

BURLEIGH COUNTY WATER RESOURCE DISTRICT AGENDA

September 11, 2012 - 8:00 a.m.

Tom Baker Meeting Room

City/County Building - Bismarck

1. 8:00 AM - Call to Order
2. Roll Call (Fleck, Royse, Backstrand)
3. **Approval of Minutes of (8-15-12)1-10**
4. **Approval of Minutes from Special Meeting (8-22-12)11-15**
5. Financial Reports
 - End of August Financial Data..... 16
6. **Approval of Bills 114**
7. McDowell Dam Recreation Area Updates
 - Water Permits – Update (if any)
 - Water Quality Inquiry and Response - NDDH
 - **Boy Scouts Event – Boat Access to Reservoir – BP&RD..... 18**
 - **Re-Approval of Bismarck Parks & Recreation District Agreement with edits..... 19-24**
 - McDowell Dam Expenses..... 25
8. Drainage Complaints
 - Bitner & Smith/Barbere – Letter to Marcus Hall regarding obstruction removal.....26-
 - Eldin Spier/UTTC – City review ongoing
 - Sanferd Mees/Ed Jaszowskiak – Removal of Obstruction Order
 - Letter to Roger Branning27-30
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 - Statement of Agreement Signed by Mr. Koppang 34
 - Response email from Mr. Emery
 - **Arnold Schieve – Drainage Complaint.....36**
9. Legal Issues
 - Property Acquisition for Hogue Island Flood Control Project
 - Sovereign Lands NDCC Memorandum – David Bliss
 - **Request meeting with ND State Engineer regarding ownership status of eroded lands**
10. Missouri River Flood Hazard Mitigation Studies
 - Letter to ND State Engineer requesting funding assistance.....37-38
 - Missouri River Correctional Center FHMP #23 – Schedule Public Informational Meeting
 - Sibley Area FHMP #26, 27 & 30 – Schedule Public Informational Meeting
11. **Comments and Discussion from Public**
12. Break
13. Fox Island (FM #19 & #21) – Project Assessment Report
 - Public Informational Meeting - Contacts with residents and petitioners
 - Harbor Drive Flood Control Project
 - Letter to Riverwood West Homeowners Association – Project Alternative39-41
 - On hold pending receipt of project petition

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• Work Order #12 - Revision	
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• Email from Ray Ziegler re: Non Structural Development Permits	
• Progress Report on Construction Activities	
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15. Hogue Island Flood Control Project (FM #39) – September 30 th Deadline	
• Work Order #17 – Restarted	
• Alternative project alignment reviews underway	
• Acquisition Landowner meeting summary	
• Contacts with landowners with proposed levee – on going	
16. Burnt Creek Flood Control Repair Project (FM #7) – Update	
• Agreement for Cost Share with NRCS signed at 7-10-12 meeting	
• Status of funding is uncertain – NRCS Federal Year End Cuts	
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• Work order No. 19 on hold until formal agreement is received from the Health Department	
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18. Sunny View Flood Control Project – Update	
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• Letter dated 8-6-12 from ND Dept. of Health.....	53-55
• Signed copy of Financing Resolution.....	56-66
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• A BCWRD Statement on Authority, Powers and Responsibilities	70-78
• New Board Appointments	
• Apple Creek Bypass Project – Marcus	
21. New Business	
• Board Procedures	
• Stormwater Management Plan Review Policy	
22. Correspondence or Document Information	
• City Final Plats - emailed	
○ Airway Avenue Addition	
○ Harvest Ridge Subdivision	
○ Boulder Ridge 5 th Addition	
• City Recorded Final Plats - emailed	
○ Northern Sky Addition	
○ Promontory Point IV Second Replat	
• Resubmitted/Revised Plats - emailed	
○ Whispering Ridge 1 st Subdivision	
○ Kolbo 3 rd	

- City Recorded Minor Subdivision Plat - emailed
 - Ridgefield 2nd Addition
- City Preliminary Plat - emailed
 - Pine Meadows Third Subdivision
 - Boulder Ridge Commercial Park First Addition
 - Apple Creek Ridge Subdivision
- Annexation - emailed
 - Boulder Ridge Commercial Park First Addition
 - Lot B of the NE1/4 of Section 23, T139N-R80W, Hay Creek Township
- Private Street Name Designation - emailed
 - Lots 2-10, Block 1, Kilber North Addition
 - Lot 1-9, Block 1, Ridgefield Addition as Calgary Loop
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23. List of Bills 114

24. Next Meeting: Tuesday, October 9th, 2012

25. Adjourn

Note: Bold Items Require Board Action



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Interim Chairman Terry Fleck called the meeting to order at 8:02 a.m.

Present: Interim Chairman Terry Fleck, Ken Royse, Cary Backstrand, Chairman Doug Schonert, Burleigh County Commission, Dave Bliss, Bliss & Stebbins Law Firm, Michael Gunsch, Houston Engineering, Inc., and Mona Livdahl, Personalized Management Services, Inc.

Resignation of Chairman Narum: Ken moved that Terry Fleck fulfill the term of Chairman until the next board election. Cary seconded. Motion carried.

Resignation of Reinold “Rynee” Kellar: A letter was received on today’s date noting Rynee’s resignation is effective August 16th, 2012 due to health issues.

Reappointment of Portfolios: (Rynee and Gailen) Cary moved that we keep the portfolios that we have until such time as we have a full board appointed and then do a complete organization, but in the interim he will take the McDowell Dam portfolio. Ken seconded. Motion Carried.

Minutes from July 10th Meeting: Cary moved to approve the minutes as printed, Ken seconded. Motion Carried.

Special Meeting Minutes July 17th: Cary moved to approve the minutes as printed, Ken seconded. Motion carried.

2013 Proposed Draft Budget: The 2012 budget was at \$1.2 million and the proposed 2013 budget is for \$6.6 million. Michael reviewed the budget items noting that we incorporated the projected special assessment district numbers including: Sunnyview, Fox Island, Harbor Drive, Hogue Island, Missouri River Correctional Center, Burnt Creek Flood Control and Apple Valley Cooperative. Engineering Administration has been added as a new line item this past year which includes writing letters, meetings, drainage complaints, etc.. Legal fees are listed as a separate line item, as currently all legal fees are listed as one item however they can be billed separately to individual projects. Historically the projects don’t always develop in the year planned, so the Board doesn’t always expend its budgeted monies. Chairman Schonert noted there has been talk of hiring an engineer for the County to assist the Board and asked if the Board has a line item for this. Gunsch noted nothing would preclude the Board from using those monies from the Engineering Administration category or others to do so. Cary moved to approve the proposed budget for submission to the County Commissioners and that the Chairman and Engineer in consultation make minor adjustments is necessary based on the discussion, and that the Proposed Budget is presented by Ken at the County Budget meeting. Ken seconded. Discussed the project carry over funds of \$906,291. It was noted the total end budget at the bottom or net change is money taken from reserve. Ken felt that if we have carry over money, do we then need to request extra funds if it is in our budget as a reserve. It was noted that we do not have projects with designated carry over money at this time. There is approximately a 2 mill reserve at 2013 year end we it would be around one mill. Chairman Fleck called for a roll call vote:



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Backstrand: Yes

Royse: Yes

Fleck: Yes

Motion carried.

Bills: Cary moved to approve the bills as amended (added Bismarck Parks and Rec and Rynee Kellar) in the total amount of \$10,927.30. Ken seconded. Motion carried.

McDowell Dam:

McDowell Dam & Bismarck Parks & Recreation Draft Agreement: The current management agreement that the BCWRD has with the Bismarck Parks & Recreation District is effective through December 31, 2012. A new revised agreement has been provided. Dave Bliss reviewed the agreement and felt the indemnification provision looks good noting this contract is good through 2016. **Cary moved to approve the Draft Agreement as provided and to authorize our Chairman to sign. Ken seconded.** Ken noted that typically during the budget process we get quizzed on the 25% administrative fee. Greg Smith, Bismarck Parks & Recreation District noted he could justify it with various personnel assisting with the McDowell Dam, but noted that at this time they do not have a system in place to track these hours. Greg noted that he was not involved in the original agreement and was not sure where the 25% came from, but noted that they will try to track it better. Greg noted they also have risk management training which is included in these numbers. It was felt that this amount was not a profit maker for the Bismarck Parks & Recreation District, however felt that if we needed to cover actual costs there would need to be a way to track them. Ken noted he is comfortable with it, however noted we need to come up with a more clear cut way to do this. Terry noted we should leave this in Bismarck Parks and Recreation District's hands to find a way to track it for the future. A roll call vote was taken:

Backstrand: Yes

Royse: Yes

Fleck: Yes

Motion carried.

McDowell Dam Proposed Budget 2013: Cary moved that we accept the statement of revenue and expenses for McDowell. Ken seconded. A roll call vote was taken:

Backstrand: Yes

Royse: Yes

Fleck: Yes

Motion carried.



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O&M Inspection of McDowell Dam: Mike reviewed noting the NRCS conducts yearly review and a few maintenance recommendations were provided, which typically are taken care of by Forrest Ecklund. Cary asked about the state inspection of McDowell as they do it every 5 years. Michael noted it was completed last year.

Drainage Complaints:

Bitner/Smith: Cary reviewed the complaint noting that there are two parts to this complaint. One is the landowner complaint with Mr. Barbere but the other is an obstruction along the east side of 80th Street south of Apple Creek Road and noted that they met with Marcus and the Apple Creek township board. Cary handed out a statement to be sent on behalf of the BCWRD wrote to Mr. Bitner and the township board. **Cary moved to accept this statement as the framework for the letter based on Dave Bliss' review and have the Chairman of BCWRD sign noting that the BCWRD would participate in the removal of sediments from within the channel in the amount of \$500; with the township responsible for the remaining balance. Ken seconded.** Cary also commended Commissioner Brian Bitner for being patient in this process and not throwing his weight around as a County Commissioner. **Motion carried.**

Eldin Spier: Cary noted we have been working with Mel Bullinger, City Engineer on this issue. Michael noted that when United Tribes was expanded their campus and there are limitations on where they could put the storm water. They initially constructed an infiltration pond as to where the water can go but due to the saturation and high groundwater during the last few years, it is full. Michael noted that United Tribes is also expanding and increasing runoff into the pond. Discussions have been ongoing with the City and noted that the capacity that was intended to have does not exist and the functionality and impacts to the airport operations area is also an issue. It is an ongoing review and the City will continue to review further. It was noted that the pond that is there was intended to be a temporary measure. Michael noted as for their expansion funding for UTTC has been held up in congress so they have not grown as expected. The issue will be tabled until we work further with Mel Bullinger and the City. Michael noted within the next few weeks a sit down discussion could be held with Mr. Spier, Cary and Mel. Mel also noted at this time that they are working with the engineering consultant for UTTC.

Emery Koppang draft: Cary noted that we have been working as mediator with both parties and have come up with a plan and agreement that was acceptable to both parties. Michael noted that in reviewing the draft the Koppang's requested a statement be added "and the project be completed by a licensed contractor". **Cary moved to approve the letter and agreement be sent to the parties as amended. Ken seconded.** Dave noted that the final paragraph of the agreement will be used in future agreements noting that they are unable to call members of the Board as a witness in a civil trial. Ken asked if we are able to do this, Dave noted as a mediator we can do this. **Motion carried.**



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Sanferd Mees: Mr. Mees was present and informed the Board that Mr. Jaszowski wants to put rocks in the roadway which will hold water on Mr. Mees property. Cary noted he agreed but at the present time Mr. Jaszowski is building a road adjacent to the quarter line on his property and has so far constructed around 500 feet, but his intent is to build it further into the area. Cary noted as a rock riprap Texas crossing if he blocks it, we will get a complaint from Mr. Mees but until he does it, we can't do anything. Cary read the letter that was written requesting our attorney to send and to forward to Mr. Jaszowski. **Cary moved that the BCWRD Order Mr. Edward Jaszowski to remove the obstruction to the watercourse by removing the fill material causing the obstruction or installing a drainage structure at the natural overflow elevation with an opening of not less than that provided by a 30 inch culvert, and further, that Mr. Jaszowski's private roadway project be constructed in compliance with Burleigh County Ordinance Article 21, and that the BCWRD Attorney Dave Bliss draft the order for signature by the BCWRD Chairman. Ken seconded.** Ken asked if Cary about the culvert size. Cary noted the area itself is not that large, so an 18 or 24 inch culvert normally would be adequate, but the main problem is the Apple Creek overflow so a 30 inch culvert would be minimum. Michael noted the natural drainage in that area is not that large and feels 30 inch is adequate. **Motion carried.**

Comments and Discussion from the Public:

Duwayne Ternes: Mr. Ternes discussed the proposed levee in the Fox Island area. Mr. Ternes noted they have two groups, one of which is gathering a petition (which was submitted) because of the levee position. Some of the questions that the residents have are related to the repayment or relocation of underground heat sources, swimming pools, removal of trees, sprinklers, etc. Sod is another issue; Mr. Ternes felt that if they sodded their lots, they should be sodded not seeded, also noted that he has rain bird heads on the sprinkler system and wants to know if those will be replaced as they were – in kind. Mr. Ternes felt that site to site visits should be made before bidding the project. Mr. Ternes also felt that contingencies are an issue, the residents want the contractors to know what they are to do and do it, asked that the bid be specific.

Mr. Ternes also felt that there is a lack of communication, an email goes out to Mike Eggl but it does not go out to all the people, some of the residents are feeling they are being left out in the dark noting that we need to come together and get this done. Chairman Fleck asked Duane what it is that they would want. Duane asked that we have someone from HEI to do a walk-through of all the yards being affected, noting that he wants his yard back the way it is now. Mr. Ternes noted he does not want the project stopped just wants more information on the impact areas. Chairman Fleck noted our job is to take care of our constituents. Michael added that the most complex issue is the Board is charged with developing the project, and is not proposing the project. Michael discussed the contingency noting we are not yet into preliminary design as we



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have not been charged with taking it to that level yet. Michael noted that our recommendation based on the public information meeting was to get additional comments from the public, if the Board chooses to meet with all those residents to find out what the issues area that is a good step, but when we get a petition that drops the project for those areas that requested removal. Michael felt that if the residents are interested in the project and need assurances, if the Board directs that process to occur we can do that. Chairman Fleck noted the Board will revisit this issue this morning and will get back to Mr. Ternes with our plan.

Hogue Island: Jerry Rodgers was present and requested to be separated from the acquisition of the four homes at Hogue Island as long as there was no detrimental effect to the purchase of the other homeowners. Chairman Fleck asked to get this in writing. Mr. Rodgers noted that Mr. Olson is no longer representing the group. Dave asked Mr. Rodgers to put his request in writing and present it to the Board.

Heather Magnus also asked to be separated from the project as well without affecting the other homeowners. Dave questioned if this does have a detrimental effect on the others if they would change their mind. Mr. Rodgers noted they will be respond at such time as they find out that determination, if it will or will not affect the other landowners. Dave asked to get the request in writing. Chairman Fleck noted at this time we will receive their request.

Recessed at 9:37 a.m. Reconvened at 9:45 a.m.

Hobson Brown Drainage Complaint: Michael noted that Craig Odenbach from HEI went out and noted he did not find any water in the wetland or anything indicating a violation of the permit. Michael asked that the BCWRD send Mr. Roger Branning a letter noting we did not find any evidence relative to the violation of the permit that supports his complaint and subsequently this Board has nothing to act on. **Cary moved that we send a letter to Mr. Branning dismissing the complaint and that we have our engineer, Michael draft the letter. Ken seconded. Motion Carried.**

Legal Issues:

A letter had been sent to John Olson. Dave noted that his letter has been superseded by the severing of Mr. Rodgers and Mrs. Magnus today and asked that the Board go into special session to discuss this and properly respond to their request. Fleck noted he will have Mona doodle a time frame whereas the entire board can attend a special meeting.

Missouri River Flood Hazard Mitigation:

Missouri River Correctional Center: Michael noted he spoke to Dave Krabbenhoft with the MRCC. Mr. Krabbenhoft noted they do not have adequate funds available at this time and are putting that in their request for funds the next legislative session in January. Michael noted it



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may be an advantage to do a mailing with a status update to the residents. Marcus Hall strongly recommended a public informational meeting noting it is a fear of people not knowing what is going on. Michael noted the Sibley Island meeting should be held sooner as well. Chairman Fleck noted that we need to have Marcus attend so that we show that work on these various projects is being tied together. Chairman Fleck felt that the citizens are not connecting the dots as to who all is working together. Michael will work with Marcus on this whether it will be a full mailing to the residents or just a public notice and advertisement. Michael asked for, and received, a general consensus on MRCC and Sibley meeting in late September, early October.

Fox Island:

Project Assessment Report: Michael reviewed noting that the Riverwood West Homeowner's Association has taken it upon themselves to put together what they want as a project and forward it to the BCWRD. The interior roadway can be raised to protect the properties inside; the homeowners discussed raising Mills Avenue which benefits everyone with the exception of the SouthPort people. The raising of Mills Avenue would be charged to the Riverwood West Homeowners Association. Michael reviewed the other project components. Michael noted we could notice again hold a public informational meeting at the City County building, if the project proceeds it would then go to a public hearing to vote on the assessments. The O&M would no longer be the board's as it is a roadway system versus having a levee. Ken questioned why the board needed to be involved, Michael noted the involvement was from a cost share with the State Water Commission. Michael noted his recommendation is for the board to request this group to petition the Board for a project and define what they are looking for. Chairman Fleck felt that we need to have those public information groups to get the information out as to what the Board role is versus the homeowners. Michael noted Lance Boyer has been instrumental in getting this going and having the neighborhood discussions. Chairman Fleck discussed the need to educate and inform the homeowners so they understand the process.

Michael suggested the Board prepare a summary of what they understand the residents want, and then have them provide a petition to define the project. Marcus noted that we may need to separate the projects as it could get held up with costs due to federal monies involved.

Segment D and E of Fox Island (DuWayne Ternes) area: Michael noted that 23 of 31 residents or lot owners have petitioned to let us know we will not be granting an easement for the project. Michael noted that we need to find out if they are not willing or want to renegotiate. If they are not willing to participate, then the project goes to Marcus to allow the raising for the roadways. Ken asked if we need to meet or if the issue is dead in the water at this time. Cary asked for a map showing who signed the petition and where these residences are located. Michael asked that we let those who signed the petition know that if we don't go with the levee project, they will not be a part of the flood protection. The Board discussed ending the project based on the originally submitted petition. By consensus Michael was directed to work with Marcus on the



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alignments. They will have a consensus formed by October as to what to do and project direction (Mike and Marcus). Michael noted we will have additional costs on work order perspective as all this work is outside the current scope of services. It is also hard to project where the end project is going to be.

Hogue Island Bank Stabilization: Michael noted he is working on a blanket draft for authorization to install bank protection. A public informational meeting was held on site on August 9th with the Corps of Engineers and their contractor, it was well attended with approximately 35-45 people.

Email from Ray Ziegler re: non structural permits: Michael noted he will discuss it further with Ray Ziegler on the NOI's (Notice of Intent). Michael added that this is the contractor's issue, not the BCWRD's issue. Michael also noted the Contractor has requested that HEI assist with the survey locates for the project and some contact information with the residents. He has visited with the COE and they were ok with HEI doing this but from a disclosure perspective Michael wanted to know if the Board is ok with them working for the Contractor. It was the consensus of the Board that it is ok and not a concern.

BCWRD Statement on Authority, Powers and Responsibilities: Dave Bliss noted that he would prefer to look at it again and asked that we table until the next meeting. Dave noted he will present as agenda item next meeting.

Removal of Pioneer web Email: Mona noted that this account was set up for the BCWRD in 2009; we now have that capability with our website and will no longer be using this email account. **Cary moved that we remove email info@bcwrdd.org, Ken seconded. Motion carried.**

Board Procedures: Discussed motions that were made and had procedural irregularities. It was the Board consensus to table this due to time restraints and revisit at September meeting.

Hogue Island Flood Control Project:

Michael noted this will be on the agenda for the special meeting as to our options, and now that we have had the withdrawal of two parties. Michael also discussed the statute which ostensibly regulates avulsion in a navigable or non-navigable stream bed. If a river or stream, navigable or not, carries away by sudden violence a considerable and distinguishable part of a bank and bears it to the opposite bank or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof. If the owner does not claim it within one year, since the state owns the bed of the river, from a project perspective, if you were to build a levee you need to build a portion of that levee in the scour area or potentially on state land. It appears the Board needs to go on record prior to October to lay claim. Bliss noted when the Board has the special meeting we can articulate what we want to do at that time. In North Dakota there is very little case law on these issues. Until the issue is appealed to the Supreme Court for a decision it is unclear what the law



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means. Chairman Fleck noted we need to first have FEMA's official flood date as declared, as that may apply to the question as well. Mr. Jerry Rodgers noted that the end of September was the official end date. Mr. Rodgers also asked to sit down and have a discussion with the water board, the state, etc. as to what this means.

Burnt Creek Flood Control Repair Project:

Michael noted he does not have any updates at this time; he will put in a work order to gather the required survey data for design purposes.

Hay Creek Sediment:

Michael received a call from Mike Ell requesting that we downsize the budget and scope of work to \$9,000 for the project. Michael will provide a revised Work Order # 19.

Sunnyview:

Michael noted that additional work on the project reconfiguration is ongoing and will continue to update the Board.

Storm Water Management Plans:

Chairman Fleck asked Michael to discuss with Marcus to see if he has any issues, noting that if Marcus wants Michael to review he needs to ask. Michael noted he briefly looks at these as a firm but not for the Boars as they have requested him not too. He also noted that this Board specifically asked to get copies of the Storm Water Management Plans so they could review and comment. Cary stated that we need to discuss with Marcus and let us know if he is reviewing and get his input. Noted we need to have this discussion with Marcus as well as with Chairman Schonert.

Michael noted that as part of Board procedures and the Work Order #1 discussion, HEI needs to find out what the County wants us to deal with develop a more formal procedure for this work. Cary and Michael will discuss this issue with Marcus.

Apple Valley Cooperative Lagoon Project:

Kevin Glatt asked to be part of this discussion and was present. Gunsch noted everything was ready for bid in 2010-2011 – and due to the flood, voting on property taxes, etc. the project was delayed, but recently advertised. The information was then provided to the Health Department and they required additional information be place in the advertisement, the advertising was pulled, we are now advertising. Completion date has been pushed back to June 2013. The AVC is looking at the water quality for discharges and a construction access point. The next piece is the assessment piece noting Kevin, Scott Wagner and Michael have exchanged emails on the



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assessment costs and financial resolution, but there is no final cost amount. Michael noted the Board has a Financing Resolution in front of them and discussed paying and assessing the landowners in late 2013 after all costs are known. Kevin Glatt expressed concerns that if the assessment is placed this year without final costs being in place, he does not want to be caught in the middle. In the event a landowner pays it off and a refund is to be given and the landowner sells, who will get the refund? Chairman Fleck asked for a viable solution. Kevin asked that we don't certify assessments costs until all assessment costs documented and final. Currently the only option we have is to incur the costs and when we finalize cost and close out the project it is then assessed to the residents. Ken Royse left during the latter part of the discussion, so the Board did not have a quorum to pass the financial resolution. It will be considered at the special meeting.

Solicitation of Views:

Michael reviewed noting that there are concerns of things being built without discussing the impact on the bank stabilization easements. Discussed creating a GIS application to locate and map the easements so that residents are aware of their location. It was noted the original bank stabilization easements are recorded and on the deeds, but not contained on the subdivision plats. Michael noted we should discuss this issue with Chairman Doug Schonert as there is value to a joint request to the State Water Commission to put the necessary information together and provide the mapping to locate these easements. Discussed letting Michael discuss with Chairman Doug Schonert and then report back at the next meeting. Michael suggested that the State Water Commission be requested to either complete or possibly provide funding to complete this task.

Discussed resolutions for Rynee and Gailen and their years of service. Dave Bliss will prepare these and send out.

Next Regular Meeting Tuesday, Sept. 11th.

The meeting adjourned at 11:43 a.m.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Mona Livdahl".

Mona Livdahl
BCWRD Secretary

Burleigh County Water Resource District Meeting

Members of the Public in Attendance Date: August 15, 2012

NAME - PLEASE PRINT	ADDRESS/COMPANY REPRESENTING
Jerry Rodgers	9750 Island Road Bismarck ND
Jim Volk	3397 - GALATIAD DR - BISMARCK
Heather Magnus	9806 Island Road
RONNY BULL	3131 WILLOWPARK DR
MEL BULLINGBEEK	CITY OF BISMARCK ENGINEERING DEPT.
Steve Bernard	9700 Island Rd Bismarck ND 58503
Forrest Ecklund	1951 73rd St NE, Bism 58501 (Parks & Rec)
Dan Eckhardt	Bismarck Tribune
Dawn [unclear]	2500 Larson Rd. Bism. Fox Island,
Sanford Meier	11219 Hargrave Dr. ND 58501



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Present: Terry Fleck, Cary Backstrand, Ken Royse, Michael Gunsch, Houston Engineering, Inc.; Dave Bliss, Bliss & Stebbins Law Firm; Chairman Doug Schonert, Burleigh County Commission; Marcus Hall, Burleigh County Highway Engineer; Mona Livdahl, Personalized Management Services

Roll Call: Chairman Fleck called the meeting to order at 8 a.m. noting a quorum was present.

