

NOTICE OF HEARING - APPLICATION FOR DRAINAGE PERMIT

Notice is hereby given that the Marshall County Drainage Board will meet on April 14, 2020 at 9:10 A.M. at the Marshall County Courthouse Commissioners Chambers, concerning the following application for a Drainage Permit from the Marshall County Drainage Board.

Steven and Matthew McLaen are requesting a drainage permit for reconstruction of a ditch that was previously approved as a temporary emergency drain on September 27, 2019 and also to an existing ditch; on the properties described as the W1/2 of Section 9, T128N, R57W and the E1/2 of Section 8, T128N, R57W, respectively. The new ditch would direct the water to flow into the Wild Rice Legal Drain on the S1/2S1/2SSE1/4 of Section 4, T128N, R57W. Plans also include 2 new 52" squash culverts to replace the existing culverts; Culverts are proposed at 426th Ave; S1/2NE1/4 of Section 8, T128N, R57W and the NW1/4 of Section 9 T128N, R57W and 102nd St; SE1/4 in section 8, T128N, R57W and NE1/4 of Section 17, T128N, R57W; for the purpose of handling the increased water flow from a 37 square mile watershed. Construction will start on or before April 15, 2020 and will be completed on or before August, 2021.

Erin Collins-Miles
Planning & Zoning Administrator

Published once at the approximate cost of:

For publication: April 1, 2020

MARSHALL COUNTY DRAINAGE BOARD
P.O.BOX 9
BRITTON, SOUTH DAKOTA 57430
Office| 605.448.7540
Cell| 605.824.8014

March 30, 2020

To whom it may concern,

Notice is hereby given that the Marshall County Drainage Board will meet on April 14, 2020 at 9:10 a.m. at the Marshall County Courthouse Commissioners Chambers, concerning the following application for a Drainage permit.

Steven and Matthew McLaen are requesting a drainage permit for reconstruction of a ditch that was previously approved as a temporary emergency drain on September 27, 2019 and also to an existing ditch; on the properties described as the W1/2 of Section 9, T128N, R57W and the E1/2 of Section 8, T128N, R57W, respectively. The new ditch would direct the water to flow into the Wild Rice Legal Drain on the S1/2S1/2SSE1/4 of Section 4, T128N, R57W. Plans also include 2 new 52" squash culverts to replace the existing culverts; Culverts are proposed at 426th Ave; S1/2NE1/4 of Section 8, T128N, R57W and the NW1/4 of Section 9 T128N, R57W and 102nd St; SE1/4 in section 8, T128N, R57W and NE1/4 of Section 17, T128N, R57W; for the purpose of handling the increased water flow from a 37 square mile watershed. Construction will start on or before April 15, 2020 and will be completed on or before August, 2021.

Being as you are an adjacent landowner to the proposed drainage project; you are being notified of the hearing. If you have any questions, please contact my office. Any comments or concerns should be stated in writing and forwarded to my office or expressed at the scheduled hearing.

Sincerely,



Erin Collins-Miles
Planning and Zoning Administrator

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Being as you are an adjacent landowner to the proposed drainage project; you are being notified of the hearing. If you have any questions, please contact my office. Any comments or concerns should be stated in writing and forwarded to my office or expressed at the scheduled hearing.

