



October 13, 2021

Direct Dial: 320-656-3523
Ndelaney@RinkeNoonan.com
Direct Dial: 320-656-3517
Henzner@RinkeNoonan.com

Cass County Commission
c/o Robert Wilson, Cass County Administrator
Cass County Court Government
211 Ninth Street South
Fargo, ND 58103

VIA U.S. MAIL AND EMAIL: wilsonro@casscountynd.gov

**Re: Fargo-Moorhead Diversion Project
Our File No. 28637-0001**

Dear Cass County Commission:

We are writing to contest the County's approval of the acquisition of the Bailly (OINs 213 and 214) and Sauvageau (OINs 28 and 1086) properties. On October 18, 2021, the County Board will be asked to vote to quick take property from several property owners. This approval is not only an approval of the acquisition of private property against the will of the owners, but also an acquisition of private property before the determination and payment of just compensation as established by a jury.

This use of eminent domain to seize private property has, as the Fargo-Moorhead Diversion Project proceeds, become a common event; a given. However, the County Board should ask itself why such a drastic government action has become a common event. As farmers, homeowners, and landowners have their properties taken, roles of government appear to have changed. Rather than ensuring the rights of individuals, local governments feel no hesitation in their sacrifice of individual rights. Process has become the excuse as individual farmers and landowners are sacrificed to that process without acknowledgement of their individual rights.

Why have you not heard from many? Because they have been told the fight is futile. The process is stacked against them. They have witnessed others waste their time appearing before boards who defer to the "process;" a process which, when push comes to shove, is all make believe.

The Cass County Joint Water Resource District has hired some of the most professional land acquisition agents in the Upper Midwest and have experienced attorneys at their disposal. However, it is our impression that these acquisition professionals have been handcuffed by the Cass County Joint Water Resource District Board ("CCJWRD Board"). This places the

Diversion Authority's professionals in an unenviable position of having to fake real negotiation. The result is that landowners are left to negotiate with hired consultants who have zero authority to negotiate on behalf of the CCJWRD Board.

The CCJWRD Board has retained sole and absolute authority over land purchases; summarily rejects deals brought by their own professional consultants; and provides little to no guidance to agents in terms of where their approval may lie.

In this one-sided negotiation process, it is made clear to all that the Board will not negotiate at their meetings and the invitation sent by mail is nothing more than the appearance of compliance with the statute. No real venue for discussion and negotiations exists. The Board leaves the acquisition agents to make various sacrifices of landowner rights and compensation in attempts to satisfy the Board. The Board, contrary to federal law, state law, and the Diversion Authority's published policies, refuses to consider material information provided by landowners.

All of this leaves landowners to negotiate with themselves. Landowners are left burning up time they need to relocate their homes, families, farms and businesses in a constant re-assessment and negotiation with themselves and agents who have no clue where the Board may end up on any given day. Landowners are directed through a system similar to that of an amusement park funhouse with 50 doors to try in an attempt to get to the negotiating room.

We shall go to the County Board we have told them. "Don't waste your time", they respond. We are told that the County's role has been limited to that of a rubber stamp. The County Board is said to be powerless and no more than a rubber stamp for the actions of the unelected CCJWRD Board. The Diversion Authority Board and its various boards and committees of elected officials have pushed off to a non-elected board the dirty work of taking land from farmers, kicking people out of their homes, and removing families from land they have owned for generations. When these farmers and landowners ask for the time of day, they are told that the elected officials have no authority over the process.

The "process" is an all-powerful excuse. The CCJWRD Board submits a letter to the County Board saying the CCJWRD has complied with the process and whatever the owner says will be ignored. The steam engine of the process shall crush all who stand in its way. Farmers and landowners are left with no recourse; take what they offer or they will take what they need by eminent domain.

The County's authority is not as limited as suggested by the CCJWRD Board. If the County Board is acting in a quasi-judicial capacity in this regard, then you must review whether the CCJWRD has complied with the statutory pre-requisites for acquisition (and these include negotiation and consideration of materials presented by landowners). If instead your role is one of participant in this acquisition, then you have the further obligation to ensure your actions are not complicit in their failures.

We challenge the CCJWRD Board's contention that they have complied with legal procedures

allowing the County to approve the acquisition of privately owned property against the will of the owners. We ask that the County Board hear this challenge, question the actions of the CCJWRD Board, question the limitations they have imposed upon you, and hear your constituents' concerns.

The actions of the CCJWRD Board have not complied with federal acquisition standards, North Dakota law, or the Property Rights Acquisition and Mitigation Plan policies established by the Diversion Authority.

The CCJWRD Board has refused to consider material information provided by landowners and refused informal negotiations.

The CCJWRD Board has refused to consider information presented by landowners as to matters they believe were either incorrectly considered or not considered at all by Diversion Authority hired appraisers.

The CCJWRD Board has refused to consider sales of comparable property identified by landowners.

The CCJWRD has recently informed landowners that they need not attempt to negotiate absent having an appraisal costing thousands of dollars. This form of negotiation is directly contrary to federal law, state law and the Diversion Authority's own policies, which require informal negotiation and consideration of any materials presented by landowners.

The FM Diversion Project Property Rights Acquisition and Mitigation Plan states that one of its "Overarching Property Acquisition Philosophies" is that "Negotiations are a necessary component of property acquisitions." The policy states the following:

- **Negotiations:** Negotiations are a necessary component of property acquisitions. Negotiation teams do their best to secure the property for the most equitable price possible and use Eminent Domain as a last resort. Property owners have been able to counter offer their appraised values and are encouraged to support these counter offers with factual data to support their position, this could include:
 - Updated comparable sales.
 - Updated cost approach information.
 - Updated financial information (for businesses).
 - Issues in the appraisal (i.e., square footage difference, missed features, incorrect data).



- Per the Project Partnership Agreement (PPA) executed on July 11, 2016, the federal government can also acquire land on behalf of the non-Federal sponsor.

