

STATE OF MINNESOTA  
RENVILLE COUNTY BOARD OF COMMISSIONERS  
ACTING AS THE DRAINAGE AUTHORITY UNDER MINNESOTA STATUTES CHAPTER 103E  
FOR RENVILLE COUNTY DITCH 59

In the Matter of the Petition to Impound,  
Reroute, and Divert Renville County Ditch 59  
(Kubeshes & Renville SWCD, et al.)

**FINDINGS AND ORDER GRANTING PETITION  
TO IMPOUND, REROUTE, AND DIVERT  
DRAINAGE SYSTEM WATERS**

At a duly noticed and public meeting conducted by the Renville County Board of Commissioners on March 18, 2025, acting as the drainage authority for Renville County Ditch 59, having received a petition and amended petition to impound, reroute, and divert drainage system waters pursuant to Minnesota Statutes, section 103E.227; having appointed an engineer to investigate the effect of the proposed installation and file a report of findings; having received the engineers' report of findings; and having noticed and conducted a public hearing on the engineers' report of findings; based on the record and proceedings, Commissioner Mertens moved, seconded by Commissioner Snow to adopt the following Findings and Order:

**Findings:**

1. The Renville County Board of Commissioners ("Drainage Authority") is the public drainage authority under Minnesota Statutes, chapter 103E, for Renville County Ditch 59 ("CD 59").
2. A Petition to Impound, Reroute, and Divert CD 59 Drainage System Waters dated December 12, 2024 ("Petition") signed by David & Margaret Kubesh and the Renville County Soil & Water Conservation District was filed with the Drainage Authority.
3. The Petition states that David & Margaret Kubesh own property within the benefited area of CD 59, identified locally by Parcel Identification No. 27-01720-00, which is located within the Northeast Quarter, the West Half of the Southeast Quarter, and the North Half of the Northeast Quarter of the Southeast Quarter of Section 27, Township 116 North, Range 35 West (Winfield Township), Renville County, Minnesota.
4. The Petition states that the Renville County Soil & Water Conservation District is a political subdivision of the state of Minnesota that promotes sustainable use of water and soil resources through innovative and mutually beneficial conservation activities with local stakeholders.
5. To conserve and make more adequate use of water resources, Petitioners David & Margaret Kubesh and the Renville Soil & Water Conservation District offered the

Petition as part of a proposed project to provide for temporary and permanent water storage for the CD 59 drainage system. The Petition states that the proposed water storage on the Kubesh property in Section 27 will reduce peak flows downstream of the project and will reduce sediment and nutrients delivered downstream to CD 59 and Beaver Creek.

6. Concept plans for the proposed project and a map identifying the areas likely to be affected by the proposed project were attached to the Petition as Exhibit A. The proposed project as generally depicted in the Petition's concept plans include a wetland storage area on the Kubesh property in Section 27 as described in the Petition and four water and sediment control basins ("WASCOBs") upstream of the wetland storage area in Sections 27 and 28.
7. During the proceedings, an Amended Petition to Impound, Reroute, and Divert CD 59 Drainage System Waters dated February 13, 2025 ("Amended Petition") was filed with the Drainage Authority. The Amended Petition describes the location of the four WASCOBs depicted in the Petition's concept plans, but not described in the original Petition. The Amended Petition also describes the names and addresses of property owners affected by the proposed WASCOBs as follows:

Property Owners/Address	Parcel I.D. #	Description
<b>WASCOB #1</b>		
Kubesh/David & Margaret/Tr 85554 310th St Danube, MN 56230	27-01720-00	27-116-35 NE4 – Ex BLDG SITE IN E2 OF NER - & W2 OF SE4 7 N2 OF NE4 OF SE4
<b>WASCOB #2</b>		
Kubesh/David & Margaret/Tr 85554 310th St. Danube, MN 56230	27-00760-00	27-116-35 S2 OF NW4 & N2 OF SW4
Schneiderman/Dale & Rachel 29688 840th Ave. Danube, MN 56230	27-00770-00	27-116-35 S2 OF SW4 -EX SCHNEIDERMAN PLOT
<b>WASCOB #3</b>		
Kubesh/David & Margaret/Tr 85554 310th St. Danube, MN 56230	27-00830-00	28-116-35 E2 OF SE4
<b>WASCOB #4</b>		
Kubesh/David & Margaret/Tr 85554 310th St. Danube, MN 56230	27-00830-00	28-116-35 E2 OF SE4

