

FM AREA DIVERSION PROJECT

Property Owner Information Packet for Cass County Commission

October 5th, 2020

PROPERTY OWNER: Mickeal Fosse

LAND AGENT: Lisa Kilde with SRF

OIN: 1191 1193



FM AREA
DIVERSION
PROJECT

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Written Correspondence Timeline – Mickeal Fosse

OIN 1191 1193	Sent	Received
Offer to Purchase	8/26/2019	8/26/2019
Formal Negotiations and Written Offer of Just Compensation	4/22/2020	4/23/2020
Request for Meeting	5/18/2020	5/20/2020
Notice of Intent to Take Possession of Right-of-Way	7/8/2020	7/13/2020
Request for Approval to Take Possession of Necessary Right-of-Way and Temporary Easement	8/21/2020	8/21/2020
Invitation to Attend Public Meeting	8/26/2020	8/27/2020
Commission Meeting Date	10/5/2020	

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

A. Subject Property Information:

1. Landowner: Mickeal Fosse
2. Land Agent: Lisa Kilde
3. Parcel Nos.: 67-0000-12712-000, 67-0000-12712-020
4. OIN Nos.: 1191, 1193

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, regarding OINs 1191 and 1193.

FM Area Diversion Project Property Negotiation Summary

September 28, 2020

Owner	Mickeal and Bonnie Fosse
Mailing Address	16862 46 th Street SE, Horace, ND 58047
Property Location	Diversion Channel
Property Type	Agriculture/Residential
OIN	1186 1191 1193
Land Agent	Ken Helvey and Lisa Kilde – SRF
Landowner Representative	Rinke Noonan

Property Need

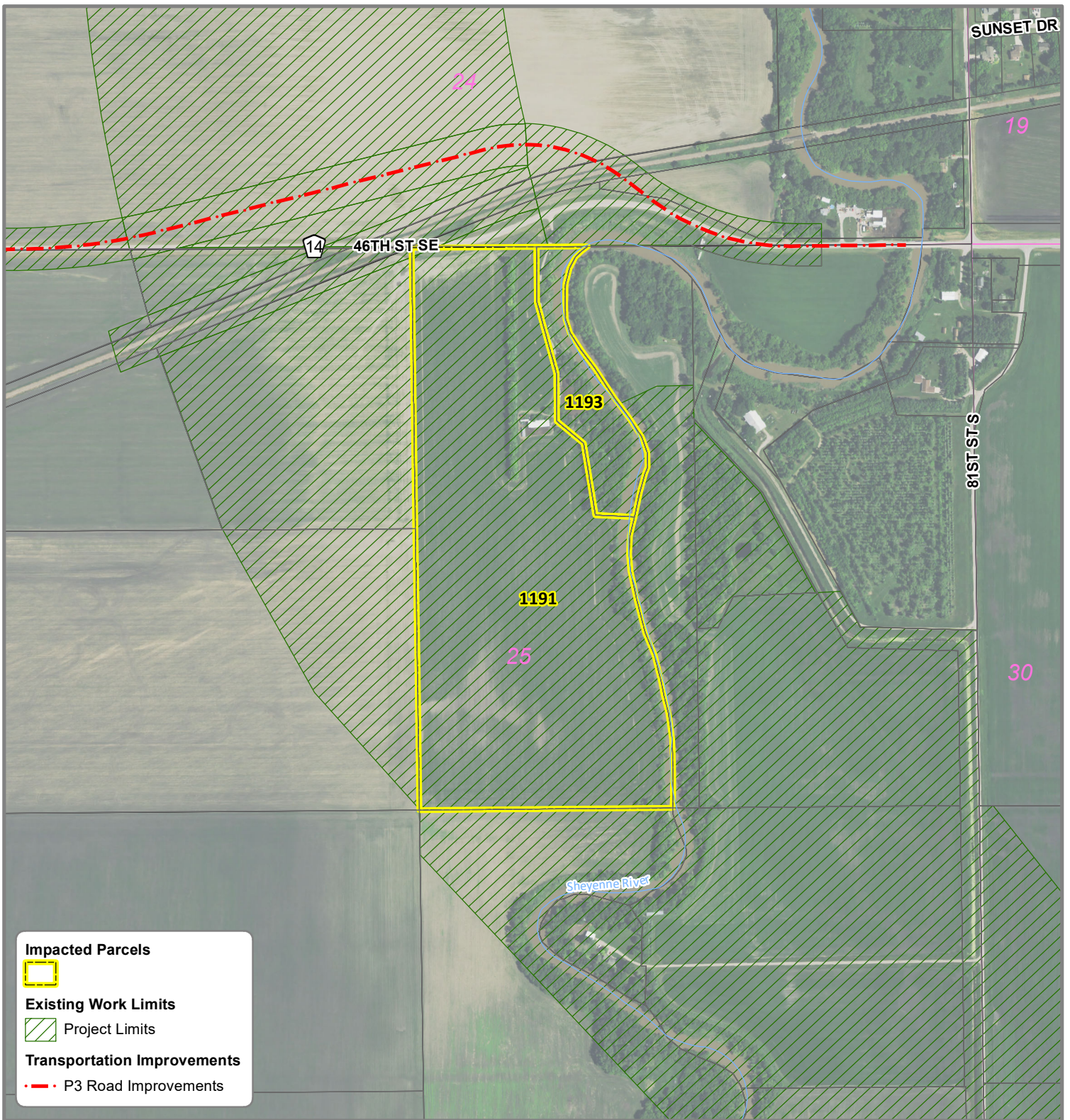
The parcel is located within the Diversion Channel area associated with the Project. The Diversion Authority is required to obtain a portion of the parcel for the Diversion Channel.

