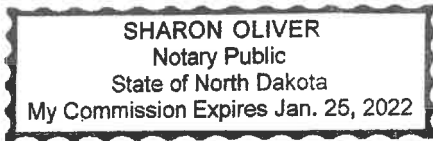
[¶7] The District has instructed Ulteig Engineering, Inc. to refrain from referencing, mentioning, or threatening quick take eminent domain during negotiations since August 1, 2017.

[¶8] I verify to the best of my knowledge, as a Land Agent of Ulteig Engineering, Inc., that during the above described timeframe, I did not work with or have contact with the Landowner and was not present during any of the meetings, therefore, based on the electronic files, I understand that nobody from Ulteig Engineering, Inc. has referenced, mentioned, or threatened quick take eminent domain to Landowner during negotiations from August 1, 2017 to August 26, 2019.

Dated this 15<sup>th</sup> day of September, 2020.

Lisa Brekkestran  
Lisa Brekkestran  
Ulteig Engineering, Inc.

Subscribed to and sworn to before me this 15<sup>th</sup> day of September, 2020.



Sharon Oliver  
Notary Public, County of Cass  
State of North Dakota  
My Commission Expires: 1/25/2022

(SEAL)

"Exhibit A"

OIN	Land Owner	Land Agent/PMC Organization	Land Agent/PMC	If other Organization, please specify:	Specify your name:	Type of Contact	Comments	Date & Time Observed
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson			Phone Call	Spoke with Derek but he was in a meeting. He wil call back later in the day.	4-5-2017; 1:30PM
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson			Phone Call	Derek returned phone call. Discussed Diversion Project and his intention to build on his 120 acres on the east side of the NE1/4 of Section 15 in Mapleton Township. Discussed the appraisal process.	4-5-2017; 2:20PM
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson	City of West Fargo		Letter	City of West Fargo sent a letter to Derke Flaten regarding the building permit for his home. They made him aware of the possibility to construct the diversion channel and clarify that the City of west Fargo has no future liability inrelation to approval of the permit if issues arise in the future with the Diversion Authority.	4/6/2017
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson			Phone Call	Spoke with Derek, invited him to a meeting at the Cass County Hwy Dept. Derek will try to make the meeting.	4/13/2017; 10:48AM
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson			Phone Call	Spoke with Derek, meeting time changed to 4:30PM on Wed., April 19.	4/18/2017; 2:20PM
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson			Phone Call	Left message with Jim Bullis, attorney for Derek Flaten.	4/26/2017; 11:00AM
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson			Phone Call	Spoke with Jim Bullis to discuss Derek Flaten's plans to build his house and the Diversion Authority planning to build the channel across his property.	4/27/2017; 1:53PM
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson			Phone Call	Jim Bullis called to say he spoke with Derek Flaten and urged him not to go forward with building the house. Informed Bullis that Brian Field will appraise the property. It was suggested that Derek move the home site west off of the Diversion channel and onto his dad's land that the JB may also assist in paying for survey work and other work he has completed on the original site.	5/01/2017; 11:30AM
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson	AE2S		Emails	Emails between AE2S, Cass County Administrator: Discussions regarding the West Fargo building permit. Oly provided update from Bullis phone call and that Bullis will contact Flate to discuss the project with him and ask that he hold off on building his home. Also Crown Appraisal will begin the appraisal process.	5/04/2017; 4:00 - 5:45PM
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson	AE2S		Emails	Emails between Oly and AE2S looking for update from any contact with Bullis; no contact made as of this date.	5/09/2017; 4:00PM
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson	AE2S		Emails	Email between Oly and AE2S looking for update from any contact with Bullis. Oly spoke with Jim and Jim suggested to Derek not to begin excavation on the property.	5/10/2017; 2:30PM
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson			Phone Call	Left message for Jim Bullis to contact Oly.	5/16/2017; 8:20AM
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson			Phone Call	Left message for Jim Bullis to contact Oly.	5/18/2017; 10:55AM



