

# **Moorhead - Clay County Joint Powers Authority (MCCJPA)**

Thursday, August 22, 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                                               |
|                   | Commissioner Mongeau                                                      |
| BRRWD:            | Member Van Amburg – Attending via Teams at: 4518 5 <sup>th</sup> St South |
|                   | Moorhead, MN 56560                                                        |

Others Present or on Microsoft Teams:

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, ProSource

Katie Laidley and Ken Helvey, SRF Consulting

Stephen Larson and Sarah Hellem, Clay County staff

Bob Zimmerman, City of Moorhead

Peggy Harter, Jacobs

### **3) APPROVAL OF AGENDA**

**Council Member Seljevoll moved, and Council Member Hendrickson seconded, to approve the agenda. Motion carried.**

### **4) APPROVAL OF MINUTES**

**Mayor Carlson moved, and Council Member Hendrickson seconded, to approve the minutes from August 1, 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 no change from the previous month. The upstream mitigation area (UMA) footprint is at 52.7% complete with no change from the previous month. The Property Acquisition Progress by Location was briefly discussed with the

Southern Embankment being 91.1% complete, UMA being 52.7% complete and the Environmental Monitoring Easement is 75.5% complete. The Drayton Dam, In-Town Levees, Stormwater Diversion Channel, and Oxbow Hickson-Bakke are 100% complete. The Property Acquisition Progress by MCCJPA is 59.1% complete. The Southern Embankment & Associated Infrastructure remains at 71.1%, with no change, the Upstream Mitigation Area remains at 45.1% with no change, the Upstream Mitigation Area – Wolverton remains at 7.1%, with no change, and the Environmental Monitoring Easements remain 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 52.8% 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 3 parcels/3 owners in the UMA. Continuing the process of disposing of excess lands – 28 parcels/313.37 acres have been approved as excess lands. 13 parcels/273.73 acres are moving through the policy and 15 parcels/39.64 acres have been sold or pending closing. 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.

**b. MN Litigation Action Update**

Chris McShane, Ohnstad Twichell, stated he and Jodi Smith, Diversion Authority, met with Mark Askegaard and family the previous week and unfortunately, they did not come to a resolution. They have expressed the desire to move forward with the Commissioner process, therefore, coordination of a site visit of this property is being completed. Once the site visit is finished, there will be a Commissioner hearing roughly 60 days after that. This is the one that is furthest along.

Mr. McShane stated an eminent domain action has been filed in Wilkin County, and getting service of process with those landowners has been a challenge. The private processor that typically conducts this task stated he wouldn't do it because one of the last times he tried to serve one of the landowners, he was met with a shot gun. Therefore, now we're dealing with the Sheriff's Office, which tends to be a slower process compared to using a private processor. We're doing our best to get services on those landowners, and once we have service, we'll set a hearing date, but the courts stated they will not set a hearing date with a judge until proof of service of all landowner dependents are in that action.

**7) LAND AGENT REPORT**

Katie Laidley, SRF Consulting, stated they still continue to work with landowners and reach out to attorneys if they have them. We are working on some environmental monitoring easements, relocations, and we do have some appraisals for the Wolverton area that, if approved today, we will work on as well.

Ken Helvey, SRF Consulting, stated that Brad and Wendy Buth's home has been removed and reestablished at the new site. Both with their new foundation and Morgan Buth's home next door. Mr. Dodds' team has checked to make sure they met the elevation requirements in the zone 4 area of the new property, so, we are monitoring that move and construction to be sure everything is being built in compliance with the flowage easement.

Dale Ahlsten, ProSource, stated they are working on negotiations and relocations as they arise. They are working through some access relocations and getting those completed as well as some title issues which are in relation to ongoing condemnation support, as well as some preliminary work and support on a RIMP application.

Mr. Dodds discussed the struggles with Wilkin County that were previously discussed and wanted to commend the Building and Zoning Official from Wilkin County, Breanna Koval, who's been helping us work through some of the rebuilds with the landowners in northern Wilkin County. She's been very helpful and cooperative in the process and there is a good working relationship there.

Commissioner Campbell provided an update and stated he met Kris Bakkegard and Peggy Harter regarding issues with Reach-4, and there is small segment of road on 170<sup>th</sup> Avenue that will need to be abandoned, as it will be permanently closed. Right now, we're waiting for the township to sign onto this agreement, and they have chosen to go through their attorney. There is concern about the timing of that because we want to make sure that the project isn't delayed when it's already been awarded. There might be a process where the Clay County Board might need to be involved with that, and have that road permanently closed.

## **8) RELOCATION REIMBURSEMENT**

### **a. OIN 1305 Mortenson Reimbursement Request**

Ms. Laidley stated the Michele Mortenson reimbursement request is for partial payment for the Replacement Housing Differential Payment (RHDP) which is for the purchase of land and partial payment for the home that was purchased. There will be additional requests that will come forward as this becomes final.

