

Moorhead - Clay County Joint Powers Authority (MCCJPA)

Thursday, January 23, 2025, 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 Vice-Chair Hendrickson at 1:00 p.m.

2) ROLL CALL

City of Moorhead: Mayor Shelly Carlson

Council Member Chuck Hendrickson

Council Member Lisa Borgen

Clay County: Commissioner Kevin Campbell – Attending via Teams at: 1916 E Lindrick
Dr. Chandler, AZ, 85249

Commissioner Jenny Mongeau – Attending via Teams at: 11 Kellogg Blvd.
E. Saint Paul, MN 55101

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, Dean Vetter, AE2S

Dale Ahlsten, Scott Stenger, ProSource

Ken Helvey, SRF Consulting

Bob Zimmerman, City of Moorhead

Sarah Hellem, Clay County staff

Rob Stefonowicz, Larkin Hoffman

3) APPROVAL OF AGENDA

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

4) APPROVAL OF MINUTES

Mayor Carlson moved, and Commissioner Campbell seconded, to approve the minutes from December 19, 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 map pertaining to the MCCJPA Acquisition Status and stated property rights have been attained on 160 parcels; 60 parcels are pending value; 2 parcels have a flowage easement signed; 11 parcels are in eminent domain; 2 parcels have a railroad agreement pending; 6 parcels are eminent domain authorized; and 9 parcels are in negotiation. The property acquisition progress was discussed

with the construction footprint is 98.4% complete, no change from last month. The upstream mitigation area (UMA) footprint is at 57.8% complete, with an increase of 0.3% from last month. The Property Acquisition Progress by Location was briefly discussed with the Southern Embankment being 95.3% complete, no change from last month, UMA being 57.8% complete, with an increase of 0.3% from last month, and the Environmental Monitoring Easement being 77.3% complete with no change from last month. The Drayton Dam, In-Town Levees, Stormwater Diversion Channel, and Oxbow Hickson-Bakke are 100% complete. The Property Acquisition Progress by MCCJPA is 66.5% complete, with no change from last month. The Southern Embankment & Associated Infrastructure is 80% complete, with no change from last month, the Upstream Mitigation Area is 57% complete, with no change from last month, the UMA – Wolverton remains at 7.1%, with no change, and the Environmental Monitoring Easements is 83.8% complete, with no change from last month. The Landowner Overview was discussed which shows owner groups and parcels broken down for the construction and UMA footprint with 98% of the owner groups complete for the Construction Footprint and 58.9% 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 2 parcels/2 owners, in the UMA. Completing appraisal reports for the Christine area flowage easements and Sheyenne River Benching project. Continuing the process of disposing of excess lands – 39 parcels/682.83 acres have been approved as excess lands, 17 parcels/546.36 acres are moving through the policy and 22 parcels/136.47 acres have been sold or pending closing. Continued work on farmland leases for 2025. For Minnesota properties, vacate dates for owners of occupied structures is April 1, 2025, for Clay County and June 1, 2025, for Wilkin County.

The Land Agent Reports for the Minnesota side of the project include providing relocation advisory and claim preparation services to people that are moving. Assisting with mediations and settlement negotiations. Working on flowage easement acquisitions in Wolverton. And processing RIMP reimbursement requests.

b. MN Litigation Action Update

Chris McShane, Ohnstad Twichell, stated there isn't too much to update from the previous month. There are two more actions to start in Wilkin County but we're dealing with appraisal and title issues which need to be resolved before filing those two actions. Litigation actions are moving forward and we're doing our best to negotiate with landowners.

c. Deposit of Appraisal Values

Mr. McShane discussed a list of properties that were identified in the court action for the immediate possession of the Right of Way that is needed, and with that, the statute requires that before the possession is taken, there needs to be a deposit of the appraised amount for each of the properties. There are two variables still being worked on, one being title issues and the other is whether or not those landowners want the payment directly to them or if there is a payment that needs to be made to the court.