Valuation and Negotiation Summary:

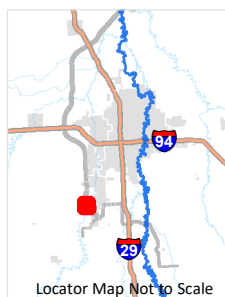
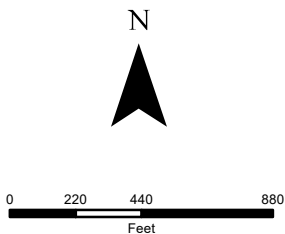
Appraisal Value / Date	\$18,000 – April 10, 2019 1.5 acres land/site taking at \$12,000/acre – \$18,000
Counteroffer	None received to date

Negotiation Notes

- SRF Land agents, Lisa Kilde and Ken Helvey has had contact with landowner regarding the offer to purchase approximately 3 times.
- Landowners have retained Rinke Noonan, and they are getting their own appraisal.
- Land agent has most recently been in touch with Rinke Noonan on September 25th regarding road improvement questions that the landowner had.
- Owner is currently moving items from site.



Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use.
 All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.
 Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced by: hrecords - AE2S, Inc. |
 C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\IProject Wide\Individual Property Maps - General Inquiry\IndividualLayout8x10v105notdatadriven.mxd



Mickeal Fosse
OINs: 1191, 1193
Parcel ID's: 67-0000-12712-000, 67-0000-12712-020
Cass County, ND
 FM AREA DIVERSION
 Map Date: 5/19/2020





August 26, 2019

Mickeal and Bonnie Fosse
16862 46th Street SE
Horace, ND 58047

RE: **Offer to Purchase**
Parcel ID: OIN 1191 1193
Project Title: Fargo Moorhead Diversion
PID: 67-0000-12712-000 and 67-0000-12712-020

Dear Mickeal and Bonnie Fosse,

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, Integra Realty Services. The appraiser has determined that the market value of the interests being purchased is **\$750,000.00**. The CCJWRD has used the market value set forth in the appraisal as the basis for determining Just Compensation for the property interests being acquired from you. A copy of the appraisal is attached to this letter and provided to you. If the purchase amount is based on any conditions or exceptions (such as terms of the transfer of possession or retention of any interest); they will be included in Exhibit A.

The Cass County Joint Water Resource District hereby offers to pay you \$750,000.00 as Just Compensation for the property interests it must acquire from you.