Review Fox Island Petition map with petitioner lots designated: Terry commended Michael on the map noting where residents live as it provides a very clear picture of the issue. Michael reviewed the map showing depicting the names of the petitioners on each lot who did not want the levee on their property, along with the potential alternatives if they are removed from the project. The majority of the signatures were along the Tavis Oxbox area, and a few along the river. Michael noted that there were several that have already constructed private levees. Michael reviewed the options discussed various alignment alternatives. A stormwater easement also needs to be secured on the Klausnitzer property as they already have a private levee and the natural watercourse flows through their property. Michael noted while there are no stormwater easements in this residential area securing these was included in the project development plan. The roadway grade raise plan is also another option under consideration. Ken asked if all the options provide the same level of protection, it was noted they generally do, with the exception of those that only have grade raises. Chairman Fleck asked if we discussed how to assess the costs for and is this is part of the cost analysis, noting that a number of people asked why they should pay for grade raises for access roads, versus those getting protection. Michael noted that initially a percentage based distribution was created – on the North side of Mills Avenue a cost approach distribution is now being used, which would now be apply here as well. If you raise Gallatin, those provided flood protection would pay for the grade raise and flood protection, while others would just share in the paving costs. Marcus asked the next step. It was noted it is still a benefit for the access – if the township decides to do the road, they could pay for it. It was questioned if Marcus does it, do we still get cost share? Michael noted that is dependent on how it is presented to the State Water Commission. Marcus noted it is not the best access in that some will still not be able to get their homes, but they will get closer. Ken asked Marcus if they had to do a public information meeting with road grades. Marcus noted it would not be it was decided upon by the Township Board. The township can make a request to assess the residents but generally they don't.

Jim Volk, a resident of Fox Island, noted that he wasn't sure if all the petition signers don't want any protection, they signed it based on how it was presented to them by one individual whose home was high enough. Mr. Volk felt that if we could address the questions that DuWayne Ternes raised during last week's meeting so they could get a better handle on the cost to them there may be other individuals who would sign on for levee protection.



BURLEIGH COUNTY WATER RESOURCE DISTRICT AGENDA
Wednesday, August 22, 2012 at 8 am
City/County Building – Bismarck

The residents felt that by signing it they did not state that they did not want protection, they just wanted more information. Chairman Fleck noted that the petition language was pretty clear, in that they were not interested. It was noted that a constituent had called asking that a meeting be held inviting all the residents. A question was asked on how that would differ from the last public informational meeting.

Michael noted that the recommendation to the Board from the last public meeting was to have a discussion with other members along the Fox Island area, however, the petition came in before the recommendation was presented to the Board. Marcus noted that he felt that the petitioner's language was very clear as well – and felt that even though we presented it again, we probably could not get all the residents to agree. Michael noted that the alternatives were looked at – based on the fact that the order from the Board was to protect all the constituents – the new alternatives will be based on those not wanting it. The next steps were discussed, which is to provide flood protection for people who want it. Mr. Volk asked that assuming the project does not go through, what options they have. Michael noted there would be an assessment and a vote that needs to be done before the project could proceed. Building a private levee is also an option for those that choose to. Cary asked if there were any private roadways here – Marcus noted no, as they are all township roads. Ken felt another public informational meeting should be held to review the issues one more time. Mr. Volk stated that the residents want more information as to what it is going to cost them. Ron Klein felt that to work lot by lot with each one would be very time assuming due to the various issues i.e. geothermal system, landscaping issues, etc. and was not sure anything would change.

Consensus of the Board was to have Mr. Volk and Mr. Klein go back and visit with the Fox Island residents who petitioned and decide if they want another public meeting to discuss the levee options and if so, to let Michael know and he will work with Marcus to get this going. Otherwise the Board would continue to pursue the other alternatives discussed today.

Apple Valley Lagoon Finance Resolution approval: Noted it was discussed at the last meeting, however Ken had left early and we did not have a quorum to vote on this resolution. **Cary moved to adopt the resolution, Ken seconded. Motion carried.**

Adjourn for Executive Session to Discuss Hogue Island Flood Control Property Acquisition severance of two homeowners (Rodgers/Magnus):

Chairman Fleck first asked if the homeowners present had something to add. Heather noted her concern of just finding out that they possibly only had until September 30th to reclaim their property based on the avulsion issue. Ken felt that the BCWRD or its staff should not offer legal advice or an opinion on this issue. Dave noted that it was premature as to how the law was to be applied or the meaning of that statute and reiterated that this meeting is the homeowners chance to tell the board where they are at with the severance as the focus. Laura & Rodney Boll as well as Dr. Bernard provided a letter to accept the offer provided by BCWRD.



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Heather Magnus felt that at this point they feel they have no choice but to accept the offer also and did provide a letter stating such. Jerry Rodgers again expressed that he only wishes to be severed if it does not have an adverse effect on the Boll's, Magnus and Bernard's acquisition. Dave questioned Mr. Rodgers meaning of the term adverse effect. Mr. Rodgers stated that if he is severed, it would not effect on the other homeowners. When questioned his plan if it did have an adverse effect, Mr. Rodgers noted he would answer the question once that was decided.

Ken moved to go into Executive Session at 8:48 a.m. Cary seconded.

Meeting reconvened at: 10:30 a.m. with Heather Magnus, Laura Boll, and Mr. Jerome Rodgers present.

Chairman Fleck deferred to Ken Royse for discussion. Ken noted that his perception is Mr. Rodgers would like to stay in his home and asked Mr. Rodgers if we could figure out a project which would protect him as well as allow him to stay in the home as well as the Boll's if that would be acceptable noting their reluctance to move. Mrs. Boll felt that with the cost to have their home conformed to the new building codes financially it would be wiser economically to accept the buyout. Ken questioned Mrs. Magnus regarding the access they would have. Mrs. Magnus noted they would like a guarantee that they would still own water front properties.

Ken noted that when we first did this we needed all four lots to make the project work, Ken noted that we read Mr. Rodgers statement that he chooses not to sell and asked if the BCWRD could go back to the drawing board to accommodate everyone noting it is no guarantee, but we could accommodate those that would like to sell. It would mean a different type of project; and it would not necessarily be that we would come back to them for a buyout. Currently there are too many unknowns with the project, and at this point we have to stay with an all or none buyout proposal. Ken asked Dave for clarification, Dave noted the Board is open to options other than the all four or none as we are charged with a flood project but not forcing the project on people. Dave noted that what we have right now is all four or none, since Mr. Bernard is not here, asked that all the homeowners revisit this current project and then consider if we take the project off the table that the Board could reconfigure this offer.

Mr. Rodgers questioned how we would know how the reconfiguration would look like. Mr. Rodgers also pointed out that if he was to do this without severing, it could save the county money. Ken noted that we would not know this without reconfiguring the properties and estimating costs. Ken stated that at this time we are prepared to go forward with all four buyouts. Chairman Fleck stated that we are trying to accommodate all four parties. Mr. Rodgers stated that he has no trust in the Board or county that they won't harm the other homeowners, noting this has not been a transparent process. Mr. Rodgers asked why an amendment to the current acquisition process couldn't be done. Cary noted we are not buying properties, we are offering a flood control project, noting that we are willing to go back to the drawing board.

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BURLEIGH COUNTY WATER RESOURCE DISTRICT AGENDA
Wednesday, August 22, 2012 at 8 am
City/County Building – Bismarck

Michael noted the four homes were lined up as a preferred alternative, by separating the four we are now separating each homeowner to potentially configure it to their own needs. If reconfigured the project they may or may not get the buyout, but they could be protected to some extent.

Ken noted that Mr. Rodgers can't define adverse effect as he can't determine that. Mr. Rodgers noted that his request was to be severed at no ill effects. Michael noted that if Mr. Rodgers is out, the board may not need all the properties based on the reconfiguration. Mr. Rodgers felt that they should have the reconfiguration first. Ken pointed out that at this point the alternatives are very conceptual. Michael can review but we don't know if they are preferred options.

Michael reviewed the optional alignments with the homeowners, with the objective to protect the homeowners on the island. Discussed if it went to a vote, it would need to be voted on by all residents on the island that are benefited. Michael noted the September 30th deadline was established by the Board, and the option exists to ask the State Water Commission to extend the deadline if requested and believe there is an opportunity to do that based on the sovereign lands issue. **Ken moved that we reconfirm our position that this is an all or nothing acquisition, we want to confirm that Mr. Rodgers has time to confirm his decision by September 30th, and thirdly we allow each of these landowners direct access to Michael to review the alternatives and determine their position on this project. Cary seconded the motion.** Mr. Rodgers asked what the date for his decision is. It was noted the deadline is still September 30th. Michael noted that between now and September 30th, as we talk about the reconfiguration process, they all have the opportunity to reconsider their offers. **Ken amended the second part of his motion would be not only the Rodgers but all four landowners have time to change their minds until the 30th of September. Cary seconded the amendment.** Dave noted that this is difficult for neighbors, noting that with the word severance it brings the homeowners their own rights without negative consequences. **Roll call vote:**

Royse: Yes

Backstrand: Yes

Fleck: Yes

Motion Carried.

Dave reiterated that time is of the essence, noting he will be working on the sovereign lands issue. Dave also felt this may create title issues with the sovereign lands noting the acquisition program asked for clear title on all the properties purchased.

With no further business the meeting adjourned at 11:20 a.m.

Respectfully Submitted,

Mona Livdahl

Mona Livdahl
BCWRD Secretary

Burleigh County Water Resource District Meeting

Members of the Public in Attendance Date: August 22, 2018

NAME - PLEASE PRINT	ADDRESS/COMPANY REPRESENTING
Jerry Rodgers	9756 Island Road Bismarck ND 58503
TIM VOLK	3397-GALLATIN DR - B15.
Ron Klein	3413 Gallatin Dr Bismarck ND 58504
Marcus S. Hall	Burleigh County
Patsy Clark	3131 W Irving Dr
Leather Magness	9226 Island Road

Burleigh County
Water Resource District
Financial Data August 31, 2012

09/04/12

Balance Sheet

Cash & Investments	901,876
Taxes Receivable	21,641
Fund Balance	<u>923,517</u>

Statement of Revenues and Expenditures

	<u>ACCOUNT #</u>	<u>BUDGET</u>	<u>JULY</u>	<u>ACTIVITY</u>	<u>AUGUST</u>
REVENUE					
Real Estate Tax	31110	542,000	579,474	1,252	580,726
In Lieu of Tax	31810	3,100	3,158	-	3,158
State Aid Distribution	33610	48,500	38,770	-	38,770
Homestead Credit	33620	4,500	4,429	-	4,429
Reimbursements	33810	612,285	-	-	-
Operating Grants	34220	54,000	-	-	-
Interest	36110	2,500	1,262	-	1,262
Misc Revenue	36910	6,500	2,585	-	2,585
TOTAL		<u>1,273,385</u>	<u>629,678</u>	<u>1,252</u>	<u>630,930</u>
EXPENDITURES					
Salaries	111	20,000	15,255	1,215	16,470
Temporary Services	112	5,000	3,516	399	3,915
Fringe Benefits	211	1,599	1,227	93	1,320
Legal Fees	312	15,000	14,024	1,663	15,687
Engineering Administration	315	-	14,782	-	14,782
Insurance	328	900	636	-	636
Building Rent	335	1,500	713	105	818
Travel	341	1,200	69	-	69
Dues & Publications	376	3,300	1,225	1,000	2,225
County Services	398	6,824	6,824	-	6,824
Office Supplies	411	2,000	1,856	159	2,015
McDowell Dam	904	181,542	72,643	783	73,426
McDowell Dam-Additional	905	55,000	1,009	-	1,009
Shared Projects	910	200,000	54,022	-	54,022
Misc	911	2,000	1,415	-	1,415
Continuing Education	920	1,000	25	250	275
Bismarck Cost Share	932	25,000	-	-	-
Missouri River General Sen	933	-	9,764	-	9,764
Design/Specail Assesment	937	595,000	32,608	-	32,608
Burnt Creek Rehab	940	60,000	2,194	-	2,194
Apple Creek Watershed	941	10,000	-	-	-
Hay Creek	953	90,500	966	-	966
TOTAL		<u>1,277,365</u>	<u>234,773</u>	<u>5,667</u>	<u>240,440</u>
EXCESS OF REVENUE OVER EXPENDITURES			394,905	(4,415)	390,490

BCWRD 9-11-12

Name	Project	Invoice	Amount	Code
Bismarck Parks and Rec	August Billing McDowell	3128	\$24,960.63	904
Bliss & Stebbins Law Firm	Legal	12254	\$4,215.15	312
Houston Engineering	McDowell Dam	12565	\$461.50	905
Houston Engineering	General	12633	\$12,872.25	315
Houston Engineering	Sunnyview Project	12634	\$2,647.00	937
Houston Engineering	Fox Island Flood Control	12635	\$20,059.25	937
Houston Engineering	Apple Valley Cooperative	12636	\$10,109.25	937
Houston Engineering	Hogue Island Bank Stabilizaiton	12637	\$3,137.50	910
Houston Engineering	Hogue Island Flood control	12638	\$1,161.10	910
Houston Engineering	Missouri River Correctional	12639	\$1,418.75	910
Personalized Management Svs.	August Secretarial services	5039	\$691.88	112
Personalized Management Svs.	suplies	5039	\$169.21	411
		TOTAL:	\$81,903.47	

From: Cory Wrolstad [<mailto:district13.nlc@midconetwork.com>]

Sent: Monday, August 27, 2012 1:30 PM

To: Randy Bina

Subject: Boy Scouts

Hey Randy hope all is well. We are doing an event with the Girl Scouts, Game & Fish 4h and any youth from town on September 30th. We are expecting around 500-1000 youth on hand this day filled with many activities at Mcdowell Dam. I had a request from the Burleigh County Sheriff's to do some water safety and demonstrate dive operations and bring out their equipment. One thing they would like to bring out is their Air Boat. I was just going to clear it with you to make sure we could have this on the water that day. Let me know your thoughts.

Cory Wrolstad

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Mona Livdahl

From: Greg Smith [GSmith@bisparks.org]
Sent: Friday, August 17, 2012 11:39 AM
To: Mona Livdahl
Subject: RE: 8-22-12 Special Meeting Agenda

Thanks Mona.

FYI on the draft agreement – Randy Bina and I are giving it a last look. We both found a couple of items that could stand to be cleared up a bit. The references to the various plans is a little confusing, so there may be a few more minor revisions to the draft.

Greg Smith
Operations Director
Bismarck Parks & Recreation District
(701) 222-6464

From: Mona Livdahl [<mailto:mona@midco.net>]
Sent: Friday, August 17, 2012 11:11 AM
To: 'Bill Robinson, Chairman Lower Heart WRD'; 'Cary Backstrand'; 'Clyde Thompson'; 'David Bliss '; 'Dennis Reep - NRCS'; 'Duxbury'; Forrest Ecklund, Bismarck Parks & Rec.; 'Gailen Narum'; Greg Smith; 'John A. Paczkowski - State Water Commission'; 'Keith Demke - Public Works'; 'Ken Royse'; 'Kevin Glatt - Auditor'; 'LeAnn Eckroth'; 'Linda Oster'; 'Marcus Hall'; 'Mary Senger - Emergency Management'; 'Mel Bullinger'; Michael Gunsch; 'Morton County WRD'; Randy Bina; 'Ray Ziegler'; Rynee Kellar; Terry Fleck; Chairman Doug Schonert; 'Commissioner Brian Bittner'; Commissioner Jim Peluso; Commissioner Mark Armstrong; Doug Schonert; 'Vice Chairman Jerry Woodcox'
Subject: 8-22-12 Special Meeting Agenda

**AGREEMENT
FOR THE MAINTAINANCE AND MANAGEMENT
OF MCDOWELL DAM RECREATIONAL FACILITY**

This Agreement is made between the Burleigh County Water Resource District (hereinafter "the District"), and the Bismarck Parks and Recreation District, whose address is 400 East Front Avenue, Bismarck, ND, 58504, hereinafter ("BPRD").

Whereas, the District is interested in obtaining daily operation, management, planning and development services for its McDowell Dam recreational facility; and

Whereas, BPRD is in the position to provide daily operation, management, planning and development services for the McDowell Dam recreation facility; and

Now, therefore, in consideration of the premises, it is agreed as follows:

1. **Scope of Services:** The District and BPRD agree that BPRD, as an independent contractor through its designated and employed staff, shall furnish services to and for the benefit of the District by providing management and operational services for its McDowell Dam recreational facility and through planning a master plan for future development of the McDowell Dam recreational facility in accordance with the terms and conditions of this agreement. BPRD assumes the obligation to provide such services through its designated and employed staff consistent with the terms of this agreement in compliance of established professional standards. In furtherance, but not in limitation of the scope of services designated herein, such duties, obligations and responsibilities shall include the following:
 - a. BPRD shall require its designated and employed staff providing services under the provisions of this agreement to comply with any and all policies and procedures which are developed through the joint efforts of the parties relating to and concerning the provision of operational services for the McDowell Dam recreational facility and the implementation of the March, 2005 strategic plan for future development of the facility as directed by and in coordination with the District.
 - b. BPRD shall be responsible for the supervision and management of the District's designated and employed staff providing services under the provisions of this agreement.
 - c. BPRD shall be solely responsible for the selection, retention, supervision and compensation of all designated BPRD employees or staff engaged by BPRD required to fulfill the obligations and duties imposed by this agreement.
 - d. BPRD through its designated and employed staff shall be responsible for:
 - i. Maintaining the McDowell Dam recreational facility within the accepted practices of grounds maintenance to include mowing, weed control, forestry, public safety, cleaning of bathrooms, maintenance of the public

beach swimming area, docks, pet cemetery and other facilities including permanent and temporary structures and shelters;

- ii. Providing a friendly and knowledgeable and trained staff;
- iii. Caring for all equipment including machinery and tools owned by the District;
- iv. Keeping buildings and structures in good repair and upkeep to include painting and cleaning;
- v. Establishing garbage systems and hauling of refuse for proper disposal;
- vi. Assuring that road and trail repair and maintenance (crack sealing, pavement marking, patching, etc.) is maintained;
- vii. Developing of fees, an annual work plan and budget (personnel, utilities, supplies, repairs and maintenance, contract services, equipment and capital improvements) for approval by the District in accordance with and agreed-upon timeline and budget process;
- viii. Coordinating and overseeing of budget development, planning and implementation;
- ix. Overseeing and planning of marketing and promotional efforts of the McDowell Dam recreational facility and programs and public information related to management and operations of the facility;
- x. Administering required insurance policies and inventory (property and liability);
- xi. Developing and overseeing capital improvement projects and non-engineered construction management, with a 5% management fee based upon actual construction costs, subject to the District's approval of such projects;
- xii. Preparing a capital improvement and equipment schedule that would be developed and reviewed during the annual budget process;
- xiii. Managing the bidding process, and current and future leases, contracts and rental agreements of the McDowell Dam recreational facility. BPRD will provide recommendations to the District on current contracts, leases and rental agreements for the District's consideration and final approval;
- xiv. Maintain an operating manual that provides administrative guidelines and operating procedures for the management of the McDowell Dam recreational facility, containing existing and new operating policies,

administrative rules, ordinances, legal requirements, protocols and each party's responsibilities and authorities.

- xv. Managing the listings of any McDowell Dam recreational properties for any sale of such property. BPRD will provide recommendations to the District on the proposed sale of any McDowell Dam recreational property for the District's consideration and final approval;
 - xvi. Collecting all fees, donations, contributions and other revenues generated from the use and for the benefit of the District and the McDowell Dam recreational facility with said funds being credited to the District's McDowell Dam operational expenses; and listed on the monthly invoices
 - xvii. Other duties as agreed upon by the parties to this agreement.
2. **Communication:** BPRD shall designate its Executive Director, or other designee as the primary contact to work with a District Board member or members as designated by the District.
 3. **Reporting:** BPRD will provide a monthly written report, including income and expenses, to the District on the McDowell Dam recreational facility to the District. A comprehensive annual report will be completed and presented by BPRD to the District by March 1, 2013, and by March 1 of each of the following years of this agreement.
 4. **Existing Agreements.** This contract shall replace all existing oral agreements, leases, and/or memorandums of agreement and contracts between the District and BPRD.
 5. **Funding.** The District is responsible for funding the annual approved operation, maintenance and capital improvement budgets for the McDowell Dam recreational facility. In the event of an emergency, BPRD has the right to appear before the District for budget enhancements directly related to the emergency project.
 6. **Compensation.** The District shall pay BPRD an annual management fee of 25 percent, based upon actual gross operating expenses for administrative services provided under this contract, excluding all capital improvements as set forth in Section 1(d. xi) of this agreement.
 7. **Reimbursement.** BPRD shall submit a monthly statement of income and expenses incurred for the operation of the McDowell Dam recreational facility to the District, and thereupon the District shall reimburse BPRD for all items of expense within the budget or thereafter approved by the District. All expense items are subject to limitations as set forth as a part of the District's normal budgeting process.
 8. **Ownership and Custody of Property.** All real and personal property, publications, trade names, plans, logo or ideas prepared for and purchased by the District shall be the District's sole property. Film, photographs, etc. supplied to media, printers, etc., shall not be recovered unless specifically requested by the District through its designated agent. BPRD shall not be responsible for loss by media. The District has the right and authority

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to use all property purchased from the BPRD. BPRD shall acknowledge the District's ownership of the McDowell Dam recreational facility in all written and/or distributed information.

9. **Embankment and Dam Safety:** The District will retain authority and responsibility over the dam itself, including management of water quality, water quantity and dam safety concerns.
10. **Relationship of Parties:** This agreement shall not be construed to create any form of any employment relationship between the District and BPRD, or any person designated by BPRD under the provisions of this agreement. It is the intention of the parties hereto to maintain separate and distinct organizations, and BPRD through its designated employees shall at all times be acting as an independent contractor in providing services to and for the benefit of the McDowell Dam recreational facility. BPRD shall be responsible to control and supervise all of its employees and to pay compensation to or for the employees of all wages, salaries, taxes, withholding payments, fees, as well as other benefits or compensation to any pension or retirement plans. BPRD shall not claim that the District is responsible for the payment of any of the foregoing payments, withholdings, contributions, or taxes in relationship to its designated employees.

Further, it is understood that this management relationship is between the District and BPRD and BPRD has no other responsibility to report management duties or operations, including budget and capital projects, or represent on behalf of the District unless so approved by the District or agreed to by BPRD.

11. **Severability.** The unenforceability or invalidity of any provision of this contract shall not render any other provisions of this contract unenforceable or invalid.
12. **Governing Law.** This contract is to be governed by and construed according to the North Dakota Century Code and local and federal laws.
13. **Insurance.** BPRD shall maintain in full force and effect during the term of this agreement, at BPRD's sole cost and expense, general liability coverage, including liability coverage for any of its employees, contractors or subcontractors designated to provide services under the terms of this contract and shall name the District as an additional insured. In addition to the liability insurance coverage, BPRD shall, at its own expense, obtain and maintain appropriate workers compensation coverage for all of BPRD's employees who shall provide services under this contract.
14. **Indemnification and Hold Harmless.** Each party to this agreement shall be responsible for the claims, losses, damages and expenses, which may arise out of the negligent or wrongful acts or omissions of that party or that party's agents, employees, or representatives acting in the scope of their duties in this contract. Each party to this agreement agrees to inform the other in the event such party is notified of an investigation or claim arising out of the services of managing the McDowell Dam recreational facility under the terms and conditions of this contract and shall provide reasonable access to the information involving such investigation or claim. Each party shall further notify the other party of the disposition of any such investigation or claim.

15. **Contract Term.** This agreement is for a period effective on the date signed by the last party to sign the agreement through December 31, 2017.
16. **Termination of Agreement.** The District or BPRD may unilaterally terminate this agreement upon 90 days written notice to the other party.
17. **Attorneys Fees and Costs.** Each party shall pay their own attorneys fees and costs.

IN WITNESS WHEREOF, the parties have executed this contract as of the day, month and year written above, and each party hereby acknowledges that it has the full right and authority to enter into this contract and bind the respective party to the terms stated herein.

Mike Schwartz, President
Bismarck Park Commission Board

Date

Terry Fleck, Chairman
Burleigh County Water Resource District

Date

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**Bismarck Parks Recreation
2012 Expenses for
McDowell Dam Recreation Park**

Month	Salaries & Wages	Employer Payroll Tax	Pension & Benefits	Operating Expenses	Total Expenses	Admin. Fee (25%)	Total Amount	Invoice Number
January	\$ 2,993.65	\$ 302.36	\$ 1,259.31	\$ 688.28	\$ 5,243.60	\$ 1,310.90	\$ 6,554.50	2970
February	\$ 2,428.02	\$ 469.02	\$ 1,259.31	\$ 2,993.54	\$ 7,149.89	\$ 1,787.47	\$ 8,937.36	2985
March	\$ 2,428.02	\$ 245.23	\$ 1,259.31	\$ 1,075.72	\$ 5,008.28	\$ 1,252.07	\$ 6,260.35	3015
April	\$ 3,577.02	\$ 361.28	\$ 1,259.31	\$ 2,657.79	\$ 7,855.40	\$ 1,963.85	\$ 9,819.25	3032
May	\$ 6,516.77	\$ 658.19	\$ 1,259.31	\$ 4,252.28	\$ 12,686.55	\$ 3,171.64	\$ 15,858.19	3047
June	\$ 14,474.74	\$ 1,453.03	\$ 1,396.93	\$ 2,846.20	\$ 20,170.90	\$ 5,042.73	\$ 25,213.63	3081
July	\$ 11,723.99	\$ 1,161.85	\$ 1,267.16	\$ 6,288.92	\$ 20,441.92	\$ 5,110.48	\$ 25,552.40	3104
August	\$ 10,860.61	\$ 1,076.29	\$ 1,267.16	\$ 6,764.44	\$ 19,968.50	\$ 4,992.13	\$ 24,960.63	3128
September	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 23,600.00	
October	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 14,523.00	
November	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 12,708.00	
December	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 12,709.00	
Total	\$ 55,002.82	\$ 5,727.25	\$ 10,227.80	\$ 27,567.17	\$ 98,525.04	\$ 24,631.26	\$ 186,696.30	To Date

Capital Improvements:

2012 Budget: \$ 181,542.00
Under Budget through July: \$ 5,154.30



Burleigh County Water Resource District

City/County Office Building - 221 North 5th Street
Bismarck, North Dakota 58501-4028

August 21, 2012

Marcus Hall, PE
Burleigh County Engineer
2000 North 52nd Street
Bismarck, ND 58501

RE: **80TH STREET DRAINAGE COMPLAINT**

Dear Marcus:

The Burleigh County Water Resource District (BCWRD) received a complaint from Mr. Brian Bitner and Mr. Patrick Smith regarding an obstruction of drainage along the east side of 80th Street south of Apple Creek Road. After reviewing this issue through onsite inspections, field surveys and discussions with you and township representatives we have determined that the drainage in this area has been obstructed.

