

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA****SUPREME COURT NO. 20200171**

Cass County Joint Water Resource District,

Plaintiff and Appellee

v.

Cash H. Aaland, Larry W. Bakko and Penny
Cirks,

Defendants and Appellants

and

Richard and Sandra Ihland, Stuart D. Boyer
and Patricia J. Boyer, Vance G. Gylland,
Thomas Jorgensen, Brent Larson and
Timothy Larson, Mary Jo Schmid, Thomas
R. Nelson and Michelle Nelson, Jeffrey C.
Shipley and Maria Shipley, Patricia A.
Rudnick, Dona L. Duffy, Myron Ihland,
Carol Sheridan, Marjorie Rieger, Betty Jean
Hulne (deceased), Gregory S. Hulne, Jack T.
Hulne, Michael J. Hulne, David A. Hulne,
Jean M. Johnson, Dorothy A. Stapleton and
Laura Aaland,

Defendants and Appellees

Appeal from District Court Orders Granting Right of Entry dated May 13, 2020
and May 20, 2020, District Court No. 39-2020-CV-00048

County of Richland, Southeast Judicial District, Hon. John A Thelen, Presiding

APPELLEE'S BRIEF

Rob A. Stefonowicz, ND ID #05740
LARKIN HOFFMAN DALY LINDGREN
LTD.
8300 Norman Center Drive, Suite 1000
Minneapolis, Minnesota 55437-1060
TEL (952) 835-3800
FAX (952) 842-1718
rstefonowicz@larkinhoffman.com

Attorney for Plaintiff and Appellee

TABLE OF CONTENTS

| | <u>Page</u> |
|--|----------------------|
| TABLE OF AUTHORITIES | 4 |
| | <u>Paragraph [¶]</u> |
| STATEMENT OF ISSUE | 1 |
| STATEMENT OF THE CASE | 2 |
| STATEMENT OF THE FACTS | 6 |
| STANDARD OF REVIEW | 14 |
| ARGUMENT | 15 |
| I. THE DISTRICT COURT PROPERLY GRANTED RIGHT OF ENTRY PURSUANT TO ESTABLISHED NORTH DAKOTA LAW..... | 15 |
| A. The Right of Entry Approved by the District Court Complies with N.D.C.C. § 32-15-06..... | 15 |
| B. The Limited Right of Entry Authorized by the District Court Does Not Affect a Taking of Landowners’ Private Property..... | 21 |
| CONCLUSION | 29 |
| CERTIFICATE OF COMPLIANCE | 30 |

TABLE OF AUTHORITIES

Paragraph [¶]

CASES

Alliance Pipeline L.P. v. Smith, 833 N.W.2d 464 (N.D. 2013) 18

In re 2015 Application for Permit to Enter Lands for Surveys and Examinations Associated with a Proposed N. Dakota Diversion & Associated Structures, 883 N.W.2d 844 (N.D. 2016) 14, 19, 20, 23

Lorretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982) 23, 25

Square Butte Elec. Co-op v. Dohn, 219 N.W.2d 877 (N.D. 1974) 14, 16, 18-20, 23, 28

STATUTES

N.D.C.C. § 32-15-06 1, 2, 14-21, 23, 24, 26, 28, 29

N.D.C.C. § 47-20.1-10 24

N.D.C.C. Ch. 61-16.1 7

N.D.C.C. § 61-16.1-09 (12) 17

OTHER AUTHORITIES

ND Attorney General Opinion 76-76 (May 17, 1976)..... 16

STATEMENT OF ISSUE

[¶1] The district court granted a limited right of entry onto Appellants' properties for purpose of making examinations, surveys and maps pursuant to N.D.C.C. § 32-15-06. Did the district court err when it determined that the limited right of entry sought by Appellee is allowed by the statute?

STATEMENT OF THE CASE

[¶2] This is an appeal from district court orders (May 13, 2020 and May 29, 2020) granting permission to Appellee Cass County Joint Water Resource District (the “District”) to enter upon the land of Appellants Cash Aaland, Larry Bakko and Penny Cirks (the “Landowners”) to conduct examinations, surveying and mapping pursuant to N.D.C.C. § 32-15-06. Appellants’ Appendix (“APP.”) 121; Register of Action “Index” # 140.