Separate from this agreement are relocation benefits provided as a part of the acquisition of your property. These may consist of certain moving expense reimbursement. There is no replacement housing assistance as the property is not "occupied".

Mickeal and Bonnie Fosse
Offer to Purchase

OIN 1191 1193

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

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

If you have any questions about the acquisition process, please contact the representative at 701-893-7437. The representative is here to help you understand the process and to assist in negotiating a fair direct purchase of the Parcel, however, we do not represent you. We are willing to meet with you in person as well as set up a time to discuss questions on the phone.

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

- Copy of the appraisal for Parcel ID OIN 1191 1193 by Integra Realty Services.
- Exhibit A (Acquisition Summary)

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

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

Sincerely,



Lisa Kilde
Senior Right of Way Specialist

I acknowledge that on _____, 20____, I received this letter and all documents listed above.

Michael Fosse

Bonnie Fosse

Lisa Kilde hand delivered documents to Mickeal on 8/26/19.

Enclosures: Appraisal Report, Exhibit A

EXHIBIT A

**ACQUISITION SUMMARY
Fargo Moorhead Diversion**

Offer to Purchase

Parcel ID: OIN 1191 1193

Project Title: Fargo Moorhead Diversion

PID: 67-0000-12712-000 and 67-0000-12712-020

Property Address: 16862 46th St SE, Horace, ND 58407

Recorded Fee Owner: Mickeal and Bonnie Fosse

Property Legal Description:

SEE ATTACHED APPRAISAL

Description of Property Interests to be Acquired: Fee Simple

Noted and Waived Exceptions, Reservations or Encumbrances: None

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

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

APPRAISAL SUMMARY

Parcel Value	Area Size/ Description	Per Unit	Indicated Value
Land/Site Taking	62.5 Acres	\$ 12,002	\$ 750,125.00
TOTAL (rounded)			\$ 750,000.00

Lisa Kilde

From: Nick Delaney <NDelaney@rinkenoonan.com>
Sent: Monday, August 26, 2019 1:54 PM
To: Lisa Kilde
Cc: Ken Helvey; Angie Bengtson; Igor Lenzner
Subject: RE: Mike Fosse (OIN 1186)

Thanks.

Nicholas R. Delaney
Attorney

RINKE NOONAN
Suite 300, US Bank Plaza
P.O. Box 1497
St. Cloud, MN 56302
(320) 251-6700 Office
(320) 656-3500 Fax

[website](#) | [email](#) | [bio](#) | [map](#)



RINKE NOONAN
attorneys at law

LinkedIn

For immediate assistance, please contact my paralegal,
Amber Schmid at (320) 656-3535 or aschmid@rinkenoonan.com

From: Lisa Kilde <lkilde@srfconsulting.com>
Sent: Monday, August 26, 2019 1:52 PM
To: Nick Delaney <NDelaney@rinkenoonan.com>
Cc: Ken Helvey <khelvey@srfconsulting.com>; Angie Bengtson <ABengtson@rinkenoonan.com>; Igor Lenzner <ILenzner@rinkenoonan.com>
Subject: RE: Mike Fosse (OIN 1186)

Mr. Delaney,

Attached please find a copy of the Offer Letter and Appraisal for Mickeal and Bonnie Fosse for the remaining parcels, OIN 1191 and 1193. I am meeting with Mickeal this afternoon to give him a copy of these as well.

Thank you,

Lisa Kilde
Senior Right of Way Specialist
SRF Consulting Group
One North 2nd Street, Suite 226, Fargo, ND 58102
Phone: 701.237.0010 | Direct 701.893.7437 | lkilde@srfconsulting.com



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From: Nick Delaney <NDelaney@rinkenoonan.com>
Sent: Monday, August 26, 2019 11:28 AM
To: Ken Helvey <khelvey@srfconsulting.com>
Cc: Angie Bengtson <ABengtson@rinkenoonan.com>; Igor Lenzner <ILenzner@rinkenoonan.com>; Lisa Kilde <lkilde@srfconsulting.com>
Subject: RE: Mike Fosse (OIN 1186)