Lippert/James & Carol/Trustees 89118 Co. Rd. 1 Danube, MN 56230	27-00801-00	28-116-35 W2 OF SE4
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8. The Amended Petition was signed by David Kubesh & Margaret Kubesh, Trustees of the David & Margaret Kubesh Trusts; Phil Smith, Chair of the Renville County Soil & Water Conservation District; Dale & Rachel Schneiderman; and James Lippert, Trustee of the James & Carol Lippert Trusts ("Petitioners").
9. Taken together, the Petition and Amended Petition request approval from the Drainage Authority to impound, reroute, and divert CD 59 drainage system waters in Sections 27 and 28 of Township 116 North, Range 35 West (Winfield Township), Renville County, Minnesota, by constructing a wetland storage area and four WASCObS (the proposed "Project").
10. The Petition and Amended Petition allege that the CD 59 drainage system tile in Sections 27 & 28 of Winfield Township presently need repair and that the proposed Project will provide temporary and permanent storage on the CD 59 drainage system. The Petition and Amended Petition allege that if approved, the proposed Project will provide significant benefits to the CD 59 drainage system through avoided repair costs and increased hydraulic capacity.
11. The Petition and Amended Petition note that Petitioners anticipate a significant portion of the proposed Project costs will be paid for by a grant made available by the Board of Water & Soil Resources ("BWSR"). Based upon the anticipated benefits to CD 59 provided by the proposed Project, the Petition and Amended Petition request the portion of proceeding and construction costs not covered by the BWSR grant be covered by the CD 59 drainage system funds.
12. The Drainage Authority met on February 18, 2025, and accepted the Petition. The Drainage Authority appointed Shaun Luker, P.E., of Bolton & Menk and Bolton & Menk as the engineers ("Engineers") to investigate the effect of the proposed Project pursuant to Minnesota Statutes, section 103E.227, subdivision 3(a).
13. Engineer Luker filed a report of findings ("Engineers' Report") with the Drainage Authority dated February 26, 2025, containing his investigation of findings regarding the effect of the proposed Project on CD 59.
14. The Drainage Authority set a public hearing for March 18, 2025, for review of the Engineer's Report of findings and directed the Renville County Drainage Systems Manager to provide at least 10 days advance notice, by mail, of the time and location of the hearing to the Petitioners, political subdivisions, and owners of property likely to be affected by the proposed Project.

15. Notice of the public hearing was properly provided as required by law, and is evidenced by the affidavit of mailing on file with the Drainage Authority in the CD 59 drainage system records for this proceeding.
16. The Drainage Authority held a public hearing on March 18, 2025, at 8:30 a.m. at the Renville County Government Services Center, 105 South 5<sup>th</sup> Street, Olivia, Minnesota 56277.
17. At the public hearing, Engineer Luker presented the proposed Project in the Petition and Amended Petition and a summary of the findings and conclusions in his Engineers' Report.
18. In the Engineers' Report, Engineer Luker recommended modifications to the concept plans attached to the Petition and Amended Petition for the proposed Project. The Preliminary Plans and Profiles for the proposed Project, as recommended by Engineer Luker, are contained within Exhibit 1 of the Engineers' Report.
19. The proposed impound, reroute, and diversion Project as described in the Engineers' Report includes ditch closure replaced with subsurface drainage tile, construction of 5 WASCObS, and creation of a wetland/water quality storage area. The proposed installation of the Project as recommended by Engineer Luker's Engineers' Report is as follows:
  - a. Replace approximately 1,550 feet of CD 59 open ditch across the Kubesh property (P.I.N. 27-01720-00) with 15", 24", and 48" tile running in parallel with a 60" outlet. (Per the Engineers' Report, the drainage coefficient at this location is 1"/day as a result of a cattle crossing control on the drainage system. The resulting drainage coefficient will match the NRCS standard of 0.5"/day). The 15" and 24" pipe may be perforated. The Engineers' Report recommends three contractor options for the type of pipe to be used: (1) Dual Wall or Triple Wall Polypropylene Drain Tile meeting the requirements of the American Society for Testing Materials F2376 and bedded in granular foundation rock; or (2) Dual Wall Polyethylene Drain Tile meeting the requirements of the American Society for Testing Materials F2648 and bedded in granular foundation rock (with the option to shape the bottom of the trench to conform to the pipe and eliminate some of the granular bedding if the pipe manufacturer would warrant the material installation); non-perforated pipe; perforated pipe that includes a drain tile sock or micro perforations/slots to avoid granular infiltration into the pipe; or (3) Reinforced concrete pipe meeting the requirements of MnDOT Specification 2501, with the joints being covered with geotextile fabric or gasketed joints.
  - b. Construction of 5 WASCObS using select borrow material sourced from the wetland/water storage excavation, consisting of an embankment across the slope of the field or minor waterway to temporarily detain and release water through a

pipd outlet or infiltration and constructed perpendicular to the flow direction. The location of the WASCOBs is depicted in Exhibit 1 of the Engineers' Report and described as follows:

Property Owners/Address	Parcel I.D. #	Description
<b>WASCOB #1</b>		
Kubesh/David & Margaret/Tr 85554 310th St Danube, MN 56230	27-01720-00	27-116-35 NE4 – Ex BLDG SITE IN E2 OF NE4 – & W2 OF SE4 7 N2 OF NE4 OF SE4
<b>WASCOB #2<sup>1</sup></b>		
Kubesh/David & Margaret/Tr 85554 310th St. Danube, MN 56230	27-00760-00	27-116-35 S2 OF NW4 & N2 OF SW4
<b>WASCOB #3 &amp; WASCOB #5<sup>2</sup></b>		
Kubesh/David & Margaret/Tr 85554 310th St. Danube, MN 56230	27-00830-00	28-116-35 E2 OF SE4
<b>WASCOB #4</b>		
Kubesh/David & Margaret/Tr 85554 310th St. Danube, MN 56230	27-00830-00	28-116-35 E2 OF SE4
Lippert/James & Carol/Trustees 89118 Co. Rd. 1 Danube, MN 56230	27-00801-00	28-116-35 W2 OF SE4

- c. Construction of water storage/wetland creation and saturated buffer strip as shown on Exhibit 1 of the Engineers' Report designed to have 1.5-feet of permanent storage, a wet bottom ditch to remove additional pollutants through sedimentation, 24-inch base of topsoil through the bottom of the system to prevent infiltration, upland and wetland native grass and forb seeding to enhance filtration of sediment and nutrients and benefit wildlife and insect populations.
- d. Repair approximately 5,220 feet of 24", 22", and 20" with 24" with HDPE pipe. The Engineers' Report notes that whenever possible it is recommended to match tile sizes and grade for non-improvements, however there is not a feasible size readily

<sup>1</sup> Note that the Engineers' Report recommends that WASCOB #2, which was depicted on the Petition and Amended Petition as affecting property owned by Petitioners Dale & Rachel Schneiderman identified locally as PIN 27-00770-00, be modified so as not to be located on the Schneiderman property.

<sup>2</sup> Note that the Engineers' Report recommends adding WASCOB #5, which was not depicted on the concept plans attached to the Petition and Amended Petition.

available for these tiles sizes, so it is recommended to use the next available size in the case of the 22" and 20" tile.

20. As part of the proposed Project as recommended by Engineer Luker, approximately 3.2 acres of drainage system open ditch and buffer strip will be converted back into farmable acres and 2.3 acres of wetland and buffer strip acquired.
21. The Engineers' Report notes that the proposed Project will be of public or private benefit. The Engineers' Report states that the proposed impoundments and reroutes will store overland water and reduce the overall flow and nutrient runoff. The proposed Project will replace existing clay tiles that may currently have obstructions from collapsed tiles, roots, and animals. The best management practices create just under 170 acre-feet of water storage. The WASCObS detain water from contributing areas, reducing sedimentation, and controlling the release of water, thereby reducing erosion by reducing the peak overland flows discharged to the CD 59 Main Open Ditch. The Engineers' Report estimates the project will reduce nitrogen by 3,162 lbs/year; phosphorous by 389 lbs/year; and sediment (Total Suspended Solids) by 34.2 tons/year.
22. Engineer Luker determined that the proposed impounding, rerouting, and diversion of CD 59 drainage system waters as proposed in the Petition and Amended Petition will not impair the utility of the drainage system and will not deprive affected landowners of their benefits.
23. During the public hearing, the Chair called for comments from the public and all comments submitted were taken and made part of the record of proceedings on file with the Drainage Authority. No comments were made at the public hearing that cast substantive doubt on the findings in Engineer Luker's Engineers' Report or raised any reason why the Drainage Authority should not proceed with approving the Petition and Amended Petition.
24. Minnesota Statutes, section 103E.227, subdivision 4 requires the petitioner or drainage authority to obtain all required permits and all necessary rights-of-way and flowage easements from owners of land to be affected by an impound, reroute, and diversion petition before installing or constructing a project.
25. The Drainage Authority's counsel has prepared rights-of-way and flowage easements attached hereto as **EXHIBIT A** and **EXHIBIT B** for the right to access, construct, inspect, and repair the wetland/water storage and WASCObS as described in the Engineers' Report.
26. The Drainage Authority finds that it is necessary and in the best interest of the CD 59 drainage system for the Drainage Authority to inspect and repair the WASCObS and wetland/water storage described in the Engineers' Report.

