



City Council MEMO

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To: City of North Sioux City
From: Administration
Date: 6/2/2023
Re: Update on McCook Lake Canal Project

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 15th 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. The Mayor and members of the City Council met with a representative of Mr. Chicoine today after they reached out to the City. NO UPDATE ON THIS TO REPORT
- 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 7th has received no response. The City has received no responses at all from the offices of Senator Thune or Representative Johnson. The Lake Association recently sent letters to our DC elected officials in the hopes of enlisting their help in the matter. The City reached out to Senator Rounds office the week of 12/12/22 for an update but has received no response. EDC Director Andrew Nilges reached out this week to his contacts to start a discussion about the canal. The Lake Association has heard back from Representative Johnson's office. They spoke with the US Army Corps of Engineers and this was the Corps' response: *"The canal was not within our federal jurisdiction, as it was constructed in the uplands, and where it entered the lake, clean excavation methods were used. In short there was no fill activity, and thus no Corps jurisdiction. The riprap at the canal entrance was the only thing needing a Corps permit. (Note that the permit area did include the canal location for the purpose of complying with ESA and 106). However, for purpose of the application the only fill into waters of the U.S. for this project was the placement of riprap on the lake side of the berm breach."* Representative Johnson's office does not believe there is a path forward for them to assist us at this time. 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 THIS TO REPORT.

- 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 27th 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. Sec. Robling has informed the City that he was planning a site visit during the first week in November and that he had no updates at this time. Secretary Robling met with members of the Lake Association on November 21st at 2 PM. NO UPDATE ON THIS TO REPORT
- 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
- 9) A hydrological study is now under way with soil test borings being performed on November 3rd. This is consistent with conversations the City has had with GF&P Secretary Robling that additional studies and tests would need to be performed before GF&P could begin to assess the potential impact of the project. NO UPDATE ON THIS TO REPORT
- 10) The McCook Lake Association is working with legislators on a bill which would establish rules for the approval of channels off of bodies of water. House Bill 1134 was heard in committee this week but was defeated. However, members of the House committee were highly critical of the US Army Corps of Engineers, Game Fish & Parks, and the Department of Agriculture and Natural Resources for their handling of the matter. They also instructed Game Fish & Parks to engage all parties to ensure that any proposed project protects the lake long-term prior to issuing any permits. NO UPDATE ON THIS TO REPORT

11) The Department of Agriculture & Natural Resources' Water Management Board will be conducting a hearing on July 12, 2023 at 10:00 AM on an application by Mr. Chicoine to appropriate water from his existing well to fill his proposed canal. Written petitions were being accepted until June 12th.