[¶3] On February 21, 2020, the District filed an Application for Permit to Enter Land (the “Application”) for the purpose of conducting examinations, surveys and mapping required for evaluation and design of a proposed flood control project (the “Project”). APP. 11. Entry was sought by the District to allow surveyors to examine, analyze and verify existing river conditions, and if possible, minimize and refine sites along the rivers’ banks for future environmental monitoring of river conditions. Landowners objected to the Application. The district court held hearings on the Application on May 4, 2020 and May 29, 2020.

[¶4] The district court granted the Application pursuant to its Amended Findings, Conclusions and Order Granting Right of Entry and Order Denying Evidentiary Hearing dated May 13, 2020 [APP. 121] and Order Granting Right of Entry – Bakko dated May 29, 2020 [Index # 140]. The orders allow entry for purposes of examining, surveying and mapping the properties, which include geomorphological studies as well as biotic surveys and boundary line surveys. APP. 126. In granting the Application, the district court imposed certain restrictions and

limitations on the entry, including advance notice to the landowner prior to entry and a maximum number of permitted entries per property. *Id.*

[¶5] Landowners filed a motion to stay the right of entry orders with the district court which was denied by on June 11, 2020. Landowners filed their Notice of Appeal on July 1, 2020. APP. 128. This Court denied Landowners’ motion for a stay pending appeal on September 15, 2020 [2020 ND 196].

STATEMENT OF THE FACTS

[¶6] The United States Army Corps of Engineers (the “Corps”), the City of Fargo (“Fargo”), the City of Moorhead (“Moorhead”), and the Metro Flood Diversion Authority negotiated a Project Partnership Agreement (“PPA”) for the design and construction of a flood control project (the “Project”). APP. 12. The Project, as defined by the PPA, is a diversion project through North Dakota with appurtenant structures and staging areas. *Id.* Pursuant to the PPA, the local sponsors are responsible for acquiring the real property interests in North Dakota necessary to complete the Project. *Id.*

[¶7] The District is a joint water resource district and political subdivision under Chapter 61-16.1 of the North Dakota Century Code, with unique and specific statutory authorities to develop, construct, establish, and maintain flood control and protection projects, including the right to acquire real property through eminent domain, if necessary. APP. 11. In light of the District’s unique authority, the District, Fargo and Cass County (all members of the Metro Flood Diversion Authority) entered into a Joint Powers Agreement regarding the District’s role in

the Project, which includes obtaining rights of entry and ultimately acquiring real property rights for the Project. APP. 12.

[¶8] It was determined that entry onto certain properties was necessary as part of the process of studying, examining, and verifying baseline river conditions—essentially determining the current or “before” river conditions, including river geology, hydrology and biotic life—and in doing so, identifying and verifying (and where possible minimizing) locations along the rivers’ banks where environmental monitoring will occur when the Project is constructed. (Index # 31). The studies and examinations, which are necessary to make informed decisions regarding the Project, are focused on the waterways themselves. *Id.* For Landowners Aaland and Bakko, the subject waterway is the Wild Rice River, and for Landowner Cirks it is the Red River. *Id.*

[¶9] The right of entry will allow surveyors to determine if river conditions have changed since the last right of entry was granted in 2017. Because the subjects of the studies are flowing bodies of water, flood conditions and natural erosion may have changed where river survey markers are needed or were previously placed. APP. 122-23. In addition, it will determine if additional monitoring sites are needed and if any locations can be removed. Further, the entry will assist in identifying where entry onto the rivers can be best made and if improvements exist (such as structures or fences) along the river banks which are to be avoided in preparing and verifying environmental monitoring easement boundaries.

[¶10] The District sought no more than seven entries per property and proposed to provide at least 48-hours' advance notice to property owners prior to each entry. APP. 123. Permission to enter was sought until December 31, 2021, so that two survey seasons were included within the Application as a precaution should intervening circumstances prevent the completion of the examinations and surveys or in the event a flooding event. (Index #31).

