

SPECIAL MEETING

Moorhead - Clay County Joint Powers Authority (MCCJPA)

Thursday, August 1, 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 Seljevoid

Clay County: Commissioner Kevin Campbell

Commissioner Mongeau

BRRWD: Member Van Amburg – Attending via Teams at: 4518 5th St South

Moorhead, MN 56560

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, Chris McShane, Kathryn McNamara 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

Attorney Rob Stefonowicz – Larkin Hoffman

3) APPROVAL OF AGENDA

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

4) APPROVAL OF MINUTES

Mayor Carlson moved, and Council Member Seljevoid, to approve the minutes from June 27, 2024, and July 10, 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 discussed the property acquisition progress stating the construction footprint is 97% complete with a 0.7% increase from last month. The upstream mitigation area (UMA) footprint is at 52.7% complete with a 3.1% increase from last month. The Property Acquisition Progress by Location was briefly discussed the Southern Embankment being 91% complete, UMA being 52.7% complete. The Stormwater Diversion Channel being 100% complete and Oxbow-Hickson-Bakke (OHB) being 100% complete which is a 2.6% increase from last month. The Property Acquisition Progress by MCCJPA is 59.1% complete with a 0.4% increase from last month, with the Drayton Dam being 100% complete. The Southern Embankment & Associated Infrastructure remains at 71.1%, with no change, the Upstream Mitigation Area is at 45.1% complete with a 0.7% increase from last month, the Upstream Mitigation Area – Wolverton remains at 7.1%, with no change, and the Environmental Monitoring Easements is at 82.5%, 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 96.6% of the owner groups complete for the Construction Footprint and 51.2% for the UMA Footprint.

The key activities are to continue negotiating settlement agreements for existing eminent domain actions. In the last month, successfully closed on 28 parcels/3 owners. Of those parcels, 19 of them were in the UMA, 3 parcels for I-29, 3 parcels for SE-2B, and 3 parcels for OHB. Completed the real estate certification for SE-2B. Obtained final right-of-entry for surveying needs in Christine. Retained appraisals for the Sheyenne River Benching Project and Christine flowage easements. And for Minnesota properties, vacate dates for owners of occupied structures are April 1, 2025, for Clay County, and June 1, 2025, for Wilkin County.

Commissioner Campbell asked, to date, what has been sent to landowners regarding notification of vacate date. Mr. Dodds stated land agents have shared those dates with property owners. The court actions used in the filings have conveyed those dates. And we're also sending notice letters to each of the property owners, notifying them of those dates.

b. MN Litigation Update

Chris McShane, Ohnstad Twichell, discussed the updates for the Minnesota litigation and stated they initially had a hearing scheduled for last Friday for two landowners in Clay County. We were able to stipulate if those landowners were entered into an order conveying the property rights that are necessary. The move out date was articulated and were working on receiving payment through Clay County, and those landowners will have those checks available to them at their attorney's office. We will appoint commissioners in that matter, we have stipulated to the appointment of the same three commissioners as before. The first meeting with the commissioners took place a couple weeks ago, and they were sworn in by the clerk. The next step is to conduct a site visit and schedule a valuation hearing. There is an action pending in Wilkin County that's relatively new. We're doing our best to get service on those landowners and to set a hearing date. The clerks' offices want us to file a Civil Cover Sheet, so there has been some pushback between offices regarding if this is needed. The eminent domain statute states that it's a special proceeding, so those normal civil documents are not applicable. The hearing date is looking to be set for the end of September, once that is set, we'll coordinate to ensure everyone is available.

7) LAND AGENT REPORT

Katie Laidley, SRF Consulting, stated they are continuing to negotiate with landowners that don't have representation, and we are continuing to work on relocation with individuals. We are also

keeping lines of communication open with legal representation. As the appraisals start to come in for Wolverton, MN, we will start those negotiations with those landowners as well.

Scott Stenger, ProSource, stated we're working on clean-up issues, access agreement issues, legal description problems, and relocation work.

Dale Ahlsten, ProSource, stated we continue to work with landowners as we're able to. We heard today that we might be able to move forward with one of our relocation owners. So we stand ready and work with who we can.