**Council Member Seljevold moved, and Member Van Amburg seconded, to approve the reimbursement request for OIN 1305 in the amount of \$50,000.00. Motion carried.**

## **9) ACQUISITION**

### **a. Ness Settlement Negotiation Summary Update**

Mr. Dodds discussed that the MCCJPA approved a comprehensive settlement with Larry and Judith Ness, L & J Ness, LLLP, and Matthew and Rachel Ness (collectively "Ness") on July 10, 2024. The Ness family has been actively working on estate planning and has modified the ownership of certain properties. The estate plan for the Nesses is to deed the current building site to Matt Ness Farms, Inc. Also, the new building site will be deeded to Matt Ness Farms, Inc. as well. However, the motion passed by MCCJPA at its July 10, 2024, meeting did not include reference to Matt Ness Farms, Inc. As such, to facilitate timely closing of the transactions associated with the comprehensive settlement, it is recommended that the MCCJPA adopt an amendment to the motion to reflect the proper ownership. Add "Matt Ness Farms, Inc." as an entity associated with "Ness" and indicate that the RIMP Loan will be with Matt Ness Farms, Inc.

**Commissioner Mongeau moved, and Mayor Carlson seconded to approve the amended language in the Ness Settlement Negotiation Summary for OINs 1670N, 1822N, 1272N, 5061, 1671, 1672, 1822, 1670, 1796, 1826, 1824 and 1817 and reads as follows: Larry and Judith Ness, L & J Ness, LLLP, and Matt Ness Farms, Inc., and Matthew and Rachel Ness (collectively "Ness") will convey fee simple ownership of approximately 60.97 acres on OINs 1670N, 1822N, and**

1272N and a temporary construction easement of approximately 18.97 acres on OINs 1670N and 1822N. Ness will convey flowage easements over approximately 782 acres on OINs 5061, 1671, 1672, 1822, 1670, 1796, 1826, 1824, to be determined more fully by survey. The flowage easement on OIN 1824 will include an area mapped out of Mitigation Zone 1 into Mitigation Zone 4C as approved by USACE and as determined more fully by survey. Ness will convey an environmental monitoring easement on OIN 1817. The MCCJPA will pay Ness a total of \$3,930,000 inclusive of the Replacement Housing Differential Payment (RHDP), and less the funds previously paid to Ness related to Civ. No.14-CV-23-4107 (Clay County District Court) in the amount of \$2,909,993, and also less the funds previously paid to Ness in Civ. No. 84-CV-23-505 (Wilkin County District Court) in the amount of \$500, upon closing of the real estate transactions contemplated under the parties' agreement for the property rights conveyed by Ness as outlined above. In addition, the MCCJPA will pay Ness \$1,200,000 as just compensation for the contributory value of the nonresidential improvements on OINs 1824 and 1826. Upon closing, Ness will lease the improvements on OINs 1824 and 1826 from the MCCJPA for \$500 per month until 30 days' written termination notice from Ness or until December 30, 2025, whichever occurs sooner. MCCJPA will reimburse Ness for reasonable and eligible relocation costs and expenses in accordance with the Uniform Relocation Act, which may include residential moving and closing costs, commercial actual moving costs, and business re-establishment costs. The MCCJPA approves a RIMP loan for Matt Ness Farms, Inc. in the total amount of \$1,500,000, secured by a mortgage encumbering the property on which the replacement improvements are constructed; the parties' agreement will require the RIMP loan funds to be placed in an escrow fund, and Ness must first spend the \$1,200,000 contributory value cash payment outlined above, on such improvements, before accessing the RIMP loan funds. Under the parties' agreement, Ness will grant the District right-of-entry for cultural and environmental inspections on OINs 1824 and 1826. Following the closing of the real estate transaction contemplated under the parties' settlement agreement, and following payment to Ness, the parties will execute and file a stipulation to dismiss the eminent domain actions, Civ. No. 14-CV-23-4107 and Civ. No. 84-CV-23-505 with respect to Ness and Ness' property described in such actions. The District will reimburse Ness for reasonable attorneys' fees, fees for Ness prior attorney, appraisal fees, other consultant fees and litigation expenses, not to exceed \$152,000. Motion carried.

**b. Red River Valley Cooperative Power Association Utility Easement on OIN 1879**

Peggy Harter, Jacobs, stated Red River Valley Cooperative Power Association (RRVCPA) is looking to obtain an easement from the MCCJPA for the purposes of relocating their electric line on MCCJPA's property. The utility relocation is needed, as RRVCPA will convert their overhead electric line to an underground electric line across the Wolverton Creek and the adjacent parcel along the south Clay County line. This utility relocation work is being performed because the overhead lines are in direct conflict with removal/replacement of the Wolverton box culvert associated with work being completed as part of Southern Embankment Reach 5 (SE-5). The utility relocation will also reduce a potential conflict with the overhead utility and construction equipment for the USACE contractor's construction staging area.