[¶11] The District, through its agents, contacted owners of the properties for which entry was necessary to request permission to examine, inspect and survey the properties. (Index #34). While many property owners did not object and voluntarily granted right of entry, certain landowners either failed to respond to the District or denied permission to access. *Id.* With respect to those property owners who had either failed to respond or denied permission, the District filed the Application with the district court on February 21, 2020. APP. 11.

[¶12] The district court, following hearing, granted the District's request for entry pursuant to its Amended Findings, Conclusions and Order Granting Right of Entry and Order Denying Evidentiary Hearing dated May 13, 2020 [APP. 121] and Order Granting Right of Entry – Bakko dated May 29, 2020. (Index # 140).

[¶13] The orders granting the Application permits limited entry onto the subject properties, including Landowners' properties, for the "purpose of examining, surveying, and mapping, which shall include conducting geomorphological studies that require placement of survey monuments, biotic surveys and boundary line surveys." APP. 126. To the extent geomorphological

survey monuments or markers need to be installed, the property owners would be paid \$250 per marker. APP. 13. The access right expires on December 31, 2021, and is subject to the following restrictions and limitations: (a) forty-eight hours advance notice must be provided to Landowners; (b) a maximum of seven entries per property; (c) no buildings are to be entered/damaged and no trees are to be cut; (d) properties are to be returned, as nearly as practicable, to original conditions; and (e) any damages caused to the property are to be repaired or fair compensation paid to the property owner. APP. 126.

STANDARD OF REVIEW

[¶14] For the purposes of entering the land for survey and limited testing under N.D.C.C. § 32-15-06, a public entity is required to show only that it is in the category of persons entitled to seek eminent domain. *See Square Butte Elec. Co-op v. Dohn*, 219 N.W.2d 877, 883 (N.D. 1974). This Court decides questions of statutory interpretation *de novo*. *See In re 2015 Application for Permit to Enter Lands for Surveys and Examinations Associated with a Proposed N. Dakota Diversion & Associated Structures*, 883 N.W.2d 844, 847 (N.D. 2016).

ARGUMENT

I. THE DISTRICT COURT PROPERLY GRANTED RIGHT OF ENTRY PURSUANT TO ESTABLISHED NORTH DAKOTA LAW.

A. The Right of Entry Approved by the District Court Complies with N.D.C.C. § 32-15-06.

[¶15] The District properly sought, and the district court properly granted, permission to enter the subject properties for purposes of conducting examinations and surveys pursuant to N.D.C.C. § 32-15-06, which provides:

32-15-06. Entry for making surveys. In all cases when land is required for public use, the person or corporation, or the person's or corporation's agents, in charge of such use may survey and locate the same, but it must be located in the manner which will be compatible with the greatest public benefit and the least private injury and subject to the provisions of section 32-15.21. Whoever is in charge of such public use may enter upon the land and make examinations, surveys and maps thereof, and such entry constitutes no claim for relief in favor of the owners of the land except for injuries resulting from negligence, wantonness, or malice.

[¶16] This Court has evaluated the application of N.D.C.C. § 32-15-06 on several occasions. In *Square Butte Elec. Co-op v. Dohn*, 219 N.W.2d 877 (N.D. 1974), this Court examined an electric cooperative's request for permission to enter certain lands for purposes of making surveys and conducting soil testing in conjunction with a proposed electrical line. *Square Butte*, 219 N.W.2d at 884. The Court held that the electrical co-op had established sufficient grounds for its requested order permitting entry. *Id.* In doing so, the Court concluded that the controlling factor governing entry pursuant to N.D.C.C. § 32-15-06 is whether the requesting party is in a category of persons entitled to use the power of eminent domain. *Id.* at 883. The salient facts identified by the Court in *Square Butte* were

that the applicant: (a) was an electric cooperative; (b) was authorized to do business in North Dakota; (c) enjoyed the privileges of eminent domain; (d) planned to construct a project for which eminent domain was available; and (e) resolved that conducting the surveys and testing were necessary for the underlying project. *Id.* at 844.¹ The Court held that “[f]or purposes of entering the land for survey and limited testing, it is our view that Square Butte is required to show only that it was in the category of persons entitled to seek eminent domain, and that it was not required to prove at this stage of the proceedings eminent domain was proper, justified, and necessary.” *Id.* at 833.

