

FM AREA DIVERSION PROJECT

# Property Owner Information Packet for Cass County Commission

November 16<sup>th</sup>, 2020

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PROPERTY OWNER: Harvey Brakken

LAND AGENT: Pat Roberts with ProSource

OIN: 1173



FM AREA  
**DIVERSION**  
PROJECT

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## Written Correspondence Timeline – Harvey Brakken

OIN 1173	Sent	Received
Offer to Purchase	3/23/2020	3/25/2020
Formal Negotiations and Written Offer of Just Compensation	6/5/2020	6/19/2020
Request for Meeting	7/21/2020	7/25/2020
Notice of Intent to Take Possession of Right-of-Way	8/26/2020	8/27/2020
Request for Approval to Take Possession of Necessary Right-of-Way and Temporary Easement	10/2/2020	10/2/2020
Invitation to Attend Public Meeting	10/9/2020	10/12/2020
Commission Meeting Date	11/16/2020	

**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: Harvey Brakken, and James J. Brakken and David F. Brakken, as Co-Trustees of the Brakken Irrevocable Living Trust Agreement dated February 19, 1997
2. Land Agent: Patrick Roberts
3. Parcel No.: 15-0000-12655-010
4. OIN No.: 1173

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 of 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 OIN 1173.

# FM Area Diversion Project

## Property Negotiation Summary

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November 6, 2020

Owner	Harvey Brakken
Address	SWQ of 81 <sup>st</sup> Street S and 44 <sup>th</sup> St SE Horace, Cass County ND 58047
Property Location	Diversion Channel
Property Type	A-1 Agriculture – Undeveloped Transitional Agricultural
OIN	1173
Land Firm & Land Agent	ProSource – Pat Roberts

**Property Need:** P3 Diversion Channel

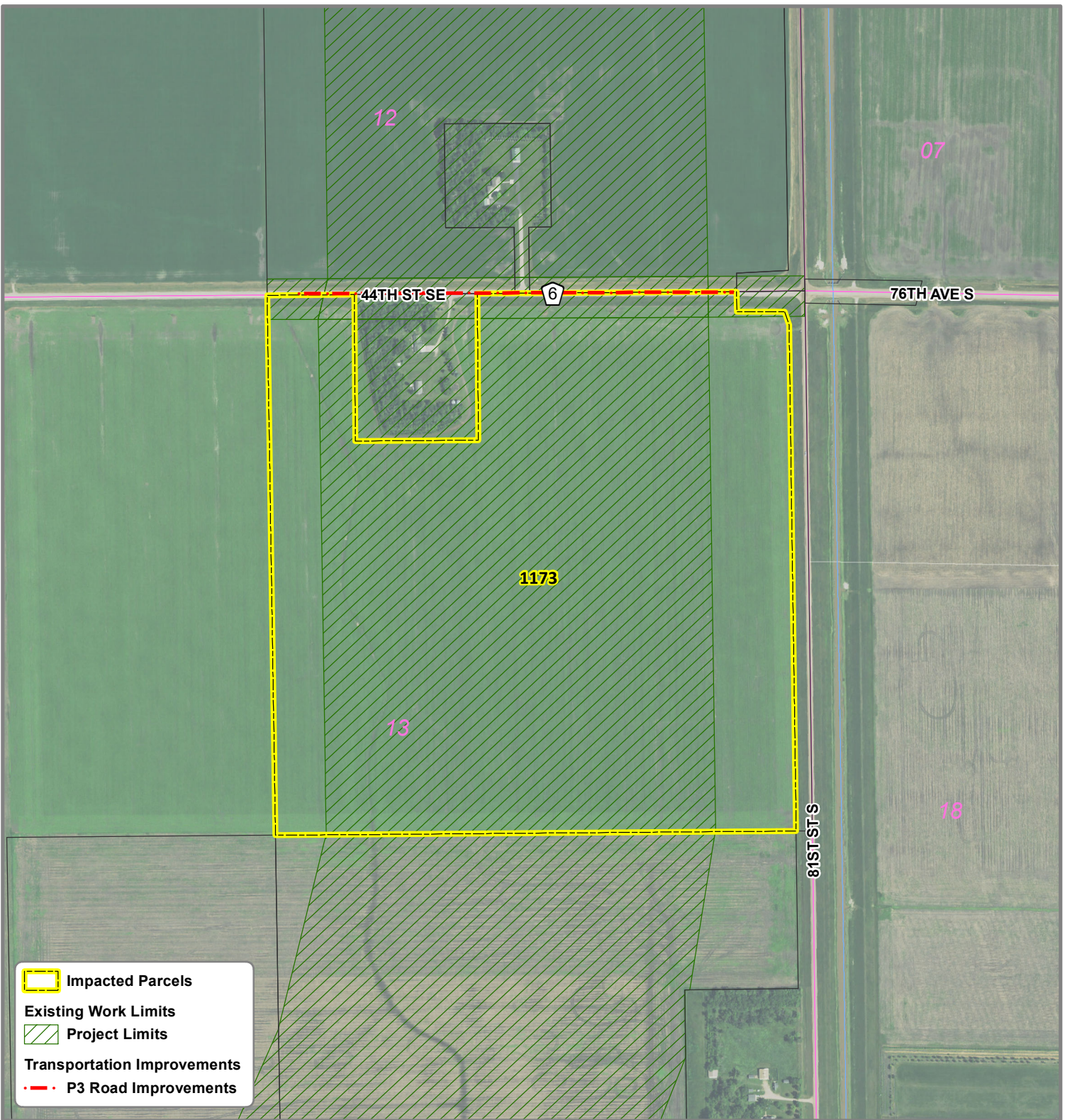
### Valuation and Negotiation Summary:

Appraisal Value / Date	\$1,011,100 (4-9-19 valuation date) 108.18 acres X \$9000/acre + \$37,470 in damages
Counteroffer	\$2,867,462 145.4 acres x \$19,721/acre.

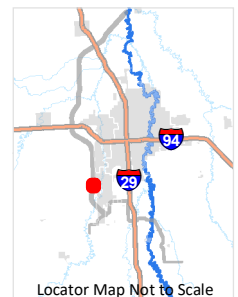
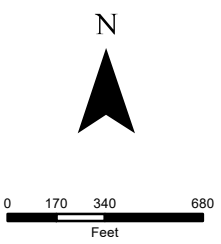
### Miscellaneous Provisions

- Project needs for this property is 108.18 acres. The owner is requesting the whole parcel be acquired.
- The counter-offer of \$19,721/acre is 119% over appraised.
- The counter-offer is based on property comparables they feel better represent the subject property. Based on their analysis, they arrived at a per acre amount of \$23,990 and subtracted out \$4268 of flood elevation development costs to arrive at the \$19,721/acre amount.
- The information is not an appraisal.
- The attorney is not pointing directly to development potential in the counter-offer for Mr. Harvey Brakken, but is using the same comparable properties used in the Samuelson counter-offer where there was a direct connection to development potential. The Samuelson properties are just south of this property.
- Their counter-offer remains a firm **\$2,133,417** for the 108.18 acres + \$734,045 for the additional roughly 37.22 acres for a total taking amount of \$2,867,462 the 145.4 acres.
- Our offer is for **\$1,011,100** for 108.18 acres.
- We are \$1,122,317 apart on required acres and a total of \$1,856,362 apart on offers.

November 6, 2020



*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.*  
 Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced by: hrecords - AE2S, Inc. |  
 C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\IProject Wide\Individual Property Maps - General Inquiry\IndividualLayout8x10v105.mxd



**OIN: 1173**  
**HARVEY BRAKKEN**  
**Parcel ID: 15-0000-12655-010**  
**Cass County, ND**

FM AREA DIVERSION  
 Map Date: 7/30/2020





March 23, 2020

Harvey J. Brakken  
319 Mickey Mouse Ave  
Horace, ND 58047

Delivered via Certified US Mail

RE: **Offer to Purchase**  
Fargo-Moorhead Area Flood Diversion Project  
**Property Address:** Unassigned, Horace ND  
Property ID(s): 1173 PID(s): 15-0000-12655-010

Dear Harvey J. Brakken:

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

On August 17, 2019 CCJWRD made an approved offer to all interested parties who may have an interest in the real estate rights to be acquired the sum of \$1,017,000.00. This offer is based on an independent appraisal by Integra Realty Resources based on a taking of 105.8 acres and a temporary construction easement. It has been determined by an updated Certificate of Survey, that the taking amount needed is 108.28 acres and the temporary construction easement has been eliminated. As such, an update has been completed on the appraisal resulting in an updated offer amount of \$1,011,100.

**The Cass County Joint Water Resource District hereby offers to pay you \$1,011,100.00 as Just Compensation for the property interests it must acquire from you.**

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

- Copy of appraisal for OIN 1173 by Integra Realty Resources.
- Exhibit B (Certificate of Surveys)

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.



Page 2  
Harvey J. Brakken  
Offer to Purchase Letter

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,



Patrick Roberts  
Senior Project Manager  
319-899-0433  
[proberts@prosourcetech.com](mailto:proberts@prosourcetech.com)

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

## Track Another Package +

**Tracking Number:** 70122210000082344903

[Remove X](#)

Your item was delivered at 11:35 am on March 25, 2020 in HORACE, ND 58047.

### **Delivered**

March 25, 2020 at 11:35 am  
Delivered  
HORACE, ND 58047

Feedback

**Get Updates** 

---

**Text & Email Updates** 

---

**Tracking History** 

---

**Product Information** 

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**See Less** 

## Can't find what you're looking for?

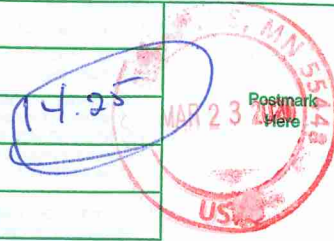
Go to our FAQs section to find answers to your tracking questions.