Commissioner Campell asked if the deposit for the Wilkin County properties needs to go through Clay County or the City of Moorhead. Mr. McShane stated that Moorhead is the condemning authority for the Wilkin County properties and assumes that the payment will be made by the City of Moorhead and an action from this board to authorize that is needed. Mayor Carlson asked if the Diversion Authority has already deposited the funds that will be utilized for eminent domain. Mr. McShane asked if Mayor Carlson meant if the Diversion Authority has made that payment to MCCJPA. Mayor Carlson confirmed that's what she

meant. Mr. Dodds didn't believe that to be correct and stated that the MCCJPA would request reimbursement from the Diversion. His understanding of the flow of funds is that the City of Moorhead would need to make this deposit with the court and then seek reimbursement for the expense. Mayor Carlson discussed how she thought a payment was made when the eminent domain process started. Mr. Dodds stated there has been multiple rounds of the necessity hearings and believes that the payment to the court is made after the necessity hearings have been completed. Mayor Carlson stated she was under the impression that the payment that was made last summer covered everything, and thanked Mr. Dodds for the clarification. Mayor Carlson asked what the total amount would be. Mr. Dodds stated the total amount that needs to be deposited for the Wilkin County properties is \$1,509,471.00.

Commissioner Campbell stated this is why he raised the question because during the last go around when Clay County needed to make a deposit to the court, it was over \$9 million, and the concern was the turnaround time it would take the Diversion Authority to reimburse Clay County, because we don't have those funds readily available. Commissioner Campbell believed that there was an arrangement where there would be an immediate deposit from the Diversion Authority to Clay County to cover that payment.

John Shockley, Ohnstad Twichell, stated he didn't have a precise answer at this moment, however, typically the condemning authority would be the entity making the deposit. We can have administration look into what the turnaround time would look like. Mayor Carlson asked Commissioner Campbell if he recalled the lag time between the payment and the reimbursement. Commissioner Campbell stated in this case, because the dollar amount was so significant, it was arranged prior to the payment, through the administrative process. Mayor Carlson stated the turnaround time would be her only concern. Commissioner Campbell discussed how Clay County has been determined as the fiscal host for the MCCJPA and stated not being opposed to the deposit coming from Clay County, but is unsure if that is legal based on who is the condemning authority. Mr. Shockley stated the process for the reimbursement would be set up administratively, and he is not certain of the precise timing of when the reimbursement would occur. Mr. McShane stated in regards to the payment being delayed, the court order says that we give possession of the property rights that are identified, when two things happen; the expiration of days, which then puts us out into January 27, 2025, and then the payment of those funds. It needs to be both, so it's just that the possession of property rights won't happen until we make the payment. Mr. McShane stated he would prefer it if Clay County didn't make the deposit, as Moorhead is the condemning authority. Mayor Carlson asked to take five minutes between this item and the Executive Session to make a phone call to the Finance Department and possibly address this item after the Executive Session.

Council Member Hendrickson asked if this item should be tabled. Mr. Shockley stated the board should motion to table the item and take it up after the Executive Session.

Council Member Borgen moved, and Mayor Carlson seconded, to table this item at 1:25 p.m. and to revisit it after the Executive Session. Motion Carried.

BREAK

The Board took a five-minute break from 1:25 to 1:30 p.m.

7) 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 OIN 1237 and 1256.**

Council Member Borgen moved, and Mayor Carlson seconded, to approve to go into executive session at 1:31 p.m. Motion Carried.

Council Member Hendrickson stated the Executive Session was closed at 1:51 p.m.

8) ACTION ON NEGOTIATION SUMMARY FOR OIN 1237/1256

Mr. McShane read the proposed motion which stated Ness will convey to the MCCJPA a flowage easement with respect to OINs 1237 and 1256, consisting of approximately 65.40 acres, as depicted in the MCCJPA's appraisals, and to be defined more fully by survey to be completed by the MCCJPA. The MCCJPA will pay Ness a total of \$400,000.00 upon closing of the real estate transaction contemplated under the parties' settlement agreement, as outlined above. The MCCJPA will place \$200,000.00 in an escrow account to be dispersed to Ness upon completion by Ness of mitigation of the existing structures according to the terms of an escrow agreement between the parties, to comply with the requirements of the flowage easement on OINs 1237 and 1256 on or before June 1, 2026. The MCCJPA will reimburse Ness for reasonable and eligible relocation costs and expenses in accordance with the Uniform Relocation Act, which may include residential personal property moving and closing costs. Following the closing of the real estate transaction contemplated under the parties' settlement agreement, the eminent domain action, City of Moorhead v. David Allen Ness Civ. No. 89-CV-24-284 will be dismissed with respect to Ness and the property described in the flowage easement. The MCCJPA will reimburse Ness for reasonable attorneys' fees and costs, not to exceed \$40,000.00.