North Dakota law requires both “informal” and “formal” negotiations prior to use of eminent domain. The CCJWRD Board has not engaged in informal or formal negotiations with regard to several properties. Contrary to law, they do not consider additional information from the owners and have informed owners they will only consider full blown appraisals. The concept of “informal negotiations” required by North Dakota law and the Diversion Authority’s own policies do not require that both sides obtain full blown appraisals, hire lawyers and battle before juries. Even formal negotiations do not “require” appraisals when comparable sales are provided, actual building cost bids submitted for consideration, and other information contradicting the CCJWRD Board’s appraisals are provided by landowners. North Dakota law and the Diversion Authority’s own policies require that this information be considered and not merely tossed in the trash.

Further, because the Diversion Authority is using federal funds, they are subject to the negotiation and land acquisition requirements of the Uniform Acquisition and Relocation Act and the rules promulgated under that law. Federal Acquisition Rules (which are clearly applicable to the CCJWRD Board) provide minimum standards for basic acquisition procedures which have not been followed by the Diversion Authority and provide that, *“owners be given a reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase.”* And, that same rule requires that the *“Agency shall consider the owner’s presentation.”* That has not been done by the CCJWRD Board.

The Board refuses to consider property owner presented information in direct contradiction to information handed out in brochures that tells owners *“If you believe that all relevant material was not considered during the appraisal, you may present such information at this time. Modifications in the proposed terms and conditions of the purchase may be requested. The agency will consider any reasonable requests that are made during negotiations.”* The Board has not and does not consider information from owners. Instead, they treat their own appraisals as a single point of negotiation. Such refusal to consider other information is clearly “coercive action” in violation of federal acquisition requirements.

For example, our office submitted information on behalf of the Bailly family. That information included references to several local sales. One of the sales identified for consideration occurred after the year-old appraisal completed by the CCJWRD Board’s valuation. The Baillys had actually engaged an MAI designated appraiser to review the recent sale. The Baillys did not receive a written response. Instead, they have been told the Board will only consider a full-blown appraisal costing thousands of dollars and delaying the matter for months. This is in spite of the legal requirement that the CCJWRD Board consider all information provided by the Bailly family and that they both informally and formally negotiate after obtaining input and comparable sales information from the property owners. This lack of formal response to their written proposal and refusal to present further negotiated numbers without an appraisal is nothing other than coercive action by a board that takes the use of eminent domain for granted.

North Dakota law requires that the CCJWRD Board “*shall make every reasonable and diligent effort to acquire property by negotiation.*” 32-15-06.1. This cannot mean refusal to consider material presented by the landowner, providing zero official response to a written proposal from the landowner, and proceeding to a County Board hearing to consider taking the property against the will of the property owner on an expedited time frame prior to any formal response to landowner submissions.

We ask that you request input from the Army Corp of Engineers. Ask the Army Corp whether good faith negotiations can “require” the property owner to obtain an appraisal before their input or challenges to a government appraisal can be considered. Ask the Army Corp whether the Board can refuse to respond or even consider comparable sales presented by a landowner. Ask the Army Corp whether federal rules prohibiting coercive action allow this matter to be sent for eminent domain without even responding to written information provided by a landowner.

When they hear of our objection to the County Board, the CCJWRD may scramble and claim they have in fact considered such other information. However, the negotiation requirements apply “*before*” they have submitted this action to you and not after. To suggest beginning negotiations on the eve of consideration by the County of eminent domain certification is “*coercive action*”, which violates Federal Acquisition Rules.

The CCJWRD is asking you as the County Board to bless their inaction. Inaction which clearly is not in accord with state or federal acquisition requirements, or even the Diversion Authority’s own policies on negotiation. The question before you is not whether you are in favor of the Diversion Project, but whether the CCJWRD has complied with the law. They have not negotiated and have not taken into consideration material presented by property owners. They have instead taken coercive action by pushing this process forward while demanding negotiation can only happen if the landowner incurs the costs of hiring an appraiser and provides them with a full-blown appraisal.

The CCJWRD is asking you to approve taking property from private landowners based upon appraisals with valuations that are a year old. They have not updated their valuations or estimates in spite of living in the midst of one of the fastest climbing real estate markets in generations, and they have refused to consider and respond to sales that have occurred after their year-old valuation dates.

We ask that you NOT approve this acquisition by the awesome power of eminent domain and instead send this matter back to the CCJWRD and the Diversion Authority’s Land Committee to negotiate in good faith and that you require that appraisals and offers be updated to consider recent sales and information provided by landowners.

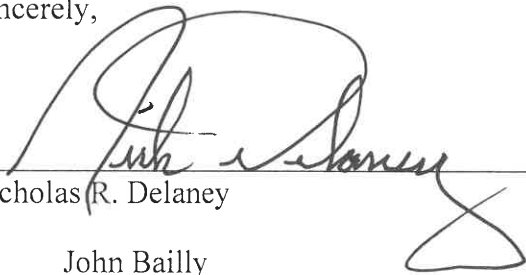
We plan on appearing at the County Board meeting on Monday and hope to have an opportunity to personally address the Board.

Cass County Commission

October 13, 2021

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Sincerely,



Nicholas R. Delaney



Igor S. Lenzner

cc: John Bailly
Terry and Kristie Sauvageau
Christopher McShane (CCJWRD Attorney)
Birch Burdick (Cass County Attorney)
Eric Dodds (Program Manager)
Taylor Albrecht (Administrative Assistant, Cass County Commission)
Ken Helvey (SRF Consulting)

FM AREA DIVERSION PROJECT

Property Owner Information Packet for Cass County Commission

October 18th, 2021

PROPERTY OWNER: Robert Bailly Revocable Trust

LAND AGENT: Lisa Kilde with SRF

OIN: 214



FM AREA
DIVERSION
PROJECT

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Written Correspondence Timeline – Robert Bailly Revocable Trust

OIN 214	Sent	Received
Offer to Purchase	01/28/2021	02/01/2021
Formal Negotiations and Written Offer of Just Compensation	04/23/2021	04/26/2021
Request for Meeting	05/19/2021	05/24/2021
Notice of Intent to Take Possession of Right-of-Way	06/24/2021	07/06/2021
Request for Approval to Take Possession of Necessary Right-of-Way and Temporary Easement	08/05/2021	08/05/2021
Invitation to Attend Public Meeting	09/08/2021	09/10/2021
Commission Meeting Date	10/18/2021	