[¶17] In the current matter, the District is within the class of persons entitled to exercise the privilege of eminent domain pursuant to N.D.C.C. § 61-16.1-09 (12), it plans to construct a flood control project (the “Project”), has resolved that it is necessary to conduct the examinations and surveys in conjunction with the Project, and sought and was granted permission from the district court to enter certain properties to conduct examinations and surveys subject to specific limitation and

¹ Subsequent to the *Square Butte* decision, the North Dakota Attorney General examined the application of the *Square Butte* and N.D.C.C. § 32-15-06 to water resource districts. *See* Attorney General Opinion 76-76 (May 17, 1976) (Index # 30). The Attorney General opined that the eminent domain authority of a water resource district must be read in conjunction with N.D.C.C. § 32-15-06 and concluded that water resource districts have the right to enter upon private land to conduct examinations and surveys relating to flood control projects. *Id.*

restrictions. APP. 121-126. Here, the Application comports with the requisites of N.D.C.C. § 32-15-06 and this Court’s interpretation of the same.

[¶18] In *Alliance Pipeline L.P. v. Smith*, 833 N.W.2d 464 (N.D. 2013), a natural gas provider filed a petition to enter the defendants’ lands to conduct examinations and surveys needed to obtain approval for a proposed pipeline. *Alliance Pipeline*, 833 N.W.2d at 467. The district court concluded that the natural gas provider was within the category of persons entitled to use eminent domain, and accordingly, it was authorized to enter the land to conduct pre-condemnation examinations and surveys. *Id.* This Court affirmed the district court’s order, and also reaffirmed the decision in *Square Butte*, that “makes clear that a proceeding for a court order authorizing examinations and surveys under N.D.C.C. § 32-15-06 is ‘preliminary to the condemnation action itself’ and is not a condemnation proceeding.” *Id.* at 470.

[¶19] In 2016, this Court affirmed the District’s right of entry pursuant to N.D.C.C. § 32-15-06 to conduct certain examinations and surveys for this Project, including drilling holes to obtain subsurface soil samples. *See In re 2015 Application for Permit to Enter Lands for Surveys and Examinations Associated with a Proposed N. Dakota Diversion & Associated Structures*, 883 N.W.2d 844 (N.D. 2016) (*Cass County Joint Water Resource District v. Brakke ,et al.* (referred to herein as “*Brakke*”)). The district court in *Brakke* found the entry to be “minimally invasive” and, similar to the court in *Square Butte*, restricted the scope of the access and imposed “other protective conditions,” including no entry into

buildings, payment of \$250 for each soil boring taken, a return of the property to its original condition (as nearly as practicable), payment for any damages to the property, and at least 48-hour advance notice to the property owner. *Id.* at 848-49. This Court affirmed the district court’s right of entry orders in *Brakke* and rejected the notion that conducting soil borings and sample was a taking of private property. *Id.* at 849-50.

[¶20] In the current matter, the district court conditioned the limited right of access in a manner consistent with the limitations and restriction imposed in *Square Butte* and *Brakke*, and, in addition, imposed a maximum number of times the properties could be entered to complete the examination and surveys. APP. 126. The district further noted that “this Application will be the last right of entry application made for these properties” and that while permission was sought to “enter through the end of the year 2021” [in the event of flooding situation requires further analysis and verification of river conditions], the examinations and surveys are expected to be “done sooner than that.” APP. 123. The district court concluded that “[c]learly this application does not constitute a taking” and that “[s]uch appears to the court to be the minimal type of intrusion authorized by N.D.C.C. § 32-15-06, and not a taking as claimed by certain landowners.” *Id.* The district court properly approved the Application permitting the District limited right of entry onto Landowners’ property.

B. The Limited Right of Entry Authorized by the District Court Does Not Affect a Taking of Landowners' Private Property.

[¶21] The limited right of entry granted to the District is a necessary part of the process of examining and verifying baseline river conditions and confirming (and refining, if possible) the scope and extent of the easement areas to be acquired as necessary for long term monitoring of rivers conditions. Such activities are authorized under N.D.C.C. § 32-15-06. The limited entry (limited both as to number and duration) is not a taking of Landowners' property as Landowners allege and is not an attempt to circumvent or deprive them of just compensation. The entry is preliminary to a future eminent domain action, not the taking itself. Landowners will not be deprived of just compensation for any easement rights ultimately determined to be needed for the Project.