U.S. Postal Service™  
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For delivery information visit our website at [www.usps.com](http://www.usps.com)®

**OFFICIAL USE**

7012 2210 0000 8234 4903

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Harvey J. Brakken  
319 Mickey Mouse Ave  
Horace, ND 58047

PS Form 3800, August 2006

See Reverse for Instructions



**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

June 5, 2020

**Cass County  
Joint Water  
Resource  
District**

Harvey Brakken  
319 Mickey Mouse Avenue  
Horace, ND 58047  
**Certified No. 7018 0040 0000 5525 6762**

Dan Jacobson  
Chairman  
West Fargo, North Dakota

James J. Brakken  
Co-Trustee of the Brakken Irrevocable Living  
Trust Agreement dated February 19, 1997  
319 Mickey Mouse Avenue  
Horace, ND 58047  
**Certified No. 7018 0040 0000 5525 6779**

Rodger Olson  
Manager  
Leonard, North Dakota

David F. Brakken  
Co-Trustee of the Brakken Irrevocable Living  
Trust Agreement dated February 19, 1997  
16868 44th Street SE  
Horace, ND 58047  
**Certified No. 7018 0040 0000 5525 6786**

Ken Loughheed  
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  
OIN: 1173  
Parcel No.: 15-0000-12655-010

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

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 15-0000-12655-010. The legal description of the property to be acquired is:

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

That part of the Northeast Quarter (NE1/4) of Section 13, Township 138 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Harvey Brakken  
James J. Brakken  
David F. Brakken  
June 5, 2020  
Page 2

Beginning at the Northwest Corner of the NE1/4; thence N87°39'54"E on the north line of said NE1/4 a distance of 429.44 feet to the west line of the parcel described in Doc. No. 1389822, records of Cass County; thence S02°20'06"E on said west line a distance of 720.00 feet to the south line of said parcel; thence N87°39'54"E on said south line a distance of 605.00 feet to the east line of said parcel; thence N02°20'06"W on said east line a distance of 720.00 feet to said north line of the NE1/4; thence N87°39'54"E on said north line a distance of 1,274.88 feet to the westerly line of the parcel described in Doc. No. 718780, records of Cass County; thence S02°26'18"E on said westerly line a distance of 100.02 feet; thence N87°33'42"E on said westerly line a distance of 235.65 feet; thence S19°31'34"E on said westerly line a distance of 26.60 feet; thence S87°39'54"W parallel with, and 125 feet south of, said north line of the NE1/4 a distance of 382.55 feet; thence S02°48'30"E, parallel with, and 475 feet west of, the east line of said NE1/4 a distance of 2,529.35 feet to the south line of said NE1/4; thence S87°33'17"W on said south line a distance of 1,915.51 feet; thence N02°53'31"W parallel with, and 250 feet east of, the west line of said NE1/4 a distance of 2,533.07 feet; thence S87°39'54"W parallel with, and 125 feet south of, said north line of the NE1/4 a distance of 250.01 feet to said west line of the NE1/4; thence N02°53'31"W on said west line a distance of 125.01 feet to the Point of Beginning.

Said parcel contains 108.18 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 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 \$1,011,090.00, rounded to \$1,011,100.00. The District approved the appraisal and this letter is the District's offer to you in the amount of \$1,011,100.00 as just compensation to purchase right of way from you for the Project. If you are willing to accept the District's offer, please sign the enclosed *Purchase Agreement* and return it to the District in the enclosed self-addressed, stamped envelope.

You are encouraged to maintain contact with the land agent assigned to your property. **Patrick Roberts** of ProSource Technologies, LLC can be reached at **(763) 786-1445** or **proberts@prosourcetech.com**. Pat is your point of contact for getting answers to any questions you have about the Project and acquisition of right of way from you for the Project.

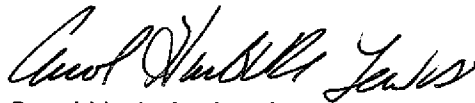
Harvey Brakken  
James J. Brakken  
David F. Brakken  
June 5, 2020  
Page 3

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: Jack Dwyer, Dwyer Law Office, PLLC  
Patrick Roberts, Land Agent  
Eric Dodds, Program Manager, AE2S  
Chris McShane, Ohnstad Twichell, P.C.  
Chad Peterson, Cass County Commission Chair  
Robert Wilson, Cass County Administrator  
Birch Burdick, Cass County State's Attorney  
Joel Paulsen, Executive Director, Diversion Authority

**SENDER: COMPLETE THIS SECTION**

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

1. Article Addressed to:  
**HARVEY BRAKKEN**  
**319 MICKEY MOUSE AVE**  
**HORACE, ND 58047**



9590 9402 3806 8032 1534 61

2. Article Number (Transfer from service label)  
**7018 0040 0000 5525 6762**

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

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature *[Handwritten Signature]*  Agent  Addressee

B. Received by (Printed Name) **HARVEY BRAKKEN** C. Date of Delivery **8/8/20**

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

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

Domestic Return Receipt

**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.

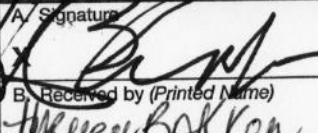
1. Article Addressed to:  
 JAMES J. BRAKKE  
 CO-TRUSTEE OF BRAKKE  
 IRREVOCABLE LIVING TRUST  
 319 MICKEY MOUSE AVE  
 HORACE, ND 58047