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: Robert A. Bailly as Trustee of the Robert A. Bailly Revocable Trust
c/o John Bailly
2. Land Agent: Lisa Kilde
3. Parcel No.: 15-0000-02590-000
4. OIN No.: 214

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 easement and easement for term of years, 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 the right of way easement and an easement for term of years by certified mail or commercial delivery, and that Landowner either signed for the notice or had constructive notice:

5. NDCC § 61-16.1-09(2)(b)(2) requires all written communications to Landowner to include contact information for responding to CCJWRD and a description of the required negotiation timeline.
 - Did CCJWRD verify that all written communications to Landowner included contact information for responding to CCJWRD and a description of the required negotiation timeline: _____
6. NDCC § 61-16.1-09(2)(b)(3) prohibits a district from including or utilizing any reference to quick take eminent domain during negotiations.
 - Did CCJWRD verify it did not include or utilize any reference to quick take eminent domain during negotiations: _____

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

RECOMMENDED MOTION:

- I move to authorize the Cass County Joint Water Resource District to utilize quick take eminent domain under Section 61-16.1-09(2) of the North Dakota Century Code to take an easement for a right of way and easement for term of years regarding OIN 214.

FM Area Diversion Project Acquisition Summary

October 18, 2021

OIN	214
Property Owner	Robert A. Bailly Revocable Trust
Mailing Address	c/o John Bailly 1489 S Emigrant Place, Casper WY 82604
Property Location	Drain 27
Property Type	Ag Land
Land Agent	Lisa Kilde – SRF
Landowner Representative	Nicholas Delaney

Property Need

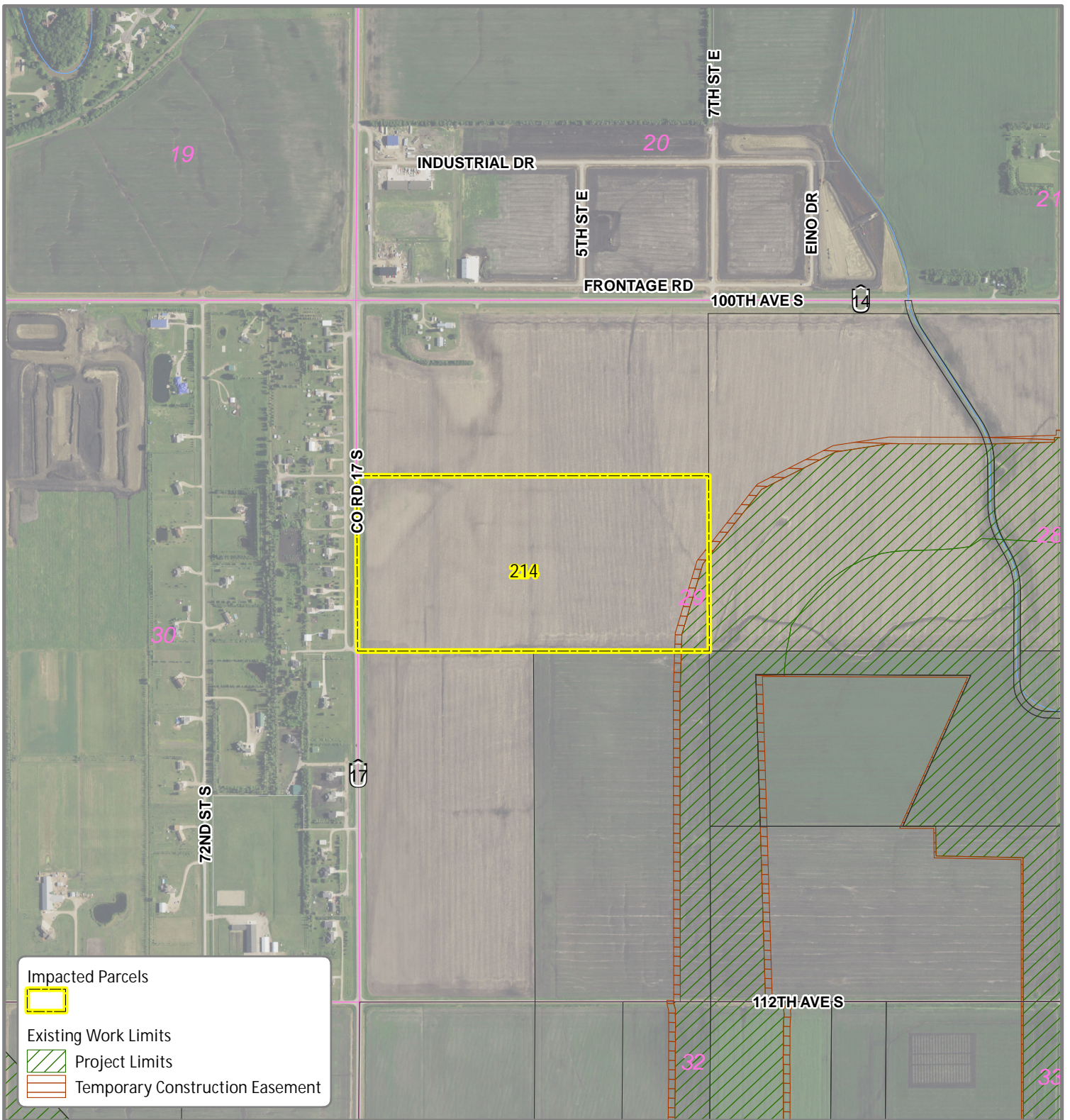
The parcel is within the Drain 27 Southern Embankment area associated with the Project. The Diversion Authority is required to obtain the entire parcel for the Drain 27 Southern Embankment.

Valuation and Negotiation Summary:

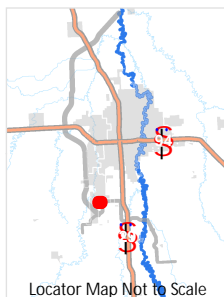
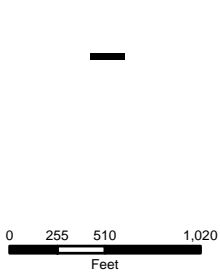
Appraisal Value / Date	\$37,900 – 9/23/20 2.182 acres land/site taking at \$17,000/acre - \$37,094 0.921 acres TCE at \$145/6 years - \$800
------------------------	--

Miscellaneous Provisions

Counteroffer presented to the Board was \$23,000/Acre for the project required acres and \$18,700/Acre for the remainder of the tract for a total of \$748,276. The Board did not take any action on this counteroffer. See Exhibit A of the Affidavit for contact notes.