27. The engineer estimates that the total costs for the proposed Project is \$1,488,979. The Engineers' Report notes that grant funding applied for by Petitioner Renville Soil & Water Conservation District was awarded, amounting to \$929,613. The Engineers' Report recommends using drainage system funds, estimated to be approximately \$559,366, to fund the portions of the proposed Project not covered by the BWSR grant. The basis of the Engineers' recommendation is avoided repair costs for the rerouted portions of CD 59, estimated cost savings in terms of avoided ditch cleaning attributable to reduction in sediment into CD 59, and additional benefits to the CD 59 drainage system such as flood storage, habitat creation, and decreased discharge rates.
28. The Engineers' Estimate of Project Costs includes recommended temporary right-of-way damages for the tile, open ditch, and wetland/water storage construction of 21.5 acres at \$600/acre, totaling \$12,900.
29. The Engineers' Estimate of Project Costs includes recommended damages for permanent right-of-way for the saturated buffer and wetland/water storage best management practices across 2.3 acres at \$16,000/acre, totaling \$36,800; however, the Engineers' Estimate of Project Costs recommends a credit for 3.2 acres of open drainage system ditch replaced with tile and thus returned to farming practices, at \$11,500/acre for a total credit of \$36,800.
30. Based on the record of proceedings before it, the Drainage Authority finds that the proposed impound, reroute, and diversion as described in the Petition and Amended Petition and as modified by the Engineers' Report will be of public and private benefit by providing increased temporary and permanent storage capacity, erosion reduction, and decrease in outlet discharge, improving downstream water quality, and increasing temporary storage of floodwaters, thereby decreasing the burden on the downstream public drainage system.
31. Based on the record of proceedings before it, the Drainage Authority finds that the proposed impound, reroute, and diversion as described in the Petition and Amended Petition and as modified by the Engineers' Report will not impair the utility of the CD 59 public drainage system or deprive other landowners of its benefit.
32. Based on the record of proceedings before it, the Drainage Authority finds that the use of drainage system funds to cover the portions of the proceedings and construction not covered by the BWSR grant are reasonable, appropriate, and justified by the benefits provided to the CD 59 drainage system by the proposed Project.

**Order:**

Based on the foregoing Findings and the entire record of proceedings before the Board, the Renville County Board of Commissioners, acting as the drainage authority for Renville County Ditch 59, hereby orders as follows:

- A. That the Petition and Amended Petition to impound, reroute, and divert CD 59 drainage system waters, as modified by the recommendations in the Engineers' Report, is hereby **GRANTED** subject to all conditions stated in this Order.
- B. That the Drainage Authority shall have jurisdiction over and shall be responsible for constructing, inspecting, maintaining, and repairing the impounded, rerouted, and diverted portions of CD 59 consistent with the requirements of Minnesota Statutes, chapter 103E. The Engineers' Report shall be amended by this Order to state that the Drainage Authority will be responsible for the construction, inspection, maintenance, and repair of WASCOb #3 and #5.
- C. That upon this Order becoming final, the Engineer shall prepare the detailed plans and specifications and other necessary documents to allow for bidding on the Project. Further, the Engineer, Drainage Authority counsel, and Drainage Authority staff shall take all necessary actions for the construction of the Project, which shall proceed as necessary, reserving to the Board only those matters that the Board, by vote, must authorize.
- D. That the rights-of-way and flowage easements attached hereto as **EXHIBIT A** and **EXHIBIT B** shall be presented by Drainage Authority staff to the affected landowners and record easements substantially compliant with said exhibits, after approved by the Drainage Authority's counsel, shall be recorded with the Renville County Recorder's Office.
- E. That the Board delegates to the Engineer the authority to provide the consent of the Drainage Authority to modifications to Engineers' final plans and specifications as circumstances require (i.e. change orders) under the conditions that (1) the change orders are consistent with Minnesota Statutes, chapter 103E and any conditions of the BWSR grants used to fund the Project; and (2) the total cost of the change order is not in excess of \$10,000. All other change orders must be presented to the Drainage Authority Board for review and approval.
- F. That upon completion of the Project, the original drainage system records shall be modified to reflect the as-built alignment and conditions of the impounded, reroute, and diverted portions of the CD 59 drainage system described in the Engineers' Report.
- G. That in consideration of the repairs avoided by construction of the rerouted or impounded portions of CD 59 and the benefits to the CD 59 drainage system as described herein, CD 59 drainage system funds shall be applied toward all costs of these proceedings, including the costs required to acquire all rights-of-way and flowage easements for the rerouted portion of the Project, that are not otherwise covered by the BWSR grant or other grant funds.