Pursuant our investigation it was determined this drainway (roadway ditch) is obstructed by the inadequate placement of two 24" CMP approach culverts and the resulting sediment accumulations. Therefore, the BCWRD directs the lowering the two culverts and re-grading the ditch to establish positive drainage toward Apple Creek, pursuant to our authorities, with the removal of the obstruction to be completed this fall. This work will affect the approaches to the Pat Smith and Dave Barbere residences and work in the roadway ditch as needed to reestablish the drainage.

This work will require limited excavation and could require the replacement of the existing culverts. We understand given their size the County is responsible for the costs for culvert modifications. Pursuant to our discussion with the Apple Creek Township representatives the BCWRD is willing to participate in the cost to remove sediments from within this channel in an amount up to \$500.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Terry Fleck".

Terry Fleck, Chairman

c: Apple Creek Township Board Members
Brian Bitner, Landowner
Patrick Smith, Landowner
Dave Barbere, Landowner
David Bliss, Bliss & Stebbins
Michael Gunsch, Houston Engineering

Current Board Members:

Terry Fleck, Vice Chair, Bismarck 223-9768 Ken Royso, Treas. Bismarck 258-1110 Cary Backstrand, Bismarck 471-9134

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Burleigh County Water Resource District

City/County Office Building - 221 North 5th Street
Bismarck, North Dakota 58501-4028

NCCC 61-16.1-51

"If a water resource board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or tenant, the board shall notify the landowner by registered mail at the landowner's post-office address of record...The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within such period as the board determines, but not less than fifteen days, the board shall procure removal of the obstruction and assess the cost of the removal, or the portion the board determines appropriate against the property of the landowner responsible...For the purposes of this section, "an obstruction to a drain" means a barrier to a watercourse, as defined by section 61-01-06, or an artificial drain, including if the watercourse or drain is located within a road ditch, which materially affects the free flow of waters in the watercourse or drain."

Current Board Members:

Galen Narum, Chair, Bismarck 323-0167 Terry Fleck, Vice Chair, Bismarck 223-9758 Kim Royle, Treas., Bismarck 258-1110 Cary Backstrand, Bismarck 471-9134 Remond Keller, Bismarck 425-6158

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Burleigh County Water Resource District

City/County Office Building - 221 North 5th Street
Bismarck, North Dakota 58501-4028

August 22, 2012

Roger Branning
77 Country Club Drive
Bismarck, ND 58501

RE: COMPLAINT OF UNAUTHORIZED DRAINAGE

Dear Mr. Branning:

We have completed an investigation of the unauthorized drainage you alleged was occurring on property owned by Mr. Hobson Brown. Attached is a memorandum prepared by Craig Odenbach of Houston Engineering, summarizing the results of his site visit. No evidence of unauthorized drainage was discovered. A small volume of water was found to be discharging from a sump for one of the buildings, but this was a small volume of water, and no authorization is required. No other water was being discharged toward your property, and no pumping of water was occurring under the authority of Drainage Permit #3620. In fact the wetland complex that had threatened Mr. Brown's buildings in the past was completely dry at the time of Mr. Odenbach's visit.

At this time, we consider this matter closed. If you feel our decision in this matter is in error, you have the right to appeal our decision to the State Engineer in accordance with ND Century Code Section 61-32-08.

Sincerely,

A handwritten signature in black ink that reads "Terry A. Fleck".

Terry Fleck, Chairman
Burleigh County Water Resource District

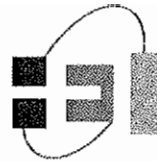
Enclosure

c: Hobson Brown
Craig Odenbach, HEI

Current Board Members:

Terry Fleck, Vice Chair, Bismarck 223-9768 Ken Royse, Treas. Bismarck 258-1110 Cary Backstrand, Bismarck 471-9134

37



Technical Memorandum

To: Burleigh County WRD

From: Craig Odenbach, P.E.

Date: July 26, 2012

Subject: Roger Branning Drainage Complaint

Roger Branning filed a complaint with the Burleigh County Water Resource District on June 26, 2012 alleging that ditching on property owned by Mr. Hobson Brown was contributing to flooding of his property. On July 26, 2012, I visited with Mr. Hobson Brown and viewed his property. This memorandum summarizes the results of that field visit.

In May of 2009, Mr. Branning filed a similar complaint. Based on a field visit at that time, Mr. Brown was informed that pumping water from his yard would require a drainage permit, because the drainage area contributing to the yard was greater than 80 acres. In July 2010, Mr. Hobson Brown filed an application for a drain permit. The Burleigh County Water Resource District approved Drain Permit #3620 in response to the application with a condition requiring that the water pumped from Mr. Brown's yard be discharged south of a particular line which would eliminate any impact to Mr. Branning's property.

At the time of my visit, there was no standing water in Mr. Brown's yard. In fact, the larger wetland to the north, which had overflowed to the yard in 2009, was dry. Mr. Brown indicated the only surface water pumped from the yard that spring had been some small amounts of trapped snowmelt, and that water was discharged south of the line as stipulated under drainage permit #3620. Mr. Brown did show me a sump pump system which collects water from the drain tile surrounding the guest home which is the structure that was threatened by surface water flooding in 2009. That sump pump does discharge to the east, but at the time of my visit appeared to constitute a flow rate similar to that of a single garden hose or less. At the time of my visit, no other water was discharging toward the wetland that impacts Mr. Branning's property. The discharge of the sump pump does not constitute an unauthorized drainage in accordance with ND Century Code Chapter 61-32.

As noted in my July 13, 2009 Investigation Report, Mr. Brown has a well installed east of his shelterbelt that has been used in the past to supplement the water level in a man-made pond. That man-made pond does connect to the wetland impacting Mr. Branning's property when water levels are high. Mr. Brown indicated that he has not pumped water from the well to the pond in a few years, but if levels continue to decline, he may do so in an attempt to maintain some minimum water level in that pond. As I noted in the prior report, the pond is not large enough to require a construction permit from the State Engineer, and as long as less than 12½ acre-feet of water is diverted, no water permit is required for fish and wildlife uses.

In conclusion, I noted no unauthorized drainage occurring on Mr. Brown's property. I recommend the Board inform Mr. Branning and Mr. Brown of these findings. Mr. Branning does have the option of appealing the Board's decision to the State Engineer in accordance with ND Century Code Section 61-32-08. Photos of site conditions during my inspection are attached to this memorandum.



The Sump Pump Discharge



MEMO



There is no water in Mr. Brown's yard or in the wetland to the north.





Burleigh County Water Resource District

City/County Office Building - 221 North 5th Street
Bismarck, North Dakota 58501-4028

August 21, 2012

Dan and Trish Emery
7245 Russell Road
Bismarck, ND 58501

**RE: REVISION TO NOTICE OF DECISION AND ORDER
Complaint of Obstruction of Natural Watercourse
Lot 7B Block 2, T-J Ranch Estates, Gibbs Township, Burleigh County**

Dear Mr. and Mrs. Emery:

After further review of the drainage issues associated with your property the Burleigh County Water Resource District affirms its original determination that construction of your residence has in fact obstructed a natural watercourse. In accordance with our discussions with you and your neighbor a mutual understanding has been reached regarding a resolution to this complaint. That resolution was documented by our engineer and Cary Backstrand of our Board. Enclosed is a copy of an agreement developed based on those discussions, along with Exhibit A, related to the relocation of the natural watercourse on Lot 7A and Lot 7B, Block 2, T-J Ranch Estates.

By signing this agreement you agree to abide by its conditions and will implement construction of the relocated watercourse. There was some discussion regarding a stormwater easement document to be prepared and recorded against the properties. The cost to create this document is estimated at \$850, which would be your expense. The agreement however effectively serves a similar purpose if you have it recorded. If you wish to have an easement completed by your own surveyor, feel free to do so.

Please notify us when you have secured a licensed contractor to begin construction so we can monitor the work and review its completion. The Board has extended the compliance deadline with their order from May 3, 2012 to September 1, 2012, which is related to signing the agreement. Construction should occur as soon as practical, since site conditions are likely as good as they will get given recent dry conditions. Also please notify us when the agreement is signed.

Current Board Members:

Terry Fleck, Vice Chair, Bismarck 223-9768 Ken Royso, Treas. Bismarck 258-1110 Cary Backstrand, Bismarck 471-9134



Burleigh County Water Resource District

City/County Office Building - 221 North 5th Street
Bismarck, North Dakota 58501-4028

If this work is not completed the BCWRD has the authority to hire a contractor to complete this work and assess your property for all costs associated with compliance actions, including site reviews, engineering, surveying, design, construction observation and construction. Our preference is not to have to use this authority; however, if no action is taken we will proceed accordingly. Our next Board meeting is September 11th, at which time we will consider the status of the agreement and take whatever action is deemed appropriate.

Sincerely,

A handwritten signature in cursive script that reads "Terry N. Fleck".

Terry Fleck, Chairman

C: Chris and Doreen Koppang
Michael Gunsch, HEI
David Bliss, Bliss and Stebbins

Current Board Members:

Gaëlen Narum, Chair, Bismarck 323-0167 Terry Fleck, Vice Chair, Bismarck 223-9768 Ken Roysse, Treas., Bismarck 258-1110 Cary Backstrand, Bismarck 471-9134 Reinold Kellar, Bismarck 425-6158

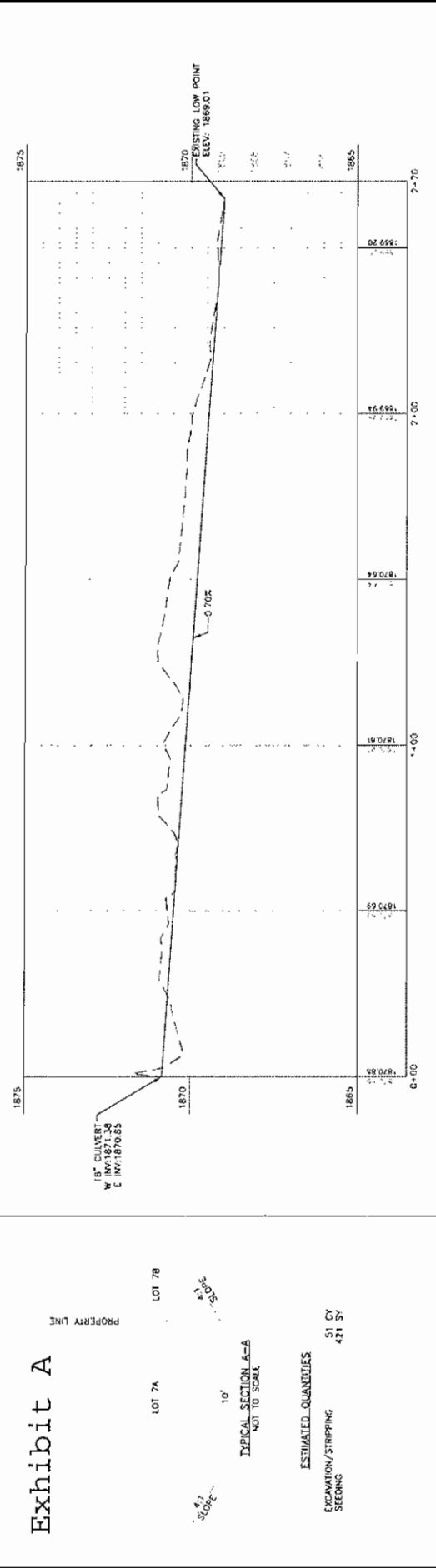
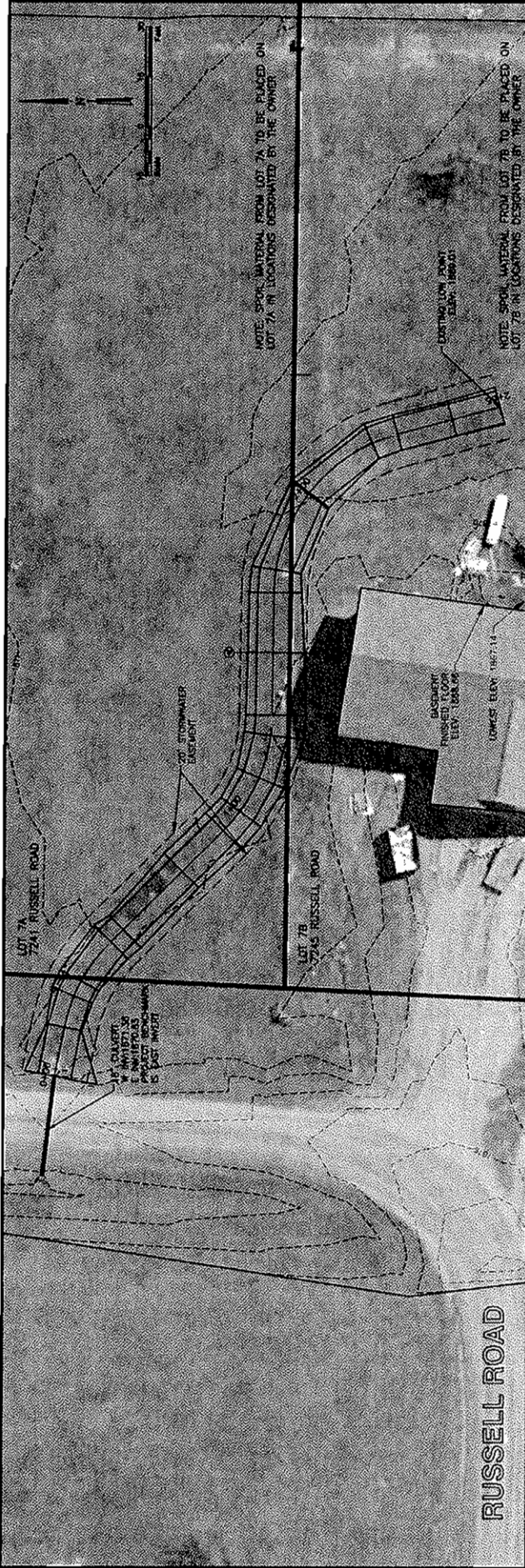


Exhibit A

PROPERTY LINE

LOT 7A

LOT 7B

10'

TYPICAL SECTION A-A
NOT TO SCALE

ESTIMATED QUANTITIES
EXCAVATION/STRIPPING
61 CY
421 SF

No.	Revision	Date	By
Bismarck		Drawn by	Date
P: 701.327.0200		CCH	7-3-12
F: 701.323.0300		Checked by	Scale
		MHG	AS SHOWN
EMERY-KOOPANG DRAINAGE COMPLAINT BURLEIGH COUNTY WATER RESOURCE DISTRICT BURLEIGH COUNTY, NORTH DAKOTA			PLAN AND PROFILE
PROJECT NO. 4243-000			SHEET
			1 of 1

23

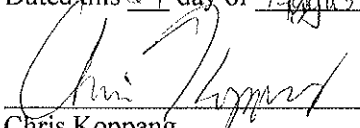
**STATEMENT OF AGREEMENT
TO CONSTRUCT DRAINAGE IMPROVEMENTS**

This agreement dated the 24th day of August, 2012, Chris and Denise Koppang, Lot 7A Block 2, T-J Ranch Estates, 7241 Russell Road, Bismarck, Gibbs Township, Burleigh County, North Dakota; and Dan and Trish Emery, 7B Block 2, T-J Ranch Estates, 7245 Russell Road, Bismarck, Gibbs Township, Burleigh County, North Dakota, owners of the respective properties shown in the drawing attached hereto as Exhibit A, hereby stipulate and agree to the construction of the surface water drainage improvements as set forth in Exhibit A to replace the natural watercourse obstructed by the construction of the residence on Lot 7B.

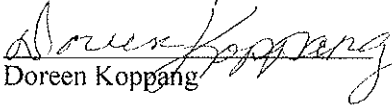
The parties agree that these drainage improvements are mutually beneficial to both properties and satisfy allegations set forth in the related drainage complaint filed with the Burleigh County Water Resource District. All expenses associated with the construction of these improvements will be borne by the owner of Lot 7B, and the project completed by a licensed contractor.

The parties further acknowledge and agree that the Burleigh County Water Resource District ("District"), has acted as a mediator to encourage a mutually agreeable resolution of all claims from either party in this matter; that each party has had the opportunity to seek legal counsel with whom to review this agreement; and that in any future legal proceedings, no party to this agreement may call as a witness any District member to testify for any purpose, nor shall any statement made by a District member or consultant during the mediation procedure be offered as evidence.

Dated this 24 day of August, 2012



Chris Koppang



Doreen Koppang

Dated this ____ day of _____, 2012

Dan Emery

Trish Emery



State of North Dakota

Office of the State Engineer

900 EAST BOULEVARD AVE. • BISMARCK, ND 58505-0850
701-328-2750 • FAX 701-328-3696 • <http://swc.nd.gov>

WATER DEVELOPMENT DIVISION

701 328 2752

August 28, 2012

Arnold Sehieve
11000 Apple Creek Rd
Bismarck, ND 58504

Dear Mr. Sehieve:

You called this office today regarding a development draining water onto your property.

As you requested, I am sending a drainage complaint form for you to fill out. Please complete only the front side. As the form says at the bottom of the front page, send the form to your local Water Resource District, which is the Burleigh County WRD. Here is their address:

Gallen Narum, Chairman
Burleigh County WRD
1811 East Thayer Ave.

Bismarck ND 58501

I recommend that after you have filled out the front of the form, that you have it photocopied front and back for your records. The Burleigh County WRD will use the back of the form for their investigation of the complaint and should let you know when they hold their hearing on the issues you bring up.

If you have any questions, please feel free to call James Lindseth or me at 701 328 2752 and we will try to answer your questions.

Sincerely,

Dwight Comfort
DC\ 1581
cc: Burleigh County WRD
attachment

TODD SANDO, P.E.
STATE ENGINEER

110



Burleigh County Water Resource District

City/County Office Building - 221 North 5th Street
Bismarck, North Dakota 58501-4028

August 15, 2012

Todd Sando, P.E.
North Dakota State Engineer
900 East Boulevard
Bismarck, ND 58505

RE: Burleigh County Flood Control Alternatives Assessment
Cost Share Request

Dear Mr. Sando:

The Burleigh County Water Resource District is continuing the process of evaluating various potential flood control projects, the need for which became apparent during last year's flood event. In a prior letter, dated April 27, 2012, we had requested \$43,925 of cost share assistance for four tasks with an estimated total budget of \$87,850. Our prior Chairman, Gailen Narum, subsequently requested that you cease processing that request while the Board continued to sort through the appropriate priorities with Burleigh County. We subsequently settled on two of the four tasks originally proposed.

The following tasks are included in the currently proposed Scope of Services:

- | | |
|--|----------|
| • Task #1 – Missouri River Correctional Center | \$13,700 |
| • Task #2 – Sibley Area Flood Control | \$36,650 |

These tasks include a preliminary assessment of the potential flood control elements. This will be a feasibility level assessment intended to develop a reasonable opinion of probable cost to assist in determining project viability. The resulting information will then be provided to the benefited residents with the understanding that, if they want to develop a flood hazard mitigation project, they could submit a petition in accordance with North Dakota Century Code Chapter 61-16.1. The Burleigh County Water Resource District could then proceed with a full preliminary engineering report, as required, public hearing and a vote of the residents.

Therefore, we are requesting cost share assistance to complete the feasibility assessment for these areas. We recognize preliminary engineering is not eligible for cost share assistance, but, in some instances, feasibility studies are eligible. In the case of the study for the Sibley Drive area, we will be evaluating various components to ascertain what combination of features may be required to achieve the desired level of flood protection. In the case of the Missouri River Correctional Center (MRCC), there is one primary alternative being evaluated. We have been in contact with the MRCC and provided a memorandum defining the flood control options in terms of connecting this system to other projects being designed by Burleigh County and/or planned by the Burleigh County Water Resource District. MRCC has informed us they are considering inclusion of project costs in their FY 2013-2015 budget. In both cases, we are developing something less than a full preliminary engineering report.

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Burleigh County Water Resource District

City/County Office Building - 221 North 5th Street
Bismarck, North Dakota 58501-4028

Todd Sando, PE, North Dakota State Engineer
RE: Burleigh County Flood Control Alternatives Assessment - Cost Share Request
August 15, 2012
Page -2-

If this assessment is determined to be eligible for your assistance, we understand they would be eligible for up to 50% cost share, resulting in the following cost breakdown.

Task	Total Cost	State Share	Local Share
Task 1 – Missouri River Correctional Center	\$13,700	\$6,850	\$6,850
Task 2 – Sibley Area Flood Control	\$36,650	\$18,325	\$18,325
Total Cost	\$50,350	\$25,175	\$25,175

Thank you for your consideration of this request. If you have any questions regarding the scope or approach, please direct them to Michael Gunsch of Houston Engineering at (701) 323-0200.

Sincerely,

Terry Fleck, Vice Chairman
Burleigh County Water Resource District

Encl.

C: Michael Gunsch, HEI
Marcus Hall, Burleigh County



Burleigh County Water Resource District

City/County Office Building - 221 North 5th Street
Bismarck, North Dakota 58501-4028

August 22, 2012

Mr. Lance Boyer, President
Riverwood West Homeowners Association
2201 Harbor Drive
Bismarck, ND 58504-8915

RE: HARBOR DRIVE FLOOD CONTROL PROJECT ALTERNATIVE

Dear Mr. Boyer:

The Burleigh County Water Resource District is working with Houston Engineering to prepare a Preliminary Engineering Analysis for the Fox Island Flood Control Project. This process was initiated in 2009 in response to a petition received from landowners who owned lots predominantly in the interior of Fox Island, south of Mills Avenue. At the time the petitioners were seeking a project to provide flood protection from an event similar to the 2009 ice jam. In response to the 2011 flood, the scope of our investigation was expanded, at the landowner's request, to identify alternatives that would protect all properties on Fox Island south of Mills Avenue for a flood equivalent to that experienced in 2011.

During this process, Burleigh County developed a conceptual master plan for flood protection, consisting of roadway grade raises and levees that included all of Fox Island. About this same time the Riverwood West Homeowners Association contacted us and inquired if the scope of work for Fox Island Flood Control Project could be expanded to include the area north of Mills Avenue in the Harbor Drive area. Houston Engineering subsequently was directed to develop a draft preliminary engineering analysis for this area, and the public meeting held on July 30th to present the draft findings and provide the public an opportunity to provide input.

One alternative evaluated for the Harbor Drive area involved construction of an earthen levee along the river. Feedback during the public meeting included significant opposition to this alternative from landowners whose property was directly adjacent to the Missouri River. A petition was presented at the meeting from these residents voicing specific opposition and rejecting any option to obtain easements on which to construct a levee system. Southport residents also voiced opposition to any project that would assess them as they perceived themselves as receiving little or no benefit.

It is our understanding the interior residents, those between Harbor Drive, West Harbor Drive and Mills Avenue support a project, was documented in a petition provided to the BCWRD. While one alternative involved constructing a levee along the river, another involved raising West Harbor Drive to provide flood control benefits to the interior residences. This would leave residences along the river outside the protected area. While they would be provided improved access, in the future they would not be protected by the construction of any publicly funded temporary flood protection measures.

It is also our understanding both Harbor Drive and West Harbor Drive, which are privately owned roadways, are in need of repair and resurfacing. This would be an opportune time to combine these repairs with a grade raise that would provide flood protection for the interior properties and improve access for all residents. This alternative provides the protection desired by the interior residents, without the levee opposed by the residents on the river. It also allows the grade raise costs, which provide flood

Current Board Members:

Terry Flock, Vice Chair, Bismarck 223-9768 Ken Royse, Treas., Bismarck 258-1110 Cary Backstrand, Bismarck 471-9134



Burleigh County Water Resource District

City/County Office Building - 221 North 5th Street
 Bismarck, North Dakota 58501-4028

Mr. Lance Boyer, President, Harbor Drive Homeowners Association
RE: HARBOR DRIVE FLOOD CONTROL PROJECT ALTERNATIVE
 August 22, 2012
 Page -2-

protection benefits to the interior residents and access benefits to all residents, to be cost shared as a flood control project through the North Dakota State Water Commission. This cost share is only available for construction costs associated with the grade raise and not the roadway resurfacing. The entire project could still be constructed via an assessment project district, which would also allow the costs to be assessed over a period of years rather than a lump sum payment, which we understand can be required if the roadway were repaired under Homeowners Association authority. Because the Southport Residents share the operation and maintenance responsibility for Harbor Drive, they would cost share in the resurfacing costs for that roadway.