Sincerely,

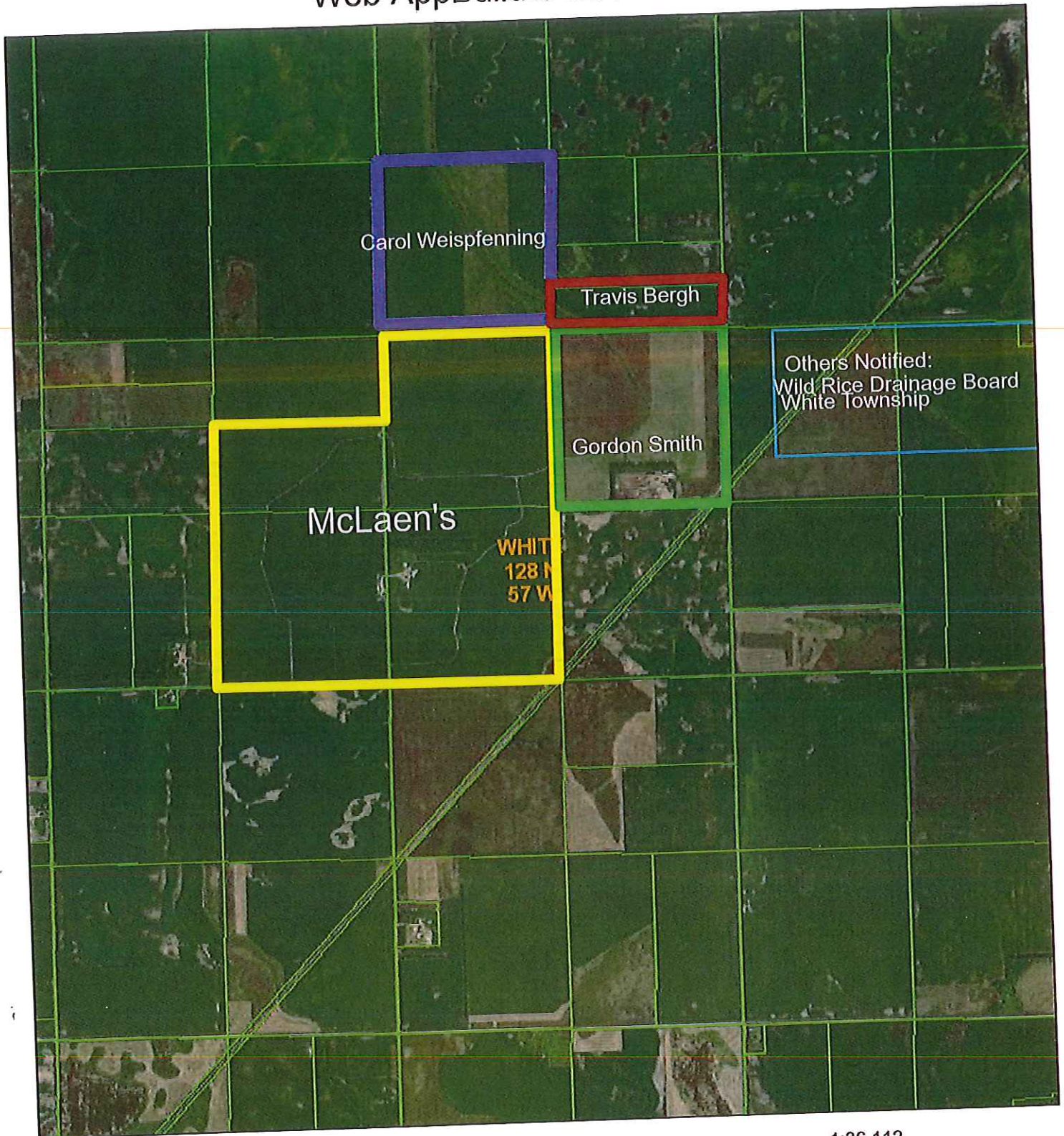


Erin Collins-Miles
Planning and Zoning Administrator

Sent to the following adjacent landowners on 3/30/2020:

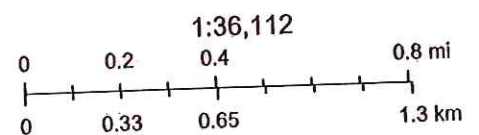
1. Wild Rice Drainage Board – Susan Wismer PO BOX 147 Britton, SD 57430
2. White Township – Doug Chapin 42742 104TH ST. Britton, SD 57430
3. Gordon Smith – 10145 427TH AVE Britton, SD
4. Travis Bergh - 302 1ST AVE S Havana, ND 58043
5. Carol Weispfenning - 223 5TH AVE SE Jamestown, ND 58401

Web AppBuilder for ArcGIS



March 30, 2020

-  PARCELS
-  CITY_LIMIT
-  TOWNSHIPS



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

MARSHALL COUNTY DRAINAGE BOARD
P.O.BOX 9
BRITTON, SOUTH DAKOTA 57430
Office| 605.448.7540
Cell| 605.824.8014

March 30, 2020

Steven D. McLaen
PO Box 9
Forman, ND 58032

Mr. McLaen,

I have reviewed your application, and wanted to contact you before the meeting set for April 14, 2020. For an easier application process, I would recommend acquiring landowner waivers. The easement will get you a long way, but seeing as you cut through the properties of both Carol Weispfenning and Gordon (and/or Tim) Smith, landowner waivers would apply. I also recommend that the Agricultural Drainage Agreement be filed in the Register of Deeds office. This will show all land owners that you do have permission to put the drain on Berghs. To be clear, your permit will be considered and discussed by the Drainage Board even if these landowner waivers are not acquired.