OIN	Land Owner	Land Agent/PMC Organization	Land Agent/PMC	If other Organization, please specify:	Specify your name:	Type of Contact	Comments	Date & Time Observed
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson	AE2S		Email	Email between Oly and AE2S looking for update and contact with Bullis. No contact made as of this date.	5/19/2017; 10:15AM
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson			Phone Call	Spoke with Jim Bullis. He has had no contact with Derek Flaten.	5/23/2017; 2:30PM
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson	AE2S		Email	Email from AE2S regarding Flaten property and proceeding with construction of his home. AE2S contacted Jim Bullis to discuss the construction. Bullis was unaware of the construction. Bullis also stated that even though he advised against construction, it is legally his land and Flaten did receive a building permit from West Fargo. AE2S will pursue the Certificate of Survey and request appraisal of the property	6/02/2017; 11:25AM
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson			Phone Call	Left voice message with Derek to inform him that negotiations were beginning again and that the appraiser will call to discuss the property appraisal.	<b>2019 Communications</b> 3/07/2019; 2:00PM
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson			Phone Call	Derek returned the phone call. He was notified that Crown Appraisal will be out to to the appraisal inspection. Derek stated that he already has an appraisal from 2 firms located in Alexandria MN and Minneapolis MN. Once the appraisal is completed a copy will be provided to him for review prior to beginning negotiations.	3/07/2019; 4:40PM
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson			Phone Call	Derek returned phone calls and text messages after several attempts. Derek agreed to set up a meeting with the appraiser.	6/26/2019; 1:30PM
9742	DEREK FLATEN	Land Agency - Ulteig	Oly Olafson			In Person Meeting	Oly, Brian Field, Derek and Dan Flaten met to discuss the appraisal process and complete the appraisal inspection.	7/02/2019; 9:00AM



Said parcel contains 71.43 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

Temporary Easement

OIN 9742

A 10-foot-wide temporary construction easement across the Northeast Quarter (NE1/4) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Northwest Corner of the Northeast Quarter (NE1/4) of Section 15; thence North  $87^{\circ} 16' 35''$  East on the north line of said NE1/4 a distance of 673.18 feet to the west line of the East 120 acres of said NE1/4; thence South  $02^{\circ} 43' 10''$  East on said west line a distance of 798.82 feet to the Point of Beginning; thence continuing South  $02^{\circ} 43' 10''$  East on said west line a distance of 12.93 feet; thence South  $53^{\circ} 23' 16''$  East a distance of 1520.54 feet; thence North  $87^{\circ} 19' 32''$  East parallel with the south line of said NE1/4 a distance of 195.11 feet; thence 880.86 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2910.00 feet, a central angle of  $17^{\circ} 20' 37''$ , and a long chord length of 877.50 feet bearing South  $05^{\circ} 58' 20''$  East to said south line; thence North  $87^{\circ} 19' 32''$  East on said south line a distance of 10.22 feet; thence 890.94 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2900.00 feet, a central angle of  $17^{\circ} 36' 09''$ , and a long chord length of 887.44 feet bearing North  $05^{\circ} 53' 04''$  West; thence South  $87^{\circ} 19' 32''$  West parallel with said south line of the NE1/4 a distance of 202.54 feet; thence North  $53^{\circ} 23' 16''$  West a distance of 1525.16 feet to the Point of Beginning.

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AND

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Commencing at the Southeast Corner of the Northeast Quarter (NE1/4); thence South  $87^{\circ} 19' 32''$  West on the south line of said NE1/4 a distance of 325.22 feet to the Point of Beginning; thence 891.75 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2690.00 feet, a central angle of  $18^{\circ} 59' 38''$ , and a long chord length of 887.67 feet bearing North  $06^{\circ} 08' 32''$  West; thence South  $87^{\circ} 19' 32''$  West parallel with the south line of said NE1/4 a distance of 10.06 feet; thence 891.71 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2700.00 feet, a central angle of  $18^{\circ} 55' 21''$ , and a long chord length of 887.66 feet bearing South  $06^{\circ} 07' 45''$  East to said south line of said NE1/4; thence North  $87^{\circ} 19' 32''$  East on said south line a distance of 10.26 feet to the Point of Beginning.