It is also necessary to raise and re-surface a portion of Mills Avenue to provide flood containment. As a City street, the City of Bismarck would be requested to fund the re-surfacing costs, while the interior residents would be responsible for the grade raise based on the flood control benefit provided. The following table summarizes a conceptual breakdown of cost responsibilities for what appears to be a viable alternative.

Project Costs	Interior Residents Assessment	SWC Cost Share	Riverwood West Homeowners Ass.	City of Bismarck	Southport
Mills Ave Grade Raise	Yes	Yes	No	No	No
Mills Ave Re-surfacing	No	No	No	Yes	No
Harbor Drive Grade Raise	Yes	Yes	No	No	No
Harbor Drive Re-Surfacing	No	No	Yes (50%)	No	Yes (50%)
West Harbor Drive Grade Raise	Yes	Yes	No	No	No
West Harbor Drive Re-surfacing	No	No	Yes	No	No

Because the roadway re-surfacing is required due to grade raises it could be included in the flood control project costs with the entire cost being assessed to the benefited residents. As noted above, this allows the re-surfacing to be re-paid over a period of years through the special assessment district. The level of assessment or cost distribution to the various lots would be apportioned in accordance with the conceptual breakdown provided in the table above. Resurfacing costs shown to be the responsibility of the Riverwood West Homeowner's Association would actually be shared equally by the association residents, while the grade raise costs would only be assessed to the interior properties receiving a flood control benefit. The Southport residents would be assessed their (50%) share of the costs associated with the re-surfacing of Harbor Drive in accordance with what we understand to be the current agreement.

Several other issues are necessary to further clarify this project. As the result would be permanent grade raises of private roadways we propose that all operation and maintenance for these roadways remain with the Riverwood West Homeowners and Southport properties in accordance with your existing agreements. The only obligation for the BCWRD is to complete the project assessment and payments

Current Board Members:

Gaalen Narum, Chair, Bismarck 323-0167 Terry Fleck, Vice Chair, Bismarck 223-9768 Ken Royse, Treas., Bismarck 258-1110 Cary Backstrand, Bismarck 471-9134 Reibold Kellar, Bismarck 425-8155



Burleigh County Water Resource District

City/County Office Building - 221 North 5th Street
Bismarck, North Dakota 58501-4028

Mr. Lance Boyer, President, Harbor Drive Homeowners Association
RE: HARBOR DRIVE FLOOD CONTROL PROJECT ALTERNATIVE
August 22, 2012
Page -3-

until the bonds are repaid. There will also need to be an easement provided to Burleigh County to allow the future placement of temporary flood control measures on these roadways. This document would be developed only if the project moves forward and may require the roadways be constructed to a higher standard that would better survive the heavier truck loading, and possibly some additional width, where practical.

If this appears to be a viable project we would entertain the option of holding another public informational meeting for the Harbor Drive and Southport residents to receive additional input regarding this conceptual approach. Based on this input we would then entertain a petition from the residents requesting us to proceed with additional preliminary engineering work, followed by a request to the State Water Commission for a conditional cost share, then a formal public hearing and vote to construct the project.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry N. Fleck".

Terry Fleck, Chairman

C: Marcus Hall, Burleigh County Engineer
Doug Schonert, Burleigh County Commission
Michael Gunsch, Houston Engineering

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CP

YOUR COPY

July 31, 2012

Notice to Barreigh Water Resource Board and Houston Engineering:

WE, the undersigned residents of Fox Island who have lots in segment E and segment D where the proposed levee is to be built, wish to notify the Barreigh Water Resource Board and Houston Engineering, that as land owners along the Missouri River and the Fox Island Oxbow, we are against the proposed permanent dike project for flood protection on our lots. We do not feel that all the alternatives were adequately studied and we believe we were not given adequate representation on the Fox Island Flood Mitigation Steering Committee. We do believe that flood protection for Fox Island is important but since the process that you have undertaken and the decisions you have made were without our input **WE WILL NOT BE GRANTING EASEMENTS FOR THIS PROJECT**. If efforts toward a permanent dike project continues and some members of Fox Island feel the dike proposal needs to proceed, and the vote results would end in favor of the permanent dike, it will require legal intervention to gain access to our property.

Name	Address	Phone No.
<i>[Signature]</i>	3126 Galloway Dr	258 6745
<i>[Signature]</i>	17 Galloway Dr	223 9920
<i>[Signature]</i>	9223 Galloway Dr	667-2164
<i>[Signature]</i>	3357 Galloway Dr	223 4247
<i>[Signature]</i>	3701 Galloway Dr	626 5866
JAN STANLEY	3736 Galloway Dr	203-8404
<i>[Signature]</i>	3432 Galloway Dr	223-3300
<i>[Signature]</i>	3325 Galloway Dr	223-2811
<i>[Signature]</i>	3367 Galloway Dr	315-3606
<i>[Signature]</i>	1417 Farwest Dr	663-4592
<i>[Signature]</i>	2349 Galloway Dr	477-0193

YOUR COPY

July 31, 2012

Notice to Burleigh Water Resource Board and Houston Engineering:

WE, the undersigned residents of Fox Island who have lots in segment E and segment D where the proposed levee is to be built, wish to notify the Burleigh Water Resource Board and Houston Engineering, that as land owners along the Missouri River and the Fox Island Oxbow, we are against the proposed permanent dike project for flood protection on our lots. We do not feel that all the alternatives were adequately studied and we believe we were not given adequate representation on the Fox Island Flood Mitigation Steering Committee. We do believe that flood protection for Fox Island is important but since the process that you have undertaken and the decisions you have made were without our input **WE WILL NOT BE GRANTING EASEMENTS FOR THIS PROJECT.** If efforts toward a permanent dike project continues and some members of Fox Island feel the dike proposal needs to proceed, and the vote results would end in favor of the permanent dike, it will require legal intervention to gain access to our property.

Name	Address	Phone No.
<i>[Signature]</i>	1437 New West Dr	761-226-1785
<i>[Signature]</i>	1807 TROBESSE DR	707-226-6784
<i>[Signature]</i>	3470 Gallatin Ln	(761) 977-1614
<i>[Signature]</i>	3456 Gallatin Dr	224-5103x
<i>[Signature]</i>	1405 Fox West Dr	406-4821
<i>[Signature]</i>	3620 Harrison Dr	258-7428
<i>[Signature]</i>	3400 S. Hobbs Dr	505-5824
<i>[Signature]</i>	1705 Fox West Dr	255-4119
<i>[Signature]</i>	1705 Fox West Dr	255-4119

July 31, 2012

YOUR COPY

Notice to Burlingame Water Resource Board and Houston Engineering:

WE, the undersigned residents of Fox Island who have lots in segment E and segment D where the proposed levee is to be built, wish to notify the Burlingame Water Resource Board and Houston Engineering, that as land owners along the Missouri River and the Fox Island Oxbow, we are against the proposed permanent dike project for flood protection on our lots. We do not feel that all the alternatives were adequately studied and we believe we were not given adequate representation on the Fox Island Flood Mitigation Steering Committee. We do believe that flood protection for Fox Island is important but since the process that you have undertaken and the decisions you have made were without our input **WE WILL NOT BE GRANTING EASEMENTS FOR THIS PROJECT.** If efforts toward a permanent dike project continues and some members of Fox Island feel the dike proposal needs to proceed, and the vote results would end in favor of the permanent dike, it will require legal intervention to gain access to our property.

Name

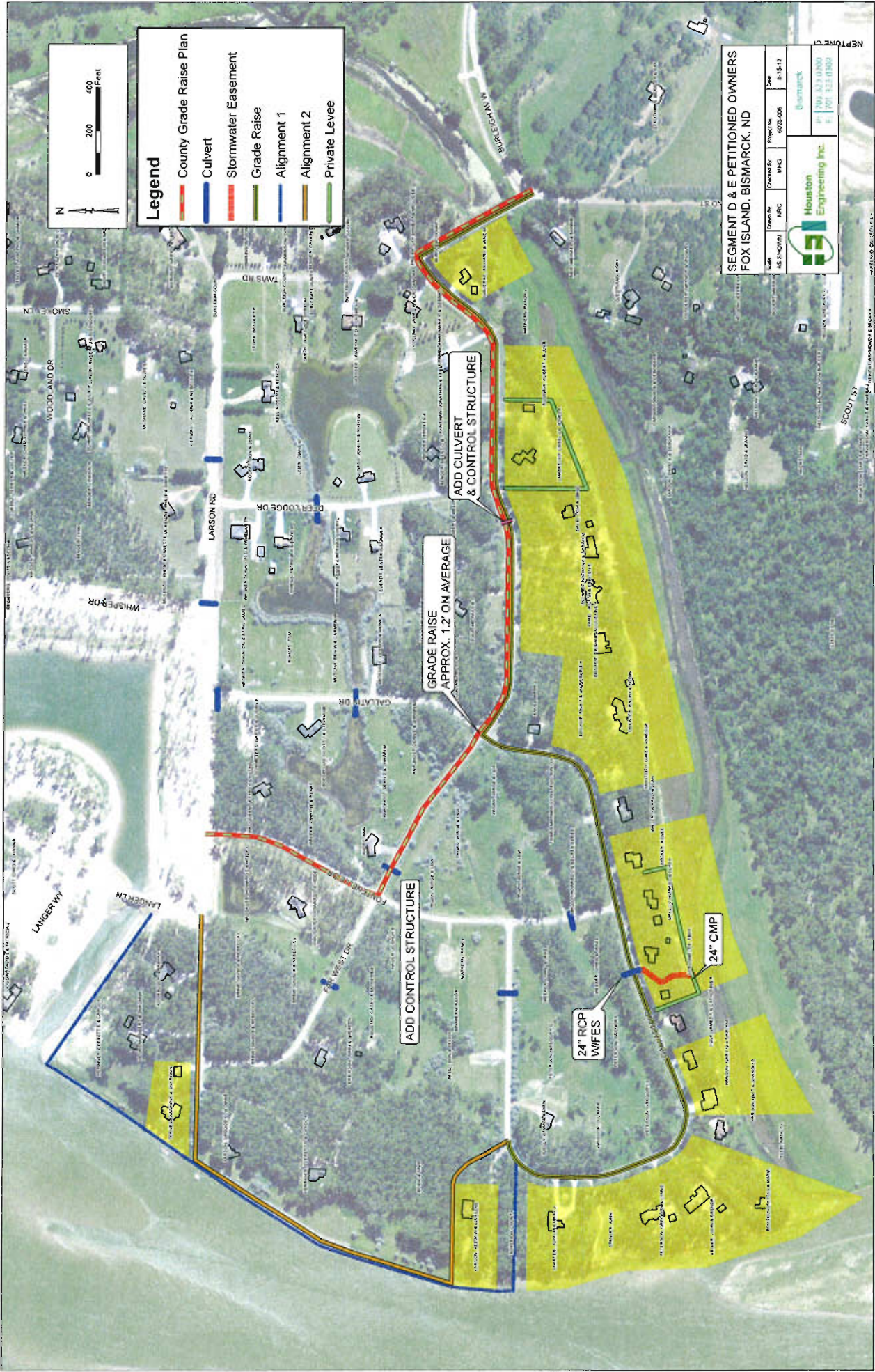
Address

Phone No.

D. J. Schuchman

3317 Cavellia

908-263



Legend

- County Grade Raise Plan
- Culvert
- Stormwater Easement
- Grade Raise
- Alignment 1
- Alignment 2
- Private Levee

**SEGMENT D & E PETITIONED OWNERS
FOX ISLAND, BISMARCK, ND**

Client	AS SHOWN	Project No.	622-006	Date	11-14-12
Drawn By	MHO	Checked By	MHO	Bismarck	
 Houston Engineering Inc.					
P: 701.437.0300 F: 701.437.0300					

ADD CONTROL STRUCTURE

GRADE RAISE APPROX. 1.2' ON AVERAGE

ADD CULVERT & CONTROL STRUCTURE

24" RCP WIFES

24" CMP

Sovereign Land Permit No. S-1818

Permittee: U.S. Army Corp of Engineers
1616 Capitol Avenue
Omaha, NE 68102

Location: SE ¼ of Section 21, the W ½ NW ¼ of Section 27, the E ½ E ½ of Section 28, and the E ½ of Section 33, Township 140 North, Range 81 West and the W ½ NW ¼ and the E ½ SW ¼ of Section 3, the NE ¼ NE ¼ of Section 4, and the NE ¼ NW ¼ of Section 10, Township 139 North, Range 81 West, Burleigh County.

Project Description:

The Permittee is hereby authorized to repair several bank stabilization structures on the left bank of the Missouri River in Burleigh County, North Dakota. These structures were constructed by the Corps beginning in the 1960s under Public Law 88-253, Public Law 90-483 "1968 Flood Control Act," and in the 1970s under Public Law 93-251, Section 32, "Streambank Erosion Control Evaluation and Demonstration Act of 1974."

The 2011 Missouri River flood event caused significant damage to these structures through channel scouring and bank erosion. The proposed project is intended to restore functionality of the structures. The project will involve reshaping the riverbank where necessary and the placement of approximately 10,770 tons of rock rip-rap on the various revtments, refusals, and hard points.

This authorization is subject to the conditions listed below and to the attached North Dakota Department of Health "Construction and Environmental Disturbance Requirements." Any other use of sovereign land is prohibited. Any proposed additional use must comply with the application and permitting process and all other requirements of state law.

General Conditions

1. Authorization of this undertaking is a privileged use of a public resource and does not constitute a property right. The public use and enjoyment of the Missouri River is of high priority.
2. All construction, maintenance, and reclamation activities shall be carried out in a manner reasonably designed to prevent degradation of the Missouri River.
3. The Permittee shall implement measures to minimize the opportunity for sediment to enter the Missouri River during construction.
4. Any construction debris or excess material shall be disposed of in a non-wetland, non-timbered upland site or in an approved landfill.

5. No work is to take place within the Missouri River between April 15 and June 1 in order to protect fishery resources.
6. Prior to or during construction, if items of substantial archeological value are discovered or a deposit of such items is disturbed, the Permittee shall cease construction activities in the area so affected. The State Engineer shall be promptly notified of the discovery, and construction will not resume until the State Engineer gives written permission.
7. This Authorization is site specific for the project as proposed and outlined in the application and supporting documents. Any changes or deviation from the site or design will need authorization from the State Engineer.
8. At the discretion of the State Engineer, in accordance with the exercise of any of the State Engineer's duties, the project is subject to modification or removal at the expense of the Permittee.
9. The State Engineer or the State Engineer's representative shall have access to inspect the authorized project during construction and associated activities and for the life of the project to ensure that it is being or has been accomplished and maintained in accordance with the terms and conditions of this Authorization.
10. The Permittee is responsible for obtaining any other local, state, or federal permits or approvals that may be necessary prior to construction.
11. By granting this Authorization, no liability for damages of any kind, including those caused by improper construction, operation and maintenance, design or failure in design, materials, or workmanship, is assumed by or transferred to the State of North Dakota, the State Engineer, the State Water Commission or any of their respective employees, agents, or assigns. The Permittee will indemnify and hold harmless the State of North Dakota, its officials, employees, agents, boards, commissions, and assigns for any and all liability for work performed and action taken under this Authorization.



Todd Sando
State Engineer

Date: 8/31/12



United States Department of the Interior

U.S. GEOLOGICAL SURVEY
North Dakota Water Science Center
821 East Interstate Avenue
Bismarck, ND 58503-1199

September 5, 2012

Terry Fleck, Chairman
Burleigh County Water Resource District
PO Box 5518
Bismarck, North Dakota 58502

Dear Terry,

The purpose of this letter is to provide the Joint Funding Agreement (JFA) for the operation and maintenance of the streamflow monitoring gaging stations on Hay Creek for fiscal year (FY) 2013.

For over ten years, the USGS North Dakota WSC (NDWSC) and the Burleigh County Water Resources District (BCWRD) have entered into a Cooperative Water Program (CWP) agreement for operation and maintenance of the three gaging stations on Hay Creek. A portion of the CWP funding, Administrative Matching Funds (AMF), have always gone to help fund support benefits and services provided by the USGS at the national level. Under a new business practice the NDWSC can no longer include the AMF in the CWP line item on the JFA. Beginning in FY 2013, the NDWSC will no longer be able to include the AMF in our annual JFA. Instead, USGS funding listed on the JFA, will reflect only funding directly associated with the CWP at the NDWSC level. The benefits and services supplied at the national level will be supported in the NDWSC through other USGS funding sources unrelated to the CWP.

The change in AMF will decrease the on-paper NDWSC contribution and total cost for a particular gage where CWP funds are applied. This change does not decrease the overall expense for the NDWSC to conduct the work nor does it diminish the benefits and services, provided through the CWP. Also, no additional costs will be incurred by the BCWRD as a result of this change.

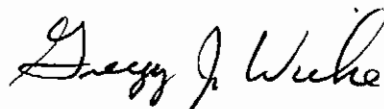
It is proposed that the BCWRD continue to fund the operation of the Hay Creek crest-stage gages on 43rd and 71st Avenues. The City of Bismarck will fund the Hay Creek gaging stations located on Divide and Main Avenues and the gaging station on the Drainage Ditch at Wachter Ave. The total FY 2013 program cost for operation of the gages on Hay Creek and the Wachter Ave Drain will be \$21,740. The USGS will use funds from the CWP to partially match the BCWRD for the two Hay Creek gages, making the BCWRD's contribution \$2,600 as shown in the table below.

<u>Station Name</u>	BCWRD	City of Bismarck	USGS CWP	Total
Hay Creek at 71 st Ave	\$ 1,300	0	980	\$ 2,280
Hay Creek at 43 rd Ave	1,300	0	980	2,280
Hay Creek at Divide Ave	0	1,300	980	2,280
Hay Creek at Main Ave	0	6,190	4,670	10,860
Drain on Wachter Ave	0	4,040	0	4,040
FY2013 Monitoring Costs	\$ 2,600	11,530	7,610	\$ 21,740

I have enclosed 2 signed copies of the FY 2013 JFA. Please sign and return one copy for our files. We will bill you following completion of the work.

Work performed with funds under this agreement will be conducted on a fixed-price basis and data collected will be available for publication by the USGS. Please contact Steve Robinson at (701) 250-7404 if you have any questions.

Sincerely,



Gregg J. Wiche
Director

Enclosures

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
for
Water Resources Investigations

Customer #:	600000113
Agreement #:	13EMNS0000113XH
Project #:	NS00A9R
TIN #:	45-6002204
Fixed Price:	Yes

THIS AGREEMENT is entered into as of the 5th day of September 2012, by the U.S. Geological Survey, United States Department of the Interior, party of the first part, and the Burleigh County Water Resource District, party of the second part.

1. The parties hereto agree that subject to availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation **the operation and maintenance of the crest-stage gages at 43rd Avenue and at 71st Avenue on Hay Creek**, herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50; and 43 USC 50b.
2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program:
 - (a) **\$1,960** by the party of the first part during the period
October 1, 2012 to September 30, 2013
 - (b) **\$2,600*** by the party of the second part during the period
October 1, 2012 to September 30, 2013

* \$640 in unmatched funding

 - (c) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties.
 - (d) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.
3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.
4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.
5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.
6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.
7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.
8. The maps, records, or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records, or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program and, if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at costs, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records, or reports published by either party shall contain a statement of the cooperative relations between the parties.
9. USGS will issue billings utilizing Department of the Interior Bill for Collection (form DI-1040). Billing documents are to be rendered annually. Payments of bills are due within 60 days after the billing date. If not paid by the due date, interest will be charged at the current Treasury rate for each 30 day period, or portion thereof, that the payment is delayed beyond the due date. (31 USC 3717; Comptroller General File B-212222, August 23, 1983).

**U.S. Geological Survey
United States
Department of the Interior**

Burleigh County Water Resource District

By: 
Gregg J. Wiche, Director

9/5/2012
Date

By: _____ Date

By: _____ Date

By: _____ Date

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
for
Water Resources Investigations

Customer #:	6000000113
Agreement #:	13EMNS0000113XH
Project #:	NS00A9R
TIN #:	45-6002204
Fixed Price:	Yes

THIS AGREEMENT is entered into as of the 5th day of September 2012, by the U.S. Geological Survey, United States Department of the Interior, party of the first part, and the Burleigh County Water Resource District, party of the second part.

- The parties hereto agree that subject to availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation **the operation and maintenance of the crest-stage gages at 43rd Avenue and at 71st Avenue on Hay Creek**, herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50; and 43 USC 50b.
- The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program:

- (a) **\$1,960** by the party of the first part during the period
October 1, 2012 to **September 30, 2013**
- (b) **\$2,600*** by the party of the second part during the period
October 1, 2012 to **September 30, 2013**

* \$640 in unmatched funding

- (c) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties.
 - (d) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.
- The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.
 - The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.
 - The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.
 - During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.
 - The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.
 - The maps, records, or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records, or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program and, if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at costs, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records, or reports published by either party shall contain a statement of the cooperative relations between the parties.
 - USGS will issue billings utilizing Department of the Interior Bill for Collection (form DI-1040). Billing documents are to be rendered annually. Payments of bills are due within 60 days after the billing date. If not paid by the due date, interest will be charged at the current Treasury rate for each 30 day period, or portion thereof, that the payment is delayed beyond the due date. (31 USC 3717; Comptroller General File B-212222, August 23, 1983).

U.S. Geological Survey
United States
Department of the Interior

Burleigh County Water Resource District

By: Gregg J. Wiche 9/5/2012
Gregg J. Wiche, Director Date

By: _____ Date

By: _____ Date

By: _____ Date

USGS Information

Agreement:	<u>12EMNS0000113XE</u>	
Project Contact:	<u>Steve Robinson</u>	Telephone: <u>701-250-7404</u>
Title:	<u>Data Chief</u>	Fax Number: <u>701-250-7492</u>
Email:	<u>smrobins@usgs.gov</u>	
Organization Name:	<u>U.S. Geological Survey</u>	Duns Number: <u>92-983-6096</u>
Mailing Address:	<u>821 E. Interstate Avenue</u>	TIN/ALC <u>53-0196958</u>
City, State, Zip:	<u>Bismarck, ND 58503</u>	
Administrative Contact:	<u>Doug Verdouw</u>	Telephone: <u>701-250-7403</u>
Title:	<u>Administrative Officer</u>	Fax Number: <u>701-250-7492</u>
Email:	<u>dverdouw@usgs.gov</u>	
Administrative Address	<u>U.S. Geological Survey</u>	USGS legal authority to enter into the
Mailing Address:	<u>821 E. Interstate Avenue</u>	agreement.
City, State, Zip:	<u>Bismarck, ND 58503</u>	<u>43 USC 50</u>

Customer Information

Agreement:	<u>12EMNS0000113XE</u>	
Project Contact:	<u>Terry Fleck</u>	Telephone: <u>701-223-9768</u>
Title:	<u>Chairman</u>	Fax Number: <u>701-222-0103</u>
Email:	<u>tfleck@attitudedr.com</u>	
Organization Name:	<u>Burleigh County Water Resource District</u>	Duns Number: <u>05-4341219</u>
Mailing Address:	<u>PO Box 5518</u>	TIN/ALC <u>45-6002204</u>
City, State, Zip:	<u>Bismarck, ND 58502</u>	
Administrative Contact:	<u>Terry Fleck</u>	Telephone: <u>701-202-7665</u>
Title:	<u>Chairman</u>	Fax Number: <u>701-222-0103</u>
Email:	<u>tfleck@attitudedr.com</u>	
Administrative Address	<u>Burleigh County Water Resource District</u>	Legal authority to enter into the
Mailing Address:	<u>PO Box 5518</u>	agreement.
City, State, Zip:	<u>Bismarck, ND 58502</u>	<u>NDCC 61-16.1</u>



August 6, 2012

Gailen Narum, Chairman
Burleigh County Water Resource District
City/County Office Building
221 N. 5th St.
Bismarck, ND 58501

RE: Apple Valley Cooperative
Sanitary Lagoon Improvements
CWSRF Project No. 380945-01
Apple Valley, North Dakota

Dear Mr. Narum:

The Facility Plan for the above-referenced project has been reviewed by this Department and is hereby approved. The Environmental Review conducted by the Houston Engineering meets CWSRF requirements and is also approved.

Please retain a copy of the approved Facility Plan in the official project file. Should you have any questions, please contact me at 701-328-5220.

Sincerely,

Susan Hazelett, P.E.
Environmental Engineer
Division of Municipal Facilities

SH:dgg
xc: Michael Gunsch, Houston Engineering, Inc.

53



August 6, 2012

Gailen Narum, Chairman
Burleigh County Water Resource District
City/County Office Building
211 N. 5th St.
Bismarck, ND 58501

RE: Apple Valley Cooperative Sanitary Lagoon Improvements
Burleigh County Water Resource District
CWSRF Project No. 380945-01
Burleigh County, North Dakota

Dear Mr. Narum:

The plans and specifications for the above-referenced project have been reviewed and approved by this office. Any modifications to the approved plans and specifications must be approved by this office. Please submit three copies of any proposed modifications to this office for approval. Unauthorized modifications of approved plans and specifications may result in suspension of federal participation in the project.