[¶22] Landowners argue that a "successive" right of entry (a reference to the prior right of entry granted in 2017) renders the current right entry improper and a taking. *See* Appellants' Br. at pp. 11-13. The right of entry statute does not limit the number of examinations and surveys or prohibit a subsequent entry to conduct the same. Here, the subject of the examinations and surveys are flowing bodies of water (Wild Rice and Red Rivers). The District has not been able to view the property since either 2017 or 2018. This entry is intended to be the final step and final entry (barring a flooding event) to verify the conditions and confirm and refine what property rights may need to be acquired to monitor impacts of the Project on the waterways. A subsequent or "successive" entry, which were also minimally

invasive and limited in duration, does not effectuate a taking of Landowners' property.

[¶23] Landowners argues that entry and use of survey markers or monuments is greater than the “scope of use” allowed by N.D.C.C. § 32-15-06 and constitutes a “permanent” physical invasion or occupation. Appellants' Br. at pp. 13-16. Landowners, citing to and relying on *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), argue that survey monuments are a physical occupation that “amounts to a taking without just compensation.” See Appellants' Br. at ¶25 (quoting *Loretto* that “when the physical intrusion reaches the extreme form of a permanent physical occupation, a taking has occurred”). This Court's precedents belie the notion that the examinations and surveys constitute a taking. See *Square Butte* and *Brakke*.

[¶24] Landowners' arguments further fails because the right of entry is not a permanent physical occupation of Landowners' property, but rather is limited in scope and duration (and subject to further restrictions and protections discussed above). The right of entry is limited in the total number entries that can be made and terminates on a specific date. It is not “long term” monitoring as the Landowners assert. See Appellants' Br. at pp. 16, 19. Moreover, the performance of surveys is expressly authorized by N.D.C.C. § 32-15-06, and the use of survey markers (which are relatively small monuments) is necessary and a required tool to the performance of surveys. See N.D.C.C. § 47-20.1-10. The District is paying all property owners, including Landowners, the sum of \$250 for each survey marker

that is installed, and as indicated above, Landowners will receive just compensation for those easement rights confirmed to be necessary for the Project that are later acquired through eminent domain. To the extent easements rights are necessary for long-term environmental monitoring, they will be acquired and just compensation will be paid. The right of entry here, however, is preliminary to the eminent domain action, not the “taking” itself.

[¶25] Landowners reliance on *Loretto* is misguided. First, for the reasons stated above, the instant right of entry matter is not a permanent occupation. Further, *Loretto* did not involve a significant flood control project and examinations and surveying of waterways pursuant to a right of entry statute. Instead, *Loretto* involved a challenge to the New York state statute that allowed, without just compensation, the installation of permanent cable facilities (large cable boxes and cable lines) on the roof of plaintiff/landlord’s apartment building for an indefinite period of time. 458 U.S. at 420. *Loretto* did not involve a limited right of entry preliminary to future eminent domain action.

[¶26] The district court correctly determined that District’s limited right of entry onto Landowners’ property is “minimally intrusive” and for legitimate purposes consistent with the right of entry statute., and accordingly, is not a taking of private property. The only claim for relief available under the law relating to said surveys is for “injuries resulting from negligence, wantonness, or malice.” N.D.C.C. § 32-15-06.

[¶27] Landowners make reference to 2019 correspondence from the District proposing a voluntary easement agreement and assert that the District should have commenced eminent domain proceedings when the voluntary agreements were declined by the Landowners. *See* Appellants’ Br. at p. 19. As the district court found, there is nothing unusual or sinister with the District securing additional property information after voluntary agreements are refused. APP. 123. If a voluntary agreement is objectionable or unacceptable to a property owner, it is not unreasonable to examine or reexamine the property at issue and verify or refine the scope and extent of potential easement rights to be acquired. In fact here, Landowners assert that the “easement solicited [in 2019] by the District included curtilage near Landowner Cash Aaland’s house/residence” which Aaland asserts invokes Fourth Amendment concerns. *See* Appellant Br. at ¶ 31. This claimed curtilage concern is an example of the type of issue that can be examined and addressed through the right of entry granted in this matter. The District’s entry is for legitimate purposes authorized under the statute.