Said easement contains 0.20 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 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.

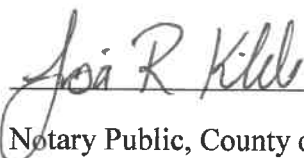
[¶7] The District has instructed SRF Consulting Group, Inc. to refrain from referencing, mentioning, or threatening quick take eminent domain during negotiations since August 1, 2017.

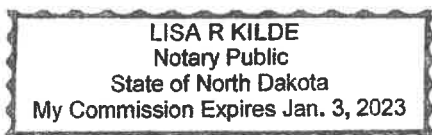
[¶8] I verify to the best of my knowledge, as Principal/Land Agent of SRF Consulting Group, Inc., nobody from SRF Consulting Group, Inc. has referenced, mentioned, or threatened quick take eminent domain to Landowner during negotiations since August 1, 2017.

Dated this 8 day of September, 2020.

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

Subscribed to and sworn to before me this 8 day of September, 2020.

  
\_\_\_\_\_  
Notary Public, County of Cass  
State of North Dakota  
My Commission Expires: \_\_\_\_\_



(SEAL)

## OIN 9742 - Derek Flaten Contacts

<b>Date</b>	<b>Note</b>
11/22/2019	Appraisal and offer letter hand delivered
12/12/2019	Relocation notice sent
1/27/2020	Ken called - voicemail was full
2/5/2019	Ken mailed a letter to Derek requesting a meeting to discuss the offer
2/6/2020	Derek left Ken a voicemail. He is not happy, will not consider the offer as it stands now. Does not want to be contacted again
2/19/2020	Talked to Derek regarding offers-They are not for sale and to leave them alone
4/22/2020	Formal offer letter sent
5/18/2020	CCJWRD invite sent
5/21/2020	CCJWRD invite received
8/5/2020	Talked with Dan regarding both offers
8/7/2020	Talked to Dan about both of family parcels. Still want what we discussed
8/13/2020	Board rejected Flaten counter offer
8/18/2020	Talked with Dan. Will try to work up a number we think the Board will accept
8/20/2020	Sent email to Derek and Dan regarding settlement proposal (pending Board approval). Received a reply and then responded
8/24/2020	Email to see what they thought about counter proposal
8/25/2020	Received a call from Derek that he was still only willing to accept the proposal that the Board rejected
8/26/2020	Emailed Derek and Dan and reiterated that the Board would not accept that offer. Proposed alternate proposal
9/1/2020	Derek emailed that the would like a call. I responded that I would return call after a meeting. Tried calling two times. Voice mail was full. Texted and asked him to call me on the 2nd.
9/3/2020	Called and left voicemail to give me a call
9/3/2020	Talked to Derek about the offer and Board not accepting his proposal. Told him that I sent him an alternative. He will not accept anything less than his proposal- PERIOD. He doesn't recognize or accept the 90 day Notice. His tone and words were very angry and threatening.

**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 a Right of Way and Temporary Easement in and to real property owned by Derek Scott Flaten (“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 and Temporary Easement 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 9742

That part of the Northeast Quarter (NE1/4) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Beginning at the Northeast Corner of Section 15; thence South 02° 43' 10" East on the east line of the Northeast Quarter (NE1/4) a distance of 1933.43 feet; thence North 60° 37' 11" West a distance of 315.00 feet; thence South 87° 19' 32" West parallel with the south line of said NE1/4 a distance of 121.44 feet; thence 891.71 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2700.00 feet, a central angle of 18° 55' 21", and a long chord length of 887.66 feet bearing South 06° 07' 45" East to the south line of said NE1/4; thence South 87° 19' 32" West on said south line a distance of 204.82 feet; thence 890.94 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2900.00 feet, a central angle of 17° 36' 09", and a long chord length of 887.44 feet bearing North 05° 53' 04" West; thence South 87° 19' 32" West parallel with said south line of the NE1/4 a distance of 202.54 feet; thence North 53° 23' 16" West a distance of 1525.16 feet to the west line of the East 120 acres of said NE1/4; thence North 02° 43' 10" West on said west line a distance of 798.82 feet to the north line of said NE1/4; thence



North 87° 16' 35" East on said north line a distance of 1971.55 feet to the Point of Beginning.