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, LLC |
 C:\Data\Projects\GIS Projects\FM Area Division\Projects\Land Acquisition\Project Work Package\Project Wide\Individual Property Maps - General Inquiry\IndividualLayout8x10v105.mxd



OIN: 214
JOHN BAILLY
Parcel ID: 15-0000-02590-000
Cass County, ND

FM AREA DIVERSION
 Map Date: 2/19/2021





January 28, 2021

SRF No. 13783.00

Robert A Bailly Trust
Attn: John Bailly, POA
1489 S Emigant Place
Casper, WY 82604

RE: **Offer to Purchase**
Parcel ID: OIN 214
Project Title: Fargo Moorhead Diversion
PID: 15-000-02590-000

Dear Mr. Bailly,

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 SRF Consulting Group Inc. 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 the 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, the CCJWRD retained the services of the independent property appraisal firm, Patchin Messner. The appraiser has determined that the market value of the interests being purchased is **\$37,900**. The CCJWRD has used the market value set forth in the appraisal as the basis for determining Just Compensation for the property interests being acquired from you. A copy of the appraisal is attached to this letter and provided to you. If the purchase amount is based on any conditions or exceptions (such as terms of the transfer of possession or retention of any interest); they will be included in Exhibit A. A summary of the appraisal is provided on Exhibit A (Appraisal Summary).

The Cass County Joint Water Resource District hereby offers to pay you \$37,900 as Just Compensation for the property interests it must acquire from you.

www.srfconsulting.com

Case Plaza, One North Second Street, Suite 226 | Fargo, ND 58102-4801 | 701.237.0010 Fax: 1.866.440.6364

Equal Employment Opportunity / Affirmative Action Employer

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. The CCJWRD has flexibility regarding closing, rent and/or leaseback options. We also support 1031-1033 tax exchanges.

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

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

- Copy of the appraisal for Parcel ID OIN 214 by Patchin Messner.
- Exhibit A (Acquisition Summary), and Exhibit B (Certificate of Survey)

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

On behalf of the 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
Associate
Direct # 701-893-7437
lkilde@srfconsulting.com

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

John Bailly, Power of Attorney for Robert A. Bailly, Trustee of the Robert A. Bailly Trust

*Required Notice: Schedule and Cass County Joint Board Information can be found at:
<https://fmdiversion.gov/lands-schedule/>*

Enclosures: Appraisal Report, Exhibit A, Exhibit B

I:\Projects\7715-18\RW_Parcels\214 - Robert Bailly\OIN 214 Robert Bailly Informal Offer v2.docx

EXHIBIT A

**ACQUISITION SUMMARY
Fargo Moorhead Diversion**

Offer to Purchase

Parcel ID: OIN 214

Project Title: Fargo Moorhead Diversion

PID: 15-000-02590-000

Property Address: 170th Avenue SE (County Road 17 South), City of Horace, ND

Recorded Fee Owner: Robert A Bailly Trust

Property Legal Description:

SEE ATTACHED SURVEY

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

Noted and Waived Exceptions, Reservations or Encumbrances: None

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

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

APPRAISAL SUMMARY

Parcel Value	Area Size/ Description	Per Unit	Indicated Value
Land/Site Taking	2.182 Acres	\$ 17,000	\$ 37,094
Easement	0.921 Acres	\$ 145 (x 6 years)	\$ 800
Severance			\$ 6
TOTAL (rounded)			\$ 37,900

Track Another Package +

214
Bailey

Tracking Number: 9505511429331028413455

Remove X

Your item was delivered in or at the mailbox at 11:30 am on February 1, 2021 in CASPER, WY 82604.

USPS Tracking Plus™ Available ∨

Feedback

✓ Delivered

February 1, 2021 at 11:30 am
Delivered, In/At Mailbox
CASPER, WY 82604

Get Updates ∨

Text & Email Updates ∨

Tracking History ∨

USPS Tracking Plus™ ∨

Product Information ∨

See Less ^



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

April 23, 2021

Cass County
Joint Water
Resource
District

Robert A. Bailly as Trustee of Robert A. Bailly Revocable Trust
c/o John Bailly
1489 South Emigrant Place
Casper, WY 82604
Certified No. 7020 1290 0001 0393 6207

Dan Jacobson
Chairman
West Fargo, North Dakota

Greetings:

Rodger Olson
Manager
Leonard, North Dakota

RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
Formal Negotiations and Written Offer of Just Compensation
OIN: 214
Parcel No.: 15-0000-02590-000

Ken Lougheed
Manager
Gardner, North Dakota

The Cass County Joint Water Resource District (the "District") is in the process of acquiring property interests necessary for the Fargo-Moorhead Area Diversion Project (the "Project"), and the District has been in discussions with you regarding right of way the District must acquire from you to accommodate the Project. The District directed me to provide you this letter as the District's formal offer to purchase a right of way easement and easement for term of years from you. More specifically, to accommodate the Project, the District must acquire a right of way easement and an easement for term of years from you over property located in Cass County and identified as Parcel Identification Number 15-0000-02590-000. The legal description of the property to be acquired is:

Jacob Gust
Manager
Fargo, North Dakota

Right of Way Easement:

Keith Weston
Manager
Fargo, North Dakota

That part of the Southeast Quarter of the Northwest Quarter of Section 29, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Carol Harbeke Lewis
Secretary-Treasurer

1201 Main Avenue West
West Fargo, ND 58078-1301

Commencing at the southwest corner of said Northwest Quarter; thence North 87°59'46" East, along the southerly line of said Northwest Quarter, for a distance of 2652.83 feet to the southeast corner of said Northwest Quarter and the true point of beginning; thence North 02°12'57" West, along the easterly line of said Northwest Quarter, for a distance of 714.57 feet; thence South 36°17'47" West for a distance of 73.53 feet; thence South 14°46'09" West for a distance of 553.74 feet; thence South

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

00°08'21" East for a distance of 126.75 feet to a point of intersection with the southerly line of said Northwest Quarter; thence North 87°59'46" East, along the southerly line of said Northwest Quarter, for a distance of 212.14 feet to the true point of beginning.