9590 9402 3806 8032 1534 54

2. Article Number (Transfer from service label)  
 7018 0040 0000 5525 6779

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature   Agent  
 Addressee

B. Received by (Printed Name) James J. Brakke C. Date of Delivery 4/8/20

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

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



**SENDER: COMPLETE THIS SECTION**

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


1. Article Addressed to:  
 DAVID F. BRAKKE  
 CO-TRUSTEE OF BRAKKE  
 IRREVOCABLE LIVING TRUST  
 16268 44TH STREET SE  
 HORACE, ND 58047



9590 9402 3806 8032 1534 47

2. Article Number (Transfer from service label)  
 7018 0040 0000 5525 6786

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature   Agent  
 Addressee  
 B. Receiver's (Printed Name)  
 C. Date of Delivery  
 6/19/2020

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

July 21, 2020

Cass County  
Joint Water  
Resource  
District

Harvey Brakken  
319 Mickey Mouse Avenue  
Horace, ND 58047  
**Certified No. 7020 0090 0000 7648 4199**

James J. Brakken  
Co-Trustee of the Brakken Irrevocable Living  
Trust Agreement dated February 19, 1997  
319 Mickey Mouse Avenue  
Horace, ND 58047  
**Certified No. 7020 0090 0000 7648 4205**

David F. Brakken  
Co-Trustee of the Brakken Irrevocable Living  
Trust Agreement dated February 19, 1997  
16868 44th Street SE  
Horace, ND 58047  
**Certified No. 7020 0090 0000 7648 4212**

Greetings:

RE: Cass County Joint Water Resource District  
 Fargo-Moorhead Area Diversion Project  
 Request for Meeting  
 OIN: 1173  
 Parcel No.: 15-0000-12655-010

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 June 5, 2020; a copy of the District's appraisal for the right of way needed from you; and a Purchase Agreement as the District's offer of just compensation to purchase the right of way from you. The District's letter specifically described the right of way the District must acquire from you for the Project. We have not received a signed Purchase Agreement from you, and we have not otherwise arrived at mutually acceptable terms regarding the District's purchase of right of way from you to accommodate the Project.

The District requests your attendance at a meeting to discuss the District's offer to purchase right of way from you. The District is meeting at 8:00 a.m. on August 13, 2020, and August 27, 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.

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

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)

Harvey Brakken  
James J. Brakken  
David F. Brakken  
OIN 1173  
July 21, 2020  
Page 2

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.

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

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

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

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



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

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

**SENDER: COMPLETE THIS SECTION**

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

1. Article Addressed to:  
**HARVEY BRAKKEH**  
**319 MICKEY MOUSE AVENUE**  
**NORACE ND 58047**



9590 9402 5989 0062 9059 17

2. Article Number (Transfer from service label)  
**7020 0090 0000 7648 4199**

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature **Ch K**  Agent  Addressee

B. Received by (Printed Name) **Harvey Brakken CIA** C. Date of Delivery **7-24-2020**

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

3. Service Type
- |  |   |
|--|---|
| <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) |   |

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

Domestic Return Receipt

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:  
**JAMES J BRAKKEN**  
**CO-TRUSTEE OF BRAKKEN IRREVOCABLE**  
**LIVING TRUST AGREEMENT**  
**319 MICKEY MOUSE AVENUE**  
**NORACE ND 58047**



9590 9402 5989 0062 9059 00

2. Article Number (Transfer from service label)  
**7020 0090 0000 7648 4205**

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature *Ch R*  Agent  
 Addressee

B. Received by (Printed Name) *Harvey Brakken C19* C. Date of Delivery *7-24-2020*

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

3. Service Type
- |  |   |
|--|---|
| <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) |   |

Domestic Return Receipt

**SENDER: COMPLETE THIS SECTION**

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

1. Article Addressed to:

DAVID F BRAKLEN  
 CO-TRUSTEE OF BRAKLEN IRREVOCABLE  
 LIVING TRUST AGREEMENT  
 16868 44TH STREET SE  
 NORACE MO 58047



9590 9402 5989 0062 9058 94

2. Article Number (Transfer from service label)

7020 0090 0000 7648 4212

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *Lu Ann Braklen*  Agent  
 Addressee

B. Received by (Printed Name)

*Lu Ann Braklen*

C. Date of Delivery

*7/25/20*

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

3. Service Type

- |  |   |
|--|---|
| <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) |   |



**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Cass County  
Joint Water  
Resource  
District

August 26, 2020

Harvey Brakken  
319 Mickey Mouse Avenue  
Horace, ND 58047  
**Certified No. 7020 0090 0000 7648 4540**

Dan Jacobson  
Chairman  
West Fargo, North Dakota

James J. Brakken  
Co-Trustee of the Brakken Irrevocable Living Trust  
Agreement dated February 19, 1997  
319 Mickey Mouse Avenue  
Horace, ND 58047  
**Certified No. 7020 0090 0000 7648 4557**

Rodger Olson  
Manager  
Leonard, North Dakota

Ken Lougheed  
Manager  
Gardner, North Dakota

David F. Brakken  
Co-Trustee of the Brakken Irrevocable Living Trust  
Agreement dated February 19, 1997  
16868 44th Street SE  
Horace, ND 58047  
**Certified No. 7020 0090 0000 7648 4564**

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: 1173  
Parcel No. 15-0000-12655-010

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

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

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 June 5, 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 July 21, 2020, to invite you to meet with the District for purposes of discussing the acquisition of your right of way. 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 right of way from you to accommodate the Project.