Said parcel contains 71.43 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

Temporary Easement  
OIN 9742

A 10-foot-wide temporary construction easement across the Northeast Quarter (NE1/4) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Northwest Corner of the Northeast Quarter (NE1/4) of Section 15; thence North 87° 16' 35" East on the north line of said NE1/4 a distance of 673.18 feet to the west line of the East 120 acres of said NE1/4; thence South 02° 43' 10" East on said west line a distance of 798.82 feet to the Point of Beginning; thence continuing South 02° 43' 10" East on said west line a distance of 12.93 feet; thence South 53° 23' 16" East a distance of 1520.54 feet; thence North 87° 19' 32" East parallel with the south line of said NE1/4 a distance of 195.11 feet; thence 880.86 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2910.00 feet, a central angle of 17° 20' 37", and a long chord length of 877.50 feet bearing South 05° 58' 20" East to said south line; thence North 87° 19' 32" East on said south line a distance of 10.22 feet; thence 890.94 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2900.00 feet, a central angle of 17° 36' 09", and a long chord length of 887.44 feet bearing North 05° 53' 04" West; thence South 87° 19' 32" West parallel with said south line of the NE1/4 a distance of 202.54 feet; thence North 53° 23' 16" West a distance of 1525.16 feet to the Point of Beginning.

Said easement contains 0.60 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

A temporary construction easement across the Northeast Quarter (NE1/4) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southeast Corner of the Northeast Quarter (NE1/4); thence South 87° 19' 32" West on the south line of said NE1/4 a distance of 325.22 feet to the Point of Beginning; thence 891.75 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2690.00 feet, a central angle of 18° 59' 38", and a long chord length of 887.67 feet bearing North 06° 08' 32" West; thence South 87° 19' 32" West parallel with the south line of said NE1/4 a distance of 10.06 feet; thence 891.71 feet on the arc of a non-tangential curve, concave to the east, having a radius of 2700.00 feet, a central angle of 18° 55' 21", and a long chord length of 887.66 feet bearing South 06° 07' 45" East to said south

line of said NE1/4; thence North 87° 19' 32" East on said south line a distance of 10.26 feet to the Point of Beginning.

Said easement contains 0.20 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 of just compensation to Landowner by certified mail and commercial delivery, 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 and commercial delivery; 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**.

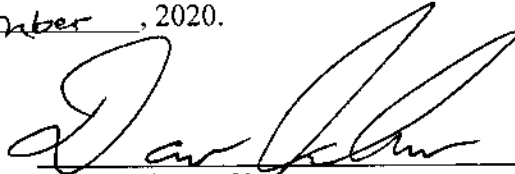
[¶10] The District and Landowner have not reached an agreement regarding compensation, and more than thirty days have passed since Landowner's receipt of the request for a meeting.

[¶11] On July 2, 2020, the District sent Landowner a written notice of intent to take possession of the Right of Way and Temporary Easement, by certified mail and commercial delivery. 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.

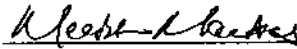
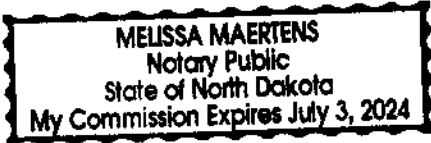
[¶13] I verify there have been no references, mention, or threats of quick take eminent domain by the District during negotiations since August 1, 2017.

Dated this 15 day of September, 2020.



Dan Jacobson, Chair  
Cass County Joint Water Resource District

Subscribed to and sworn to before me this 15 day of September, 2020.



Notary Public, Cass County, State of North Dakota

(SEAL)