Thank you

Nicholas R. Delaney
Attorney

RINKE NOONAN
Suite 300, US Bank Plaza
P.O. Box 1497
St. Cloud, MN 56302
(320) 251-6700 Office
(320) 656-3500 Fax

[website](#) | [email](#) | [bio](#) | [map](#)



For immediate assistance, please contact my paralegal,
Amber Schmid at (320) 656-3535 or aschmid@rinkenoonan.com

From: Ken Helvey <khelvey@srfconsulting.com>
Sent: Monday, August 26, 2019 11:25 AM
To: Nick Delaney <NDelaney@rinkenoonan.com>
Cc: Angie Bengtson <ABengtson@rinkenoonan.com>; Igor Lenzner <ILenzner@rinkenoonan.com>; Lisa Kilde <lkilde@srfconsulting.com>
Subject: RE: Mike Fosse (OIN 1186)

Nick,

Mike talked to Lisa. We owe him a second appraisal and offer for the other two properties. They are OIN's 1191 and 1193. The attached is just for 1186.

Lisa will bring him the other package today and we will email you copies.

From: Nick Delaney <NDelaney@rinkenoonan.com>
Sent: Monday, August 26, 2019 11:12 AM
To: Ken Helvey <khelvey@srfconsulting.com>
Cc: Angie Bengtson <ABengtson@rinkenoonan.com>; Igor Lenzner <ILenzner@rinkenoonan.com>
Subject: Mike Fosse (OIN 1186)

Ken-

We are working with Mike Fosse who just received an appraisal and certified letter from Lisa Kilde (sp?) of SRF. Can you send me a copy of his appraisal report(s)? He mentioned that he doesn't think he got an appraisal for all of his impacted property. He believes he has another piece of property for which he did not received any paperwork and has expressed to me some confusion. I was hoping to clear that up for him if possible, so anything you can do to help in that regard would be appreciated. Identifying all of his impacted parcels and any for which a report/offer has not been yet generated might help clear up that confusion. Thanks, Ken.

Nicholas R. Delaney
Attorney

RINKE NOONAN
Suite 300, US Bank Plaza
P.O. Box 1497
St. Cloud, MN 56302
(320) 251-6700 Office
(320) 656-3500 Fax

[website](#) | [email](#) | [bio](#) | [map](#)



For immediate assistance, please contact my paralegal,
Amber Schmid at (320) 656-3535 or aschmid@rinkenoonan.com

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

April 22, 2020

**Cass County
Joint Water
Resource
District**

Mickeal Fosse
16862 46th Street SE
Horace, ND 58047
Certified No. 7019 1640 0002 0398 8248

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
Formal Negotiations and Written Offer of Just Compensation
OINs: 1191, 1193
Parcel Nos.: 67-0000-12712-000, 67-0000-12712-020**

The Cass County Joint Water Resource District (the "District") is in the process of acquiring property interests necessary for the Fargo-Moorhead Area Diversion Project (the "Project"), and the District has been in discussions with you regarding right of way the District must acquire from you to accommodate the Project. The District directed me to provide you this letter as the District's formal offer to purchase right of way from you. More specifically, to accommodate the Project, the District must acquire right of way from you over property located in Cass County and identified as Parcel Identification Number 67-0000-12712-000 and 67-0000-12712-020. The legal description of the property to be acquired is:

Right of Way:

That part of the West Half of the Northeast Quarter of Section Twenty-five, in Township One hundred Thirty-eight, of Range Fifty, lying West of the Sheyenne River, situate in the County of Cass and the State of North Dakota.

Said parcel contains 62.5 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

Carol Harbeke Lewis
Secretary-Treasurer

1201 Main Avenue West
West Fargo, ND 58078-1301

701-298-2381
FAX 701-298-2397
wrđ@casscountynđ.gov
casscountynđ.gov

Enclosed is an appraisal regarding the value of the right of way the District must acquire from you, as determined by a licensed North Dakota appraiser. As you can see from the appraisal, the appraiser indicated the value of the right of way the District must acquire from you is \$750,000.00. The District approved the appraisal and this letter is the District's offer to you in the amount of \$750,000.00 as just compensation to purchase right of way from you for the Project. If you are willing to accept the District's offer, please sign the enclosed *Purchase Agreement* and return it to the District in the enclosed self-addressed, stamped envelope.