Commissioner Campbell moved, and Council Member Borgen seconded, to approve the negotiation summary for OIN 1237 and OIN 1256, as presented by Counsel. Motion Carried.

6) PROJECT UPDATES

c. Deposit of Appraisal Values

Council Member Borgen moved, and Mayor Carlson seconded, to take this item off the table at 1:54 p.m. Motion Carried.

Mr. Shockley provided verbiage for the motion which is to approve the deposit of the appraised values as set forth in the packet on page 18 and to undertake the reimbursement processes previously occurred through wire transactions with Clay County and the authority and this time it would with the City of Moorhead.

Mayor Carlson moved, and Commissioner Campbell seconded, to have Moorhead and Clay County deposit the appraised values as set forth in the packet on page 18 and to undertake the reimbursement from the Metro Flood Diversion Authority. Motion Carried.

9) PROPERTY MANAGEMENT

a. 2025 Farmland Leases

Madeline Daudt, Diversion Authority, stated there are four farmland leases that need approval, which include OINs 249X1, 254Y, 253Y1, 249X2, 251Y, 255x, 256Y2, 253Y2, 235Y3, 1638Y, 1850x2, 250Y.

Commissioner Mongeau asked when these payments are due. Ms. Daudt stated that all

payments are due March 15, 2025. Mr. Dodds discussed the rental rates for Council Member Borgens awareness.

Mayor Carlson moved, and Council Member Borgen seconded, to approve the farmland lease for OINs 249X1, 254Y, 253Y1, 249X2, 251Y, 255x, 256Y2, 253Y2, 235Y3, 1638Y, 1850x2, 250Y. Motion Carried.

10) ADJOURN

Commissioner Campbell discussed how there was a request made that he and the Cass County Joint Water Resource District (CCJWRD) Board Chair meet with some of the attorneys who represent some of the clients in these land acquisitions. It was proposed that the negotiations that they would go through, in this case with Jodi Smith, would become final. Commissioner Campbell stated that he made it perfectly clear to the attorneys that that would be unlawful and that any final negotiations need to be approved by the governing board. He also mentioned that the MCCJPA Board puts a lot of confidence in the land agents and land acquisition team and what the MCCJPA Board is presented regarding negotiations is taken very seriously. There hasn't been one suggested action that the MCCJPA Board has not approved of based on the work done by the land team/agents. The attorneys were frustrated because there was a negotiation that was temporarily denied by the CCJWRD, and it made them look bad in front of their clients. Commissioner Campbell stated that he and the CCJWRD Board chair assured the attorneys that every negotiation would be taken seriously, and each Board would do everything they can to meet those negotiation settlements, and that every Board member has a right to hear what those negotiation settlement proposals are and has a right to question them.

Commissioner Mongeau provided an update on legislative work and discussed that there were members from the City of Moorhead and the Capital last week talking about our legislative ask and that she had the opportunity at the Red River Basin Commission Land & Water International Summit Conference last week to talk about the Buffalo Red River Watershed District (BRRWD) and about the component of the funds that we're asking for. There were great conversations with Senators and Representatives on the legislative ask. Commissioner Mongeau mentioned that she and Mayor Carlson are working weekly to make sure they have a meeting every Friday to discuss who they have each been talking to and how to leverage those conversations and what possibly needs changing. One item of feedback was that the BRRWD members aren't exactly up to speed on what the legislative ask is that Clay County and the City of Moorhead are doing together. Therefore, they have requested that we come to their Board to give an update on what our work is to get funds for their project. Commissioner Mongeau stated she spoke with Mayor Carlson about maybe including the BRRWD lobbyist and keeping him in the loop when it comes to bonding and the DNR.

The meeting was adjourned at 2:05 p.m.

Stephen Larson, MCCJPA Secretary