If you are granted a drainage permit by Marshall County, you will still have to follow all applicable laws, including those found in SDCL 31-14 and SDCL 31-32.

You also do have the option of leaving the emergency temporary drain as-is. The temporary permit was granted on September 27, 2019 with a 2-year time limit before reevaluation of the temporary permit would need to be completed.

With the recent COVID-19, my office is not currently open to the public. Therefore, if you have any questions, please contact my office via phone or email: mczoning@venturecomm.net.


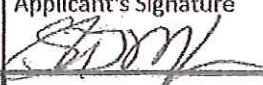
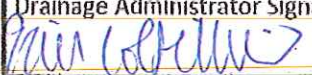
Sincerely,

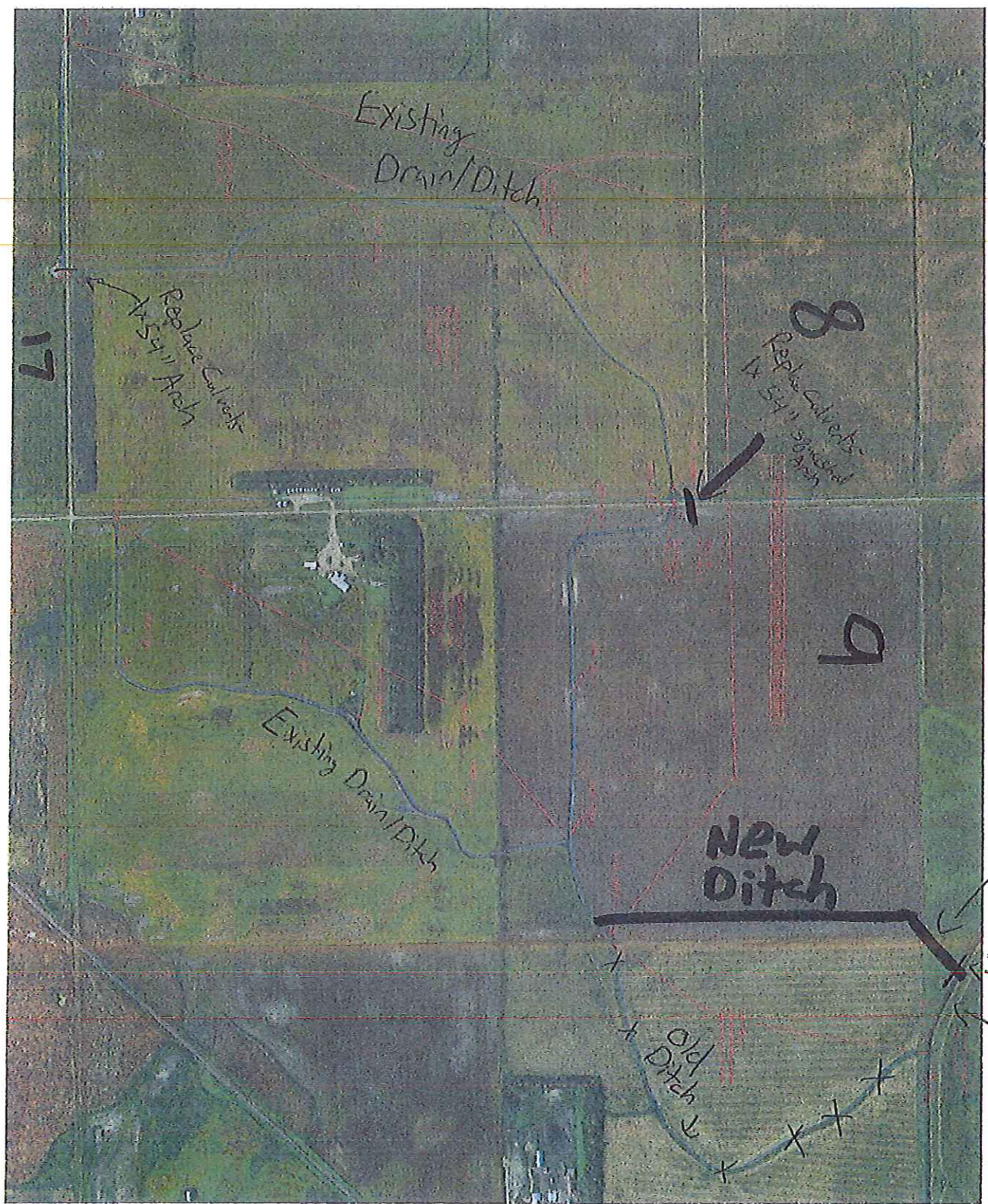


Erin Collins-Miles
Planning and Zoning Administrator

MARSHALL COUNTY DRAINAGE PERMIT APPLICATION

APPLICANT		DRAINAGE REQUIREMENTS	
Name: <u>Steven D. McLaen</u>		Certified Wetland Determination attached?	
Address(Mailing): <u>P.O. Box 9</u>		[] YES [X] NO [] NA (see below)	
City: <u>Forman</u> State: <u>ND</u> Zip: <u>58032</u>		Explain: <u>No Wetlands - Natural Drain</u>	
Phone: <u>701-680-0797</u>		Engineer's plans attached?	
		[X] YES [] NO [] NA (see below)	
LOCATION OF LAND TO BE DRAINED		Explain: <u>Ellingson Companies</u>	
Legal Owner: <u>Steven D. McLaen</u>		NOTE: A map showing the location of the proposed drain MUST accompany this application.	
Legal Description: <u>West Half 9, East Half 8</u>			
<u>NE 1/4 17</u>		Description	
Section: <u>9, 8, 17</u> Township: <u>128</u> Range: <u>57</u>		1. Proposed drainage ditch:	
LOCATION OF OUTLET END OF PROPOSED DRAIN		a. Length of drain: <u>2000</u> feet	