After discussion, the Board Chair called the question. The question was on the adoption of the foregoing Findings and Order, and there were 5 yeas, 0 nays, 0 absent, and 0 abstentions as follows:

	Yea	Nay	Absent	Abstain
CARLSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HAMRE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MERTENS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ROBINSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SNOW	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Upon vote, the Chair declared the motion passed and the Findings and Order adopted.



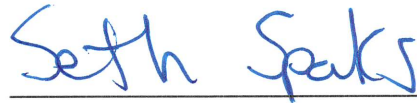
David Hamre, Chairperson  
Renville County Board of Commissioners

Dated: March 18, 2025

\* \* \* \* \*

I, Seth Sparks, Renville County Drainage Systems Manager, do hereby certify that I have compared the above motion and Findings and Order Granting Petition to Impound, Reroute, and Divert Drainage System Waters with the original thereof as the same appears of record and on file with the Renville County Drainage Authority and find the same to be a true and correct transcript thereof. The above order was filed with me, Renville County Drainage Systems Manager, on March 18, 2025.

IN TESTIMONY WHEREOF, I hereunto set my hand this 18th day of March, 2025.



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Seth Sparks, Drainage Systems Manager  
Renville County, Minnesota

## **EXHIBIT A**

### **CONSERVATION EASEMENT AND RIGHT-OF-ENTRY**

THIS CONSERVATION EASEMENT AND RIGHT-OF-ENTRY AGREEMENT ("**Agreement**") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2025, by and between **David P. Kubesh and Margaret M. Kubesh, as Trustees, under the David P. Kubesh Revocable Living Trust dated December 14, 2017, and to Margaret M. Kubesh and David P. Kubesh, as Trustees, under the Margaret M. Kubesh Revocable Living Trust dated December 14, 2017** (collectively "**Grantors**") and Renville County, Minnesota, in its capacity as the drainage authority for Renville County Ditch 59 (the "**Grantee**" or "**Holder**" or "**Drainage Authority**"), (Grantors and the Drainage Authority are collectively the "**Parties**").

#### **RECITALS**

WHEREAS, David P. Kubesh and Margaret M. Kubesh, as Trustees, under the David P. Kubesh Revocable Living Trust dated December 14, 2017 and Margaret M. Kubesh and David P. Kubesh, as Trustees, under the Margaret M. Kubesh Revocable Living Trust dated December 14, 2017, are the record owners of real property in Renville County, Minnesota, identified as parcel numbers 27-00830-00, 27-01720-00, and 27-00760-00, legally described in **Exhibit A**; and

WHEREAS, Grantors' property identified as parcel numbers 27-00830-00, 27-01720-00, and 27-00760-00 and legally described in Exhibit A is hereinafter referred to as the "**Kubesh Property**"; and

WHEREAS, there is an existing drainage system known as Renville County Ditch 59 ("**County Ditch 59**") that consists of an open ditch and subsurface drainage tile that benefits the Kubesh Property; and

WHEREAS, the Drainage Authority is authorized under Minnesota Statutes, chapter 103E to establish, construct, repair, and maintain County Ditch 59 and other drainage systems and holds all necessary property interests to do so; and

## **EXHIBIT A**

WHEREAS, Grantors filed a petition with the Drainage Authority under Minnesota Statutes, section 103E.227 (2024) to impound, reroute, or divert County Ditch 59 drainage system waters for beneficial use; and

WHEREAS, Grantee has completed the procedures of Statutes, section 103E.227; has approved Grantors' petition to impound, reroute, or divert County Ditch 59 drainage system waters; will undertake construction of certain water quantity, quality, and erosion control best management practices to stabilize and control water rate and volume and delivery of sediment within County Ditch 59; and will maintain such practices as part of the County Ditch 59 drainage system following construction as described in the Engineers' Report referenced and documented in the Grantee's Findings and Order to Impound, Reroute, and Divert Drainage System Waters dated March 18, 2025 on file with the Drainage Authority (the "**Project**"); and

WHEREAS, the portion of the Project to be implemented on the Kubesh Property involves the construction of multiple water control impoundments within the easement area; and

WHEREAS, the construction of the water control impoundments on the Kubesh Property will enhance and protect the riparian zone of County Ditch 59 and protect the function of the system; and

WHEREAS, Grantors agree to grant a new conservation easement under Minnesota Statutes, chapter 84C on the Kubesh Property to the Holder Drainage Authority for the Project, including the construction, inspection, maintenance, and repair of the water control impoundments; and