This project may now be advertised and bids opened. Following approval of the bid documents by this office, you will be notified that the construction contracts may be awarded. Contracts may not be awarded until this office has authorized award.

Through an agreement with EPA, this office has been delegated the responsibility of monitoring projects for compliance with EPA regulations and policy. A representative of this office will attend the preconstruction conference and perform onsite project inspections.

I would suggest you get a copy of the approved plans and specifications for the above-referenced project, which would then be available to personnel from this office for inspection activities.

Please ensure that a copy of the approved plans and specifications are furnished to the North Dakota-South Dakota / Native American Business Development Center, 3315 University Drive, Bismarck, North Dakota 58501, 701-530-0668, Extension 1359.

This is an appropriate time to remind you that you must certify to the North Dakota Department of Health, on the date one year after the initiation of operation, that the project is capable of meeting the project performance standards as follows:

- The project must be constructed in accordance with approved plans and specifications.

Should you have any questions, please contact me at 701-328-5220.

Sincerely,



Susan Hazelett, P.E.
Environmental Engineer
Division of Municipal Facilities

SH:dgg

xc: Michael Gunsch, Houston Engineering, Inc.

BURLEIGH COUNTY WATER RESOURCE DISTRICT
DEFINITIVE IMPROVEMENT WARRANT, SERIES 2012

FINANCING RESOLUTION

WHEREAS, the Burleigh County Water Resource District (the "**Issuer**") was established by order of the North Dakota State Water Commission on June 11, 1971, and is a political subdivision of the State of North Dakota, organized and operating pursuant to North Dakota Century Code ("**NDCC**") Chapter 61-16.1; and

WHEREAS, the Issuer's Water Resource Board (the "**Board**") has determined that it is necessary to undertake a wastewater treatment project, specifically the rehabilitation of the Apple Valley Cooperative wastewater treatment facility, as well as all other items of work and materials which are reasonably necessary or incidental to the completion of such improvements (the "**Project**"); and

WHEREAS, the North Dakota Public Finance Authority (the "**NDPFA**") is authorized pursuant to NDCC Chapter 6-09.4 to lend money to political subdivisions of the State of North Dakota, to acquire and hold municipal securities issued by such political subdivisions, including those issued to construct, maintain, repair, and operate or cause to be operated, public water and wastewater system utilities, and to issue its bonds to pay the costs of acquiring such municipal securities; and

WHEREAS, the NDPFA has issued its bonds and has deposited the proceeds from the sale thereof together with other available funds in the Clean Water and Safe Drinking Water Act revolving loan funds created by NDCC Chapter 61-28.1 and Chapter 61-28.2 (the "**Revolving Loan Fund**") from which Revolving Loan Fund loans will be made to political subdivisions of the State, including the Issuer to finance the costs of public water and wastewater system utilities and to assist public entities in connection with the financing of such facilities; and

WHEREAS, the Issuer has made timely application to the North Dakota Department of Health (the "**Department**") pursuant to the requirements of the Revolving Loan Fund to finance all or a portion of the cost of the Project; and

WHEREAS, the Department has approved the Issuer's application for a loan from available proceeds of the bonds or other available funds of the NDPFA deposited in the Revolving Loan Fund in an amount not to exceed the cost of the Project; and

WHEREAS, the Issuer, having full power and authority to cause sanitary sewer system projects to be constructed (as defined in NDCC Sections 61-16.1-02 and 61-16.1-09) and to assess the costs of the improvements against benefitted property and incur debt for the payment of the cost of such improvements, recites that by resolution of the Board the Issuer:

1. On July 7, 2010, there having been proposed to the Board the Apple Valley Cooperative wastewater treatment facility project, the Board adopted a Resolution of Necessity financing and determining that it is necessary to construct the Project.
2. Designated Houston Engineering, Inc. as engineer to prepare plans and estimated costs of the Project in such detail as necessary to enable the Board to determine the probable share of the

total costs to be assessed against each of the affected landowners in the proposed assessment district.

3. Upon the filing of the engineer's report and after inspection by the Board of any and all lots and parcels of land which may be subject to assessment, a determination was made by the Board as to the individual assessments not exceeding the benefits to the property, and the Board caused notice of hearing scheduled for December 1, 2010 with regard to the Project to be published in accordance with NDCC Section 61-16.1-18.
4. After the December 1, 2010 public hearing and opportunity for protest as required by law, protests to bar construction of the Project were deemed to be insufficient and on January 10, 2011 adopted an Order establishing the Project and authorized further proceedings on a hearing to determine objections from affected landowners to assessments as established in the Assessment List included in the January 24, 2011 Notice of Hearing on Special Assessments.
5. Approved Plans and Specifications for the Project and Directed Advertisement for Bids for construction of the Project as required by NDCC Section 61-16.1-14.
6. Conducted the Hearing on February 14, 2011 at the appointed time and place as required by the Order referenced in paragraph 4 above, wherein the Board having determined that the benefits and assessments as established in the Assessment List were correct as modified at such hearing and therefor adopted and confirmed Assessment List as modified on February 14, 2011.
7. Performed all other acts required of the Issuer by the constitution and laws of the State of North Dakota prerequisite to the issuance and sale of improvement warrants for the purpose of providing money to pay for the cost of the Project in the manner required of the Issuer by law with full power and authority conferred on it as a political subdivision of the State of North Dakota and does hereby ratify, confirm and adopt all acts performed, resolutions, motions or ordinances passed or adopted and publications had in and incidental to the construction and financing of the Project whether or not reflected on the official minutes and records of the Issuer.

BE IT RESOLVED:

CONDITIONS AND AGREEMENTS

1. The Warrant, authorized by the terms of this resolution to be issued for the purpose of defraying the cost of the improvements for the Project, is issued pursuant to the terms and provisions of NDCC Section 61-16.1-34.
2. The total cost of the improvements for the Project, including construction, engineering, administrative, any land or easement acquisition required, and other fees and all other expenses incidental to the completion of the improvements, are estimated to be not less than \$239,026.

3. The Issuer has performed all statutorily required procedures preliminary to the issuance of the Warrant and asserts that as a condition of issuance, all required acts, conditions and things prerequisite to issue do exist and have been performed by the governing body which is legally constituted and empowered to bind the Issuer.
4. All monies required to be deposited in the Principal and Interest Account of the Fund created by this resolution and any other monies from whatever source dedicated to the retirement of the Warrant payable from the Fund are hereby dedicated and appropriated to the payment of outstanding principal and interest on the Warrant properly chargeable against the Fund when due and payable.
5. All monies required to be deposited in the Construction Account of the Fund created by this resolution are hereby dedicated and appropriated to the payment, when due and payable, of the construction cost of the improvements for the District and all administrative costs and fees incident to such construction and the issuance of the Warrant on the Fund, and to the reimbursement of the Issuer for funds advanced from other sources for such purposes.
6. Expenditure of monies from the Fund shall be made and accounted for by the officers of the Issuer empowered to expend and required to account for Issuer general funds.
7. Whenever all special assessments and any other revenues or taxes appropriated and theretofore collected for any special improvement for the Project are insufficient to pay principal or interest then due on the Warrant issued against the improvement's Fund, Burleigh County, North Dakota (the "**County**") is required to advance to the Issuer an amount sufficient to pay the deficiency attributable to benefited property pursuant to NDCC Section 61-16.1-25.
8. Special assessments have or will be certified to the Issuer's Special Assessment Commission for spreading against benefited property of the Project. The Issuer agrees to take whatever action is necessary to cause a final levy to be made against benefited property of the Project in an amount not less than the total cost of the respective improvement therein. The Issuer will cause the installments of special assessments as finally confirmed by the Issuer to be annually certified to the County Auditor for collection with the general taxes chargeable against the benefited property, except to the extent that payment is provided for by dedication of a portion of the revenues or service charges, if any, available to the Issuer. The Issuer will continue to cause annual certification of balances of special assessments unpaid for the Project to be certified for repayment over a period of years, pursuant and subject to NDCC Section 61-16.1-28, with the first certification and for first collection in the years, respectively, as follows, and annually thereafter:

<u>District</u>	<u>Repayment</u>	<u>Year of First</u>	<u>Year of First</u>
Project	<u>Period (Years)</u>	<u>Certification</u>	<u>Collection</u>
	20	2012	2013

9. The Issuer authorizes officers of the Issuer to furnish certified copies of all proceedings had with regard to the issuance of the Warrant on the Fund by the governing body of the Issuer.

c.7

The Issuer agrees to furnish additional certifications of its officers as are necessary to establish the validity of the Warrant, the tax-exempt status of interest payable thereon, the absence of litigation materially affecting the issuance of the Warrant and any other certifications or information reasonably necessary to insure marketability and compliance with the conditions of underwriting. The Issuer further authorizes its officers to execute the Loan Agreement in substantially the form on file with the Issuer's Chairman, with such changes, insertions or omissions therein as shall be approved by the officer executing the same upon the advice of counsel to the Issuer, the execution and delivery thereof to constitute conclusive evidence of the approval of any such changes.

10. The Issuer covenants that (i) it will restrict the use of the proceeds of the Warrant in such manner and to such extent as may be necessary, in view of the Issuer's reasonable expectations at the time of issuance of the Warrant, so that the Warrant will not constitute "arbitrage bonds" under Section 148 of the Internal Revenue Code of 1986 and regulations prescribed under such Section, and (ii) it will take all actions that may be required of it so that the interest on the Warrant will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.
11. The Warrant issued on the Fund may be exchanged for Refunding Improvement Bonds in principal amounts aggregating the total principal balance due on the Warrant at the time of such exchange, at the option of the registered owner of the Warrant.

IMPROVEMENT DISTRICT FUND

There is hereby created the Apple Valley Cooperative Wastewater Treatment Facility Improvement District No. 2010-1 Fund (the "**Fund**"), which is the fund upon which the Warrant is drawn and payable as provided herein and required by NDCC Section 61-16.1-34.

The Fund shall be held by the Secretary and shall at all times be kept on deposit with a qualified depository of public funds as provided in NDCC Chapter 21-04 as a special fund for the sole purpose of payment of all costs incidental to the construction and financing of the improvement and principal and interest on any outstanding warrant, temporary or definitive, secured thereby, and shall be maintained until all balances of principal or interest on the Warrant issued thereon are fully paid. There shall be established and maintained within the Fund the following accounts, which such accounts may be maintained as separate and special bookkeeping accounts on the official books and records of the Issuer, to be used for no other purpose than that stated herein:

1. Construction Account. There shall be deposited into the Construction Account of the Fund (the "**Construction Account**") all proceeds from the sale of the Warrant and the earnings from time to time received from investment of such proceeds. As warrant proceeds are needed for the Project's improvements, the Issuer shall submit requests in accordance with Section 2.02 of the Loan Agreement. Loan advances shall be recorded on the grid on the back of the Warrant. Monies in the Construction Account from such proceeds and earnings

shall be used for payment of the cost of the improvements and costs of issuance of the Warrant, to include reimbursement to the Issuer for advances made for such costs and for no other purpose; provided, that if upon completion of the improvements for the District, and payment of all costs related thereto, there remains any unexpended balance in the Construction Account from such proceeds or the earnings thereon, such balance shall be used for payment of principal and interest on the Warrant.

2. Principal and Interest Account. There shall be deposited into the Principal and Interest Account of the Fund (the "**Principal and Interest Account**") the accrued interest and any funded interest on the Warrant, any paid, prepaid, and all future collections of special assessments from the District, any revenues dedicated to the payment of principal and interest on the Warrant, and any balances remaining in the Construction Account after it is determined that any additional costs properly payable there from are unlikely to arise.

Disbursements from the Construction Account for construction costs and the Principal and Interest Account for principal and interest payments shall be made as provided by law.

THE WARRANT

In anticipation of the levy and collection of assessments, and any other taxes or revenues pledged to pay for the improvements, the Issuer herewith determines it to be in its best interests to issue the Warrant. The Issuer covenants that it will diligently pursue completion of the improvements, if not completed prior to the date of this resolution, and cause valid and final levy of special assessments upon all benefited property within the District. The levy of special assessments shall be in an aggregate principal amount equal to the total cost of the improvements to benefited property. The Warrant is hereby issued and shall be sold according to the following terms and conditions:

1. Authorization, Sale and Administrative Fee. The issuance and sale of the Warrant in the total principal amount of not to exceed \$239,026 for the cost of the Project and the related costs of issuance of the Warrant and any other expenses, administrative or otherwise, incurred by the Issuer in the completion of the improvement as evidenced by the Warrant is hereby authorized as hereinafter provided. Sale of the Warrant is hereby awarded to the NDPFA on the terms and conditions set forth herein. The Issuer agrees to pay to the NDPFA the Administrative Fee as defined in the Loan Agreement.
2. Principal Amounts, Denominations and Number. One Warrant, numbered R-1, shall be issued on the Fund, in principal amount and denomination set forth below. The actual amount drawn may be less.

<u>Fund</u>	<u>Principal Amount</u>
Apple Valley Cooperative Wastewater Treatment Facility Improvement District No. 2010-1 Fund	\$239,026

3. Date of Warrant. The Warrant shall be dated the date that money is first advanced to the

Issuer by the NDPFA; which first advance must exceed \$11,951 (the lesser of \$50,000 or 5% of the Warrant's principal amount).

4. Maturity and Interest Rate. The Warrant shall mature on September 1, 2032 and shall bear interest at the rate of 2.50% payable on March 1 and September 1 in each year commencing March 1, 2013 (or March 1 or September 1 following closing).

The Warrant is subject to annual principal installments commencing September 1, 2013, with the last principal payment being made on September 1, 2032, subject however to the final amortization schedule to be attached to the Warrant upon the final loan advance in accordance with Section 2.02 of the Loan Agreement. The preliminary amortization schedule has been presented to this meeting and is hereby approved. Each loan advance shall be recorded on the grid on the reverse of the Warrant.

5. Type of Warrant. Single fully registered definitive warrant.
6. Prepayment. The Warrant is subject to prepayment on any interest payment date with the written consent of the NDPFA at a price equal to the principal amount thereof plus accrued interest. Upon partial redemption of any Warrant, a new warrant or bond will be delivered to the owner without charge, representing the remaining principal amount outstanding.
7. Payment. Interest on the Warrant and, upon presentation and surrender thereof to the Bank of North Dakota, as paying agent and registrar of the Bonds, (the "**Paying Agent**" or "**Registrar**") or its successor, the principal thereof shall be payable in lawful money of the United States of America by check, draft, wire or other electronic transfer. Interest shall be payable to the person in whose name the Bond is registered at the close of business on the 15th day (whether or not a business day) of the immediately preceding month. Interest on the Bond shall cease at maturity or on a date prior thereto on which they have been duly called for redemption unless the holder thereof shall present the same for payment and payment is refused.
8. Preparation, Execution and Delivery. The Warrant shall be printed under the supervision and at the direction of the Secretary, executed and authenticated by the co-signatures of the Chairman of the Water Resource Board and the Secretary and sealed and delivered to the buyer at closing upon receipt of the purchase price plus any accrued interest.
9. Source of Payment/Security. The Warrant is payable as to principal and interest from the Fund which derives its revenues from the levy and collection of special assessments against benefitted property and from such other funds as are required to be provided in accordance with NDCC Section 61-16.1-25. The Warrant is also payable in part as to principal and interest from any legally available funds of the Project until such time as all property to be benefitted by the Project is subject to the levy and collection of special assessments in an amount sufficient to pay debt service on the Warrant. Any such necessary legally available funds are hereby authorized and appropriated for such use. Thereafter, whenever all special assessments collected for the Project improvements are insufficient to pay principal or

interest then due on the Warrants, the County is required to advance to the Project Fund referenced herein the amount necessary to cover the anticipated deficiency in accordance with NDCC Section 61-16.1-25, and as provided by such section, advances made by the County shall be obligations of the Project improvement district payable from any surplus in such Fund and from future Issuer budgets and tax levies..

10. Registration. The Warrant shall be registered as to both principal and interest and the Registrar shall establish and maintain a book of registry for the purposes of recording the names and addresses of the registered owners or assigns, the dates of such registration and the due dates and amounts for payment of principal and interest on the Warrant; and the Issuer and the Registrar may treat the person in whose name the Warrant is registered as the absolute owner thereof, whether the Warrant is overdue or not, for the purpose of receiving payment of principal and interest and all other purposes, and shall not be affected by any notice to the contrary.
11. Assignment. The Warrant is transferable by the registered owner or the owner's attorney, duly authorized in writing upon presentation thereof to the Registrar, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney. Each such transfer shall be made on the book of registry and noted on the reverse of the Warrant by the Registrar and the Warrant delivered to the transferee.
12. Form of Warrant. The Warrant shall be reproduced in substantially the form attached hereto as Attachment 1.
13. Additional Warrants. The Issuer reserves the right to issue and sell additional improvement warrants or bonds, temporary or definitive, upon the Fund in such amount, if any, as may be required to pay the full cost of the related improvements or to retire any outstanding temporary improvement warrants or bonds issued thereon, and to refund such additional warrants or bonds by the issuance of one or more series of refunding improvement bonds.
14. Qualified Tax-Exempt Obligation. The Issuer hereby designates the Warrant as a "qualified tax-exempt obligation" under Section 265 of the Code relating to the deduction allowed financial institutions for interest expense allocable to tax-exempt interest. The Issuer represents that: (i) the Warrant is not a "private activity bond" as defined in the Code; (ii) the reasonably anticipated amount of qualified tax-exempt obligations (other than "private activity bonds" except for "qualified 501(c)(3) bonds" as defined in the Code) which will be issued during the calendar year 2012 does not exceed \$10,000,000; and (iii) not more than \$10,000,000 of "qualified tax-exempt obligations" will be designated by the Issuer (including subordinate entities) for the calendar year 2012.
15. Records. The Issuer shall provide audited financial statements as set out in Section 3.01(f) of the Loan Agreement.

BURLEIGH COUNTY WATER RESOURCE DISTRICT
DEFINITIVE IMPROVEMENT WARRANT, SERIES 2012

Principal Amount: Not to Exceed Two Hundred Thirty Nine Thousand Twenty Six Dollars (\$239,026)
Registered Holder: North Dakota Public Finance Authority

Dated Date _____, 2012 Maturity Date Interest Rate
September 1, 2032 2.50%

Interest Payment Dates Initial Interest Payment Date Registrar/Paying Agent
March 1 and September 1 March 1, 2013 Bank of North Dakota

BURLEIGH COUNTY WATER RESOURCE DISTRICT (the "Issuer"), a political subdivision of and existing under and pursuant to the laws of the State of North Dakota acknowledges itself indebted and for value received hereby promises to pay to the Registered Holder the Principal installments set out in the hereto attached amortization schedule and as reorded on the grid on the reverse hereof (which schedule shall be revised in accordance with Section 2.02 of the Loan Agreement in the event funds are advanced to the Issuer other than as originally set forth in the attached amortization schedule), unless redeemed prior thereto as provided in the Financing Resolution (the "Resolution") adopted by the Water Resource Board on August 15, 2012, at which time interest shall cease to accrue provided money for such redemption is on deposit with the Paying Agent, and to pay interest on the Principal Amount at the Interest Rate specified above from the date principal amounts are advanced as recorded on the grid on the reverse hereof to the Initial Interest Payment Date and on each Interest Payment Date thereafter including the Maturity Date. The Registered Holder shall record each principal advance on the grid on the reverse hereof.

This definitive improvement warrant is a duly authorized warrant of the Issuer (the "Warrant") issued by the Issuer in the principal amount of not to exceed \$239,026 under and pursuant to North Dakota Century Code Chapter 61-16.1 and the Resolution. The Warrant is issued on a special fund and represents a portion of the cost of improvements for Apple Valley Cooperative Wastewater Treatment Facility Improvement District No. 2010-1 (the "District"). Capitalized terms used herein which are not specifically defined herein shall have the same meanings given to such terms in the Resolution. A copy of the Resolution is on file in the office of the Secretary in Bismarck, North Dakota.

The Warrant:

- (i) is transferable, as provided in the Resolution;
- (ii) is subject to optional redemption prior to maturity as set out in the Resolution;
- (iii) is subject to the payment of the principal installments set out in the attached amortization schedule, and
- (iv) shall not be valid or obligatory for any purpose until the Certificate of Authentication hereon shall have been signed by the Paying Agent.

The Warrant is a special obligation of the Issuer and is payable solely out of the Fund which derives its revenues from special assessments levied to pay for improvements within the District or from service charges as provided in NDCC Section 61-16.1-34. Whenever all special assessments and any other revenues or taxes appropriated and theretofore collected are insufficient to pay principal and interest then due on the Warrant, Burleigh County, North Dakota is required to advance to the Fund the amount necessary to cover the anticipated deficiency in accordance with NDCC Section 61-16.1-25, and as provided by NDCC Section 61-16.1-25, advances made by the County shall be obligations of the Issuer payable from any surplus in the Fund and from future Issuer budgets and tax levies. The Warrant is issued in full conformity with the Constitution and laws of the State of North Dakota and the ordinances and resolutions of the Issuer duly adopted and approved prior to the issue hereof.

IN WITNESS WHEREOF, the Issuer has caused the Warrant to be executed in the name of the Issuer and on its behalf by the manual or facsimile signature of the Chairman of the Water Resource Board and attested to by the manual or facsimile signature of the Secretary, and has hereunto affixed, imprinted, engraved or otherwise reproduced the official seal of the Issuer (or a facsimile thereof).

BURLEIGH COUNTY WATER RESOURCE DISTRICT



Chairman
Water Resource Board
(S E A L)

ATTEST:



Secretary

CERTIFICATE OF AUTHENTICATION

This is the Warrant delivered pursuant to the Resolution mentioned within.

BANK OF NORTH DAKOTA
Bismarck, North Dakota
as Paying Agent and Registrar

Authorized Representative

Dated August ²²15, 2012.

BURLEIGH COUNTY
WATER RESOURCE DISTRICT

Troy A. Fleck
Chairman
Water Resource Board

Attest:

Mona Givdahl
Secretary

(S E A L)

The governing body of the Issuer acted on the foregoing resolution at a properly noticed meeting held in Bismarck, North Dakota, on August ²²15, 2012, with the motion for adoption made by Cary Backstrand and seconded by Ken Royse, and the roll call vote on the motion was as follows:

"Aye" Backstrand, Fleck, Royse

"Nay" N/A

Absent N/A

Abstain N/A

Record of Advances

Amount	Date	Officer's Initials	Amount	Date	Officer's Initials
(1) \$			(6) \$		
(2) \$			(7) \$		
(3) \$			(8) \$		
(4) \$			(9) \$		
(5) \$			(10) \$		
		Total	\$		

\$239,026

**BURLEIGH COUNTY WATER RESOURCE DISTRICT
DEFINITIVE IMPROVEMENT WARRANT, SERIES 2012**

We have acted as bond counsel to the Burleigh County Water Resource District (the "**Issuer**") in connection with the issuance by the Issuer of the not to exceed \$239,026 Definitive Improvement Warrant, Series 2012, dated 8/22, 2012 (the "**Warrant**"). In such capacity, we have examined such law and such certified proceedings, certifications, and other documents as we have deemed necessary to render this opinion.

Regarding questions of fact material to our opinion, we have relied upon the certified proceedings and other certifications of public officials and others furnished to us without undertaking to verify the same by independent investigation.

Based on the foregoing, we are of the opinion that, under existing law:

- The Issuer validly exists under the constitution and laws of the State of North Dakota with the power to adopt the Financing Resolution dated August 13, 2012, to perform the agreements on its part contained therein and to issue the Warrant.
- The Warrant is a valid and binding special obligation of the Issuer payable from the Apple Valley Cooperative Wastewater Treatment Facility Improvement District No. 2010-1 Fund.
- The Warrant has been duly authorized, executed and delivered and is payable from special assessments levied against the property benefited by the improvement in the District.
- Whenever all special assessments collected for the improvements are insufficient to pay principal or interest then due on the Warrant, Burleigh County, North Dakota is required to advance to the Fund the amount necessary to cover the anticipated deficiency in accordance with NDCC Section 61-16.1-25, and as provided by such section, advances made by the County shall be obligations of the Issuer payable from any surplus in the Fund and from future budgets and tax levies of the Issuer.
- Interest on the Warrant is excludable from gross income of the owners for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on certain corporations. The opinion set forth in the preceding sentence is subject to the condition that the Issuer comply with all requirements of the Internal Revenue Code of 1986, as amended (the "**Code**"), that must be satisfied subsequent to the issuance of the Warrant in order that interest thereon be, and continue to be, excludable from gross income for federal income tax purposes. The Issuer has covenanted to comply with all such requirements. Failure to comply with certain of such requirements may cause the interest on the Warrant to be included in gross income for federal income tax purposes retroactively to the date of issuance of the Warrant.
- The Issuer has designated the Warrant as a "qualified tax-exempt obligation" within the meaning of Code Section 265(b)(3), and, in the case of certain financial institutions (within the meaning of Code Section 265(b)(5)), a deduction is allowed for 80% of that portion of such financial institutions' interest expense allocable to interest on the Warrant.
- The interest on the Warrant is excludable from gross income for State of North Dakota income tax purposes (other than the tax imposed on financial institutions by North Dakota Century Code, Chapter 57-35.3).