Harvey Brakken  
James J. Brakken  
David F. Brakken  
OIN 1173  
August 26, 2020  
Page 2

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.

You are encouraged to maintain contact with the land agent assigned to your property. **Patrick Roberts of ProSource Technologies, LLC** can be reached at **(319) 899-0433** or **proberts@prosourcetech.com**. Pat is your point of contact for getting answers to any questions you have about the Project and acquisition of right of way from you for the Project.

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

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



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

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



**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:  
**HARVEY BRAKKEN**  
**319 MICKEY MOUSE AVENUE**  
**HORACE ND 58047**



9590 9402 5989 0062 9053 82

2. Article Number (Transfer from service label)  
**7020 0090 0000 7648 4540**

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

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee  
B. Received by (Print Name) **[Signature]** C. Date of Delivery **07/20**  
D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

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

Domestic Return Receipt

**SENDER: COMPLETE THIS SECTION**

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

1. Article Addressed to:  
**DAVID F BRAKKE**  
**CO-TRUSTEE OF BRAKKE IRREVOCABLE**  
**LIVING TRUST**  
**16868 44TH STREET SE**  
**HORACE ND 58047**



9590 9402 5989 0062 9053 99

2 Article  
**702**

PS Form

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee  
*[Signature]*  
 B. Received by (Printed Name)  Date of Delivery  
*[Signature]* **1/27/20**  
 D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  Priority Mail Express®  
 Adult Signature  Registered Mail™  
 Adult Signature Restricted Delivery  Registered Mail Restricted Delivery  
 Certified Mail®  Return Receipt for Merchandise  
 Certified Mail Restricted Delivery  
 Collect on Delivery

Confirmation™  
 Confirmation  
 Delivery

Domestic Return Receipt

**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:

JAMES J BRAKKEN  
 CO-TRUSTEE OF BRAKKEN IRREVOCABLE  
 LIVING TRUST  
 319 MICKEY MOUSE AVENUE  
 HORACE ND 58047



9590 9402 5989 0062 9054 05

2. Article Number (Transfer from service label)

7020 0090 0000 7648 4557

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

**COMPLETE THIS SECTION ON DELIVERY**

Signature

Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

Domestic Return Receipt



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

Cass County  
Joint Water  
Resource  
District

October 2, 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  
OIN: 1173  
Parcel No.: 15-0000-12655-010

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 Harvey Brakken, and James J. Brakken and David F. Brakken, as Co-Trustees of the Brakken Irrevocable Living Trust Agreement dated February 19, 1997 (the "Landowner"):

- Letter dated June 5, 2020, enclosing the District's appraisal for the acquisition of the right of way from the Landowner and a proposed Purchase Agreement;
- Letter dated July 21, 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 August 26, 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](mailto:wrđ@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 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:

OIN 1173

That part of the Northeast Quarter (NE1/4) of Section 13, Township 138 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Beginning at the Northwest Corner of the NE1/4; thence N87°39'54"E on the north line of said NE1/4 a distance of 429.44 feet to the west line of the parcel described in Doc. No. 1389822, records of Cass County; thence S02°20'06"E on said west line a distance of 720.00 feet to the south line of said parcel; thence N87°39'54"E on said south line a distance of 605.00 feet to the east line of said parcel; thence N02°20'06"W on said east line a distance of 720.00 feet to said north line of the NE1/4; thence N87°39'54"E on said north line a distance of 1,274.88 feet to the westerly line of the parcel described in Doc. No. 718780, records of Cass County; thence S02°26'18"E on said westerly line a distance of 100.02 feet; thence N87°33'42"E on said westerly line a distance of 235.65 feet; thence S19°31'34"E on said westerly line a distance of 26.60 feet; thence S87°39'54"W parallel with, and 125 feet south of, said north line of the NE1/4 a distance of 382.55 feet; thence S02°48'30"E, parallel with, and 475 feet west of, the east line of said NE1/4 a distance of 2,529.35 feet to the south line of said NE1/4; thence S87°33'17"W on said south line a distance of 1,915.50 feet; thence N02°53'31"W parallel with, and 250 feet east of, the west line of said NE1/4 a distance of 2,533.07 feet; thence S87°39'54"W parallel with, and 125 feet south of, said north line of the NE1/4 a distance of 250.01 feet to said west line of the NE1/4; thence N02°53'31"W on said west line a distance of 125.01 feet to the Point of Beginning.

Said parcel contains 108.18 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.

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.