Legal Description: <u>S 1/2 of S 1/2 of SE 1/4 of Sec 4</u>		b. Drain Design: 1) Bottom width: <u>6</u> feet	
<u>* Easement Attached *</u>		Grass will be planted at completion. 2) Side Slope: <u>3:1</u> percent	
Section: <u>4</u> Township: <u>128</u> Range: <u>57</u>		3) Maximum cut: <u>60</u> feet	
LOCATION OF MAJOR EARTH CHANGE WORK OR UNDERGROUND DRAIN INSTALLATION		c. Proposed drainage flow: _____ cu. Ft./sec.	
Legal Description: <u>West Half 9, SE of 4</u>		2. Proposed drainage tile (underground drain pipe):	
		a. Length of drain: _____ feet	
		b. Drain Diameter: _____ inches	
Section: <u>9, 4</u> Township: <u>128</u> Range: <u>57</u>		c. Approx. area contributing runoff to the drain where tile is located: _____ acres.	
LOCATION OF COUNTY HWY R.O.W./DITCH INTO WHICH WATER WILL BE DRAINED		Engineer	
Legal Description/Rd: <u>S 1/2, S 1/2, SE 1/4, 4</u>		Name: _____	
<u>Wild Rice Drain</u>		Address: _____	
Section: <u>4</u> Township: <u>128</u> Range: <u>57</u>		Phone: _____	
PLEASE FILL IN: <u>Steven D. McLaen</u> , propose to start construction of the drain on or before <u>April 15</u> , 20 <u>20</u> , and will be completed on or before <u>August</u> , 20 <u>21</u> .			
The proposed drainage is a result of a township, county or other water management plan:			
[] YES [X] No [] I don't know			
If yes, describe such plan:			

SIGNATURES	
The owner of this proposed drain & the undersigned agree to conform to all applicable laws.	
Owner's Signature 	Date March 25 th 2020
Applicant's Signature 	Date March 25 th 2020
Drainage Administrator Signature 	Date 3-26-2020