The rights of the owner of the Warrant and the enforceability of the Warrant is limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, and by equitable principles, whether considered at law or in equity. We express no opinion regarding the accuracy, adequacy, or completeness of any offering material relating to the Warrant. Further, we express no opinion regarding tax consequences arising with respect to the Warrant other than as expressly set forth herein. Due to the absence of an official statement or other offering material the equivalent of an official statement, this opinion may only be relied upon by the parties to whom it is addressed and may not be relied upon by a subsequent purchaser of the Warrant, or any principal portion thereof, in any future sale or transfer of the Warrant.

Respectfully submitted,
Arntson Stewart Wegner PC

I hereby certify that the foregoing is a full and correct copy of the text of the legal opinion of bond counsel on the issue of the within Warrant of the Burleigh County Water Resource District rendered as of the date of the original delivery of and payment for the Warrant.

WITNESS my hand this 22 day of August, 2012.

Mona Sivdahl, Secretary

Clean Water Loan Info PRELIMINARY

Loan #	7
Loan	Durleigh Co WRD
Interest Rate	2.50%
Administration Fee	0.50%
Loan Amount	239,026.00
Issuance Denomination	5,000.00
Credit Rating	NR
Security Type	Special Assessment
Closing Date	11/1/2012
First Maturity	9/1/2013
Term	20
Final Maturity	9/1/2032
First Interest	3/1/2013
First Interest Payment	1,200.00
First Admin. Payment	250.00
First DSRF Payment	9/1/2013

Project Description
 Rehab Apple Valley Waste Water Treatment Facility

Date	Principal	Interest	Total Principal & Interest	Annual P&I Payment	Outstanding Balance	Admin. Fee	Total Payment	Annual Total Payment
					239,026.00			
3/1/2013	-	1,200.00	1,200.00	-	239,026.00	250.00	1,450.00	-
9/1/2013	14,026.00	2,987.83	17,013.83	18,213.83	225,000.00	597.57	17,611.40	19,061.40
3/1/2014	-	2,812.50	2,812.50	-	225,000.00	562.50	3,375.00	-
9/1/2014	10,000.00	2,812.50	12,812.50	15,625.00	215,000.00	562.50	13,375.00	16,750.00
3/1/2015	-	2,687.50	2,687.50	-	215,000.00	537.50	3,225.00	-
9/1/2015	10,000.00	2,687.50	12,687.50	15,375.00	205,000.00	537.50	13,225.00	16,450.00
3/1/2016	-	2,562.50	2,562.50	-	205,000.00	512.50	3,075.00	-
9/1/2016	10,000.00	2,562.50	12,562.50	15,125.00	195,000.00	512.50	13,075.00	16,150.00
3/1/2017	-	2,437.50	2,437.50	-	195,000.00	487.50	2,925.00	-
9/1/2017	10,000.00	2,437.50	12,437.50	14,875.00	185,000.00	487.50	12,925.00	15,850.00
3/1/2018	-	2,312.50	2,312.50	-	185,000.00	462.50	2,775.00	-
9/1/2018	10,000.00	2,312.50	12,312.50	14,625.00	175,000.00	462.50	12,775.00	15,550.00
3/1/2019	-	2,187.50	2,187.50	-	175,000.00	437.50	2,625.00	-
9/1/2019	10,000.00	2,187.50	12,187.50	14,375.00	165,000.00	437.50	12,625.00	15,250.00
3/1/2020	-	2,062.50	2,062.50	-	165,000.00	412.50	2,475.00	-
9/1/2020	10,000.00	2,062.50	12,062.50	14,125.00	155,000.00	412.50	12,475.00	14,950.00
3/1/2021	-	1,937.50	1,937.50	-	155,000.00	387.50	2,325.00	-
9/1/2021	10,000.00	1,937.50	11,937.50	13,875.00	145,000.00	387.50	12,325.00	14,650.00
3/1/2022	-	1,812.50	1,812.50	-	145,000.00	362.50	2,175.00	-
9/1/2022	10,000.00	1,812.50	11,812.50	13,625.00	135,000.00	362.50	12,175.00	14,350.00
3/1/2023	-	1,687.50	1,687.50	-	135,000.00	337.50	2,025.00	-
9/1/2023	10,000.00	1,687.50	11,687.50	13,375.00	125,000.00	337.50	12,025.00	14,050.00
3/1/2024	-	1,562.50	1,562.50	-	125,000.00	312.50	1,875.00	-
9/1/2024	10,000.00	1,562.50	11,562.50	13,125.00	115,000.00	312.50	11,875.00	13,750.00
3/1/2025	-	1,437.50	1,437.50	-	115,000.00	287.50	1,725.00	-
9/1/2025	15,000.00	1,437.50	16,437.50	17,875.00	100,000.00	287.50	16,725.00	18,450.00
3/1/2026	-	1,250.00	1,250.00	-	100,000.00	250.00	1,500.00	-
9/1/2026	15,000.00	1,250.00	16,250.00	17,500.00	85,000.00	250.00	16,500.00	18,000.00
3/1/2027	-	1,062.50	1,062.50	-	85,000.00	212.50	1,275.00	-
9/1/2027	15,000.00	1,062.50	16,062.50	17,125.00	70,000.00	212.50	16,275.00	17,550.00
3/1/2028	-	875.00	875.00	-	70,000.00	175.00	1,050.00	-
9/1/2028	15,000.00	875.00	15,875.00	16,750.00	55,000.00	175.00	16,050.00	17,100.00
3/1/2029	-	687.50	687.50	-	55,000.00	137.50	825.00	-
9/1/2029	15,000.00	687.50	15,687.50	16,375.00	40,000.00	137.50	15,825.00	16,650.00
3/1/2030	-	500.00	500.00	-	40,000.00	100.00	600.00	-
9/1/2030	15,000.00	500.00	15,500.00	16,000.00	25,000.00	100.00	15,600.00	16,200.00
3/1/2031	-	312.50	312.50	-	25,000.00	62.50	375.00	-
9/1/2031	15,000.00	312.50	15,312.50	15,625.00	10,000.00	62.50	15,375.00	15,750.00
3/1/2032	-	125.00	125.00	-	10,000.00	25.00	150.00	-
9/1/2032	10,000.00	125.00	10,125.00	10,250.00	-	25.00	10,150.00	10,300.00
Total	\$ 239,026.00	\$ 64,812.83	\$ 303,838.83	\$ 303,838.83		\$ 12,972.57	\$ 316,811.40	\$ 316,811.40

Mona Livdahl

From: Michael Gunsch [mgunsch@houstoneng.com]
Sent: Tuesday, September 04, 2012 9:23 AM
To: Cary Backstrand; David Bliss; Ken Royse; Mona; Terry Fleck
Cc: Glenda Anderson (gjanderson@nd.gov); Glenda Anderson (tanderson2098@msn.com); Craig Odenbach; Travis Johnson
Subject: Apple Valley Cooperative
Attachments: Apple Valley Plan holders List 9-4-2012.xlsx

Terry: et. al.

Just an update – attached is the most recent plan holders list for the Apple Valley Cooperative project.

Bid Opening is September 7, 2012 at 11 am. – our office.
You can attend if you wish, but not required.

We will provide a bid tab and recommendation to award or reject at your September 11th meeting.

Based on the listing it appear we should have at least several bidders.
The only reason I can see for a possible rejection of the bids is if the total cost projection exceeds 20% of the amount that was voted on, which could create concerns. At this point based on our Opinion of Probable Costs we should be okay, but the market and pricing continues to change.

Thanks,

Michael H. Gunsch, PE

Principal / Senior Project Manager

O 701.323.0200 | F 701.323.0300 | C 701.527.2134

3712 Lockport St. • Bismarck, ND • 58503

mgunsch@houstoneng.com

www.houstoneng.com

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Electric Pump; Des Moines, IA
Fargo Water Equipment Company; Fargo, ND
Quality Flow Sys., Inc.; New Prague, MN
The Blue Book Building & Construction Network; Jefferson Valley, NY
Meyer Contracting Inc. ; Maple Grove, MN
Sand Creek Corporation; Bismarck, ND
Dakota Supply Group ; Bismarck, ND
iSqFt Planroom; St. Paul, MN
Park Construction Company; Minneapolis, MN
Veit & Company, Inc.; Rogers, MN
Weisz & Sons Inc.; Bismarck, ND
RILEY BROS. CONSTRUCTION, INC.; MORRIS, MN
McGraw-Hill Construction/Dodge; Cincinnati, OH
Strata Corporation; Grand Forks, ND
Brock White Co LLC; Brooklyn Park, MN
HD Supply Waterworks, LTD; Eden Prairie, MN
Ferguson Waterworks - Fargo; Fargo, ND
American Logistics & Contracting; Fargo, ND

James Calland
Fargo Water Equipment
Pat Malay
Daedri Peters
MistyLee Quast
Kay Sehn
John Lippert
Tracy Lane
Michael Christianson
Patrice Broding
Ryan Holen
Amy Christians
Jake Meszaros
Rob Martens
Rick Kruger
Derek Johnson
Jeremy Sagvold
Dan Jacobsen

Supplier	jamesc@electricpump.com
Supplier	office@fgoh2o.com
Supplier	jon@qfsi.net
Plan Room	ddempsey@thebluebook.com
Prime Bidder	mlquast@meyercontractinginc.com
Prime Bidder	sehnfive@bis.midco.net
Supplier	jlippert@dsginc.biz
Plan Room	agcminnesota@isqft.com
Prime Bidder	estimating@parkconstructionco.com
Prime Bidder	estimating@veitusa.com
Prime Bidder	ryan@weiszandsons.net
Prime Bidder	amyc@rileybros.com
Plan Room	dodge_reocmw@mcgraw-hill.com
Prime Bidder	quotes@strata-corp.com
Supplier	rkruger@brockwhite.com
Supplier	derek.johnson3@hdsupply.com
Supplier	jsagvold@nwws.biz
Subcontractor	danjacobsen429@gmail.com

Mona Livdahl

From: Gailen Narum [gonarum@yahoo.com]
Sent: Wednesday, June 27, 2012 4:13 PM
To: Terry Fleck
Cc: Cary Backstrand; Ken Royse; Rynee Kellar; Mona Livdahl
Subject: FYI (Board)
Attachments: A BCWRD Statement.pdf

Terry,

At the May 8th Regular Board meeting (the meeting you missed), a motion was made to adopt a BCWRD Statement of Authority, Powers and Responsibilities (attached) and have it placed on the BCWRD web page. After considerable discussion, a substitute motion was made and carried to defer the original motion until we have a full board attendance in order that we may have full board participation in the discussion and vote.

The Board has the right to utilize the North Dakota Century Code and/or provide clarification as to how we, as a Board, view our Authority, Powers and Responsibilities. Even though this statement is not an interpretation of the North Dakota Century Code, when our interpretations are challenged, we have the following choices:

- Request advice or assistance from the Attorney General.
- Employ other counsel to advise and represent us in litigation.
- Change our ways and move on.

To the best of my knowledge, we are not being challenged and are not required to make any of the above choices when we consider and discuss this issue before us. What is required is that we have a discussion and then decide "Aye" or "Nay" on the motion.

Also, for your information I'm including the following:

NDCC: 61-16.1-58. Attorney general to assist boards - Employment of counsel.

The attorney general shall render legal opinions or such other assistance to water resource boards as is required to be rendered to state officers by section 54-12-01. The water resource board, however, may employ other counsel to advise and represent it in such actions and appeals and in its proceedings.

NDCC: _54-12-01. Attorney general - Duties. The attorney general shall:

6. Consult with and advise the governor and all other state officers and when requested give written opinions on all legal or constitutional questions relating to the duties of such officers respectively.

Hopefully, all the board members will be present at the July 10th meeting, so this motion can be dealt with.

Gailen

Burleigh County Water Resource District

The purpose of this document is to provide the citizens of Burleigh County a better understanding of the authority, powers and responsibilities of the Burleigh County Water Resource District as provide by the legislative assembly of North Dakota and is governed by ND State Law and any conflict between this document and the State Law is resolved in favor of the applicable State Law. This document is provided for information only should not be used as a substitute for obtaining advice and council from qualified professional of your choice.

(Excerpts from North Dakota Century Code - Paraphrased)

NDCC 61-16-05. Water resource districts - Area to be included.

All land in North Dakota shall be within a water resource district. *As a point of clarification, all land includes land within the jurisdictional limits of organized communities and cities.*

NDCC 61-16-06. Order creating water resource district.

The secretary of state's certificate, or a copy authenticated by the secretary of state, shall be prima facie evidence of the organization of the district. This new district shall be, and is hereby declared to be, a governmental agency, and a body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied to exercise such powers. *The intent of the Burleigh County Water Resource Board of Managers is to serve the citizens of Burleigh County, by working with all federal and state agencies, local communities and public entities within the district.*

NDCC 61-16-07. Water resource board - Appointment and number.

If the district's boundaries are confined to one county, the board of county commissioners shall appoint a water resource board consisting of three or five managers. *As a point of clarification, appointments are made on a rotating schedule, so any interested person can apply in any given year for an appointment.*

NDCC 61-16-08. Eligibility for appointment to board - Term of office - Removal – Filling vacancies - Compensation of managers.

When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for

appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment.

NDCC 61-21-02. Watercourses, ditches, and drains may be constructed, maintained, repaired, improved, or extended.

Watercourses, ditches, drains, and improvements thereto for the drainage of sloughs and other lowlands may be surveyed and investigated and established, constructed, maintained, repaired, improved, and cleaned out in the several counties of this state under the provisions of this chapter wherever the same shall be conducive to the public health, convenience, or welfare.

The powers conferred by this chapter and this section shall extend to and include:

1. The deepening and widening or any necessary improvement of drains which have been or hereafter may be constructed.
2. The straightening, clearing, or cleaning out and deepening of channels of creeks, streams, and rivers, and the construction, maintenance, remodeling, repairing, and extension of levees, dikes, and barriers for the purpose of drainage.
3. The location or extension of any drain if such location or extension is necessary to provide a suitable outlet or reasonably drain lands within a practical drainage area of such drains.
4. The establishment, in whole or in part, of a drain and the completion of the same on the line of an abandoned or invalid drain.
5. The establishment and construction of lateral drains with outlets in drains already constructed.
6. The installation of artificial subsurface drainage systems.

NDCC 61-16.1. Operation of water resource districts.

The legislative assembly of North Dakota recognizes and declares that the general welfare and the protection of the lives, health, property, and the rights of all people of this state require that the management, conservation, protection, development, and control of waters in this state, navigable or nonnavigable, surface or subsurface, the control of floods, the prevention of damage to property there from, involve and necessitate the exercise of the sovereign powers of this state and are affected with and concern a public purpose. To realize these objectives it is hereby declared to be the policy of the state to provide for the management, conservation, protection, development, and control of water resources and for the prevention of flood damage in the watersheds of this state and thereby to protect and promote the health, safety, and general welfare of the people of this state.

The legislative assembly further recognizes the significant achievements that have been made in the management, conservation, protection, development, and control of our water

and related land resources, and declares that the most efficient and economical method of accelerating these achievements is to establish water resource districts encompassing all of the geographic area of the state, and emphasizing hydrologic boundaries.

NDCC 61-16.1-02 Definitions.

- **"Assessment drain"** means any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage, and any artificial drain of any nature or description constructed for the purpose of drainage, including dikes and appurtenant works, which are financed in whole or in part by special assessment. This definition may include more than one watercourse or artificial channel constructed for the purpose of drainage when the watercourses or channels drain land within a practical drainage area.
- **"Project"** means any undertaking for water conservation, flood control, water supply, water delivery, erosion control and watershed improvement, drainage of surface waters, collection, processing, and treatment of sewage, or discharge of sewage effluent, or any combination thereof, including incidental features of any such undertaking.
- **"Water resource board"** means the water resource district's board of managers.

NDCC 61-16.1-06. District budget - Tax levy - Financing by special assessment.

The fiscal year of the district begins January first and ends December thirty-first. Upon completion and adoption of a budget covering necessary expenses, the water resource board shall send a copy of the budget to the county auditor of the district. The auditor shall transmit the same to the board of county commissioners of that county. The board of county commissioners shall either disapprove the budget, amend and approve the budget as amended, or approve the budget as submitted and, if approved as amended or as submitted, the board shall, by resolution, levy and authorize and direct the county auditor to extend and spread upon the tax roll of the county or portion of the county in the district a tax not exceeding the limitation in section 57-15-26.6 in the same manner, and with the same effect, as general property taxes are extended and spread. Funds produced each year by the tax levy shall be available until expended, and if the tax levy in any year will not produce sufficient revenue to cover district expenses, a fund sufficient to pay the district expenses may be accumulated.

The acquisition of rights of way, easements, and the construction, operation, and maintenance of a project in a district may, in the discretion of the water resource board, be financed in whole or in part by special assessments against property benefited by such project, or from revenues realized from general tax collections, or from net revenues to be derived from service charges to be imposed and collected for the services of the project, or any combination of such sources.

NDCC 57-15-26.6. Water resource district's general tax levy.

The board of directors of a water resource district shall estimate expenses of the district and transmit them to the board of county commissioners according to section 61-16.1-06. The board of county commissioners may, by resolution, levy and authorize the county auditor to extend upon the county or portion of the county in the district a tax not exceeding four mills on each dollar of taxable valuation in the county or portion of the county in the district.

NDCC 61-16.1-09. Powers of water resource board.

- Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter.
- Maintain and control the water levels and the flow of water in the bodies of water and streams involved in water conservation and flood control projects within the district and regulate streams, channels, or watercourses and the flow of water therein by changing, widening, deepening, or straightening the same, or otherwise improving the use and capacity thereof.
- Regulate and control water for the prevention of floods and flood damages by deepening, widening, straightening, or diking the channels or floodplains of any stream or watercourse within the district, and construct reservoirs or other structures to impound and regulate such waters. *(Does not apply to Flood Plain Management – NDCC 61-16.2 or Storm Water Management – NDCC 61-28-01.)*
- Make rules and regulations concerning the management, control, regulation, and conservation of waters and prevent the pollution, contamination, or other misuse of the water resources, streams, or bodies of water included within the district. *(Does not apply to Flood Plain Management – NDCC 61-16.2 or Storm Water Management – NDCC 61-28-01.)*
- Do all things reasonably necessary and proper to preserve the benefits to be derived from the conservation, control, and regulation of the water resources of this state. *(Does not apply to Flood Plain Management – NDCC 61-16.2 or Storm Water Management – NDCC 61-28-01.)*

- Construct, operate, and maintain recreational facilities, including beaches, swimming areas, boat docking and landing facilities, toilets, wells, picnic tables, trash receptacles, and parking areas, and to establish and enforce rules and regulations for the use thereof.
- Convey, sell, dispose of, or lease personal and real property of the district as provided by this chapter.
- Authorize and issue warrants to finance construction of water conservation and flood control projects, assess benefited property for part or all of the cost of such projects, and require appropriations and tax levies to maintain sinking funds for construction warrants on a cash basis at all times.
- Borrow money within the limitations imposed by this chapter for projects herein authorized and pledge security for the repayment of such loans.
- Petition any zoning authority established pursuant to chapter 11-33, 11-35, or 40-47 or section 58-03-13 to assume jurisdiction over a floodplain for zoning purposes when such zoning is required to regulate and enforce the placement, erection, construction, reconstruction, repair, and use of buildings and structures to protect and promote the health, safety, and general welfare of the public within a floodplain area.

NDCC 61-16.1-10 Responsibilities and duties of WRD Board.

- Meet jointly with other water resource boards within a common river basin at least twice each year at times and places as mutually agreed upon for the purpose of reviewing and coordinating efforts for the maximum benefit of the entire river basin.
- Cooperate with other water resource boards of a common river basin and provide mutual assistance to the maximum extent possible.
- Exercise jointly with other water resource districts within a river basin to effectively resolve the significant and common water resource management problem or problems of the river basin or region and to jointly develop a comprehensive plan for the river basin or region.
- Encourage all landowners to retain water on the land to the maximum extent possible in accordance with sound water management policies, and carry out to the maximum extent possible the water management policy that upstream landowners and districts that have artificially altered the hydrologic scheme must share with downstream landowners the responsibility of providing for proper management and control of surface waters.

- Address and consider fully in the planning of any surface water project the downstream impacts caused by the project. A determination of whether to proceed with the construction of a project shall be based on the following principles:
 - a. Reasonable necessity of the project.
 - b. Reasonable care to be taken to avoid unnecessary injury by fully considering all alternatives.
 - c. Consideration of whether the utility or benefit accruing from the project reasonably outweighs the adverse impacts resulting from the project.
- Require that appropriate easements be obtained in accordance with applicable state and federal law when projects will cause an adverse impact to lands of other landowners.

Additional NDCC Information

FLOOD PLAIN MANAGEMENT

NDCC 61-16.2-01. Legislative intent and purpose.

The legislative assembly finds and declares that a large portion of the state's land resources is subject to recurrent flooding by overflow of streams and other watercourses causing loss of life and property, disruption of commerce and governmental services, unsanitary conditions, and interruption of transportation and communications, all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state. The legislative assembly further finds that public interest necessitates that the floodplains of this state be developed in a manner which will alleviate loss of life and threat to health, and reduce private and public economic loss caused by flooding.

It is therefore the policy of this state and the purpose of this chapter to guide development of the floodplains of this state in accordance with the enumerated legislative findings, to reduce flood damages through sound floodplain management, stressing nonstructural measures such as floodplain zoning and flood proofing, acquisition and relocation, and flood warning practices; and to ensure as far as practicable that the channels and those portions of the floodplains of watercourses which are the floodways are not inhabited and are kept free and clear of interference or obstructions which may cause any undue restriction of the capacity of the floodways.

It is also the policy of this state and purpose of this chapter to provide state coordination and assistance to communities in floodplain management activities, to encourage communities to adopt, administer, and enforce sound floodplain management ordinances, and to provide the state engineer with authority necessary to carry out and enforce a floodplain management program for the state and to coordinate federal, state, and local floodplain management activities in this state.

NDCC 61-16.2-02. Definitions.

- In this chapter, unless the context or subject matter otherwise provides:
 1. "Commission" means state water commission.
 2. "Community" means any political subdivision that has the authority to zone.

NDCC 61-16.2-05. Floodplain management ordinances.

- Each community shall submit the floodplain management ordinances adopted under the national flood insurance program [42 U.S.C. 4001 et seq.] to the state engineer for review.

STORM WATER MANAGEMENT

NDCC 61-28-01. Statement of policy.

It is hereby declared to be the policy of the state of North Dakota to act in the public interest to protect, maintain, and improve the quality of the waters in the state for continued use as public and private water supplies, propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational, and other legitimate beneficial uses, to require necessary and reasonable treatment of sewage, industrial, or other wastes and to cooperate with other agencies in the state, agencies of other states, and the federal government in carrying out these objectives.

NDCC 61-28-02. Definitions.

- "Board" means the state water pollution control board.
- "Department" means the state department of health.
- "Person" includes any corporation, limited liability company, individual, partnership, association, or other public or private entity, including any state or federal agency or entity responsible for managing a state or federal facility, and includes any officer or governing or managing body of any such entity.

NDCC 61-28-05. Rules and standards.

The department may adopt rules and, jointly with the board, shall hold public hearings regarding the adoption, amendment, or repeal of rules and standards of quality of the waters of the state as provided in this chapter.

Prepared and Adopted
By The:
Burleigh County Water Resource District
Board of Managers
June __, 2012



State of North Dakota

Office of the State Engineer

900 EAST BOULEVARD AVE. • BISMARCK, ND 58505-0850
701-328-2750 • FAX 701-328-3696 • <http://swc.nd.gov>

August 8, 2012

Col. Joel Cross
Commander
U.S. Army Corps of Engineers
1616 Capitol Ave., Ste. 9000
Omaha, NE 68128

Dear Col. Cross:

Beginning in the 1960s, the U.S. Army Corps of Engineers (Corps) began construction on several bank stabilization structures on the Missouri River in North Dakota under Public Law 88-253, Public Law 90-483 "1968 Flood Control Act," and in the 1970's under Public Law 93-251, Section 32, "Streambank Erosion Control Evaluation and Demonstration Act of 1974". Those completed structures were then turned over to the State of North Dakota for operation and maintenance. The State entered into agreements with the various County Water Resource Districts in which the structures are located as the local sponsors for operation and maintenance of the structures.

In 2012, Brent and Patricia Levinson (Levinson) and Dave and Pat Goodin (Goodin), Bismarck, North Dakota applied for authorization from the State Engineer and the Corps to repair and reinforce 125-foot and 200-foot adjoining sections respectively of Rev. 1311.7 on the left bank of the Missouri River in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, Township 138 North, Range 80 West, Burleigh County, North Dakota that were damaged by the 2011 Missouri River flood event. The State Engineer approved the Levinson authorization (S-1780) on August 1, 2012 and the Goodin authorization (S-1784) on August 8, 2012 (copies attached).

It is my understanding that the Corps intends to issue Section 404 Permits to Levinson and Goodin for these projects. As part of that process, the Corps instructed Levinson and Goodin to first seek approval from the local sponsor of the Corps structures, in this case, the Burleigh County Water Resource District (County).

The County provided a letter of support for the proposed maintenance activities on May 10, 2012 (copy attached). The County stated that they have reviewed the projects proposed by Levinson and Goodin and feel that this work will satisfy the County's obligation for maintenance of the revetment as identified in the 1971

maintenance agreement. Also, the County indicated they will be providing financial support for these projects.

It is my understanding, that upon your decision, you will direct the Corps Regulatory Office, Bismarck, North Dakota to take the appropriate action on the Section 404 Permits for these projects.