**Council Member Seljevold moved, and Member Van Amburg seconded, to approve the Utility Easement on OIN 1879 for Red River Valley Cooperative Association. Motion carried.**

**c. OIN 1267 Blilie RIMP Pre-Approval Application**

Mr. Dodds stated the application is for Kelly Blilie who owns a plumbing and excavating business in northern Wilkin County, this is an area where we need to obtain a flowage easement and the existing property is not in compliance with that flowage easement, meaning buildings would need to be removed, therefore, displacing the business. We do have a concept to mitigate those impacts in place with some type of levee system, but that's a situation where it would require voluntary cooperation by the property owner and we're not able to force construction of a ring levee around the property. Therefore, Mr. Blilie, through his attorney, submitted the RIMP application form. The four different eligibility criteria include the Farmstead or rural Business must be displaced by the Comprehensive Project, a suitable replacement Farmstead or Business is not available for the displaced Farmstead or rural Business, the property owner must operate a Farmstead or Business from the displacement site, and the replacement site must be constructed on a site located in the vicinity of the Comprehensive Project, generally considered within the Counties of Cass, Richland, Barnes, Traill counties in North Dakota, and Clay, Wilkin, Becker, and Norman counties in Minnesota.

The Land Management Consultant and MFDA Director of Lands and Compliance have reviewed these applications and recommend approval by the MCCJPA Board.

**Mayor Carlson moved, and Council Member Seljevold seconded, to approve the Blilie Rural Impact Mitigation Program pre-approved application for OIN 1267. Motion carried.**

**10) APPRAISAL REVIEW**

**a. OIN 8793 City of Wolverton Appraisal Review**

Dean Vetter, AE2S, provided a brief overview of the Wolverton area and the five appraisals, and made note that part of the agreement with the City of Wolverton included that the City of Wolverton was to acquire their own appraisals for the footprint of the levee itself and any the associated property rights needed. So, when we look at these appraisals, these are only the portions of the property owner's property that are involved with the flowage easement part, on the wet side of these levees. The Buffalo-Red River Watershed District (BRRWD) will be doing those appraisals as well, so a lot of these same OIN numbers will not be coming through the Board but they will be reviewed by the lands team in making sure they're consistent with the rates.

Commissioner clarified that Mr. Vetter's narrative was just an overview of these appraisals

Mr. Vetter stated OIN 8793 is a small parcel owned by City of Wolverton, it's less than one acre, and there is a transmission line that goes under the river. This is a Zone 4C parcel, and the appraised valuation for loss of development and the right to store water is a total of \$1,350.00

**Commissioner Mongeau moved, and Council Member Seljevold seconded, to approve the appraisal review for OIN 8793 in the amount of \$1,350.00. Motion carried.**

**b. OIN 8791 8792 8798 8802 Nelson Appraisal Review**

Mr. Vetter referenced the map in the packet and stated of these four parcels, there is a small portion of parcel 8798 that is being appraised by the BRRWD. There is a home on that portion of the land which is high enough with the levee and can remain, but there are some out buildings that do involve being either under the footprint of the levee or on the wet side.

Because the levee is causing those structures to be inundated the BRRWD is appraising the full value of all the structures. Therefore, this appraisal for these four parcels only involves the flowage easement. There is also some CRP, tillable, and homestead land that is being appraised for a total value of \$44,136.00.

Commissioner Campbell asked if that was based on just the value for flowage easement purposes. Mr. Vetter confirmed that was correct.

**Mayor Carlson moved, and Council Member Hendrickson seconded, to approve the appraisal review for OIN 8791 8792 8798 8802 in the amount of \$44,136.00. Motion carried.**

**c. OIN 1321 1325 8799 Hanson Appraisal Review (Dean)**

Mr. Vetter referenced the packet and stated this involves three parcels, much like the previous appraisal, there will be some appraisal work done through the BRRWD. The good news is there are no structures involved so it's a straight flowage easement for the impacted areas outside of the ring levee. This landowner does have some CRP contracts and similar to the previous appraisal, there is no penalty for those acres that will not be in CRP because they'll be under the footprint, which has been reviewed by the appraisers. The total appraised valuation of these parcels is \$18,229.00.

**Council Member Seljevold moved, and Council Member Hendrickson seconded, to approve the appraisal review for OIN 1321 1325 8799 in the amount of \$18,229.00. Motion carried.**

**11) PROPERTY MANAGEMENT**

**a. OIN 1665 Buth Lease Extension**

Madeline Daudt, Diversion Authority, stated the Buth family is currently moving their home on OIN 1635 and the movers have pushed back the move date by two weeks. As a result of that, the Buth family has requested an extension to their lease on OIN 1665 by one month, to alleviate the scheduling change. The Buth's will continue to pay rent and maintain the property up until the termination of the lease termination. No further lease extensions will be allowed moving forward.

**Mayor Carlson moved, and Commissioner Mongeau seconded, to approve the extension of the OIN 1665 lease to September 30, 2024. Motion Carried.**

**12) ADJOURN**

The meeting was adjourned at 1:30 p.m.

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Stephen Larson, MCCJPA Secretary