Travis
Beagh
Easement to
Cross
Will Rice
1/2 mi. N. of

17

122nd St

Existing Drain/Ditch
Regular Collector
5 ft Arch

8

426th Ave

9

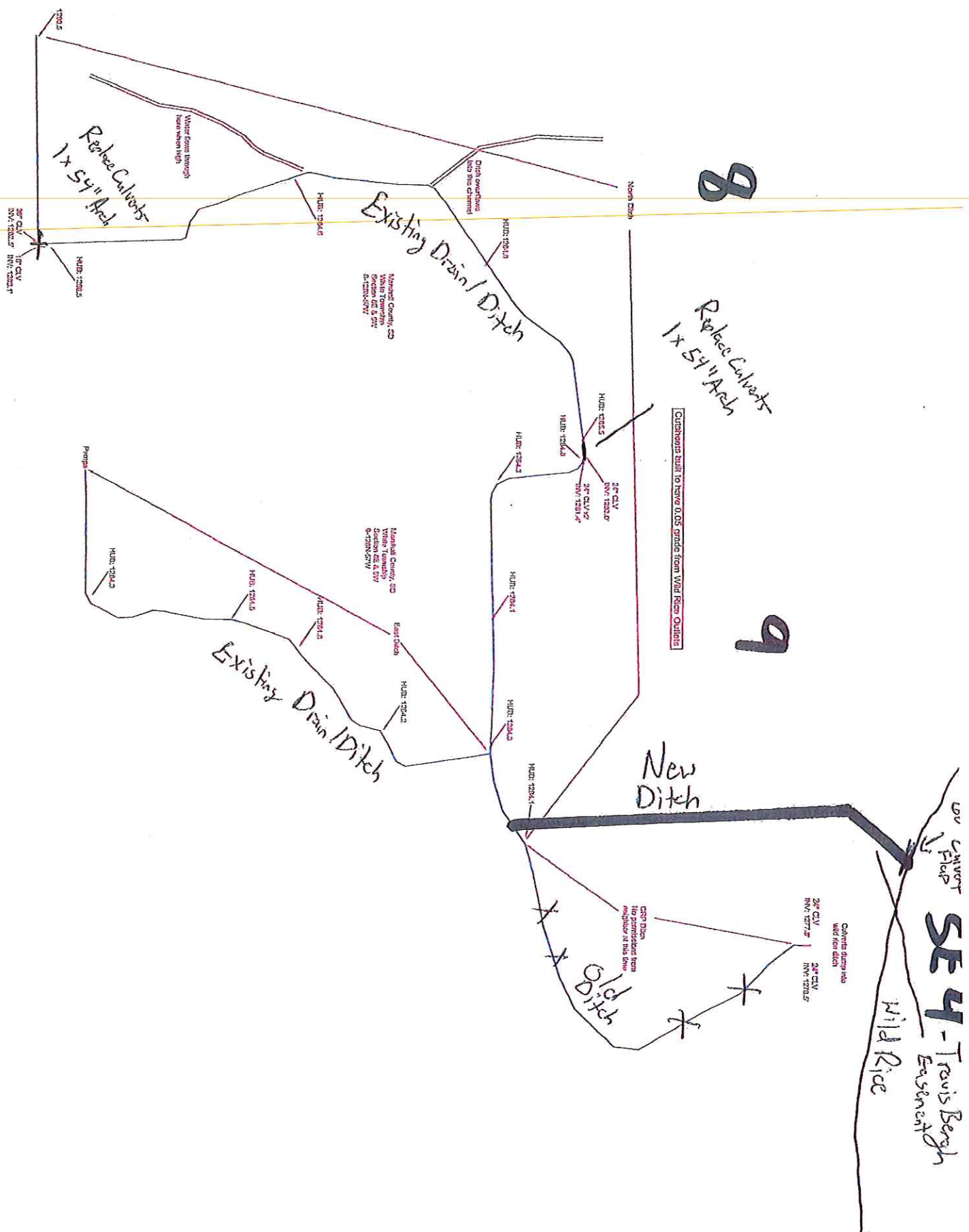
Existing Drain/Ditch

New Ditch

Trans Bergh
SE 1/4

Existing
Willow
Rice

Old Ditch



THIS INSTRUMENT DRAFTED BY:

Rinke Noonan (ATM)
1015 W. St. Germain St., Suite 300
P.O. Box 1497
St. Cloud, MN 56302-1497
(320) 251-6700
File No. 28924-0002

AGRICULTURAL DRAINAGE AGREEMENT

This Agreement is made and entered into this 10 day of March, 2019, by and between **Travis Bergh and Cynthia Bergh**, husband and wife, **Shannon Bergh**, (the "Berghs"), and **Steven D. McLaen and Janell M. McLaen** (the "McLaens") (collectively "Parties"). The Parties are the fee owners of the following described real property located in Marshall County, South Dakota:

The Berghs are the owners of a parcel of real property legally described as:

The South Half (S $\frac{1}{2}$) of the South Half (S $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Four (4), in Township One Hundred Twenty-Eight (128) North, Range Fifty-Seven (57) West, Marshall County, South Dakota.

