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May 5, 2016

Erik R. Johnson
Fargo City Attorney
City of Fargo
505 Broadway Street North, Suite 206
Fargo, ND 58102

Dear Mr. Johnson:

State Engineer Todd Sando's March 17, 2016, letter asked your client to provide "an explanation of how the Diversion Authority will secure land rights from unwilling owners in Richland County" as part of the Construction Permit application process. In response, you sent me a memorandum dated April 21, 2016, as well as documents titled "Inlet Land Acquisition Schedule" and "Typical Land Acquisition Process."

The State Engineer will accept these documents as "evidence establishing a property right" under N.D.A.C. § 89-08-02-02, and they must be submitted with the permit application as part of the plan for the procurement of the necessary property rights. The State takes no position regarding the legal viability of the Diversion Authority's justification of eminent domain authority. The plan must also include a commitment from the Cass County Joint Water Resource District to exercise the powers of eminent domain asserted in your memo.

As previously discussed, the permit for the overall project will be granted in stages. The permit for the inlet project structure itself will not be granted until the required property rights for the footprint of the inlet project structure have been secured. Similarly, the required property rights for the footprint of each additional stage will need to be secured before the additional stages of the permit are granted. The final permit will not be granted until all required property rights for property impacted by the overall project have been secured. Therefore, the plan must also include a schedule for property acquisition that will allow each stage, including the final permit, to be processed in a timely manner.

Sincerely,

Jennifer L. Verleger, P.E.
Assistant Attorney General