Mickeal Fosse
April 22, 2020
Page 2

You are encouraged to maintain contact with the land agent assigned to your property. **Lisa Kilde** of SRF Consulting Group, Inc. can be reached at **(701) 893-7437** or **lkilde@srfconsulting.com**. Lisa is your point of contact for getting answers to any questions you have about the Project and acquisition of right of way from you for the Project.

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

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

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



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

Enclosures

cc: Nicholas Delaney, Attorney at Law, Rinke Noonan
Lisa Kilde, Land Agent
Eric Dodds, Program Manager, AE2S
Chris McShane, Ohnstad Twichell, P.C.
Chad Peterson, Cass County Commission Chair
Robert Wilson, Cass County Administrator
Birch Burdick, Cass County State's Attorney
Joel Paulsen, Executive Director, Diversion Authority

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

MICKEAL FOSSE
 16862 46TH STREET SE
 HOORACE ND 58047



9590 9402 3806 8032 1546 97

2. Article Number (Transfer from service label)

7019 1640 0002 0398 8248

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Mary Glass

Agent

Addressee

B. Received by (Printed Name)

Mary Glass 019

C. Date of Delivery

4-23

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

3. Service Type

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



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

May 18, 2020

**Cass County
Joint Water
Resource
District**

Mickeal Fosse
16862 46th Street SE
Horace, ND 58047
Certified No. 7019 1640 0002 0398 8460

Greetings:

Dan Jacobson
Chairman
West Fargo, North Dakota

**RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
Request for Meeting
OINs: 1191, 1193
Parcel Nos.: 67-0000-12712-000, 67-0000-12712-020**

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 from you. The District's letter specifically described the right of way the District must acquire from you for the Project. We have not received a signed Purchase Agreement from you, and we have not otherwise arrived at mutually acceptable terms regarding the District's purchase of right of way from you to accommodate the Project.

Carol Harbeke Lewis
Secretary-Treasurer

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

1201 Main Avenue West
West Fargo, ND 58078-1301

701-298-2381
FAX 701-298-2397
wrđ@casscountynđ.gov
casscountynđ.gov

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

Mickeal Fosse
OINs 1191, 1193
May 18, 2020
Page 2

Please continue to maintain contact and negotiate with the land agent assigned to your property. **Lisa Kilde** of SRF Consulting Group, Inc. is your point of contact for getting answers to any questions you have about the Project. Lisa can be reached at **(701) 893-7437** or **lkilde@srfconsulting.com**.

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

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

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



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

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

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:
MICHAEL FOSSE
 4174 STREET SE
 5047



9590 9402 3806 8032 1544 75

2. Article Number (Transfer from service label)
7019 1640 0002 0398 8460

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ABC019RZ Agent
 Addressee

B. Received by (Printed Name) **ABC019RZ** C. Date of Delivery **5/20**

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No
16889 46th St SE

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



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Cass County
Joint Water
Resource
District

July 8, 2020

Mickeal Fosse
16862 46th Street SE
Horace, ND 58047
Certified No. 7020 0090 0000 7648 3376

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
OINs: 1191, 1193
Parcel Nos. 67-0000-12712-000, 67-0000-12712-020

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 a Purchase Agreement as the District's offer of just compensation to purchase the right of way from you. In addition, I also provided you a letter dated May 18, 2020, to invite you to meet with the District for purposes of discussing the acquisition of your land. The parties have conducted the informal and formal negotiation procedures required by law but, unfortunately, the parties have not yet reached a mutually-acceptable agreement regarding compensation for the District's purchase of the right of way from you to accommodate the Project.