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the Parties, the Parties agree as follows:

- 1. Grant of Easement.** Grantors, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grant, convey, and warrant to the Drainage Authority, and its successors, heirs, assigns, agents, permittees, and licensees, a permanent easement upon the Kubesh Property for the construction, inspection, maintenance, and repair of the Project (hereinafter referred to as the "**Easement**").
- 2. Easement Area.** This Easement is being granted over the easement area adjacent to and contiguous with County Ditch 59 as generally depicted and described as W1 (WASCOB 1), W2 (WASCOB 2), W3 (WASCOB 3), W4 (WASCOB 4), W5 (WASCOB 5) and "WETLAND" in **Exhibit B** and in the County Ditch 59 drainage system records on file with the Drainage Authority ("**Easement Area**").
- 3. Easement Purpose.** This Easement is being granted for the Drainage Authority's construction, inspection, maintenance, and repair of the practices constructed as part of the Project.
- 4. Right-of-Entry.** Grantors acknowledge the Drainage Authority's existing right of entry across the Kubesh Property, pursuant to Minnesota Statutes, chapter 103E, to access County Ditch 59 and appurtenances thereto. The Drainage Authority must exercise reasonable care to avoid and minimize damages when entering and performing work on the Kubesh Property.

## **EXHIBIT A**

- 5. Maintenance Costs.** The Drainage Authority shall be solely responsible for the routine maintenance and inspection of the Project. The Drainage Authority shall be responsible for all costs associated with maintaining the Project.
- 6. Agreement Runs with the Land.** This Conservation Easement and Right-of-Entry Agreement shall be for the benefit of the Parties, their successors, heirs, assigns, agents, permittees, and licensees, and shall be deemed to be a perpetual Conservation Easement and Right-of-Entry Agreement that shall run with the land and shall be binding upon the Parties' heirs, successors, and assigns.
- 7. Parties' Covenants.** The Parties specifically covenant with each other that:
- A. Grantors hold title to the Kubesh Property;
  - B. Each has full and good lawful authority to enter into this Agreement;
  - C. Each has full and good lawful authority to convey the Conservation Easement and Right-of-Entry as set forth in this Agreement; and
  - D. Each covenants to warrant and defend this Agreement and the Conservation Easement and Right-of-Entry contained herein against claims of all persons whomsoever.
- 8. Obstructions Prohibited.** Grantors shall not perform any practice within the Easement Area that would be detrimental to the stability, serviceability, or function of the Project or County Ditch 59 without the express written authorization from the Drainage Authority. Notwithstanding the foregoing, Grantors may cultivate and farm the portions of the Easement Area identified as W1 (WASCOB 1), W2 (WASCOB 2), W3 (WASCOB 3), and W5 (WASCOB 5) when site conditions naturally allow Grantors to do so. No Party shall construct, place, permit, or allow any structures, obstructions, or other impairments on, over, under, through, across, or within the Easement Area that may impair or interfere with the construction, inspection, maintenance, and repair of the Project, or tile banks, or channel of County Ditch 59.
- 9. Responsibility for the Project.** Grantee shall be fully responsible for constructing the Project in a workmanlike manner and is fully responsible for all costs of the Project.
- 10. Drainage Authority May Transfer Agreement.** The Drainage Authority may transfer this Agreement to another drainage authority duly formed and authorized under the State of Minnesota.
- 11. Recitals.** The recitals set forth above are incorporated herein and are made part of this Agreement.
- 12. Recording.** This Agreement shall be recorded with the Renville County Recorder on the Kubesh Property.
- 13. Counterparts.** This Agreement may be executed in parts which, when all original signatures are compiled, shall constitute a full and complete Agreement.
- 14. Governing Law.** This Agreement shall be governed by the laws of Minnesota.

## **EXHIBIT A**

**15. Legal Representation.** Rinke Noonan, Ltd. represents the Drainage Authority with regard to this Agreement. The other Parties are hereby advised to seek independent legal advice prior to execution of this Agreement.

**16. Severability.** If one provision of this Agreement is held invalid, that shall not affect any other provision of this Agreement.

**17. Enforceability.** This Agreement's provisions are for the benefit of the Parties. No third parties shall have any rights to enforce or be deemed a beneficiary of any provisions of this Agreement.