8) ACQUISITION

a. OIN 251X & OIN 9170 Driveway/Approach Agreement

Dean Vetter, AE2S, stated that field access to OIN 251X will no longer exist in the northeast corner of the field due to the SE-4 Project. MCCJPA owns the OIN 9170 parcel which includes a driveway that intersects the OIN 251X field. The Driveway/Approach Agreement will enable modern farm equipment to utilize the driveway by widening the culvert & driveway along 3rd Street South and adding a field approach on the west end of the OIN 9170 driveway. The Permanent Access Easement will allow Larry Dahlstrom, or his tenant, to access the OIN 251X field via the OIN 9170 driveway after construction is completed.

Commissioner Mongeau asked if there was a reason for the field accesses aren't closer to 3rd street. Mr. Vetter stated the elevation on 3rd street is high and there is a significant ditch. The reason that we're utilizing this driveway is because it already exists. We just need to expand that culvert, which will allow access to both the northern and southern part of the field. Whereas if we did an approach directly off of 3rd street, we'd have to build two of them. Commissioner Mongeau asked if they'll be widening the whole driveway or just the existing approach. Mr. Vetter stated it would just be the approach. It's to be able to navigate modern farm equipment

Commissioner Mongeau asked if the owner will follow Clay County and Township regulations. Mr. Vetter stated that is articulated within the contract and they will do any permitting that is required.

Council Member Hendrickson moved, and Council Member Seljevold seconded, to approve the OIN 251X & OIN 9170 Driveway/Approach Agreement and Permanent Access Agreement. Motion carried.

b. OIN 257X Farming Access Agreement

Mr. Vetter stated field access to OIN 257X will no longer exist in the southwest corner of the field due to the SE-4 Project. Once the SE-4 construction is complete there is a portion of the field that will require the property owner or his tenant to cross a significant swale that cuts through the field (south to north) near the western property line, isolating about 7 acres of the remaining 155-acre field. To ensure that all of the remaining acres of this field will continue to be accessible with modern farm equipment, the property owner is requesting field access coming off of 140th Ave South, and field swale crossing with a culvert to access the isolated acres.

The property owner will complete the work and buy the culvert needed for these access improvements, the property owner will complete all permitting (if required) and comply with all applicable rules and regulations, and MCCJPA will compensate the property owner \$7,500 for the materials and labor to complete the work. This is a full/final settlement and payment for the farming access and all matters with respect to access to and from OIN 257X.

Commissioner Mongeau discussed her concern regarding the wetness of the field. Mr. Vetter stated the property owner is simply concerned with what will happen after the Diversion is operational. There is extensive work going into the embankment on the dry side to ensure that the water stays in the toe ditch on the east side of the embankment.

Mayor Carlson moved, and Council Member Seljevoll seconded, to approve the Farming Access Agreement for OIN 257X. Motion carried.

c. OIN 1252 Kragerud Amended Language

Jodi Smith, Diversion Authority, stated at the May 2024 MCCJPA meeting, the MCCJPA authorized a settlement with the Krageruds providing in part that, “the Krageruds will be allowed to use the home and structures on OIN 1252 from closing date until the sooner of June 1, 2025, or upon election of the Krageruds’ to vacate the home.” The Krageruds are requesting a vacate date of November 1, 2025. Additionally, the approved settlement provided for a closing date prior to July 1, 2024. The Krageruds did not close by July 1, 2024, and are requesting the closing date be changed to on or before September 1, 2024.

Commissioner Mongeau stated that the Krageruds had reached out to her accusing the MCCJPA of dragging our feet regarding their issues which caused a delay in their closing, and she’s hopeful that everyone has done their best to mitigate the situation, and that closing date was in fact a misunderstanding, but hopes that another request to delay closing doesn’t occur in September. Ms. Smith stated the only thing that has changed was the extension of their vacate and closing dates.

Council Member Hendrickson asked how the November 1, 2025, date was decided. Ms. Smith stated she heard that Mr. Kragerud is looking to retire, and they were looking for a date that more aligned with the retirement date.

Commissioner Mongeau moved, and Council Member Seljevoll seconded, to approve the modification of the previously approved settlement with the Krageruds to provide for a vacate date of no later than November 1, 2025, and a closing date of on or before September 1, 2024. Motion carried.

9) REIMBURSEMENTS

a. OIN 1678 1842 1876 Nelson Incidental Acquisition Expense Claim

Dale Ahlsten, ProSource, stated the owner conveyed to the MCCJPA the property rights necessary for the FM Area Diversion Project, which included fee simple interest over approximately 55.69 acres, a temporary construction easement of 12.88 acres and 254.34 flowage easement on OINs 1678, 1842, and 1876. The MCCJPA agreed to reimburse the owner for reasonable attorneys’ fees, not to exceed \$30,000. The owner’s attorney was reimbursed for attorney’s fees in the amount of \$13,771.00 at closing and due to residual work on the file they’re asking for additional fees in the amount of \$2,299.00. Ohnstad Twichell has reviewed

the attorney's claim and found the legal costs to be appropriate and consistent with the purchase agreement. Said additional attorney fees are under the initial not to exceed amount.