Said tract contains 2.182 acres, more or less, and is subject to easements as may be of record.

AND

Easement for Term of Years

That part of the Southeast Quarter of the Northwest Quarter of Section 29, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

A 50.00 foot wide strip of land, lying westerly of and being coincident with the following described line:

Commencing at the southwest corner of said Northwest Quarter; thence North 87°59'46" East, along the southerly line of said Northwest Quarter, for a distance of 2652.83 feet to the southeast corner of said Northwest Quarter; thence North 02°12'57" West, along the easterly line of said Northwest Quarter, for a distance of 714.57 feet to the true point of beginning of the line to be described; thence South 36°17'47" West for a distance of 73.53 feet; thence South 14°46'09" West for a distance of 553.74 feet; thence South 00°08'21" East for a distance of 126.75 feet to a point of intersection with the southerly line of said Northwest Quarter, said line there terminating. Said strip shall be lengthened or shortened as necessary to intersect the easterly line of said Northwest Quarter on the east, and to intersect the southerly line of said Northwest Quarter on the south.

Said tract contains 0.921 acres, more or less.

Enclosed is an appraisal regarding the value of the right of way easement and an easement for term of years 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 easement the District must acquire from you is \$37,100.00, and the easement for term of years is \$800.00 for a total purchase price of is \$37,900.00. The District approved the appraisal and this letter is the District's offer to you in the amount of \$37,900.00 as just compensation to purchase the right of way

Robert A. Bailly Revocable Trust
April 23, 2021
Page 3

easement and easement of term for years 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. **Lisa Kilde** of SRF Consulting, 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 the required right of way easement and easement of term for years 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 easement and easement for term of years. 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 easement and easement for term of years 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 2021.

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@casscountynynd.gov

Enclosures

cc: Nicholas R. Delaney, 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:
 ROBERT A BAILLY
 TRUSTEE OF ROBERT A BAILLY RT.
 C/O JOHN BAILLY
 1489 SOUTH EMIGRANT PLACE
 CASPER WY 82604



9590 9402 6380 0303 3972 51

2. Article Number (Transfer from service label)

7020 1290 0001 0393 6207

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 X Paula Bailly Addressee

B. Received by (Printed Name) C. Date of Delivery
 Paula Bailly 4/26/21

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
 - Signature Confirmation™
 - Signature Confirmation Restricted Delivery



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Cass County
Joint Water
Resource
District

May 19, 2021

Robert A. Bailly as Trustee of the Robert A. Bailly Revocable Trust
c/o John Bailly
1489 South Emigrant Place
Casper, WY 82604
Certified No. 7020 1290 0001 0393 6146

Dan Jacobson
Chairman
West Fargo, North Dakota

Greetings:

Rodger Olson
Manager
Leonard, North Dakota

RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
Request for Meeting
OIN: 214
Parcel No.: 15-0000-02590-000

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 23, 2021; a copy of the District's appraisal for the right of way easement and an easement for term of years; and a Purchase Agreement as the District's offer of just compensation to purchase the right of way easement and easement for term of years from you. The District's letter specifically described the right of way easement and the easement for term of years 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 the right of way easement and easement for term of years from you to accommodate the Project.

Carol Harbeke Lewis
Secretary-Treasurer

1201 Main Avenue West
West Fargo, ND 58078-1301

The District would like to discuss the District's offer to purchase the right of way easement and the easement for term of years from you at an upcoming meeting. The District requests your participation either at its meeting on May 27, 2021, or at its meeting on June 10, 2021; both meetings begin at 8:00 a.m. These will be virtual meetings so you can participate by Microsoft Teams or by telephone. The District is required by law to offer a physical location where the District will have a speakerphone or computer available for members of the public to view or participate in the meeting; with that in mind, if you prefer to utilize the District's speakerphone or computer to participate, you can do so at the District's office at 1201 Main Avenue West in West Fargo.

701-298-2381
FAX 701-298-2397
wrld@casscountynnd.gov
casscountynnd.gov

Robert A. Bailly Revocable Trust
OIN 214
May 19, 2021
Page 2

The District hopes you will attend one of the above-mentioned meetings to discuss the Project and the right of way easement and easement for term of years the District must acquire from you to accommodate the Project. If you would like to attend either meeting by Microsoft Teams or telephone, 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. **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 easement and easement for term of years. The District must conclude all negotiations and complete the acquisition of the right of way easement and the easement for term of years necessary for construction of Project components on your property by Fall of 2021.

The District hopes you will attend one of the upcoming District meetings to discuss the Project and the required right of way easement and easement for term of years. 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: Nicholas R. Delaney, Rinke Noonan
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:
ROBERT A BALLY
 TRUSTEE OF ROBERT A BALLY RT.
 C/O JOHN BALLY
 1489 SOUTH EMIGRANT PLACE
 CASPER WY 82604



9590 9402 6141 0209 1908 81

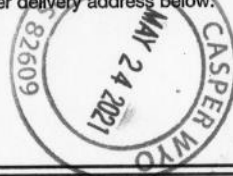
2 Article Number (Transfer from service label)

7020 1290 0001 0393 6146

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

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent
 Addressee
- B. Received by (Printed Name) **John Bally**
- C. Date of Delivery **5/24/2021**
- D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below. No



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

Domestic Return Receipt



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

June 24, 2021

Cass County
Joint Water
Resource
District

Robert A. Bailly as Trustee of the Robert A. Bailly Revocable Trust
c/o John Bailly
1489 South Emigrant Place
Casper, WY 82604
Certified No. 7020 1290 0001 0393 6535

Dan Jacobson
Chairman
West Fargo, North Dakota

Greetings:

Rodger Olson
Manager
Leonard, North Dakota

RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
NOTICE OF INTENT TO TAKE POSSESSION OF RIGHT OF WAY
OIN: 214
Parcel No. 15-0000-02590-000

Ken Lougheed
Manager
Gardner, North Dakota

Jacob Gust
Manager
Fargo, North Dakota

Keith Weston
Manager
Fargo, North Dakota

As you know, the Cass County Joint Water Resource District (the "District") is in the process of developing the Fargo-Moorhead Area Diversion Project (the "Project"). On behalf of the District, I previously provided you a letter dated April 23, 2021, a copy of the District's appraisal for your right of way easement and your easement for term of years, and a Purchase Agreement as the District's offer of just compensation to purchase a right of way easement and easement for term of years from you. In addition, I also provided you a letter dated May 19, 2021, to invite you to meet with the District for purposes of discussing the acquisition of a right of way easement and easement for term of years in and to your property. 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 easement and easement for term of years from you to accommodate the Project.