("Bergh Property").

McLaens are the owner of parcels of real property legally described as:

The Northwest Quarter (NW $\frac{1}{4}$) of Section Nine (9) in Township One Hundred Twenty-Eight (128) North, Range Fifty-Seven (57) West, Marshall County, South Dakota.

The Southwest Quarter (SW $\frac{1}{4}$) of Section Nine (9) in Township One Hundred Twenty-Eight (128) North, Range Fifty-Seven (57) West, Marshall County, South Dakota.

The South Half (S $\frac{1}{2}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Eight (8) in Township One Hundred Twenty-Eight (128) North, Range Fifty-Seven (57) West, Marshall County, South Dakota.

The Southeast Quarter (SE $\frac{1}{4}$) of Section Eight (8) in Township One Hundred Twenty-Eight (128) North, Range Fifty-Seven (57) West, Marshall County, South Dakota.

The Northeast Quarter (NE¼) of Section Seventeen (17) in Township One Hundred Twenty-Eight (128) North, Range Fifty-Seven (57) West, Marshall County, South Dakota.

("McLaen Properties").

(collectively the "Properties"). The McLaens desire to permanently construct, operate, and maintain a ditch and related outlet structure to benefit the McLaen Properties. A portion of the ditch will enter and cross the Bergh Property with the ultimate outlet emptying into the large drainage ditch running through the Bergh Property.

I. Easement and Right of Entry

A. The Berghs, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, conveys to the McLaens, their successors, heirs, assigns, agents, permittees, and licensees, a permanent perpetual easement ("Easement") upon the Bergh Property as the servient tenement in favor of the McLaen Properties as the dominant tenement for the existence of the ditch and outlet structure described above.

B. The Easement is being granted for the sole purpose of the installation, use, repair, replacement, and maintenance of the ditch and outlet structure as provided below.

C. The Easement includes a permanent right of entry ("Right of Entry") upon the Bergh Property for the sole purpose of the installation, repair and maintenance of the ditch and outlet structure.

D. The Right of Entry shall be subject to the following terms and conditions:

1. **Condition of Property.** Within thirty days following installation, repair or maintenance allowed under this Agreement, the McLaens will remove all debris, surplus materials, and equipment and will return the impacted property as nearly as practicable to its original condition, taking into consideration the nature of the work being performed.
2. **Restoration of Damage to Improvements.** During installation, repair or maintenance, the McLaens shall take all reasonable measures to prevent and minimize damage to improvements located within the area of the work performed. In the event that other drainage tiles, fences, driveways, buildings or other improvements are damaged by the McLaens at any time during the installation of maintenance of the ditch and outlet structure, the McLaens shall repair and restore the damage within thirty days.
3. **Damage to Crops.** No installation, repair or maintenance shall occur during periods when growing crops are present on the land unless failure to do so would result in the system becoming damaged or inoperable. If growing crops are present, the McLaens shall enter the Bergh Property only

as reasonably necessary and in such a manner as to not unreasonably damage any crop. If entry is required that would knowingly cause damage to crops, the McLaens shall pay the reasonable expected damages for crop loss prior to entry.

4. **Interference with Agricultural Use of Properties by Parties Prohibited.** The Parties shall not take any action related to the ditch or the outlet structure that will unnecessarily interfere with another Party's continued use of their property for agricultural purposes.

II. **Drainage Agreement**

A. In addition to the Easement and Right of Entry granted above, the Parties further agree to the following conditions:


1. **Use of Benefit.** the ditch and outlet structure only benefits the McLaen Properties. The McLaens shall be responsible for the cost of constructing the ditch and outlet structure.
2. **Procedure for Future Maintenance.** The McLaens and their successors shall, at their sole expense, repair and maintain the ditch and outlet structure.
3. **Outlet Protection.** The Parties shall take all reasonable means to protect the outlet of the ditch and outlet structure.
4. **Obstructing the Ditch is Prohibited.** No Party shall cause or permit any obstruction or planting to be placed in, over, under, on, through, across, or within the ditch and outlet structure that in any manner interferes with the Parties' rights in this Agreement.
5. **Addition of Parties to this Agreement.** The Parties shall not allow any third party to connect to the ditch and outlet structure without first amending this Agreement to make the third party and the additional lands subject to this Agreement, including proper allocation of construction, repair, and maintenance costs.
6. **Easement Runs With the Land.** This Agreement, Easement and Right of Entry shall be for the benefit of the Parties, their successors, heirs, assigns, and shall be deemed to be a perpetual Easement and Right of Entry which shall run with the land and be binding upon the Parties' heirs, successors and assigns and the Properties.
7. **Parties' Covenants.** The Parties specifically covenant with each other that:
 - (a) Each holds title to its Property;

- (b) Each has full and good lawful authority to convey the Easement and Right of Entry for the purposes stated;
- (c) Each covenants to warrant and defend this Agreement and the Easement and Right of Entry against claims of all persons whomsoever; and
- (d) Each consents and agrees that this Agreement is intended for use by the Parties for the purposes of conveying waters.