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

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
casscountynđ.gov

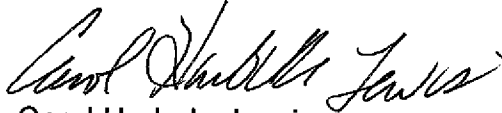
Mickeal Fosse
OINs 1191, 1193
July 8, 2020
Page 2

You are encouraged to maintain contact with the land agent assigned to your property. **Lisa Kilde** of **SRF Consulting Group, Inc.** can be reached at **(701) 893-7437** or **lkilde@srfconsulting.com**. Lisa is your point of contact for getting answers to any questions you have about the Project and acquisition of right of way from you for the Project.

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

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



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

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

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature</p> <p>X <i>dm</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>																	
<p>1. Article Addressed to:</p> <p>MICHAEL FOSSE 16862 46TH STREET SE HORACE ND 58047</p>	<p>B. Received by (Printed Name)</p> <p>Fosse C19</p>	<p>C. Date of Delivery</p> <p>7-13-2020</p>																
 <p>9590 9402 5989 0062 9066 48</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>																	
<p>2. Article Number (Transfer from service label)</p> <p>7020 0090 0000 7648 3376</p>	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>		<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
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<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery																	
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<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>Domestic Return Receipt</p>																



SENT VIA EMAIL wilsonro@casscountynd.gov

August 21, 2020

Cass County
Joint Water
Resource
District

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

Greetings:

Dan Jacobson
Chairman
West Fargo, North Dakota

Rodger Olson
Manager
Leonard, North Dakota

Ken Lougheed
Manager
Gardner, North Dakota

Jacob Gust
Manager
Fargo, North Dakota

Keith Weston
Manager
Fargo, North Dakota

RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
Request for Approval to Take Possession of Necessary Right of Way
OINs: 1191, 1193
Parcel Nos. 67-0000-12712-000, 67-0000-12712-020

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 from Mickeal Fosse (the "Landowner"):

- Letter dated April 22, 2020, enclosing the District's appraisal for the acquisition of the right of way from the Landowner and a proposed Purchase Agreement;
- Letter dated May 18, 2020, inviting the Landowner to meet with the District for purposes of negotiating compensation for the right of way to be acquired; and
- Letter dated July 8, 2020, notifying the Landowner the District planned to submit a request to the Cass County Commission seeking immediate possession of the right of way necessary for the Project.

Carol Harbeke Lewis
Secretary-Treasurer

1201 Main Avenue West
West Fargo, ND 58078-1301

701-298-2381
FAX 701-298-2397
wrđ@casscountynd.gov
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 in, on, over, across, and through certain property owned by the Landowner in Cass County, North Dakota. The legal description of the necessary right of way is as follows:

Right of Way Easement:

That part of the West Half of the Northeast Quarter of Section Twenty-five, in Township One hundred Thirty-eight, of Range Fifty, lying West of the Sheyenne River, situate in the County of Cass and the State of North Dakota.

Said parcel contains 62.5 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

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

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

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

Robert Wilson
August 21, 2020
Page 3

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

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



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

cc: Lisa Kilde, 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 26, 2020

VIA UPS – DELIVERY CONFIRMATION

**Board of County
Commissioners**

Mickeal Fosse
16862 46th Street SE
Horace, ND 58047

Chad M. Peterson
Fargo, North Dakota

Re: Cass County Commission
Fargo-Moorhead Area Diversion Project
Invitation to Attend Public Meeting
OINs: 1191, 1193
Parcel Nos.: 67-0000-12712-000, 67-0000-12712-020
UPS Tracking No. 1Z F51 82Y 30 9073 6163

Rick Steen
Fargo, North Dakota

Ken Pawluk
Fargo, North Dakota

Greetings:

Duane Breiting
West Fargo, North Dakota

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 easements necessary to accommodate the Project. You have been in negotiations with the District and its agents regarding the right of way easement the District must acquire from you for the Project. The District copied the Commission on the following three letters the District sent to you regarding the District's negotiations with you:

Mary Scherling
Stanley Township, North Dakota

- Letter dated April 22, 2020, enclosing the District's appraisal for the acquisition of the right of way 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 easement to be acquired; and
- Letter dated July 8, 2020, notifying you the District planned to submit a request to the Commission seeking immediate possession of the right of way 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 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 easement the District must acquire from you. The legal description of the necessary right of way easement is as follows:

Right of Way Easement:

That part of the West Half of the Northeast Quarter of Section Twenty-five, in Township One hundred Thirty-eight, of Range Fifty, lying West of the Sheyenne River, situate in the County of Cass and the State of North Dakota.