Carol Harbeke Lewis
Secretary-Treasurer

1201 Main Avenue West
West Fargo, ND 58078-1301

This letter is the District's NOTICE OF INTENT TO TAKE POSSESSION OF RIGHT OF WAY AND EASEMENT FOR TERM OF YEARS. If we do not have an agreement, the District will be requesting approval from the Cass County Commission to take possession of a right of way easement and an easement for term of years in and to 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.

701-298-2381
FAX 701-298-2397
wrld@casscountynd.gov
casscountynd.gov

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

Robert A. Bailly Revocable Trust
OIN 214
June 24, 2021
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 the right of way easement and an easement for term of years 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 easement and easement for term of years. Ultimately, the District must conclude all negotiations and complete all acquisitions by Fall 2021.

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 R. 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 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:
 ROBERT A BAILLY
 TRUSTEE OF ROBERT A BAILLY RT
 C/O JOHN BAILLY
 1499 SOUTH EMIGRANT PLACE
 CASPER WY 82604



9590 9402 6380 0303 3969 71

2. Article Number (Transfer from service label)
 7020 1290 0001 0393 6535

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
 B. Received by (Printed Name) C. Date of Delivery
 7/6/2021

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
 - Signature Confirmation™
 - Signature Confirmation Restricted Delivery

Domestic Return Receipt



SENT VIA EMAIL wilsonro@casscountynd.gov

Cass County
Joint Water
Resource
District

August 5, 2021

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

Dan Jacobson
Chairman
West Fargo, North Dakota

Greetings:

Rodger Olson
Manager
Leonard, North Dakota

RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
Request for Approval to Take Possession of Necessary Right of Way
Easement and Easement for Term of Years
OIN: 214
Parcel No.: 15-0000-02590-000

Ken Lougheed
Manager
Gardner, North Dakota

Jacob Gust
Manager
Fargo, North Dakota

As you know, the Cass County Joint Water Resource District (the "District") is in the process of acquiring the right of way necessary for the Fargo Moorhead Diversion Area Project ("Project"). I previously copied you on the following three letters whereby the District sought to negotiate the acquisition of the right of way easement and easement for term of years from Robert A. Bailly, as Trustee of the Robert A. Bailly Revocable Trust c/o John Bailly (the "Landowner"):

Keith Weston
Manager
Fargo, North Dakota

- Letter dated April 23, 2021, enclosing the District's appraisal for the acquisition of the right of way easement and easement for term of years from the Landowner and a proposed Purchase Agreement;
- Letter dated May 19, 2021, inviting the Landowner to meet with the District for purposes of negotiating compensation for the right of way easement and easement for term of years to be acquired; and
- Letter dated June 24, 2021, notifying the Landowner the District planned to submit a request to the Cass County Commission seeking immediate possession of the right of way easement and easement for term of years 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
wrld@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 easement and easement for term of years 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 easement and easement for term of years is as follows:

Right of Way Easement:

That part of the Southeast Quarter of the Northwest Quarter of Section 29, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at the southwest corner of said Northwest Quarter; thence North 87°59'46" East, along the southerly line of said Northwest Quarter, for a distance of 2652.83 feet to the southeast corner of said Northwest Quarter and the true point of beginning; thence North 02°12'57" West, along the easterly line of said Northwest Quarter, for a distance of 714.57 feet; thence South 36°17'47" West for a distance of 73.53 feet; thence South 14°46'09" West for a distance of 553.74 feet; thence South 00°08'21" East for a distance of 126.75 feet to a point of intersection with the southerly line of said Northwest Quarter; thence North 87°59'46" East, along the southerly line of said Northwest Quarter, for a distance of 212.14 feet to the true point of beginning.

Said tract contains 2.182 acres, more or less, and is subject to easements as may be of record.

AND

Easement for Term of Years:

That part of the Southeast Quarter of the Northwest Quarter of Section 29, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

A 50.00 foot wide strip of land, lying westerly of and being coincident with the following described line:

Commencing at the southwest corner of said Northwest Quarter; thence North 87°59'46" East, along the southerly line of said Northwest Quarter, for a distance of 2652.83 feet to the southeast corner of said Northwest Quarter; thence North 02°12'57" West, along the easterly line of said Northwest Quarter, for a distance of 714.57 feet to the true point of

Robert Wilson
August 5, 2021
Page 3

beginning of the line to be described; thence South 36°17'47" West for a distance of 73.53 feet; thence South 14°46'09" West for a distance of 553.74 feet; thence South 00°08'21" East for a distance of 126.75 feet to a point of intersection with the southerly line of said Northwest Quarter, said line there terminating. Said strip shall be lengthened or shortened as necessary to intersect the easterly line of said Northwest Quarter on the east, and to intersect the southerly line of said Northwest Quarter on the south.

Said tract contains 0.921 acres, more or less.

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 easement and easement for term of years 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 easement and easement for term of years necessary for the Project, and construction of the Project will not be possible without acquiring the right of way easement and easement for term of years 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 easement and easement for term of years.

