



## City Council MEMO

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To: City of North Sioux City  
From: Administration  
Date: 10/21/2022  
Re: Update on McCook Lake Canal Project

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**Background:** The City continues to pursue various courses of action related to the McCook Lake Canal Project

- 1) The City's engineers are in possession of a set of construction standards and are in the process of reviewing them. Based on legal advice the City believes that construction standards could be enforced as a "reasonable condition" as part of the process to get an excavation permit. NO UPDATE ON THIS TO REPORT
- 2) Mike Chicoine has not rescheduled the meeting with the City's engineers. This meeting was scheduled for September 15<sup>th</sup> in order to explain the City's requirements and expectations. Based on the permit applications, the City believes that the project lies at least partially within City limits. We have been informed that Mr. Chicoine has been advised by legal counsel not to engage with the City at this time.
- 3) In response to a request for assistance from our DC elected officials, the City has heard back from Senator Rounds' office and the City is working with his staff on issues we believe exist with the US Army Corps of Engineers permitting process. The City has not heard from the offices of Senator Thune or Representative Johnson. More about the concerns with the Corps of Engineers permit process in Item #5 below. The City reached out again to Senator Rounds office via email but as of Friday October 7<sup>th</sup> has received no response. The City has received no responses at all from the offices of Senator Thune or Representative Johnson. NO UPDATE ON THIS TO REPORT
- 4) The City has reached out via email and phone and left messages for DANR Secretary Hunter Roberts to discuss the permitting for the project and to see if the department would be willing to engage directly with the public on the matter. The City received an email from Secretary Roberts who referred the matter to the Attorney General's office for comment. The City then received a phone call from Ann Bailey from the Attorney General's office. She explained that based on the information that they currently know, the project does not constitute an appropriation of water. When pressed about the fact that the canal would need to appropriate water from McCook Lake, she simply reiterated her previous statement. NO UPDATE ON THI TO PEPORT.
- 5) In the meantime, Councilman Bogenrief has had a conversation with Shannon Minerich of the DANR. She stated that the DANR issued their permit based on the Corps of Engineers issuing a permit (which is a normal procedure for the DANR). She also said that was surprised that the Corps of Engineers issued a Nationwide permit and not an Individual permit. Worth noting is that her concerns over the Corps of Engineers permitting process are identical to the issues we raised with our DC delegation. NO UPDATE ON THIS TO REPORT

- 6) The City has reached out via email and phone and left messages for GF&P Secretary Kevin Robling to discuss the permitting for the project and to see if the department would be willing to engage directly with the public on the matter. Secretary Robling reached out to the City on September 27<sup>th</sup> to discuss the matter. He explained that the department has incomplete information to make any sort of determination and provided the following statement: *“The Department has received the application from Mr. Chicoine on the proposed canal. GFP staff are working with other agencies, reviewing relevant documents, and preparing a recommendation. We do not take this request lightly and the Department is committed to understanding the issue in its entirety before making any decisions.”* He also assured the City that we would be consulted before any final determination was made. City staff reached out to Sec. Robling during the week of October 21 for an update on the status of Mr. Chicoine’s application. No response has been received at the time of this update.
  
- 7) The City is also exploring what restrictions or requirements may legally be placed on the proposed project through its zoning process. Currently there is no zoning classification of property in the City which would explicitly allow for such a project, with or without a conditional use permit. The City Attorney’s office is researching this issue further. NO UPDATE ON THIS TO REPORT
  
- 8) The City is hearing from multiple sources that should any details about the project change or be proven to be inaccurate, and if any permit was in part based on these details, that permit would no longer be valid, and the process would need to start over. The City is aware of potential changes from what appears on the permit applications as well as details which may be inconsistent or erroneous. NO UPDATE ON THIS TO REPORT