Said parcel contains 62.5 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 October 5, 2020 at 3:30 p.m. The District will also participate in the meeting, along with a representative of the land firm which was your primary point of contact throughout the negotiation process. At the meeting, the Commission will ask the District to verify the District's compliance with Section 61-16.1-09(2) of the North Dakota Century Code. The Commission will ultimately vote on whether to approve the District's use of quick take eminent domain to take a right of way easement over your property.

If you wish to participate in the Commission's October 5, 2020 public meeting via conference call or Microsoft Teams, please contact Heather Worden at (701) 241-5609 or wordenh@casscountynd.gov as soon as possible so Ms. Worden can assist you with the necessary arrangements.

This Notice does not preclude you from continuing to work with the District regarding the right of way easement necessary for the Project. In fact, the Commission and the District encourage you to maintain contact with **Lisa Kilde** and to continue discussions about the Project. **Lisa Kilde of SRF Consulting Group, Inc.** is your point of contact regarding the Project. You can reach **Lisa Kilde** at **(701) 893-7437** or **lkilde@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 easement. The District must complete the acquisition of right of way necessary for construction of Project components on your property by Fall of 2020.

Fosse
August 26, 2020
Page 3

Sincerely,

CASS COUNTY COMMISSION



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

cc: Lisa Kilde, Land Agent
Nicholas Delaney, Rinke Noonan
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

1ZF5182Y3090736163

Weight

1.00 LBS

Service

UPS Next Day Air Saver®
with UPS Carbon Neutral 

Shipped / Billed On

08/25/2020

Delivered On

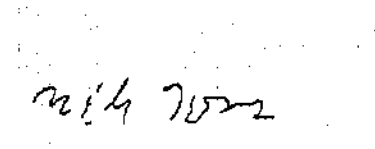
08/27/2020 9:27 A.M.

Delivered To

FOSSE
16862 SE 46TH ST
HORACE, ND, 58047, US

Received By

FOSSE



Left At

Front Desk

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: 08/31/2020 4:33 P.M. EST

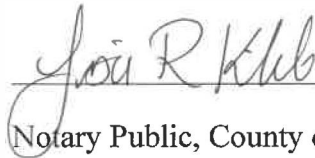
[¶8] I verify to the best of my knowledge, as Principal/Land Agent of SRF Consulting Group, Inc., nobody from SRF Consulting Group, Inc. has referenced, mentioned, or threatened quick take eminent domain to Landowner during negotiations since August 1, 2017.

Dated this 23 day of September, 2020.



Ken Helvey
SRF Consulting Group, Inc.

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



Notary Public, County of Cass

State of North Dakota

My Commission Expires: _____

(SEAL)

"Exhibit A"