Robert Wilson
August 5, 2021
Page 4

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 easement and easement for term of years 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 easement and easement for term of years identified above so the Project may proceed. For your information, while the County conducts the process under Section 61-16.1-09(2)(b)(3), the District still hopes the parties can arrive at a mutually-acceptable agreement.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



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

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.
Taylor Albrecht, Administrative Assistant, Cass County Commission



September 8, 2021

VIA UPS — DELIVERY CONFIRMATION

Board of County Commissioners

Robert A. Bailly as Trustee of the Robert A. Bailly Revocable Trust
c/o John Bailly
1489 South Emigrant Place
Casper, WY 82604

Chad M. Peterson
 Fargo, North Dakota

Rick Steen
 Fargo, North Dakota

Jim Kapitan
 Fargo, North Dakota

Duane Breitling
 West Fargo, North Dakota

Mary Scherling
 Stanley Township, North Dakota

Re: Cass County Commission
 Fargo-Moorhead Area Diversion Project
 Invitation to Attend Public Meeting
 OIN: 214
 Parcel No.: 15-000-02590-000
UPS Tracking No.: 1Z271TUZ4320025817

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 and easement for term of years necessary to accommodate the Project. You have been in negotiations with the District and its agents regarding the right of way easement and easement for term of years 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 April 23, 2021, enclosing the District's appraisal for the acquisition of the right of way and easement for term of years easement from you, along with a proposed Purchase Agreement;
- Letter dated May 19, 2021, inviting you to meet with the District for purposes of negotiating compensation for the right of way easement and easement for term of years to be acquired; and

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

- Letter dated June 24, 2021, notifying you the District planned to submit a request to the Commission seeking immediate possession of the right of way easement and easement for term of years 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 and easement for term of years 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 and easement for term of years the District must acquire from you. The legal description of the necessary right of way easement and easement for term of years is as follows:

Right of Way Easement:

That part of the Southeast Quarter of the Northwest Quarter of Section 29, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at the southwest corner of said Northwest Quarter; thence North 87°59'46" East, along the southerly line of said Northwest Quarter, for a distance of 2652.83 feet to the southeast corner of said Northwest Quarter and the true point of beginning; thence North 02°12'57" West, along the easterly line of said Northwest Quarter, for a distance of 714.57 feet; thence South 36°17'47" West for a distance of 73.53 feet; thence South 14°46'09" West for a distance of 553.74 feet; thence South 00°08'21" East for a distance of 126.75 feet to a point of intersection with the southerly line of said Northwest Quarter; thence North 87°59'46" East, along the southerly line of said Northwest Quarter, for a distance of 212.14 feet to the true point of beginning.

Said tract contains 2.182 acres, more or less, and is subject to easements as may be of record.

AND

Easement for Term of Years:

That part of the Southeast Quarter of the Northwest Quarter of Section 29, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

A 50.00 foot wide strip of land, lying westerly of and being coincident with the following described line:

Robert A. Bailly Revocable Trust
OIN 214
September 8, 2021
Page 3

Commencing at the southwest corner of said Northwest Quarter; thence North 87°59'46" East, along the southerly line of said Northwest Quarter, for a distance of 2652.83 feet to the southeast corner of said Northwest Quarter; thence North 02°12'57" West, along the easterly line of said Northwest Quarter, for a distance of 714.57 feet to the true point of beginning of the line to be described; thence South 36°17'47" West for a distance of 73.53 feet; thence South 14°46'09" West for a distance of 553.74 feet; thence South 00°08'21" East for a distance of 126.75 feet to a point of intersection with the southerly line of said Northwest Quarter, said line there terminating. Said strip shall be lengthened or shortened as necessary to intersect the easterly line of said Northwest Quarter on the east, and to intersect the southerly line of said Northwest Quarter on the south.

Said tract contains 0.921 acres, more or less

The Commission invites you to attend the Commission's meeting on October 18, 2021 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 and easement for term of years in and to your property.

If you wish to participate in the Commission's October 18, 2021 public meeting via conference call or Microsoft Teams, please contact Taylor Albrecht at (701) 241-5609 or albrechtt@casscountynd.gov as soon as possible so Ms. Albrecht 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 and easement for term of years 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 and easement for term of years. The District must complete the acquisition of right of way necessary for construction of Project components on your property by Fall of 2021.

Robert A. Bailly Revocable Trust
OIN 214
September 8, 2021
Page 4

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 R. 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.
Taylor Albrecht, Administrative Assistant, Cass County Commission

Proof of Delivery

Dear Customer,

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

Tracking Number

1Z271TUZ4320025817

Weight

1.00 LBS

Service

UPS Ground

Shipped / Billed On

09/08/2021

Delivered On

09/10/2021 12:08 P.M.

Delivered To

1489 S EMIGRANT PL
CASPER, WY, 82604, US

Received By

DRIVER RELEASE

Left At

Front Door

Reference Number(s)

271TUZ9GYHG

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: 09/13/2021 9:11 A.M. EST

AND

Easement for Term of Years:

That part of the Southeast Quarter of the Northwest Quarter of Section 29, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

A 50.00 foot wide strip of land, lying westerly of and being coincident with the following described line:

Commencing at the southwest corner of said Northwest Quarter; thence North 87°59'46" East, along the southerly line of said Northwest Quarter, for a distance of 2652.83 feet to the southeast corner of said Northwest Quarter; thence North 02°12'57" West, along the easterly line of said Northwest Quarter, for a distance of 714.57 feet to the true point of beginning of the line to be described; thence South 36°17'47" West for a distance of 73.53 feet; thence South 14°46'09" West for a distance of 553.74 feet; thence South 00°08'21" East for a distance of 126.75 feet to a point of intersection with the southerly line of said Northwest Quarter, said line there terminating. Said strip shall be lengthened or shortened as necessary to intersect the easterly line of said Northwest Quarter on the east, and to intersect the southerly line of said Northwest Quarter on the south.

Said tract contains 0.921 acres, more or less

The property described above is the "Necessary Property."

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

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

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

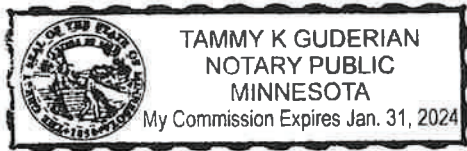
[¶8] I verify to the best of my knowledge, as Principal/Land Agent of SRF Consulting Group, Inc., nobody from SRF Consulting Group, Inc. has referenced, mentioned, or threatened quick take eminent domain to Landowner during negotiations since August 1, 2017.

Dated this 5 day of October, 2021.