Robert Wilson  
October 2, 2020  
Page 4

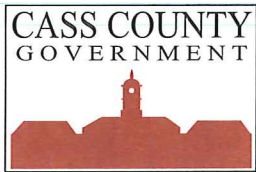
Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



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

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



October 9, 2020

**VIA UPS – DELIVERY CONFIRMATION**

**Board of County Commissioners**

Chad M. Peterson  
Fargo, North Dakota

Rick Steen  
Fargo, North Dakota

Ken Pawluk  
Fargo, North Dakota

Duane Breitling  
West Fargo, North Dakota

Mary Scherling  
Stanley Township, North Dakota

Harvey Brakken  
319 Mickey Mouse Avenue  
Horace, ND 58047  
UPS Tracking No. 1Z F51 82Y 30 9319 1086

James J. Brakken  
Co-Trustee of the Brakken Irrevocable Living  
Trust Agreement dated February 19, 1997  
319 Mickey Mouse Avenue  
Horace, ND 58047  
UPS Tracking No. 1Z F51 82Y 30 9287 5894

David F. Brakken  
Co-Trustee of the Brakken Irrevocable Living  
Trust Agreement dated February 19, 1997  
16868 44th Street SE  
Horace, ND 58047  
UPS Tracking No. 1Z F51 82Y 30 9602 5983

Re: Cass County Commission  
Fargo-Moorhead Area Diversion Project  
Invitation to Attend Public Meeting  
OIN: 1173  
Parcel No.: 15-0000-12655-010

Greetings:

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

- Letter dated June 5, 2020, enclosing the District’s appraisal for the acquisition of the right of way easement from you, along with a proposed Purchase Agreement;

Heather Worden  
Commission Assistant

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



- Letter dated July 21, 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 August 26, 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.

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:

OIN 1173

That part of the Northeast Quarter (NE1/4) of Section 13, Township 138 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Beginning at the Northwest Corner of the NE1/4; thence N87°39'54"E on the north line of said NE1/4 a distance of 429.44 feet to the west line of the parcel described in Doc. No. 1389822, records of Cass County; thence S02°20'06"E on said west line a distance of 720.00 feet to the south line of said parcel; thence N87°39'54"E on said south line a distance of 605.00 feet to the east line of said parcel; thence N02°20'06"W on said east line a distance of 720.00 feet to said north line of the NE1/4; thence N87°39'54"E on said north line a distance of 1,274.88 feet to the westerly line of the parcel described in Doc. No. 718780, records of Cass County; thence S02°26'18"E on said westerly line a distance of 100.02 feet; thence N87°33'42"E on said westerly line a distance of 235.65 feet; thence S19°31'34"E on said westerly line a distance of 26.60 feet; thence S87°39'54"W parallel with, and 125 feet south of, said north line of the NE1/4 a distance of 382.55 feet; thence S02°48'30"E, parallel with, and 475 feet west of, the east line of said NE1/4 a distance of 2,529.35 feet to the south line of said NE1/4; thence S87°33'17"W on said south line a distance of 1,915.50 feet; thence N02°53'31"W parallel with, and 250 feet east of, the west line of said NE1/4 a distance of 2,533.07 feet; thence S87°39'54"W parallel with, and 125 feet south of, said north line of the NE1/4 a distance of 250.01 feet to said west line of the NE1/4; thence N02°53'31"W on said west line a distance of 125.01 feet to the Point of Beginning.

Said parcel contains 108.18 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 November 16, 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 November 16, 2020 public meeting via conference call or Microsoft Teams, please contact Heather Worden at (701) 241-5609 or [wordenh@casscountynd.gov](mailto:wordenh@casscountynd.gov) as soon as possible so Ms. Worden can assist you with the necessary arrangements.

This Notice does not preclude you from continuing to work with the District regarding the right of way easement necessary for the Project. In fact, the Commission and the District encourage you to maintain contact with **Patrick Roberts** and to continue discussions about the Project. **Patrick Roberts of ProSource Technologies, LLC** is your point of contact regarding the Project. You can reach **Patrick Roberts** at **(319) 899-0433** or **[proberts@prosourcetech.com](mailto:proberts@prosourcetech.com)**.

Finally, North Dakota law requires the Commission to provide you with a description of the District's timeline regarding your right of way 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: Patrick Roberts, Land Agent  
Jack Dwyer, Dwyer Law Office, PLLC  
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

Harvey Brakken  
01N 1173

# Proof of Delivery

Dear Customer,

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

**Tracking Number**

1ZF5182Y3093191086

**Weight**

1.00 LBS

**Service**

UPS Next Day Air Saver®  
with UPS Carbon Neutral 

**Shipped / Billed On**

10/08/2020

**Delivered On**

10/12/2020 10:23 A.M.

**Delivered To**

HORACE, ND, US

**Left At**

Garage

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: 10/12/2020 11:35 A.M. EST

James Brakken  
01N 1173

# Proof of Delivery

Dear Customer,

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

**Tracking Number**

1ZF5182Y3092875894

**Weight**

1.00 LBS

**Service**

UPS Next Day Air Saver®  
with UPS Carbon Neutral 

**Shipped / Billed On**

10/08/2020

**Delivered On**

10/12/2020 10:23 A.M.