If you have any questions concerning this matter, please contact Gerald Heiser, Sovereign Lands Manager at (701) 328-4935.

Sincerely,

A handwritten signature in blue ink, appearing to read "Todd Sando", with a long horizontal flourish extending to the right.

Todd Sando
State Engineer

GRH/1625

Enclosures

Cc: Burleigh County Water Resource District, Bismarck, ND
U.S. Army Corps of Engineers, Regulatory Office, Bismarck, ND
Brent and Patricia Levinson, Bismarck, ND
Dave and Pat Goodin, Bismarck, ND

Sovereign Land Permit No. S-1780

Permittee: **Brent and Patricia Levinson**
2830 Langer Way
Bismarck, ND 58504

Location: **SW ¼ NE ¼ of Section 18, Township 138 North, Range 80 West, Burleigh County**

Project Description:

The Permittee is hereby authorized to repair and reinforce a rock revetment originally constructed by the U.S. Army Corps of Engineers which was damaged during the 2011 flood event proximate to your property on the Missouri River in Burleigh County. Specifically the project involves removal of dead trees, reshaping the bank, and placement of approximately 400 cubic yards of 6-inch to 24-inch crushed rock along approximately 125 feet of shoreline.

This authorization is subject to the conditions listed below and to the attached North Dakota Department of Health "Construction and Environmental Disturbance Requirements." Any other use of sovereign land is prohibited. Any proposed additional use must comply with the application and permitting process and all other requirements of state law.

General Conditions

1. Placement of rock rip-rap on the Missouri River in order to protect your property from erosion is a privileged use of a public resource and does not constitute a property right. The public use and enjoyment of the Missouri River is of high priority.
2. All construction, maintenance, and reclamation activities shall be carried out in a manner reasonably designed to prevent degradation of the Missouri River.
3. The Permittee shall implement measures to minimize the opportunity for sediment to enter the Missouri River during construction.
4. Any construction debris or excess material shall be disposed of in a non-wetland, non-timbered upland site or in an approved landfill.
5. Prior to or during construction, if items of substantial archeological value are discovered or a deposit of such items is disturbed, the Permittee shall cease construction activities in the area so affected. The State Engineer shall be promptly notified of the discovery, and construction will not resume until the State Engineer gives written permission.

6. This Authorization is site specific for the project as proposed and outlined in the application and supporting documents. Any changes or deviation from the site or design will need authorization from the State Engineer.
7. At the discretion of the State Engineer, in accordance with the exercise of any of the State Engineer's duties, the project is subject to modification or removal at the expense of the Permittee.
8. The State Engineer or the State Engineer's representative shall have access to inspect the authorized project during construction and associated activities and for the life of the project to ensure that it is being or has been accomplished and maintained in accordance with the terms and conditions of this Authorization.
9. The Permittee is responsible for obtaining any other local, state, or federal permits or approvals that may be necessary prior to construction.
10. By granting this Authorization, no liability for damages of any kind, including those caused by improper construction, operation and maintenance, design or failure in design, materials, or workmanship, is assumed by or transferred to the State of North Dakota, the State Engineer, the State Water Commission or any of their respective employees, agents, or assigns. The Permittee will indemnify and hold harmless the State of North Dakota, its officials, employees, agents, boards, commissions, and assigns for any and all liability for work performed and action taken under this Authorization.



Todd Sando
State Engineer

Date: 8/1/12



Project Site

Project Site

NORTH DAKOTA



Brent Levinson
T138N, R80W Section 18

Burleigh Co.
Permit No.S1780



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Sovereign Land Permit No. S-1784

Permittee: **Dave and Pat Goodin**
2810 Langer Way
Bismarck, ND 58504

Location: **NE ¼ SW ¼ of Section 18, Township 138 North, Range 80 West, Burleigh County**

Project Description:

The Permittee is hereby authorized to repair and reinforce a rock revetment originally constructed by the U.S. Army Corps of Engineers which was damaged during the 2011 flood event proximate to your property on the Missouri River in Burleigh County. Specifically the project involves removal of dead trees, reshaping the bank, installing approximately 200 lineal feet of fabric, and placement of approximately 600 cubic yards of 6-inch to 24-inch crushed rock along approximately 200 feet of shoreline.

This authorization is subject to the conditions listed below and to the attached North Dakota Department of Health "Construction and Environmental Disturbance Requirements." Any other use of sovereign land is prohibited. Any proposed additional use must comply with the application and permitting process and all other requirements of state law.

General Conditions

1. Authorization of this undertaking is a privileged use of a public resource and does not constitute a property right. The public use and enjoyment of the Missouri River is of high priority.
2. All construction, maintenance, and reclamation activities shall be carried out in a manner reasonably designed to prevent degradation of the Missouri River.
3. The Permittee shall implement measures to minimize the opportunity for sediment to enter the Missouri River during construction.
4. No work shall be conducted within the Missouri River from April 15 to June 1 in order to protect fishery resources.
5. Any construction debris or excess material shall be disposed of in a non-wetland, non-timbered upland site or in an approved landfill.
6. Prior to or during construction, if items of substantial archeological value are discovered or a deposit of such items is disturbed, the Permittee shall cease construction activities in the area so affected. The State Engineer shall be promptly notified of the discovery, and construction will not resume until the State Engineer gives written permission.

7. This Authorization is site specific for the project as proposed and outlined in the application and supporting documents. Any changes or deviation from the site or design will need authorization from the State Engineer.
8. At the discretion of the State Engineer, in accordance with the exercise of any of the State Engineer's duties, the project is subject to modification or removal at the expense of the Permittee.
9. The State Engineer or the State Engineer's representative shall have access to inspect the authorized project during construction and associated activities and for the life of the project to ensure that it is being or has been accomplished and maintained in accordance with the terms and conditions of this Authorization.
10. The Permittee is responsible for obtaining any other local, state, or federal permits or approvals that may be necessary prior to construction.
11. By granting this Authorization, no liability for damages of any kind, including those caused by improper construction, operation and maintenance, design or failure in design, materials, or workmanship, is assumed by or transferred to the State of North Dakota, the State Engineer, the State Water Commission or any of their respective employees, agents, or assigns. The Permittee will indemnify and hold harmless the State of North Dakota, its officials, employees, agents, boards, commissions, and assigns for any and all liability for work performed and action taken under this Authorization.



Todd Sando
State Engineer

Date: 8/8/12



Dave and Pat Goodin
NE1/4 SW1/4 Section 18,
T138N, R80W

Burleigh Co.
Permit No. S1784



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Burleigh County Water Resource District

City/County Office Building - 221 North 5th Street
Bismarck, North Dakota 58501-4028

May 10, 2012

John Paczkowski
Regulatory Section Chief
ND State Water Commission
900 East Boulevard
Bismarck, ND 58505

RE: Levinson and Goodin Sovereign Lands Permit Applications

Dear Mr. Paczkowski:

The Burleigh County Water Resource District has been working closely with Burleigh County, and we are aware of the applications recently filed by Brent Levinson and Dave Goodin for restoration of the existing revetment along their property. Both landowners have filed applications for the construction which will occur at least partially on sovereign lands. We have reviewed their proposed construction and are writing to indicate our support of the proposed maintenance activities.

The repair work will be funded in part by Burleigh County and in part by the land owner. This work will satisfy Burleigh County's obligation for maintenance of the revetment as identified in the 1971 agreement. This repair work is important both to halt the loss of private property and to ensure the continued effectiveness and integrity of the downstream revetment that protects the channel to Whispering Bay.

It is also our understanding that both Levinson and Goodin have filed applications with the US Army Corps of Engineers and the Corps has indicated their intent to authorize the work under an applicable nationwide permit once the state's regulatory requirements have been satisfied.

We hope you will take a positive view of these applications and urge their timely approval so the intended repairs can be completed in a timely fashion this summer.

Sincerely,

A handwritten signature in cursive script that reads "Gailen Narum".

Gailen Narum, Chairman
Burleigh County Water Resource District

C: Marcus Hall, Burleigh County
Michael Gunsch, HEI



Current Board Members:

Gailen Narum, Chair, Bismarck 323-0167 Terry Fleck, Vice Chair, Bismarck 223-9768 Ken Royse, Treas., Bismarck 258-1110 Cary Backstrand, Bismarck 471-9134 Reinold Kellar, Bismarck 425-

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State of North Dakota

Office of the State Engineer

900 EAST BOULEVARD AVE. • BISMARCK, ND 58505-0850
 701-328-2750 • FAX 701-328-3696 • <http://swc.nd.gov>

SOLICITATION OF VIEWS

August 24, 2012

RE: APPLICATIONS TO THE STATE ENGINEER FOR AUTHORIZATION TO CONSTRUCT A PROJECT WITHIN ISLANDS AND BEDS OF NAVIGABLE STREAMS OR WATERS OF THE STATE OF NORTH DAKOTA.

U.S. Army Corps of Engineers, Omaha, NE Applicant

Application No. **S-1820**

The U.S. Army Corps of Engineers, Omaha, Nebraska has filed an application with the State Engineer to spray vegetation on several sandbars and islands on the Missouri River in McLean, Oliver, Morton, Burleigh, and Emmons Counties. The 2011 Missouri River flood event created a considerable number and acres of islands and sandbars that provide excellent nesting and foraging habitat for the endangered least tern and threatened piping plover. With time, quality of the habitat tends to diminish as the islands and sandbars become vegetated.

The Corps is charged with implementing measures to mitigate impacts to these protected species caused by its operation of the main stem reservoirs. In an attempt to accomplish this in a way that is efficient, with minimal impact to riparian landowners, river recreationists, the river itself, and other natural resources, the Corps proposes to spray existing vegetation on selected islands and sandbars with *Glyphosate* in order to prevent them from becoming vegetated to the point where they no longer provide suitable habitat for terns and plovers. At this time, the patches of vegetation are relatively small and the vegetation short. Excellent control is anticipated.

The project will involve spraying weeds, tree seedlings, and other vegetation on a total of 32.0 acres on 14 individual islands within the Missouri River in order to prevent the islands from becoming vegetated to the point where they no longer provide suitable habitat for nesting piping plovers and least terns. Spraying will be conducted on foot using backpack sprayers or with the use of an ATV where accessible. The Corps has filed a *Notice for Pesticide Application to Waters of the State* (copy attached) with the North Dakota Department of Health. The Corps will strictly adhere to all label restrictions.

Spraying will occur in the following locations:

<u>River Mile</u>	<u>Island Size</u> (ac)	<u>Acres to be Sprayed</u>	<u>Legal Description</u>			<u>Counties</u>
			<u>TWP</u>	<u>Range</u>	<u>Section</u>	
1374.1	10	3.0	144	84	E ½ 8	McLean/Mercer
1373.7	8	1.0	144	84	SE ¼ 8	McLean/Mercer
1348.5	15	4.0	143	81	18	McLean/Oliver
1348.2	13	3.0	143	81	18	McLean/Oliver
1338.5	110	3.0	142	81	SW ¼ 27 NW ¼ 34	Burleigh/Oliver

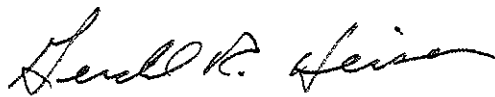
1336.0	117	3.0	141	81	2	Burleigh/Oliver
1303.8	88	4.0	137	80	E ½ 4	Burleigh/Morton
					E ½ 5	
					NW ¼ 9	
1301.5	8	0.5	137	80	NW ¼ 15	Burleigh/Morton
					NE ¼ 16	
1293.2	13	2.0	137	79	SE ¼ 16	Burleigh/Morton
1292.5	30	1.0	137	79	NW ¼ 22	Burleigh/Morton
1286.5	20	4.0	136	79	NE ¼ 8	Burleigh/Morton
1282.6	25	0.5	136	79	NE ¼ 23	Burleigh/Morton
1281.5	8	2.0	136	79	SW ¼ 23	Morton/Emmons
1281.4	7	<u>1.0</u>	136	79	SW ¼ 23	Morton/Emmons
		32.0				

No spraying will occur on any islands or sandbars between river miles 1310.2 and 1321.4 because of the high recreational use of that stretch of the river.

Projects which lie either partially or wholly below the ordinary high watermark of navigable streams or waters may require authorization from the State Engineer prior to construction or operation. At the discretion of the State Engineer, a public meeting may be held on the project for the purpose of gathering information. The State Engineer will consider riparian owner's rights, recreation, navigation, aesthetics, erosion, wildlife, water quality, maintenance of existing water flows, alternative uses, and the environment in determining whether to grant the authorization.

To ensure that all environmental, economic and social factors are considered in the evaluation of this application, your views and comments are solicited. It is requested that any comments or information be forwarded within **15** days of the date of this mailing to the State Engineer, at 900 East Boulevard Avenue, Bismarck ND. If no reply is received within the **15** days, it will be assumed that your agency has no comment on this project.

Sincerely,



Gerald R. Heiser
Sovereign Lands Manager

GRH: /1625

Enclosures: Sovereign Lands Application
Specifications
Notice for Pesticide Application to Waters of the State
Map

Copies to: Mike Brand, North Dakota Department of Trust Lands
Jesse Hanson, North Dakota Parks and Recreation Department
Terry Steinwand, Director, North Dakota Game and Fish Department
Terry Dwelle, M.D., State Health Officer, North Dakota Department of Health
Dave Koland, Garrison Diversion Conservancy District
U.S. Fish and Wildlife Service, Bismarck
State Historical Society of North Dakota
Burleigh County Water Resource District
Morton County Water Resource District
McLean County Water Resource District
Oliver County Water Resource District
Emmons County Water Resource District
U.S. Army Corps Engineers, Bismarck



APPLICATION FOR AUTHORIZATION TO CONSTRUCT A PROJECT WITHIN ISLANDS AND BEDS OF NAVIGABLE STREAMS AND WATERS

Office of the State Engineer
900 East Boulevard
Bismarck, ND 58505-0850

Permit No. 51820
Project No. 1625



I, the undersigned, do hereby submit the following information to the Office of the State Engineer as an application to construct a project that may impact islands and beds of navigable streams and waters of North Dakota under NDCC Chapter 61-33.

GENERAL INFORMATION:

This Application must include a map from an actual survey, aerial photo or topographic map and plot map (if a development). The size of the map shall be 8½ by 11 inches. The map shall have a north arrow and approximate scale. Indicate the existing or proposed work on the drawing. Plans and specifications must be submitted if project includes construction work.

- (1) Project will be located in the: Mercer, McLean, Oliver, Morton, Burleigh ^{Emmons} Water Resource District
- (2) Legal description to the nearest 40 acre tract: _____ ¼ _____ ¼ Section _____ Township see Attachment 1 Range see Attachment 1
- (3) Is this application for modification of an existing project Yes No If so, what year was project constructed: _____
By whom: _____
- (4) Proposed project involves water crossing, type _____ boat dock, boat ramp, water intake, dredge, volume _____ cu. yds. filling, volume _____ cu. yds., type _____, other (explain) see Attachment 1
- (5) Water body on which project will be located: Missouri River
- (6) Purpose: see Attachment 1
- (7) Project Description: see Attachment 1 Spraying vegetation on islands & sandbars in order to maintain habitat suitable for nesting least terns & piping plovers.
- (8) Contractor, if known: see Attachment 1
- (9) Anticipated construction start date: see Attachment 1 Completion date: see Attachment 1

The filing of this application and its approval in no way relieves the applicant or riparian landowner from any responsibility or liability resulting from the construction, operation or failure of the project.

Riparian Land Owner or Organization Sponsor: (Print) _____

Applicant: (Print) U.S. Army Corps of Engineers

Address: 1616 Capitol Avenue

Omaha, NE 68102-4901

Phone: (H) _____

(W) 402-995-2704

Signature: _____ Date Submitted: _____
(Riparian landowner or Organization Sponsoring the project)

NOTICE FOR PESTICIDE APPLICATION TO WATERS OF THE STATE
 NORTH DAKOTA DEPARTMENT OF HEALTH
 DIVISION OF WATER QUALITY
 SFN 60061 (04/11)

FOR DEPT. USE ONLY

Department ID
Received Date

State water quality regulations (North Dakota Administrative Code 33-16-02.1) require that the North Dakota Department of Health must be notified at least twenty (20) days prior to the application of any pesticide (herbicide, insecticide, biocide, piscicide, algacide) to surface waters of the state for control of aquatic pests.

Applicator Information

Organization or Person Responsible for the Pesticide Application		
U. S. Army Corps of Engineers: Todd Lindquist, Operations Project Manager, Garrison Project 701-654-7411		
Applicator Name (or Supervisor Name)	Certified Applicator Number	
Robert Martin	39250	
Address	Telephone Number	
Pipestem Dam P. O Box 1752, 8125 31 st St SE	701-252-7666	
City	State	Zip Code
Jamestown	ND	58402

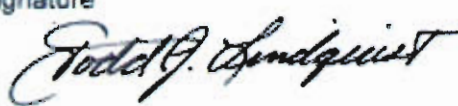
Pesticide Information

Chemical name and composition (Product name, Active Ingredient(s) and Percentage)
Polaris AQ, Isopropylamine salt of Imazapyr 28.7% Other 71.3% and Aqua Neat, Glyphosate 53.8% Other 46.2%
List target aquatic pest(s) or species to be controlled
None. We are targeting emergent vegetation on sandbars within the river. Primarily cottonwoods and willows.

Application Area Information

Attach a map which identifies the application area. Briefly describe the area below (e.g., shoreline in sec, Twp, Rng)	
Sandbars at Missouri River Miles: 1374.1, 1373.7, 1348.5, 1348.2, 1338.5, 1336, 1303.8, 1301.5, 1293.2, 1291.5, 1286.5, 1282.6, 1281.5 and 1281.4. See attached sheets for maps of listed sites.	
Water body name (or type; e.g., canal)	Aerial extent (e.g., acres or ft ²)
Missouri River	32 Acres
Provide the calculated active ingredient concentration in surface waters immediately after application (e.g., mg/L or lbs/Mgal)	Total active ingredient to be applied
0	Polaris AQ- 55.1 Pints Aqua Neat - 120.5 Pints

For multiple application sites attach additional pages with the pesticide and area information for each of the pesticide applications you wish to include with this notice.

<p>Return Completed Notice to:</p> <p>North Dakota Department of Health Division of Water Quality 918 East Divide Avenue, 4th Floor Bismarck ND 58501-1947 Attn: Pesticide Notification</p> <p>Phone (701) 328-5210 Fax (701) 328-5200</p>	I certify that I have personally examined and am familiar with the information submitted herein. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete.	
	Person Submitting Notice (Print) TODD J. LINDQUIST	Title OPERATIONS PROJECT MANAGER GARRISON PROJECT
	Signature 	Date 28 August 2012

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River Mile	Common Name (if any)	Sandbar Size (Acres)	Amount of Vegetation (Acres)	Nests	Type of Vegetation
1374.1		10	3.0	8.0	Cottonwoods & tree debris
1373.7		8	1.0	9.0	Cottonwoods & willows (north end)
1348.5		15	4.0		excessive vegetation throughout island
1348.2	Painted Woods	13	3.0	19.0	Cottonwoods & willows (north end)
1338.5		110	3.0		ring plus sporadic vegetation
1336		177	3.0		Vegetation
1303.8		88	4.0	2.0	cottonwood ring
1301.5	Little Heart	8	0.5	11.0	small patch of large trees in middle
1293.2	Rifle Range	13	2.0	3.0	Cottonwood ring and tree debris
1291.5	McLean	30	1.0	4.0	Cottonwoods & other vegetation
1286.5		20	4.0		covered w veg
1282.6		25	0.5	10.0	Sparse vegetation ring & big dead trees
1281.5		8	2.0	7.0	Cottonwoods, willow & vegetation
1281.4		7	1.0	1.0	Cottonwood ring

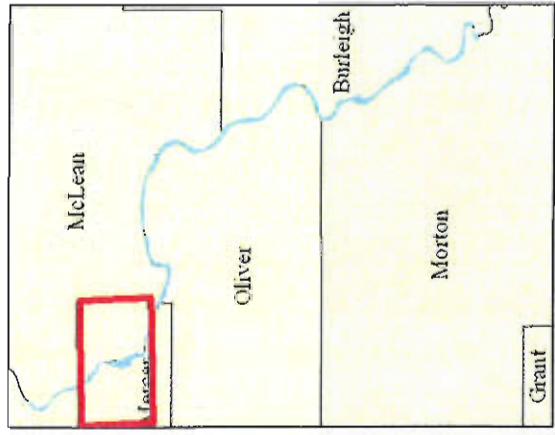
32.0

Garrison River Sites May 1st 2012

Imagery from:
2 December 2011
at 28,300 cfs

1:50,000

page 1

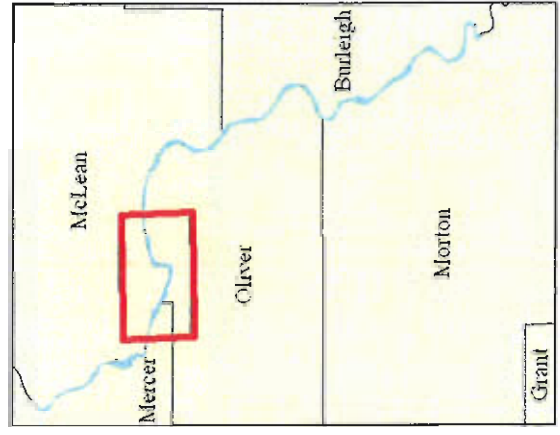


Garrison River Sites May 1st 2012

Imagery from:
2 December 2011
at 28,300 cfs

1:50,000

page 2



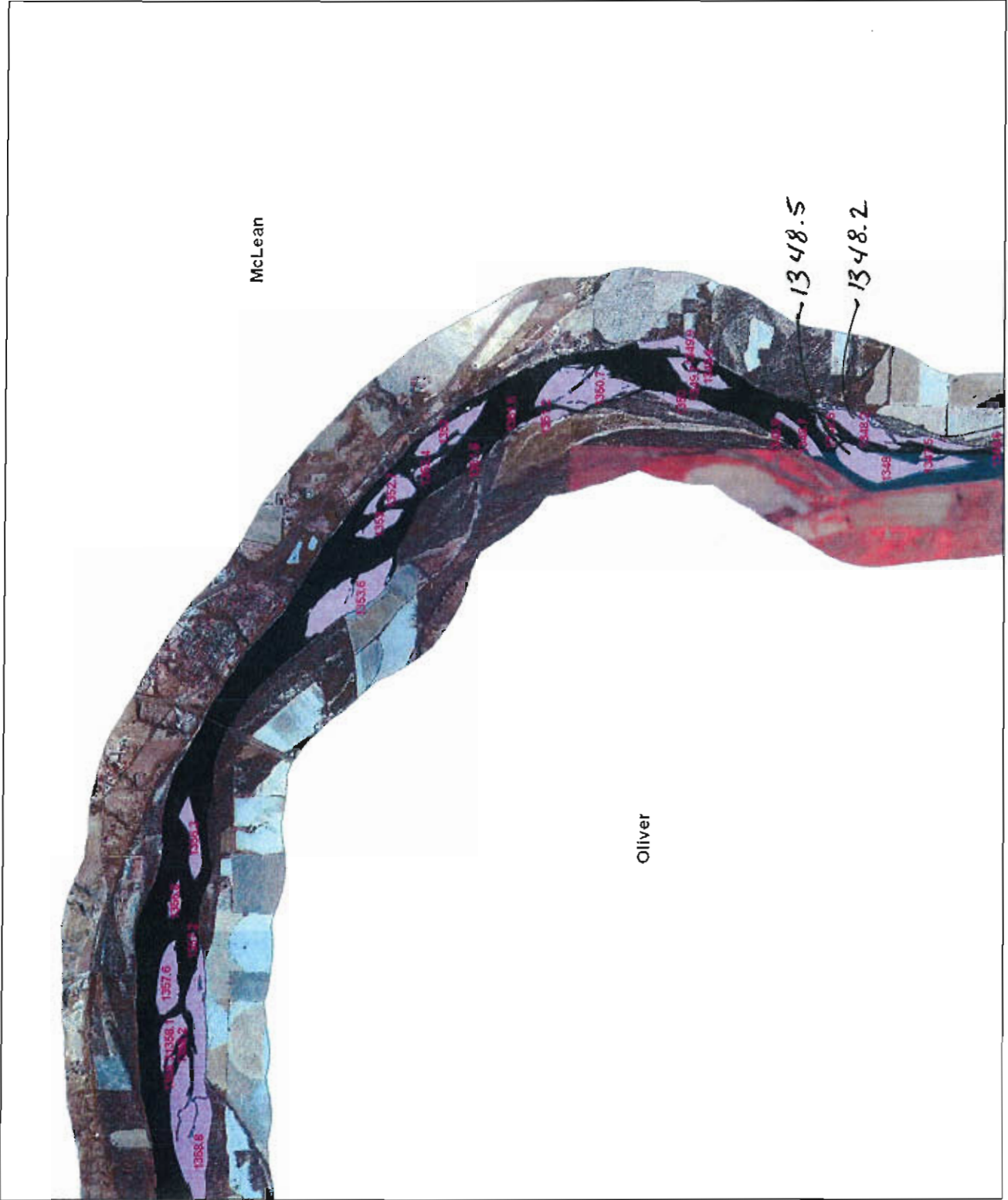
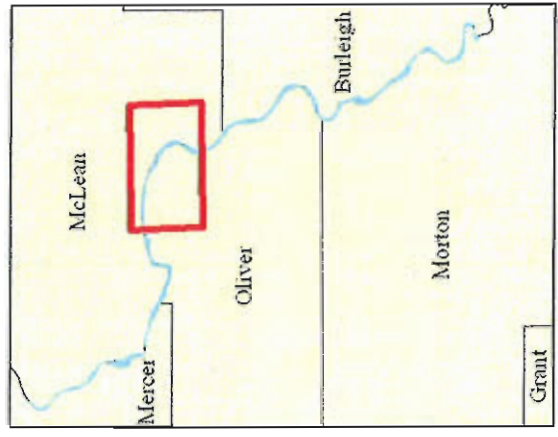
95