III. This Agreement shall be recorded with the Marshall County Register of Deeds on each of the Properties.

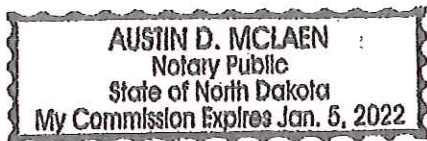
IV. Counterparts. This Agreement may be executed in parts which, when all original signatures are compiled, shall constitute a full and complete Agreement.

(Signature pages to follow)


Travis Bergh

STATE OF NORTH DAKOTA)
COUNTY OF SARGENT) SS

On this 10th day of March, 2020, before me, a Notary Public for this County, personally appeared Travis Bergh, who I know to be the persons described in the foregoing instrument, and who acknowledged that they executed that instrument as their free act and deed.

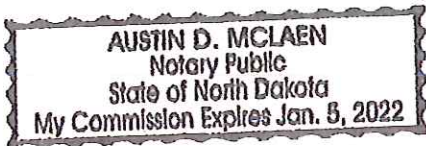



Notary Public, North Dakota
My Commission Expires: 1-5-22

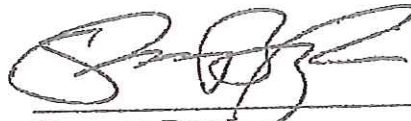
Cynthia Bergh
Cynthia Bergh

STATE OF NORTH DAKOTA)
COUNTY OF Sargent) SS

On this 10th day of March, 2020, before me, a Notary Public for this County, personally appeared Cynthia Bergh, who I know to be the persons described in the foregoing instrument, and who acknowledged that they executed that instrument as their free act and deed.



Austin D. McLaen
Notary Public, North Dakota
My Commission Expires: 1-5-22



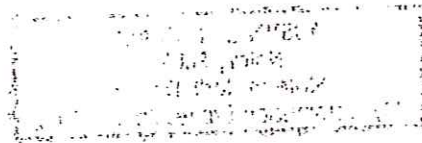
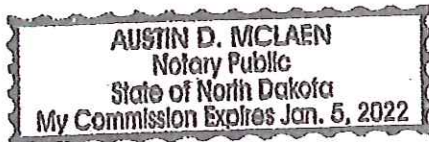
Shannon Bergh

STATE OF NORTH DAKOTA)
) SS
COUNTY OF SARGENT)

On this 10th day of March, 2020, before me, a Notary Public for this County, personally appeared Shannon Bergh, who I know to be the persons described in the foregoing instrument, and who acknowledged that they executed that instrument as their free act and deed.



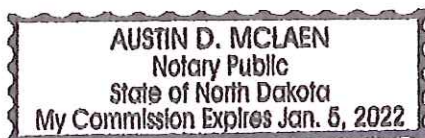
Notary Public, North Dakota
My Commission Expires: 1-5-22




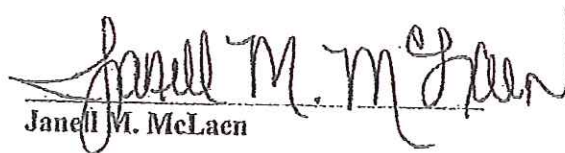

Steven D. McLaen

STATE OF NORTH DAKOTA)
COUNTY OF Sargent) SS

On this 26th day of March, 2020, before me, a Notary Public for this County, personally appeared Steven D. McLaen who I know to be the persons described in the foregoing instrument, and who acknowledged that they executed that instrument as their free act and deed.