[¶28] In this proceeding, the District was only “required to show . . . that it was in the category of persons entitled to seek eminent domain, . . . it was not required to prove at this stage of the proceedings eminent domain was proper, justified, and necessary.” *Square Butte*, 219 N.W.2d at 883. The District has satisfied that N.D.C.C. § 32-15-06 allows the limited examinations and surveys sought in this proceeding. The entry is expressly allowed by statute, and the district court did not err in the District a limited right to enter Landowners’ properties.

CONCLUSION

[¶29] For the foregoing reason, the District respectfully requests that the orders of the district court granting a limited right of entry onto Appellants' properties for purpose of making examinations, surveys and maps pursuant to N.D.C.C. § 32-15-06, be affirmed.

Dated November 24, 2020

Rob A.Stefonowicz

Rob A. Stefonowicz, ND ID #05740
LARKIN HOFFMAN DALY LINDGREN LTD.
8300 Norman Center Drive, Suite 1000
Minneapolis, Minnesota 55437-1060
TEL (952) 835-3800
FAX (952) 842-1718
rstefonowicz@larkinhoffman.com
Attorney for Plaintiff and Appellee

CERTIFICATE OF COMPLIANCE

[¶30] The undersigned attorney for Appellee hereby certifies that this document complies with the page limitation designated in Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure, and further certifies that this document contains fourteen (19) pages.

Dated November 24, 2020

Rob A.Stefonowicz

Rob A. Stefonowicz, ND ID #05740
LARKIN HOFFMAN DALY LINDGREN LTD.
8300 Norman Center Drive, Suite 1000
Minneapolis, Minnesota 55437-1060
TEL (952) 835-3800
FAX (952) 842-1718
rstefonowicz@larkinhoffman.com
Attorney for Plaintiff and Appellee

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

SUPREME COURT NO. 20200171

Cass County Joint Water Resource District,

Plaintiff and Appellee

v.

Cash H. Aaland, Larry W. Bakko and Penny
Cirks,

Defendants and Appellants

and

Richard and Sandra Ihland, Stuart D. Boyer and
Patricia J. Boyer, Vance G. Gylland, Thomas
Jorgensen, Brent Larson and Timothy Larson,
Mary Jo Schmid, Thomas R. Nelson and
Michelle Nelson, Jeffrey C. Shipley and Maria
Shipley, Patricia A. Rudnick, Dona L. Duffy,
Myron Ihland, Carol Sheridan, Marjorie Rieger,
Betty Jean Hulne (deceased), Gregory S. Hulne,
Jack T. Hulne, Michael J. Hulne, David A.
Hulne, Jean M. Johnson, Dorothy A. Stapleton
and Laura Aaland,

Defendants and Appellees

CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I hereby certify that on November 24, 2020, I caused to be electronically filed the **Appellee's Brief** with the Clerk of the North Dakota Supreme Court (at supclerkofcourt@ndcourts.gov) and served the same electronically and by U.S. Mail as follows:

By e-mail:

Jennifer A. Braun, Esq.
Stuart D. Boyer
Gregory S. Hulne
Sandra Ihland
Timothy(Brent) Larson
Thomas R. Nelson
Jeffrey C. Shipley
Thomas Jorgenson

officemanager@aalandlaw.com
stuboyer@outlook.com
ghulne@gmail.com
sihland@rrt.net
timothybrentlarson@gmail.com
TNelson@vhfargo.com
shipleyjeff1@gmail.com
thomas@bradford-staffing.com

By U.S. mail:

