

Moorhead - Clay County Joint Powers Authority (MCCJPA)

Thursday, May 23, 2024, 1:00 p.m.

Clay County Courthouse, Third Floor Meeting Rooms

In Person Meeting with Microsoft Teams Option Available

MINUTES

1) CALL TO ORDER

The meeting was called to order by Chair Campbell at 1:00 p.m.

2) ROLL CALL

City of Moorhead:	Mayor Shelly Carlson
	Council Member Chuck Hendrickson
	Council Member Larry Seljevoll
Clay County:	Commissioner Kevin Campbell
BRRWD:	Member Gerald Van Amburg

Others Present or on Microsoft Teams:

Jodi Smith, Lands & Compliance Director, Madeline Daudt, Land Specialist, and Jessica Warren, Compliance Specialist, Diversion Authority

Attorneys, John Shockley, Katie Schmidt, Chris McShan, and Lukas Andrud, Ohnstad Twichell Law
Eric Dodds and Dean Vetter, AE2S

Dale Ahlsten and Scott Stenger, ProSource

Katie Laidley and Ken Helvey, SRF Consulting

Stephen Larson and Sarah Hellem, Clay County staff

Bob Zimmerman, City of Moorhead

Commissioner Mongeau, Clay County

3) APPROVAL OF AGENDA

Mayor Carlson moved, and Council Member Hendrickson seconded, to approve the agenda. Motion carried.

4) APPROVAL OF MINUTES

Council Member Seljevoll moved, and Council Member Hendrickson seconded, to approve the minutes from April 25, 2024, and May 2, 2024. Motion carried.

5) CITIZENS TO BE HEARD

There were no citizens to be heard.

6) PROJECT UPDATES

a. Property Acquisition Status Report

Eric Dodds, AE2S, referred to the packet and referenced the map, stating green is good, meaning we've acquired everything we need to. Blue are the parcels that we continue to negotiate but not yet filed eminent domain actions on. Orange parcels are in eminent domain action. There are a few parcels shaded yellow near Christine and Wolverton, those are parcels

where we're working on appraisals.

Commissioner Campbell asked how the properties on the map would be shown if they've gone through eminent domain and we've acquired the rights but don't have the purchase price yet. Mr. Dodds stated those would show up as green on the map but would not be accounted for on the pie charts as they are not fully complete.

Mr. Dodds further discussed the property acquisition progress stating the construction footprint is 95.4% complete resulting in no change from the previous month. The upstream mitigation area (UMA) footprint is at 49.1% complete with a 1% increase from last month. The Property Acquisition Progress by Location was briefly discussed and the Property Acquisition Progress by MCCJPA is 57.2% complete resulting in no change from last month, with the Drayton Dam being 100% complete. The Southern Embankment & Associated Infrastructure remains at 71.1%, with no change, this does not account for the acquired parcels for the necessity hearings as we're still debating on the value. The Upstream Mitigation Area remains at 43.2%, with no change, the Upstream Mitigation Area – Wolverton remains at 7.1%, with no change, and the Environmental Monitoring Easements remain at 79%, with no change. Mr. Dodds referred to the Landowner Overview in the packet that shows owner groups and parcels broken down for the construction and UMA footprint with 95.3% of the owner groups complete for the Construction Footprint and 49.2% for the UMA Footprint.

The key activities are to continue negotiating settlement agreements for existing eminent domain actions. Reached a mediated settlement on 6 parcels/5 owners – 4 in ND and 1 in MN. In the last month, successfully closed on 3 parcels/1 landowner groups (all in ND). Held landowner informational meeting for the Wolverton project with BRRWD. Supported a pre-construction meeting for the OHB project with USACE. Developing a tracking system for release of temporary construction easements. And continuing to work on farmland leases for 2024.

Commissioner Campbell asked when the meeting with the BRRWD took place for the Wolverton project. Mr. Dodds stated it was two weeks ago.

b. MN Litigation Update

Chris McShane, Ohnstad Twichell, discussed the updates for the Minnesota litigation and stated we have now filed two additional properties. A necessity hearing date will take place on July 26, 2024. Today is the deadline for disclosing Commissioners for the just compensation of two of the eminent domain actions that have been filed and have an order on. We heard from Cash Aaland, who is counsel for all landowners who are still outstanding and who he recommended, and he consented to who we have recommended. The person that Mr. Aaland has recommended is John Allen. Mr. Allen is an attorney who lives in Barnesville, MN, and his primary job is working as an Administration Law Judge in ND, both from a Workers Compensation perspective as well as Department of Transportation.

Mr. McShane stated the next step would be to appoint those individuals as Commissioners and they will be sworn in, sometime in the next two months. From there, they will be doing site inspections of the properties and ultimately have hearings on the just compensation. At those hearings, we'll be able to present our evidence, the landowners can testify, and provide their own appraisals, and ultimately have that three-member panel make a decision on what just compensation can be. If we're ok with that decision, we'll let it stand, and if the

landowners are ok with that decision, they'll let it stand. If either party does not like the decision of the Commissioners, it can be appealed to the District Court, for a jury trial.