Garrison River Sites May 1st 2012

Imagery from:
2 December 2011
at 28,300 cfs

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page 3

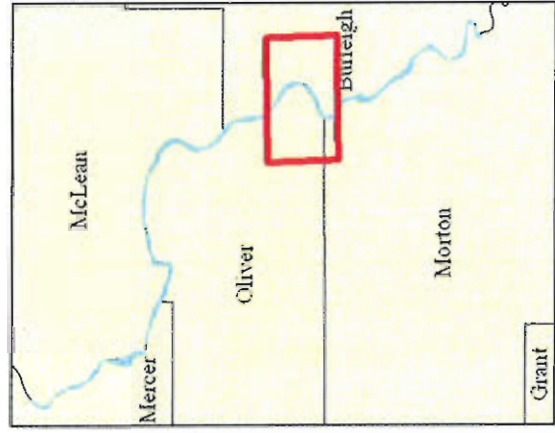
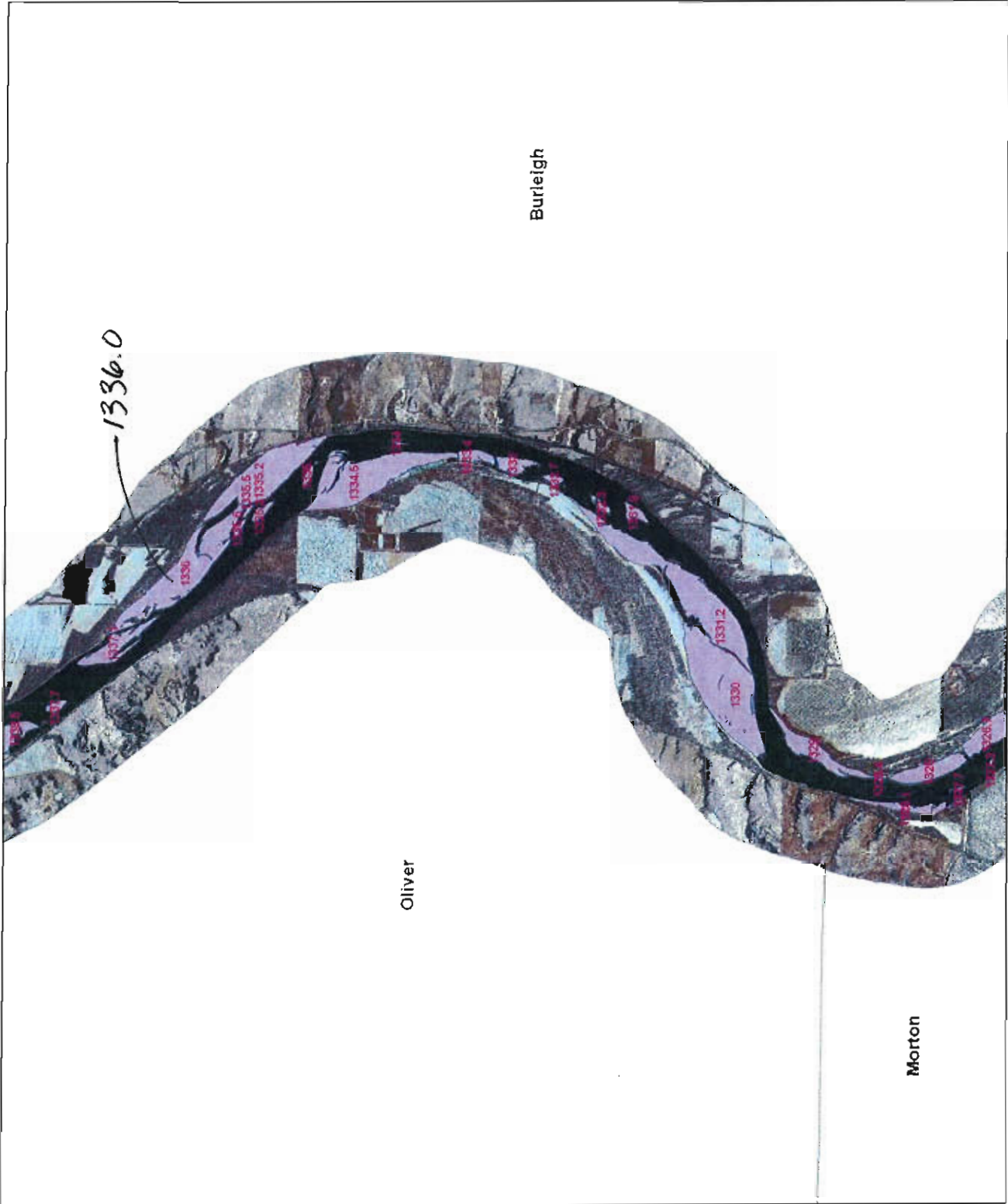


Garrison River Sites May 1st 2012

Imagery from:
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page 5



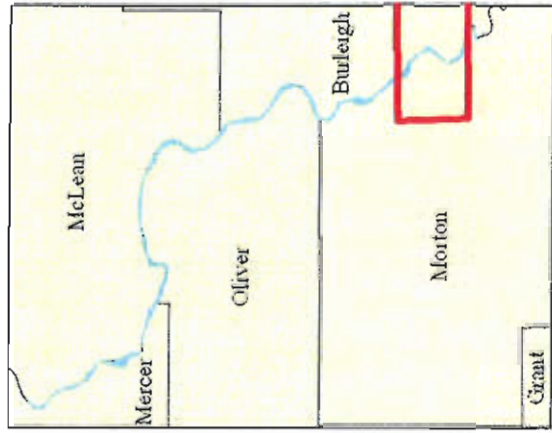
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Garrison River Sites May 1st 2012

Imagery from:
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page 7

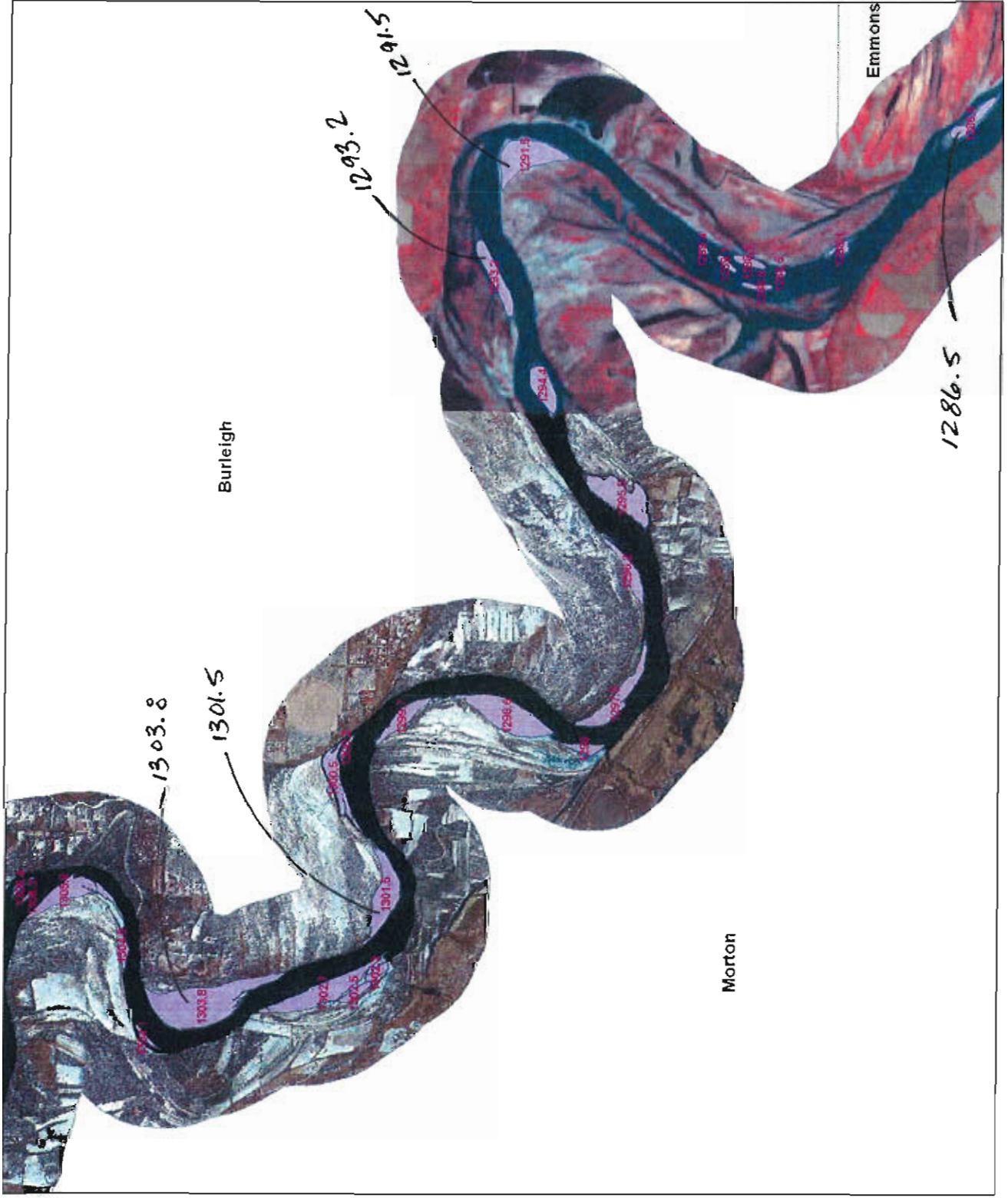
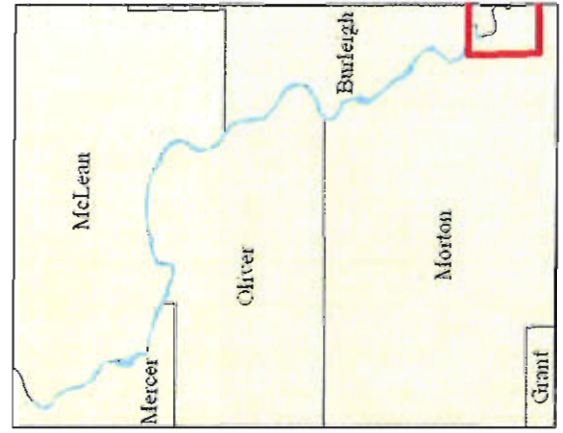


Garrison River Sites May 1st 2012

Imagery from:
2 December 2011
at 28,300 cfs

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page 8





ell
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Cross Ranch
State Park

1348.5

13482

16th St SW





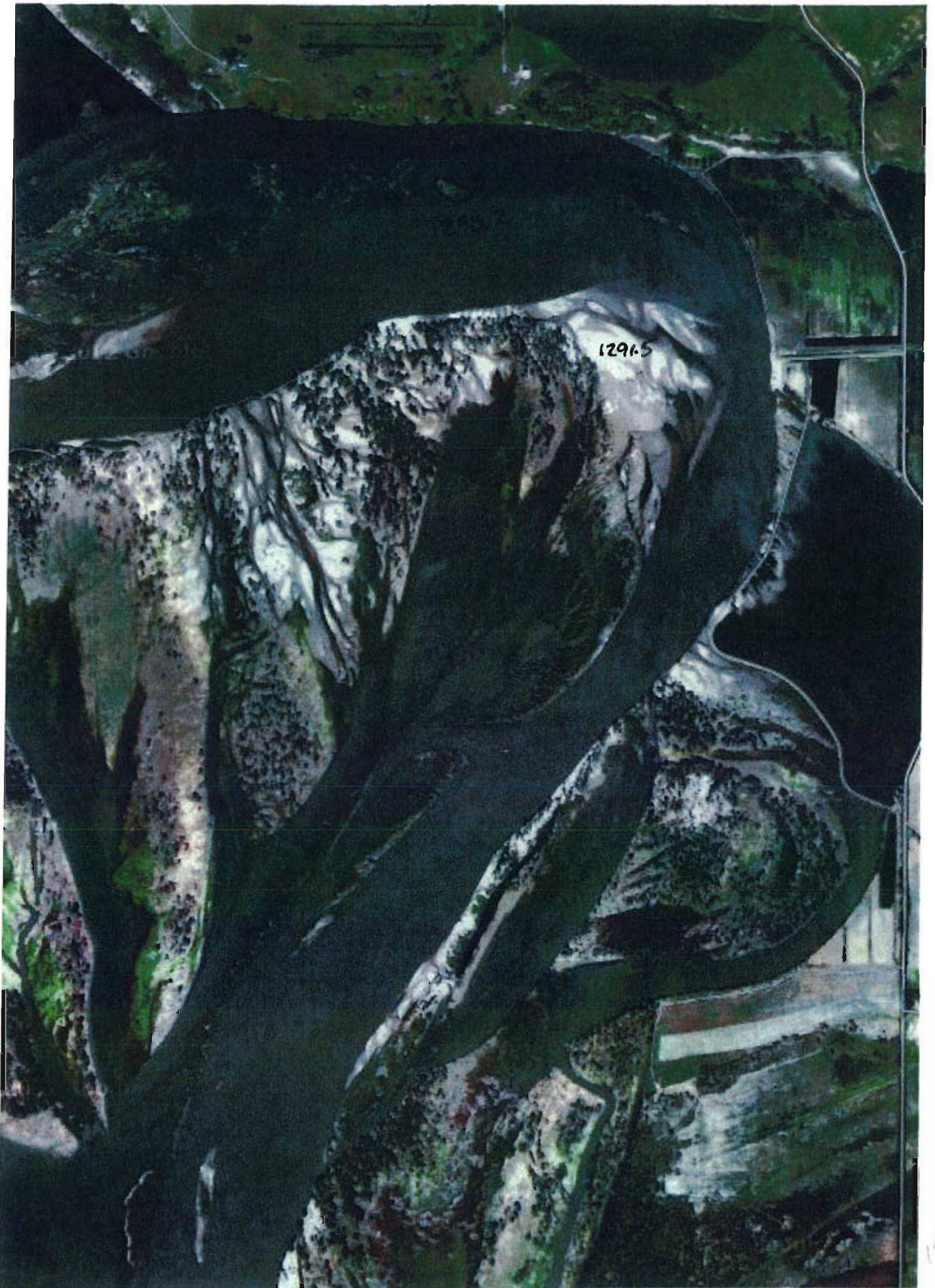
1303.8

Sibley
Nature Park

1806

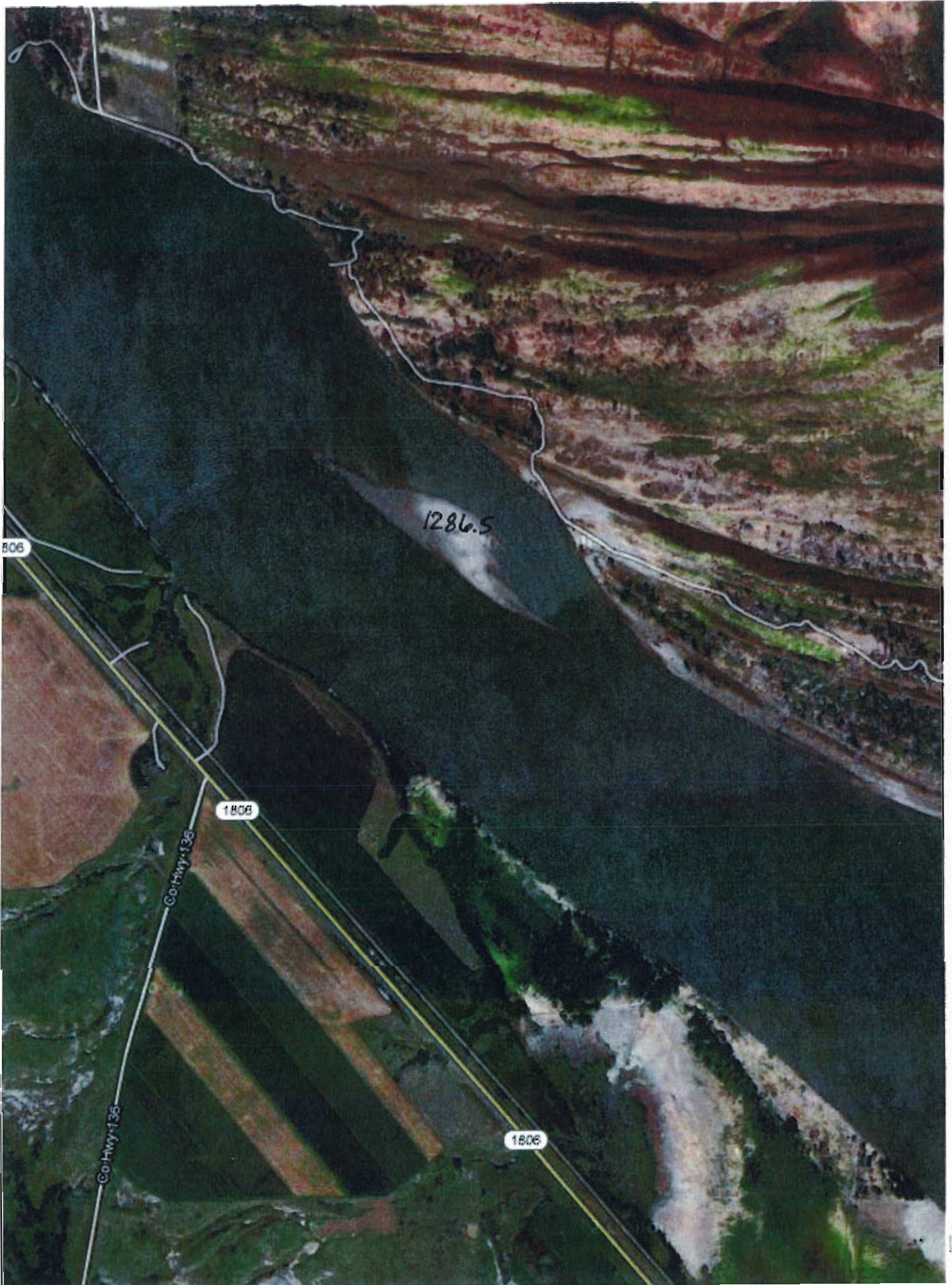
1301.5

Little He
Recreation



12915





1286.5

806

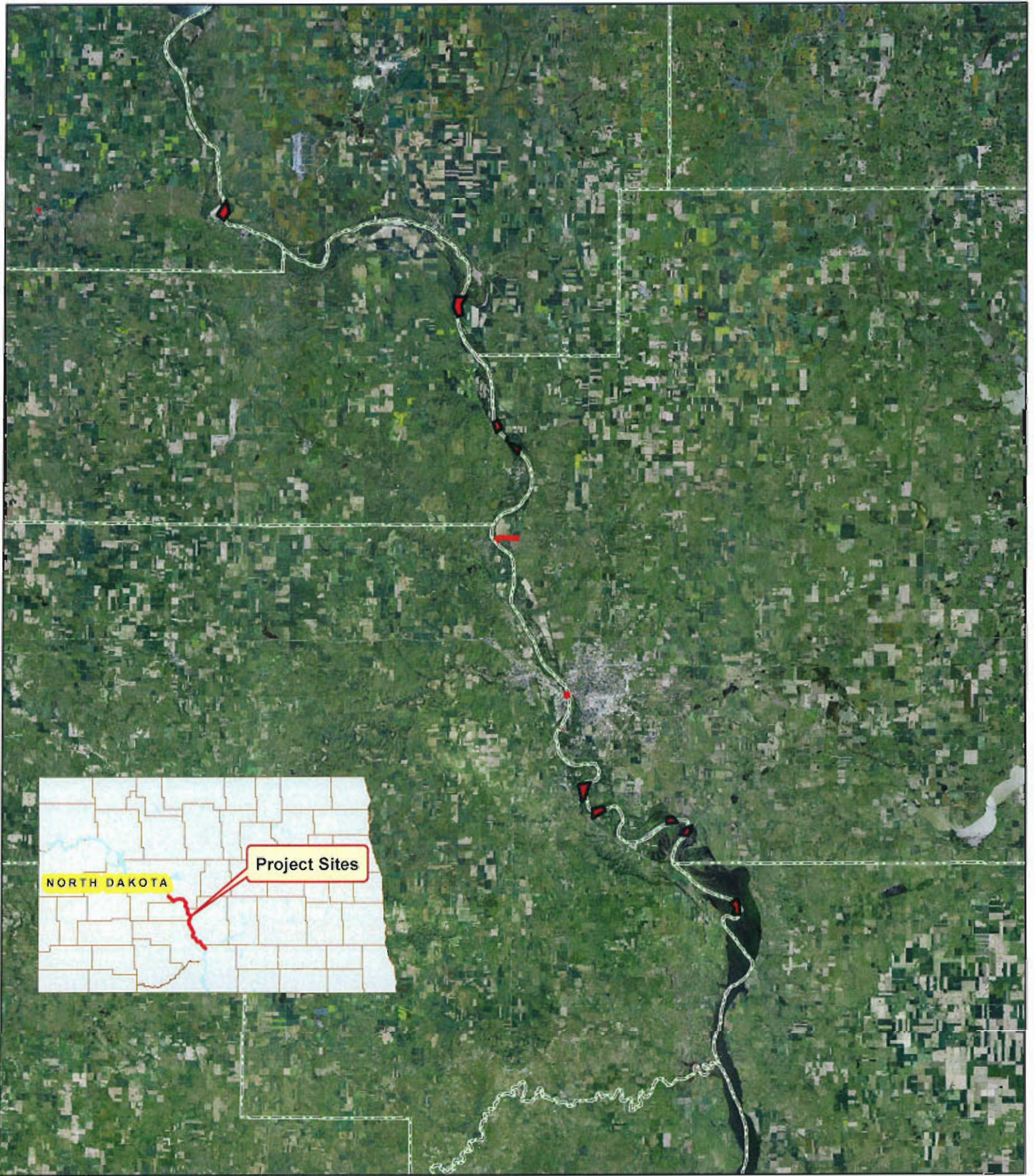
1806

Co Hwy 135

Co Hwy 135

1806

109



US Army Corps of Engineers
Burleigh, Emmons, McLean, Mercer & Morton Counties

Permit No. S1820



Soil Health Tour **"Advancing Soil Health"**



DATE:

Thursday, September 6, 2012

TIME:

3:00 p.m.

MEETING LOCATION:

Wing City Park, Wing ND

TOUR STOPS:

- **Seth & Sanford Williams**
Ransom Ridge Farms, Wing
- **Ron & Julie Hein**
Hein Ranch, Wing
- **Darrell & Jody Oswald**
Darrell E. Oswald
Loop Hole Land & Cattle Co., Wing
- **Joshua Dukart**
BCSCD; Holistic Mgmt. Certified Educator
- Wing City Park

TOPICS:

- * Cover Crops In a No-till System
- * High Stock Density Grazing on
Native Rangeland
- * Bale Grazing Impacts on Hayland
- * Crop Response Following Cover Crops
- * The Bigger Picture
- * Meal – RSVP Required by August 31st

The tour will be a drive yourself style.
Pickups are recommended and car pooling is encouraged.

An invitation to attend the tour is extended to farmers/ranchers, spouses, and managing partners. Please notify the office at 250-4518, Ext. 3, by **August 31st** with the number attending so appropriate plans can be made.

**BURLEIGH COUNTY
SOIL CONSERVATION DISTRICT**

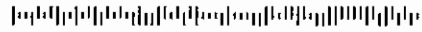
916 E. Interstate Avenue Suite 6
Bismarck, ND 58503-0548
250-4518, Ext. 3

RETURN SERVICE REQUESTED

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Organization
U.S. Postage
PAID
Permit No. 132
Bismarck, ND
58501

*****AUTO**SCH 3-DIGIT 585
BC WATER RESOURCE DISTRICT
221 N 5TH ST
BISMARCK, ND 58501-4028

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All programs and services of the Soil Conservation District and NRCS are offered on a nondiscriminatory basis, without regard to race, color, national origin, religion, sex, age, marital status or handicap.



The Soil Health Tour is sponsored by the Burleigh County Soil Conservation District and the Natural Resources Conservation Service, Bismarck, N.D. Persons requiring special accommodations or materials in an alternative format or language should contact the NRCS at 250-4518 ext. 3, prior to August 31st.

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Dam Safety 2012

Association of State
Dam Safety Officials
450 Old Vine St.
Lexington, KY 40507

September 16-21, 2012
Colorado Convention Center - Denver, CO

It's Time to Register

Early Registration Discount Ends Aug. 26th!

After August 26, late fees apply.



For Registration Information:
859-257-5140 or www.damsafety.org

Mr. Ken Royse
Chairman
Burleigh County Wrd
PO Box 5518
Bismarck ND 58506-5518

Hotel Information

Hyatt Regency at the Colorado Convention Center:
800-233-1234. Refer to Group Code "ASD" to get
the \$149 conference rate.

Hilton Garden Inn Downtown: 303-603-8000. Refer
to Group Code "ASDSO" to get the \$149 conference
rate.