Laura Aaland
5555 171st Avenue Southeast
Christine, North Dakota 58015

Mary Jo Schmid
17385 County Road 4
Colfax, North Dakota 58018

Jean M. Johnson
223 Tenth Avenue East
West Fargo, North Dakota 58078

Vance G. Gylland
P. O. Box 35
Colfax, North Dakota 58018

Dorothy A. Stapelton
7110 Hawaii Lane
Arlington, Texas 76016

Jack T. Hulne
6506 Pinehurst Drive
Granbury, Texas 76049

Patricia J. Boyer
17105 52nd Street Southeast
Horace, North Dakota 58047

Michelle Nelson
6350 173rd Avenue Southeast
Colfax, North Dakota 58018

David A. Hulne
327 West Knights Road
Sandwich, Illinois 60548

Richard Ihland
6510 176-1/2 Avenue Southeast
Wahpeton, North Dakota 58075

Patricia A. Rudnick
Dona L. Duffy
2207 12th Street South
Moorhead, Minnesota 56560

Myron Ihland
Carol Sheridan
2021 124th Avenue
Kent, Minnesota 56553

Maria Shipley
5535 171st Avenue Southeast
Christine, North Dakota 58015

Dated: November 24, 2020

/s/ Rob A. Stefonowicz

Rob A. Stefonowicz, ND ID #05740

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

SUPREME COURT NO. 20200171

Cass County Joint Water Resource District,

Plaintiff and Appellee

v.

Cash H. Aaland, Larry W. Bakko and Penny
Cirks,

Defendants and Appellants

and

Richard and Sandra Ihland, Stuart D. Boyer and
Patricia J. Boyer, Vance G. Gylland, Thomas
Jorgensen, Brent Larson and Timothy Larson,
Mary Jo Schmid, Thomas R. Nelson and
Michelle Nelson, Jeffrey C. Shipley and Maria
Shipley, Patricia A. Rudnick, Dona L. Duffy,
Myron Ihland, Carol Sheridan, Marjorie Rieger,
Betty Jean Hulne (deceased), Gregory S. Hulne,
Jack T. Hulne, Michael J. Hulne, David A.
Hulne, Jean M. Johnson, Dorothy A. Stapleton
and Laura Aaland,

Defendants and Appellees

CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I hereby certify that on November 25, 2020, I caused to be electronically filed the **Appellee's Brief** (corrected) with the Clerk of the North Dakota Supreme Court (at **supclerkofcourt@ndcourts.gov**) and served the same electronically and by U.S. Mail as follows:

By e-mail:

Jennifer A. Braun, Esq.
Stuart D. Boyer
Gregory S. Hulne
Sandra Ihland
Timothy(Brent) Larson
Thomas R. Nelson
Jeffrey C. Shipley
Thomas Jorgenson

officemanager@aalandlaw.com
stuboyer@outlook.com
ghulne@gmail.com
sihland@rrt.net
timothybrentlarson@gmail.com
TNelson@vhfargo.com
shipleyjeff1@gmail.com
thomas@bradford-staffing.com

By U.S. mail:

Laura Aaland
5555 171st Avenue Southeast
Christine, North Dakota 58015

Mary Jo Schmid
17385 County Road 4
Colfax, North Dakota 58018

Jean M. Johnson
223 Tenth Avenue East
West Fargo, North Dakota 58078

Vance G. Gylland
P. O. Box 35
Colfax, North Dakota 58018

Dorothy A. Stapelton
7110 Hawaii Lane
Arlington, Texas 76016

Jack T. Hulne
6506 Pinehurst Drive
Granbury, Texas 76049

Patricia J. Boyer
17105 52nd Street Southeast
Horace, North Dakota 58047

Michelle Nelson
6350 173rd Avenue Southeast
Colfax, North Dakota 58018

David A. Hulne
327 West Knights Road
Sandwich, Illinois 60548

Richard Ihland
6510 176-1/2 Avenue Southeast
Wahpeton, North Dakota 58075

Patricia A. Rudnick
Dona L. Duffy
2207 12th Street South
Moorhead, Minnesota 56560

Myron Ihland
Carol Sheridan
2021 124th Avenue
Kent, Minnesota 56553

Maria Shipley
5535 171st Avenue Southeast
Christine, North Dakota 58015

Dated: November 25, 2020

/s/ Rob A. Stefonowicz

Rob A. Stefonowicz, ND ID #05740