OIN 1191 1193

OIN 1186 - Fosse Contact

Date	Notes
12/15/2016	Dave DuToit called Mike to discuss project.
2/15/2017	Dave called Mike to request an ROE for BIO-GEO
2/24/2017	Dave called Mike to request an ROE for soil borings
5/24/2017	Dave met with Mike to discuss Offer. Mike was not interested in selling his property.
8/12/2019	Offer Letter mailed to Mickeal and Bonnie for OIN 1186
8/15/2019	Lisa called and left a message for Mickeal to call back to talk about the offer package and if he would like to meet
8/26/2019	Appraisal and offer letter received
8/26/2019	Mike called Lisa to talk about questions on the appraisal and offer
8/26/2019	Lisa met with Mickeal at his home to talk and deliver the appraisal and offer letter for the other 2 (of 3) parcels
8/26/2019	Lisa emailed Nick Delaney regarding Offer for OIN 1191 1193
11/7/2019	Ken emailed Nick Delaney regarding status of counteroffer
1/2/2020	Ken emailed Nick Delaney regarding counteroffer
2/4/2020	Relocation notice sent
2/7/2020	Revised Offer mailed to Mickeal and Bonnie and emailed to Nick Delaney
4/13/2020	owner is getting their own appraisal
4/17/2020	Ken emailed Igor Lenzner regarding parcel
4/22/2020	Lisa emailed Lenzner regarding questions on road improvements
4/22/2020	Formal offer letter sent
4/23/2020	Ken emailed Igor Lenzner regarding Zitzow property
5/22/2020	Lisa emailed Nick Delaney regarding Fosse parcel to see if they can put a deal together to move the buildings
6/22/2020	Melissa Maertens emailed Nick Delaney Formal Invite Letter
6/24/2020	Nick Delaney emailed Melissa Maertens regarding invitation to meet at CCJWRD Board meeting
7/16/2020	Talked to Rinke regarding possible new locations and counter offers and staking
7/22/2020	Talked to Rinke regarding possible new locations and counter offers and staking
8/5/2020	Visited site and spoke with owner about options for RW area and moving issues
	Talked to Rinke regarding moving and difficulties we see in getting that done on time. Also RW taking areas for roac
8/5/2020	items. Waiting their appraisals
8/24/2020	Emailed attorney about access for testing. They replied that it was OK
9/1/2020	Emails with attorney regarding relocation. Was told to only talk to him about acquisition. They are getting appraisals
9/2/2020	Emailed owner and attorney giving them the go ahead to get going on moving
9/10/2020	Email with owner attorney regarding design issues and relocation benefits- no counter offer to date
9/15/2020	Email with owner attorney regarding move status - they are checking in with their client
9/23/2020	Spoke with owner attorney. No counter offer yet to offer to us.

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 Metro Flood Diversion 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 Easement in and to real property owned by Mickeal Fosse (“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 Easement must be acquired by the District for the Project is located in Cass County, North Dakota, more fully described as follows:

OINs 1191, 1193

That part of the West Half of the Northeast Quarter of Section Twenty-five, in Township One hundred Thirty-eight, of Range Fifty, lying West of the Sheyenne River, situate in the County of Cass and the State of North Dakota.

[¶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, along with an appraisal and purchase agreement, on April 22, 2020. A copy of the offer (without the appraisal that was included) is attached as **Exhibit 1**.

[¶9] On May 18, 2020, the District sent Landowner a written request for a meeting, by certified mail; the District and Landowner have not reached an agreement regarding compensation,

and more than fifteen days have passed since Landowner's receipt of the offer. A copy of the written request for a meeting with Landowner is attached as **Exhibit 2**.

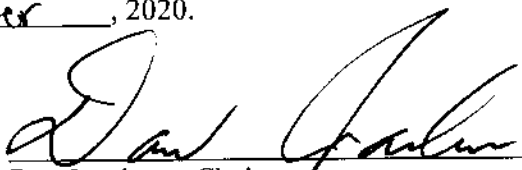
[¶10] The District and Landowner have not reached an agreement regarding compensation, and more than thirty days have passed since Landowner's receipt of the request for a meeting.

[¶11] On July 8, 2020, the District sent Landowner a written notice of intent to take possession of the Right of Way Easement, by certified mail. A copy of the notice of intent is attached as **Exhibit 3**.

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

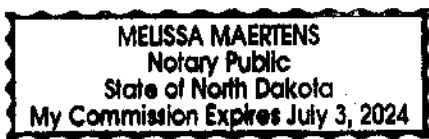
[¶13] I verify there have been no references, mention, or threats of quick take eminent domain by the District during negotiations since August 1, 2017.

Dated this 25 day of September, 2020.




Dan Jacobson, Chair
Cass County Joint Water Resource District

Subscribed to and sworn to before me this 25 day of September, 2020.



(SEAL)



Notary Public, Cass County, State of North Dakota