**THIS INSTRUMENT DRAFTED BY:**

Rinke Noonan, Ltd. (KRV)  
1015 W. St. Germain St., Suite 300  
P.O. Box 1497  
St. Cloud, MN 56302-1497  
(320) 251-6700  
File No. 11726-0281

*[signature pages to follow]*

**EXHIBIT A**

**SIGNATURE PAGE TO  
CONSERVATION EASEMENT AND RIGHT-OF-ENTRY**

**THE DAVID P. KUBESH REVOCABLE LIVING  
TRUST DATED DECEMBER 14, 2017**

David P. Kubesh, Co-Trustee

**THE MARGARET M. KUBESH REVOCABLE  
LIVING TRUST DATED DECEMBER 14, 2017**

David P. Kubesh, Co-Trustee

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2025, before me, a Notary Public for this County, personally appeared David P. Kubesh, Co-Trustee of the David P. Kubesh Revocable Living Trust dated December 14, 2017.

Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2025, before me, a Notary Public for this County, personally appeared David P. Kubesh, Co-Trustee of the Margaret M. Kubesh Revocable Living Trust dated December 14, 2017.

Notary Public  
My Commission Expires:

## EXHIBIT A

**SIGNATURE PAGE TO  
CONSERVATION EASEMENT AND RIGHT-OF-ENTRY**

**THE MARGARET M. KUBESH REVOCABLE  
LIVING TRUST DATED DECEMBER 14, 2017**

Margaret M. Kubesh, Co-Trustee

**THE DAVID P. KUBESH REVOCABLE LIVING TRUST DATED DECEMBER 14, 2017**

Margaret M. Kubesh, Co-Trustee

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2025, before me, a Notary Public for this County, personally appeared Margaret M. Kubesh, Co-Trustee of the Margaret M. Kubesh Revocable Living Trust dated December 14, 2017.

Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2025, before me, a Notary Public for this County, personally appeared Margaret M. Kubesh, Co-Trustee of the David P. Kubesh Revocable Living Trust dated December 14, 2017.

Notary Public  
My Commission Expires:



## EXHIBIT A

**SIGNATURE PAGE TO  
CONSERVATION EASEMENT AND RIGHT-OF-ENTRY**

GRANTEE:  
RENNVILLE COUNTY BOARD OF  
COMMISSIONERS, AS COUNTY DRAINAGE  
AUTHORITY FOR RENNVILLE COUNTY

By David Hamre  
Its: Chairperson

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2025, by David Hamre, the Chairperson of the Renville County Board of Commissioners, acting as County Drainage Authority for Renville County, on behalf of the organization.

Notary Public  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**Exhibit A**

Real Property in Renville County, Minnesota, described as follows:

**East Half of the Southeast Quarter of Section 28, Township 116, Range 35.**

PID 27-00830-00

East Half of the Northeast Quarter of Section 27, Township 116, Range 35, except the following described tract:

Commencing at the northeast corner of said Section 27 and thence 660 feet South along the East boundary line of said Section 27 to the point of beginning; thence at a right angle West 570 feet, thence at a right angle South 700 feet, thence at a right angle East 570 feet and thence at a right angle North 700 feet to the point of beginning.

AND West Half of the Northeast Quarter, West Half of the Southeast Quarter, and North Half of the Northeast Quarter of the Southeast Quarter, all in Section 27, Township 116, Range 35.

PID 27-01720-00

*South Half of the Northwest Quarter and the North Half of the Southwest Quarter of Section 27, Township 116, Range 35.*

PID 27-00760-00

**EXHIBIT A**

**Exhibit B**

[Depictions from Final Plans & Specifications]

## **EXHIBIT B**

### **CONSERVATION EASEMENT AND RIGHT-OF-ENTRY**

THIS CONSERVATION EASEMENT AND RIGHT-OF-ENTRY AGREEMENT ("**Agreement**") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2025, by and between **James E. Lippert as Trustee of the James E. Lippert and Carol J. Lippert Trust under Agreement dated July, 19, 2018** ("**Grantor**") and Renville County, Minnesota, in its capacity as the drainage authority for Renville County Ditch 59 (the "**Grantee**" or "**Holder**" or "**Drainage Authority**"), (Grantor and the Drainage Authority are collectively the "**Parties**").

