

Water Topics Overview Committee

**Thursday September 25, 2016, 3:30 pm
Brynhild Haugland Room, State Capitol
Bismarck, North Dakota**

Missouri River Correctional Center – Easement Acquisition

A chronology of a process and functional use of quick take authority

Chairman Schmidt and members of the Committee. I am Greg Larson, Vice Chairman of the Burleigh County Water Resource District Board (BCWRD).

We had to use our Quick Take authority on the Missouri River Correctional Center Flood Control Project. The following is a brief chronology of the process that we went through to give you an impression of what occurred in our case. The dates are approximate for purpose of time reference.

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| Aug/Sept 2015 | Our engineer met with the landowner to discuss the project and the need to obtain an easement for levee construction. They were aware of the project and would benefit from its construction as they voted in favor of the project on one parcel of their property, and voted in opposition on the other parcel. Survey stakes were provided after the discussion so they could visualize the project location. |
| October 7, 2015 | Easement documents were created and provided for consideration during a meeting in person at their residence. No compensation was offered considering their property would be benefit by the flood protection provided by the project. Options to configure the levee to best fit their property to limit tree removal, and potential tree replacement options were discussed. Permission to survey for project design was granted. |
| October 26, 2015 | Landowner obtained legal counsel, stopping all communication except between legal counsels. |
| Nov/Dec 2015 | The compensation requested was in our opinion unreasonable so we had our engineer evaluate alternatives that would not require use of their property. We then talked with other landowners who might be impacted by rerouting the protection. |
| January 2016 | Continued reviewing alternatives including survey, preliminary designs and opinions of probable costs, which were lower if the neighbors were left out or higher if they were not. |

- . February 2016 The landowner's legal counsel formally requested an appraisal to determine what compensation should be paid. They acknowledged the appraisal process and fully understood the Board's option to exercise its Quick Take authority. The Board seriously considered the Quick Take option at that time. After further discussions the Board offered the landowner the cost to complete the appraisal as compensation, they refused. The Board then agreed to proceed with the appraisal.
- March 2016 An on-site meeting with the landowner with the appraiser, engineer and me was held to discuss the "*yellow book*" appraisal process and the benefits and risks associated with the values so determined.
- March 31, 2016 Appraisal was completed, with the documented diminished property value was determined to be \$0. Effectively there was no net change in value as a result of project construction. The levee in question was to be two to three feet in height located in a 60-foot easement comprising around one acre, and not a purchase of property. The only restrictions related to use of the levee area to protect its integrity for flood control. Essentially replacing a treed area with a grassed levee.
- May Landowner again declined to sign the easement when no compensation was offered, per the appraisal. Landowner's Counsel refuted the appraisal value determination and again demanded "just compensation". The Board in turn considered the Landowner's demand and again offered the same amount as their original offer, noting if it was not accepted they would proceed with the Quick Take. The amount was declined.
- Mid-May Project and easement documentation was submitted to the ND State Engineer for permit consideration.
- July 27, 2016 The Board filed the necessary paperwork and the judge has ruled that we now have the easement. We are now awaiting a permit from the State Engineer.

August 2, 2016 Counsel for the Landowner requested a jury trial... ..the costs associated with the Quick Take process continues to increase, which will ultimately be paid by the residents within the assessment district.

The construction permit from the State Engineer for such projects require that all easements be obtained before it can be approved. Subsequently, we provided those we had and notified the State Engineer regarding the on-going negotiations and pending Quick Take process.

We recognize the rights of private property owners and in no way want to deprive them from seeking just compensation for the use of their land. In this case the use of the Quick Take process will allow the project to move forward to protect the landowners without extensive delay and unnecessary additional cost to the project.

I will be happy to answer any questions.