Mayor Carlson asked what the additional \$2,299.00 included. Mr. McShane stated to his understanding it's for the finalizing of the purchase agreement and closing.

Member Van Amburg moved, and Commissioner Mongeau seconded, to approve the reimbursement of additional attorney fees to Rinke Noonan in the amount of \$2,299.00. Motion carried.

10) CLOSED EXECUTIVE SESSION

a. Closed Executive Session pursuant to Minn. Stat. § 13D.05 subd. 3(b) and 3(c)(3) for attorney consultation regarding the purchase of property interests/settlement negotiations for the property identified as OINs 1794, 1795, 1830, 1861N, 1861X1, & 1861X2.

Commissioner Mongeau moved, and Council Member Hendrickson seconded, to close the meeting at 1:33 p.m. Motion carried.

Mayor Carlson moved, and Council Member Hendrickson seconded, to open the meeting at 1:40 p.m. Motion carried.

11) ACTION ON PURCHASE AGREEMENT FOR OINS 1794, 1795, 1830, 1861N, 1861X1, & 1861X2.

Mr. McShane stated Richard Allen Willem, Judith M. Willem, and Kathleeen M. Marx ("Willem"), will convey fee simple ownership of 27.46 acres, a temporary construction easement over 4.35 acres, and a permanent utility easement over 1.10 acres on OIN 1861. Willem will convey flowage easements over approximately 311 acres on OINs 1794, 1795, 1861, and 1830. Under the parties' agreement, Willem will grant the MCCJPA a right-of-entry for cultural and environmental inspections on OINs 1794 and 1795. The MCCJPA will pay Willem a total of \$2,495,000 inclusive of the Replacement Housing Differential Payment (RHDP), and less the funds previously paid to Willem related to Civ. No. 14-CV-23-4107 (Clay County District Court) in the amount of \$1,906,150, upon closing of the real estate transactions contemplated under the parties' agreement for the property rights conveyed by Willem as outlined above. Upon closing, Willem will lease the improvements on OINs 1794 and 1795 from the MCCJPA for \$500 per month until 30 days' written termination notice from Willem or until October 1, 2025, whichever occurs sooner. MCCJPA will reimburse Willem for reasonable and eligible relocation costs and expenses in accordance with the Uniform Relocation Act, which may include residential moving and closing costs, actual moving costs, and business re-establishment costs. Following the closing of the real estate transaction contemplated under the parties' settlement agreement, and following payment to Willem, the parties will execute and file a stipulation to dismiss the eminent domain actions, Civ. No. 14-CV-23-4107 with respect to Willem and the property interests acquired from Willem, and the District will reimburse Willem for reasonable attorneys' fees not to exceed \$32,300.

Commissioner Campbell referenced agenda item number 11, and asked if 1861X1 and 1861X2 were included in this. Ms. Smith stated those are inclusive of OIN 1861.

Council Member Hendrickson moved, and Council Member Seljevold seconded, to approve the proposed settlement for OINs 1794, 1795, 1861, and 1830. Motion Carried.

12) ADJOURN

Commissioner Campbell discussed knowing that there is a Cease and Desist order regarding the FM Diversion Authority's (FMDA) former Director and asked when the MCCJPA will take action on that. John Shockley, Ohnstad Twichell, stated that topic will be addressed at the next MCCJPA regular meeting on Thursday, August 22, 2024.

Commissioner Mongeau stated because she is not on the FM Diversion Authority Board, that she would appreciate to be briefed on any requests coming before the MCCJPA Board before hearing about it on the news. Commissioner Campbell stated the MCCJPA Board members also sit on the Diversion Authority Board with the exception of Commissioner Mongeau and Member Van Amburg and asked Mr. Shockley to meet with Commissioner Mongeau and Member Van Amburg inform them of what has been brought to the previous Diversion Authority Board meeting, so they are aware of the action that is needed to take place. Mr. Shockley stated he would be happy to do so.

The meeting adjourned at 1:50 p.m.

Stephen Larson, MCCJPA Secretary