

Landowners countersue in ongoing F-M Diversion eminent domain cases

The counterclaims allege ND landowners are not being paid for all the water that could be displaced onto their property or the resulting damages.



The Wild Rice River Structure south of Fargo on Tuesday, Feb. 25, 2025. - Chris Flynn / The Forum

By [Ingrid Harbo](#)

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FARGO — A lawyer representing landowners south of the [Fargo Moorhead Area Diversion](#) claims the Metro Flood Diversion Authority is not compensating them for the full extent of flooding and damages the project could cause.

Fargo attorney Cash Aaland represents several landowners south of the project in Cass and Richland counties who are being sued in [eminent domain lawsuits](#). With his clients,

he is in the process of filing counterclaims against the Cass County Joint Water Resource District, a member of the Diversion Authority.

The counterclaims allege North Dakota landowners are not being paid for all the water that could be displaced onto their property, or for the resulting damages, when the diversion's southern dam holds back a maximum amount of water.

"They're using smoke and mirrors to try to not pay just compensation to Richland residents," Aaland said.

The Fargo Moorhead Area Diversion is a \$3.2 billion flood control project. Once completed, it will divert water from the Red River around the Fargo-Moorhead metro during extreme floods. The project is expected to be operational in the spring of 2027.

The project has [two main areas](#): a 22-mile southern embankment — an earthen dam that will hold water south of the metro during floods — and a 30-mile diversion channel, which will transport water around the metro.

The embankment, which is being constructed by the U.S. Army Corps of Engineers, will have three structures to control the flow of water into the Red River, Wild Rice River and diversion channel.

The Diversion Authority is responsible for acquiring property rights south of the southern embankment, also called the upstream mitigation area. It works with the Cass County Joint Water Resource District in North Dakota and the Moorhead Clay County Joint Powers Authority in Minnesota to negotiate with landowners and purchase land and property rights from them.

If negotiations are unsuccessful, the joint water district and joint powers authority file eminent domain lawsuits against landowners to obtain property rights needed for the project.

Many landowners in the upstream mitigation area were offered flowage easements, which compensate them for giving the Diversion Authority the right to flood the land.

In the lawsuits, Aaland argues the proposed flowage easements for landowners he represents will not compensate them for all of the property flooded if the diversion's floodwall holds water back to its maximum capacity. By not paying for the land that could be flooded by the project, the Diversion Authority violates the North Dakota and U.S. constitutions' requirements for justly compensating land taken for public use, Aaland argues in a brief supporting a counterclaim filed in court Feb 21.

Aaland bases the claim on permit requirements for the Minnesota and North Dakota sides of the river, along with maps projecting the effect of the Diversion in the case of a probable maximum flood, or the largest flood that could happen in an area.

[Minnesota's permit](#) requires the Diversion Authority to obtain property rights for all land that will be affected when the project is operated at maximum capacity, which it says is in line with the Fifth Amendment of the U.S. Constitution and the Minnesota Constitution's Article 13, Section 4.

However, according to the project's [Property Rights Acquisition and Mitigation Plan](#), the North Dakota Office of State Engineer has defined an impact on land for the project as 0.5 feet or more of water up to the 100-year flood event, or a flood that has a 1% chance of happening in any given year.

“This is what the state engineer required as a condition of the permit,” Aaland said. “That doesn’t determine what the landowners have to be paid — it’s the Constitution.”

In Minnesota, maps show the Diversion Authority is acquiring flowage easements well into Wilkin County, around 30 miles south of Moorhead.

[Map Cemetery-Protection-Plan - Diversion Authority](#) by [The Forum of Fargo-Moorhead](#) on Scribd

In North Dakota, a majority of flowage easements are in Cass County. Flowage easements being acquired in Richland County are along the Red River or along waterways that flow into the Red River. The southernmost flowage easements in North Dakota are southwest of Christine, across the river from Wolverton, Minnesota. Wolverton is around 22 miles south of Moorhead.

Through an open records request, Aaland obtained a map from the Diversion Authority showing the effects of flooding in the case of a probable maximum flood stretching far into Richland County.

[PMF Map - Houston-Moore Group](#) by [The Forum of Fargo-Moorhead](#) on Scribd

The impacted area stretches beyond where the Diversion Authority is securing property rights to the southwest and south. Aaland suspects that map shows what would happen in the upstream mitigation area if the diversion’s gates were left closed.

The Minnesota side of the river is higher than the North Dakota side, Aaland said, meaning water will settle into the area between the Red River and Wild Rice River. He argues flowage easements in North Dakota should be acquired for land as far south as Abercrombie, around 30 miles south of Fargo.

One of the landowners Aaland represents is Riley Braaten, who owns a parcel in Cass County southwest of the southern embankment. The Diversion Authority proposed a flowage easement of around 5 acres on the land. However, the counterclaim in the case filed Feb. 21 says if operated at maximum capacity, the project would flood nearly all of Braaten's 150-acre parcel.

That filing said the landowner has and will continue to suffer damages from the construction of the southern embankment, including the loss of use of the property, diminished property value, decreased productivity on the agricultural land and a loss of income.

“It damages their value, because now they’re in a reservoir and they’ll always be in a reservoir, regardless of whether or not the Diversion Authority ever leaves the gates closed,” Aaland said.

In an emailed statement to The Forum, former Diversion Authority Director of Lands and Compliance Jodi Smith, [who now works as a consultant for the Diversion](#)

[Authority](#), said the Cass County Joint Water Resource District intends to fairly compensate landowners for impacts caused by the diversion. Taking legal action to acquire property rights through eminent domain is a last resort for the water resource district when negotiations are unsuccessful, she said.

“Ultimately, if we are not able to resolve these matters, the court will determine just compensation,” Smith said.

The Cass County Joint Water Resource District has sought to only acquire property rights necessary for the project and is mindful of landowners’ desire to have the least amount of property encumbered by flowage easements, Smith said in the statement.

“The counterclaims, as we understand them, are inconsistent with the landowners’ desires and instead seek to force acquisition of flowage easements covering more property than what is necessary for the project,” Smith said “In the event the project ultimately operates to impact more property than what is identified in the pending eminent domain actions, there is a dispute resolution process in place to address any such claims.”

The counterclaim filed in the Braaten case still needs to be approved by a judge, which Aaland anticipates won’t happen until the end of March. In the meantime, he plans to file counterclaims in more than 30 other eminent domain cases in which he represents Richland and Cass county landowners.

By [Ingrid Harbo](#)

Ingrid Harbo joined The Forum in March 2024.

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