**Delivered To**

HORACE, ND, US

**Received By**

DRIVER RELEASE

**Left At**

Garage

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: 10/13/2020 3:42 P.M. EST

David Brakken  
01N 1173

# Proof of Delivery

Dear Customer,

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

**Tracking Number**

1ZF5182Y3096025983

**Weight**

1.00 LBS

**Service**

UPS Next Day Air Saver®  
with UPS Carbon Neutral 

**Shipped / Billed On**

10/08/2020

**Delivered On**

10/12/2020 4:26 P.M.

**Delivered To**

HORACE, ND, US

**Left At**

Garage

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: 10/12/2020 5:30 P.M. EST

**AFFIDAVIT OF LAND AGENT**

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF ANOKA )

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

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

[¶3] The District must acquire certain interests in real property from Harvey Brakken, and James J. Brakken and David F. Brakken as Co-Trustees of the Brakken Irrevocable Living Trust Agreement dated February 19, 1997 (“Landowner”) for construction, operation, and maintenance of the Project.

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

OIN 1173

That part of the Northeast Quarter (NE1/4) of Section 13, Township 138 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Beginning at the Northwest Corner of the NE1/4; thence N87°39'54"E on the north line of said NE1/4 a distance of 429.44 feet to the west line of the parcel described in Doc. No. 1389822, records of Cass County; thence S02°20'06"E on said west line a distance of 720.00 feet to the south line of said parcel; thence N87°39'54"E on said south line a distance of 605.00 feet to the east line of said parcel; thence N02°20'06"W on said east line a distance of 720.00 feet to said north line of the NE1/4; thence N87°39'54"E on said north line a distance of 1,274.88 feet to the westerly line of the parcel described in Doc. No. 718780, records of Cass County; thence S02°26'18"E on said westerly line a distance of 100.02 feet; thence N87°33'42"E on said westerly line a distance of 235.65 feet; thence S19°31'34"E on said westerly line a distance of 26.60 feet; thence S87°39'54"W parallel with, and 125 feet south of, said north line of the NE1/4 a distance of 382.55 feet; thence S02°48'30"E, parallel with, and 475 feet west of, the east line of said NE1/4 a distance of 2,529.35 feet to the south line of said NE1/4; thence S87°33'17"W on

said south line a distance of 1,915.50 feet; thence N02°53'31"W parallel with, and 250 feet east of, the west line of said NE1/4 a distance of 2,533.07 feet; thence S87°39'54"W parallel with, and 125 feet south of, said north line of the NE1/4 a distance of 250.01 feet to said west line of the NE1/4; thence N02°53'31"W on said west line a distance of 125.01 feet to the Point of Beginning.

Said parcel contains 108.18 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

The property described above is the "Necessary Property."

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

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

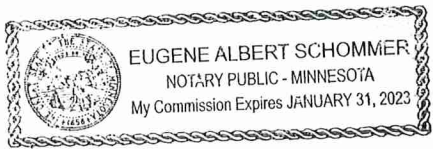
[¶7] The District has instructed ProSource Technologies, LLC to refrain from referencing, mentioning, or threatening quick take eminent domain during negotiations since August 1, 2017.

[¶8] I verify to the best of my knowledge, as Land Agent of ProSource Technologies, LLC, nobody from ProSource Technologies, LLC has referenced, mentioned, or threatened quick take eminent domain to Landowner during negotiations since August 1, 2017.

Dated this 21<sup>st</sup> day of October, 2020.

*Patrick Roberts*  
Patrick Roberts  
Land Agent

Subscribed to and sworn to before me this 21<sup>st</sup> day of October, 2020.



*Eugene Schommer*  
Notary Public, County of Washington  
State of Minnesota  
My Commission Expires: 1-31-2023

(SEAL)