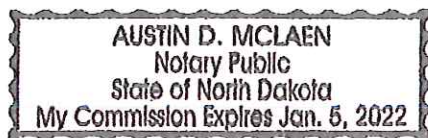




Notary Public, North Dakota
My Commission Expires: 1-5-22


Janell M. McLaen

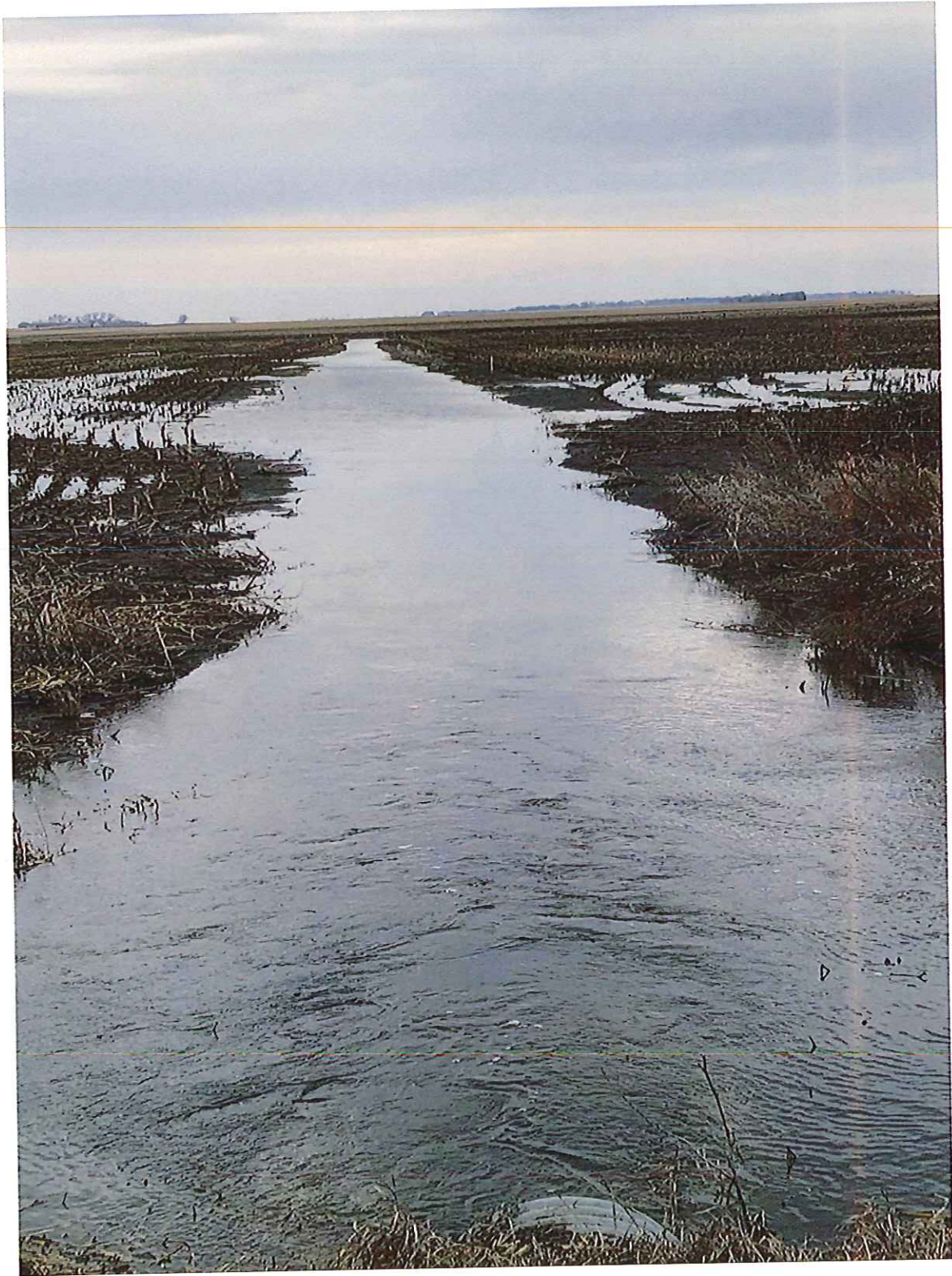
STATE OF NORTH DAKOTA)
COUNTY OF Sargent) SS

On this 26th day of March, 2020, before me, a Notary Public for this County, personally appeared Janell M. McLaen, who I know to be the persons described in the foregoing instrument, and who acknowledged that they executed that instrument as their free act and deed.




Notary Public, North Dakota
My Commission Expires: 1-5-22

102nd St







426th Ave