[Handwritten signature]

Ken Helvey
SRF Consulting Group, Inc.

Subscribed to and sworn to before me this 5th day of October, 2021.



[Handwritten signature: Tammy Guderian]

Notary Public, County of Hennepin

State of Minnesota

My Commission Expires: 1/31/2024

(SEAL)

EXHIBIT A

OIN 214 Robert A Bailly Trust Contacts (Represented by Nick Delaney)

Date	Contact Notes
9/9/2019	Telephone call to Vivian and Robert Bailly, left message.
9/24/2019	Telephone call to Vivian and Robert Bailly, left message.
9/27/2019	Telephone call to Vivian and Robert Bailly, left message.
10/1/2019	Telephone call to Vivian and Robert Bailly, left message.
10/9/2019	Telephone call to Vivian and Robert Bailly, left message.
10/11/2019	Telephone call to Vivian and Robert Bailly, left message.
10/14/2019	Telephone call to Vivian and Robert Bailly, left message.
10/5/2020	Telephone call with Vivian Bailly regarding Right of Entry. Vivian requested that I reach out and discuss matter with their son, John Bailly.
10/6/2020	Telephone call with John Bailly regarding ROE. John requested that I email to him the Right of Entry.
10/6/2020	Email with John Bailly regarding copy of ROE.
10/7/2020	Telephone call with John Bailly regarding ROE. John has looked over the right of entry and had some questions.
10/7/2020	Email with Nick Delaney regarding appraisal deadline.
10/13/2020	Telephone call with John, left message.
10/14/2020	Telephone call with John to discuss process.
10/15/2020	Telephone call with John regarding questions on documents.
10/20/2020	Telephone call with John regarding Power of Attorney documents.
10/23/2020	Telephone call with John to discuss the ROE.
1/28/2021	Telephone call with John Bailly regarding offer package. Also discussed need for TCE for storage of clay/soil. Mailed offer package.
1/28/2021	Telephone call with Paula Bailly, John's wife, and said that she received my message and to email the offer package to their attention.
1/28/2021	Email with John Bailly regarding TCE and offer letter and appraisal.
2/3/2021	Telephone call with John Bailly. Telephone call regarding acquisition of property and timing of everything. He mailed the receipts back and will meet with parents on February 9th or 10th.
2/11/2021	Telephone call with Nick and Igor regarding discussing values with John Bailly.
3/5/2021	Email with Nick Delaney regarding acquisition and need for TCE to store clay/soil.
3/12/2021	Email with Nick Delaney regarding acquisition.
3/15/2021	Email with Paula Bailly and Nick Delaney regarding question on purchase.
3/25/2021	Telephone call with Nick and Igor regarding needed acres and discussion of Greenway space.
3/31/2021	Telephone call with John Bailly.
4/15/2021	Telephone call with Nick and Igor regarding greenway and discussion with cities. Discussed required acres and possible alternatives for counteroffer.
4/15/2021	Email with Nick Delaney regarding calculations for counteroffers.
4/16/2021	Telephone call with Nick regarding counteroffer and needed acres.
5/20/2021	Email with Igor Lenzner regarding appraisal copies.
5/21/2021	Email with Nick Delaney regarding counteroffer. Questions as to appraisal completed and possible settlement on alternative acres for the project.
6/10/2021	Telephone call with Nick and Igor regarding landowner appraisal just being completed and waiting on report.
8/4/2021	Telephone call with Nick and Igor regarding landowner appraisal and recent new sales in the area. Discussed counteroffer price range.
8/10/2021	Telephone call with Nick and Igor regarding counteroffer.
8/11/2021	Email with Igor Lenzner regarding counteroffer to bring to the CCJWRD Board.
8/20/2021	Email with Igor Lenzner regarding acreage breakout for counteroffer.

Said tract contains 2.182 acres, more or less, and is subject to easements as may be of record.

AND

Easement for Term of Years:

That part of the Southeast Quarter of the Northwest Quarter of Section 29, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

A 50.00 foot wide strip of land, lying westerly of and being coincident with the following described line:

Commencing at the southwest corner of said Northwest Quarter; thence North 87°59'46" East, along the southerly line of said Northwest Quarter, for a distance of 2652.83 feet to the southeast corner of said Northwest Quarter; thence North 02°12'57" West, along the easterly line of said Northwest Quarter, for a distance of 714.57 feet to the true point of beginning of the line to be described; thence South 36°17'47" West for a distance of 73.53 feet; thence South 14°46'09" West for a distance of 553.74 feet; thence South 00°08'21" East for a distance of 126.75 feet to a point of intersection with the southerly line of said Northwest Quarter, said line there terminating. Said strip shall be lengthened or shortened as necessary to intersect the easterly line of said Northwest Quarter on the east, and to intersect the southerly line of said Northwest Quarter on the south.

Said tract contains 0.921 acres, more or less

The property described above is the "Necessary Property."

[¶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 23, 2021. A copy of the offer (without the appraisal that was included) is attached as **Exhibit 1**.

[¶9] On May 19, 2021, 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**.

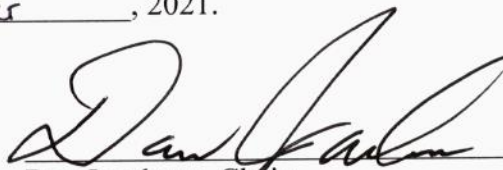
[¶10] The District and Landowner have not reached an agreement regarding compensation, and more than thirty days have passed since Landowner's receipt of the request for a meeting.

[¶11] On June 24, 2021, the District sent Landowner a written notice of intent to take possession of the Right of Way Easement and Easement for Term of Years, 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.

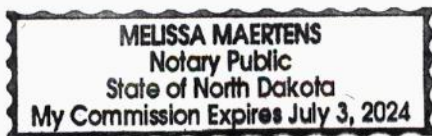
[¶13] I verify there have been no references, mention, or threats of quick take eminent domain by the District during negotiations since August 1, 2017.

Dated this 8th day of October, 2021.



Dan Jacobson, Chair
Cass County Joint Water Resource District

Subscribed to and sworn to before me this 8th day of October, 2021.



Notary Public, Cass County, State of North Dakota

(SEAL)