Exhibit A

Date	OIN 1173 Harvey Brakken contact notes
	Land Agent is Patrick Roberts
	Project needs for this property is 108.18 acres. The owner is requesting the whole parcel be acquired.
8/27/2019	Initial meeting with the Mr. Harvey Brakken. He was disappointed with the amount per acre and total offer. Also indicated that he would likely want to sell the whole parcel. Pointed out that the appraisal was done with an amount for the whole parcel. \$9000/acre. He indicated that amount was too low. He also expressed concern over the drainage in the area of his parcel and how the project would impact the drainage.
8/8/2019	Land agent shared Mr. Brakken's concerns with Dean Vetter and asked for insights. Dean provided a response with mapping and information on toe ditches that would catch local drainage. Land agent shared this information with Mr. Brakken. Mr. Brakken restated his desire for a higher amount.
9/11/2019	Land agent received a call from attorney Jack Dwyer regarding this parcel. Attorney Dwyer is representing Mr. Harvey Brakken in his negotiations. Land agent informed Mr. Dwyer that there is an opportunity to negotiate on the properties that he represents.
9/12/2019	Land agent sent a follow up email to attorney Dwyer regarding the conversation from the previous day.
10/21/2019	An email is received from attorney Dwyer with a counter-offer for \$19,721.20 / acre.
10/28/2019	Received the email again with the counter-offer.
11/20/2019	Land Agent sends a response to attorney Dwyer. The counter-offer is \$10721/acre more than the offer. Land agent requests feedback on how firm the counter-offer is as the counter-offer of \$19,721/acre is 119% over appraised.
12/2/2019	Email is received from attorney Dwyer that Mr. Brakken is firm on his counter-offer.
2/7/2020	Email received from attorney Dwyer requesting feedback. Called and spoke with attorney Dwyer.
2/10/2020	Email sent to attorney Dwyer as a follow up to our conversation on Friday. Shared the recent activity and review of counter-offers. Based on those review it would seem that a 2 <sup>nd</sup> appraisal would be encouraged.
3/20/2020	Revised appraisal was done and the taking increased from 105.8 to 108.18. New offer letter sent today.
4/8/2020	Email received from attorney Mesteth at the Dwyer law offices, with the counter-offer spelled out in letter format with additional objections to the taking. Attorney Fredricks and McShane were copied on the email. The counter-offer amount has not changed from the original counter-offer. We are still +\$10,721/acre apart in our respective offers.
4/13/2020	Email request from attorney Mesteth requesting electronic versions of letters and offers sent to Harvey.
4/14/2020	Letters emailed to attorney Mesteth.
4/30/2020	Email received from attorney Mesteth requesting feedback on offer.
5/1/2020	Land agent emailed attorney Mesteth advising in receipt of counter-offer and would complete a write up and share with project group.
5/14/2020	Land agent presented to CCJWRD the counter-offer. Feedback was based on the wide separation of offers, we would continue the process.
5/29/2020	Land agent approves wording for meeting invitation letter.
7/21/2020	Invitation letter sent.
8/26/2020	Received this email from attorney Lynn Mesteth: We were initially planning to attend the CCJWRD meeting tomorrow to present some additional information to the board on the Samuelson Trust and Harvey Brakken properties. Our engineer and appraiser are finalizing work on their reports and we would like to have those prior to presentation to the board. I talked with Chris McShane about getting on the agenda for September 24, 2020 instead and indicated that would not be a problem.

**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 Harvey Brakken, and James J. Brakken and David F. Brakken as Co-Trustees of the Brakken Irrevocable Living Trust Agreement dated February 19, 1997 (“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:

OIN 1173

That part of the Northeast Quarter (NE¼) of Section 13, Township 138 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Beginning at the Northwest Corner of the NE¼; thence N87°39'54"E on the north line of said NE¼ a distance of 429.44 feet to the west line of the parcel described in Doc. No. 1389822, records of Cass County; thence S02°20'06"E on said west line a distance of 720.00 feet to the south line of said parcel; thence N87°39'54"E on said south line a distance of 605.00 feet to the east line of said parcel; thence N02°20'06"W on said east line a distance of 720.00 feet to said north line of the NE¼; thence N87°39'54"E on said north line a distance of 1,274.88 feet to the westerly line of the parcel described in Doc. No. 718780, records of Cass County; thence S02°26'18"E on said westerly line a distance of 100.02 feet; thence

N87°33'42"E on said westerly line a distance of 235.65 feet; thence S19°31'34"E on said westerly line a distance of 26.60 feet; thence S87°39'54"W parallel with, and 125 feet south of, said north line of the NE1/4 a distance of 382.55 feet; thence S02°48'30"E, parallel with, and 475 feet west of, the east line of said NE1/4 a distance of 2,529.35 feet to the south line of said NE1/4; thence S87°33'17"W on said south line a distance of 1,915.50 feet; thence N02°53'31"W parallel with, and 250 feet east of, the west line of said NE1/4 a distance of 2,533.07 feet; thence S87°39'54"W parallel with, and 125 feet south of, said north line of the NE1/4 a distance of 250.01 feet to said west line of the NE1/4; thence N02°53'31"W on said west line a distance of 125.01 feet to the Point of Beginning.

Said parcel contains 108.18 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, along with an appraisal and purchase agreement, on June 5, 2020. A copy of the offer (without the appraisal that was included) is attached as **Exhibit 1**.

[¶9] On July 21, 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**.

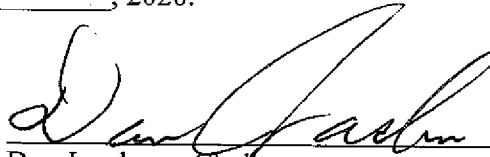
[¶10] The District and Landowner have not reached an agreement regarding compensation, and more than thirty days have passed since Landowner's receipt of the request for a meeting.

[¶11] On August 26, 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**.

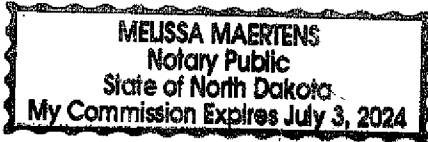
[¶12] The District has retained land agents who are in direct contact with Landowner. The District instructed our land agents not to reference, mention, or threaten quick take eminent domain during negotiations. The land agents have verified they have not referenced, mentioned, or threatened quick take 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 2<sup>nd</sup> day of November, 2020.

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

Subscribed to and sworn to before me this 2<sup>nd</sup> day of November, 2020.



(SEAL)

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