Mr. McShane stated we are working on Wilkin County as well. There are a few properties where there are some mitigation possibilities that the landowners can undertake, and they've expressed interest in doing so. Therefore, we're trying to work through that to make sure that we're condemning the necessary property rights and not condemning more than what we need. But we should be working towards getting all the rest of those filed within the next month or two.

c. BWSR Consent Agreement

Lukas Andrud, Ohnstad Twichell, stated BWSR has a Reinvest in Minnesota (RIM) Easement on OIN 1288 & OIN 1878 that existed prior to MCCJPA acquiring its interest in the property, which are narrow strips of fee and TCE. The consents permit the Project to proceed on the land with the requirement that the area seeded under the RIM Easement be reseeded at the conclusion of Project construction. USACE confirmed this reseeded is consistent with Project plans already called for.

Mayor Carlson Moved, and Member Van Amburg seconded, to approve the BWSR agreement for OIN 1288 & OIN 1878. Motion carried.

7) LAND AGENT REPORT

Scott Stenger, ProSource, stated they're continuing to work on several items, cleaning up a few things with landowners, especially on access agreements, and new farm access points, as we move into the construction side of the project. Cleaning up documentation from the recent closings and making sure everything is in the database. And lastly, assisting with the mediation process as we go forward.

Katie Laidley, SRF, stated they continue to work with landowners who are not represented, along with helping out with mediations. And continue to reach out to Wolverton landowners and move forward with their negotiations as those appraisals come in.

8) PROPERTY MANAGEMENT

a. 2024 Farmland Leases

Madeline Daudt, Diversion Authority, stated these will be the last of the farmland leases that you'll see this year. However, there might be one coming through in June as we just acquired the property rights at OIN 7215 which was the property that was bought by the MCCJPA for the Forrest Mitigation site. Bob Schmidt did say he would lease it back to us for farming purposes, but we had to wait for it to close in order to get a lease to him.

Commissioner Campbell asked if these farmland leases were small grain crops, and if MCCJPA had to go into this land early, there would be a compensation component. Ms. Daudt confirmed that was correct.

Commissioner Campbell asked if the compensation was the same regardless of if it's organic or not. Ms. Daudt stated there are three factors when we do reimbursement, it's input cost, their rental rate back, and then \$100.00 on top of that. The input cost for organic is more, so that's where you'll see a larger reimbursement.

Jodi Smith, Diversion Authority, stated there are two types of leases occurring on the Minnesota side. One is the lease and the lease rate that this Board approved last fall. And then those properties that are within the footprint of Southern Embankment 4 and 5 that need to be leased out but were acquired thru the eminent domain process, are not on a standard lease, they are on a weed management agreement that the Board has previously approved. A blanket agreement was approved because we could not submit it until April 1, 2024, when we acquired the property through the necessity hearings, to those property owners. So it only applies to the footprint along the Southern Embankment 4. Of the five property owners who we needed to sign this agreement, four of them have returned a signed copy. We are waiting for one back from an organic farmer. So, within the footprint of the construction, what we've done, is said, for \$1.00, to also manage the weeds, because through the eminent domain process, we cannot acquire property for profit, but we do need to maintain the weeds because the USACE will be bidding this out and awarding a contract. They can plant what they want, and we will only reimburse them up to the small grain crop damage reimbursement to limit our liability. We don't have the construction schedule from the USACE yet, which makes it very difficult for us to estimate when they will be out there, causing crop damage. The assumption is, is that they'll start on the northern portion, and anywhere there is an Up-and-Over. Therefore, there are five property owners, along the Southern Embankment, under the Weed Management Agreement, instead of a lease.

Commissioner Campbell asked if organic crops were taken into consideration when the weed management agreement was established. Ms. Smith stated no, we did not. Because we own the land now, we said we'd put the same crop reimbursement payment for everyone, so they can plant whatever they want and we'll only reimburse to the small grains level, to create an equal playing field for all the property owners.

Mr. McShane stated the Askegaard property is the only one that is not signed and is approximately 25 acres. Commissioner Campbell asked if they would be leasing that property from us. Ms. Smith stated they actually will not be leasing that from us, they get to farm that land for \$1.00.

Ms. Smith stated we did not receive many agreements back, so we gave their legal counsel all five agreements and they have until June 1, 2024, to respond with an executed copy, otherwise we would take control of that property and maintain it with some form of weed management.

Mayor Carlson moved, and Council Member Seljevold seconded, to approve the 2024 farmland leases for OINs 249X1, 1630N, 1638N, 1638Y, 249x2, 251Y, and 251N. Motion carried.

9) CONTRACTING ACTIONS

a. MCCJPA Contracting Actions

Jessica Warren, Diversion Authority, stated originally there were going to be two task orders brought forth, however ProSource Task Order 1 Amendment 4, will wait until the next meeting. The item for approval today is ProSource Task Order 2 Amendment 0. These are brought forward when land firms designated property owners are in the next phase of the project, such as condemnation and relocation services.

Council Member Seljevold moved, and Council Member Hendrickson seconded, to approve the ProSource Task Order 2 Amendment 0. Motion Carried.

10) ADJOURN

The meeting adjourned at 1:26 p.m.

Stephen Larson, MCCJPA Secretary