#### **RECITALS**

WHEREAS, James E. Lippert as Trustee of the James E. Lippert and Carol J. Lippert Trust under Agreement dated July, 19, 2018 is the record owner of real property in Renville County, Minnesota, identified as parcel number 27-00801-00, legally described in **Exhibit A**; and

WHEREAS, Grantor's property identified as parcel number 27-00801-00 and legally described in Exhibit A is hereinafter referred to as the "**Lippert Property**"; and

WHEREAS, there is an existing drainage system known as Renville County Ditch 59 ("**County Ditch 59**") that consists of an open ditch and subsurface drainage tile that benefits the Lippert Property; and

WHEREAS, the Drainage Authority is authorized under Minnesota Statutes, chapter 103E to establish, construct, repair, and maintain County Ditch 59 and other drainage systems and holds all necessary property interests to do so; and

WHEREAS, Grantor filed a petition with the Drainage Authority under Minnesota Statutes, section 103E.227 (2024) to impound, reroute, or divert County Ditch 59 drainage system waters for beneficial use; and

WHEREAS, Grantee has completed the procedures of Statutes, section 103E.227; has approved Grantor's petition to impound, reroute, or divert County Ditch 59 drainage system

## **EXHIBIT B**

waters; will undertake construction of certain water quantity, quality, and erosion control best management practices to stabilize and control water rate and volume and delivery of sediment within County Ditch 59; and will maintain such practices as part of the drainage system following construction as described in the Engineers' Report referenced and documented in the Grantee's Findings and Order to Impound, Reroute, and Divert Drainage System Waters dated March 18, 2025, on file with the Drainage Authority (the "**Project**"); and

WHEREAS, the portion of the Project to be implemented on the Lippert Property involves the construction of a water control impoundment within the easement area; and

WHEREAS, the construction of the water control impoundment on the Lippert Property will enhance and protect the riparian zone of County Ditch 59 and protect the function of the system; and

WHEREAS, Grantor agrees to grant a new conservation easement under Minnesota Statutes, chapter 84C on the Lippert Property to the Holder Drainage Authority for the Project, including the construction, inspection, maintenance, and repair of the water control impoundment; and

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the Parties, the Parties agree as follows:

- 1. Grant of Easement.** Grantor, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grant, convey, and warrant to the Drainage Authority, and its successors, heirs, assigns, agents, permittees, and licensees, a permanent easement upon the Lippert Property for the construction, inspection, maintenance, and repair of the Project (hereinafter referred to as the "**Easement**").
- 2. Easement Area.** This Easement is being granted over the easement area adjacent to and contiguous with County Ditch 59 as generally depicted and described as W4 (WASCOB 4) in **Exhibit B** and in the County Ditch 59 drainage system records on file with the Drainage Authority ("**Easement Area**").
- 3. Easement Purpose.** This Easement is being granted for the Drainage Authority's construction, inspection, maintenance, and repair of the practices constructed as part of the Project.
- 4. Right-of-Entry.** Grantor acknowledges the Drainage Authority's existing right of entry across the Lippert Property, pursuant to Minnesota Statutes, chapter 103E, to access County Ditch 59 and appurtenances thereto. The Drainage Authority must exercise reasonable care to avoid and minimize damages when entering and performing work on the Lippert Property.
- 5. Maintenance Costs.** The Drainage Authority shall be solely responsible for the routine maintenance and inspection of the Project. The Drainage Authority shall be responsible for all costs associated with maintaining the Project.
- 6. Agreement Runs with the Land.** This Conservation Easement and Right-of-Entry Agreement shall be for the benefit of the Parties, their successors, heirs, assigns, agents,

## **EXHIBIT B**

permittees, and licensees, and shall be deemed to be a perpetual Conservation Easement and Right-of-Entry Agreement that shall run with the land and shall be binding upon the Parties' heirs, successors, and assigns.

**7. Parties' Covenants.** The Parties specifically covenant with each other that:

- A. Grantor holds title to the Lippert Property;
- B. Each has full and good lawful authority to enter into this Agreement;
- C. Each has full and good lawful authority to convey the Conservation Easement and Right-of-Entry as set forth in this Agreement; and
- D. Each covenants to warrant and defend this Agreement and the Conservation Easement and Right-of-Entry contained herein against claims of all persons whomsoever.

**8. Obstructions Prohibited.** Grantor shall not perform any practice within the Easement Area that would be detrimental to the stability, serviceability, or function of the Project or County Ditch 59 without the express written authorization from the Drainage Authority. Notwithstanding the foregoing, Grantor may cultivate and farm the portions of the Easement Area identified as W4 (WASCOB 4) when site conditions naturally allow Grantor to do so. No Party shall construct, place, permit, or allow any structures, obstructions, or other impairments on, over, under, through, across, or within the Easement Area that may impair or interfere with the construction, inspection, maintenance, and repair of the Project, or tile banks, or channel of County Ditch 59.

**9. Responsibility for the Project.** Grantee shall be fully responsible for constructing the Project in a workmanlike manner and is fully responsible for all costs of the Project.

**10. Drainage Authority May Transfer Agreement.** The Drainage Authority may transfer this Agreement to another drainage authority duly formed and authorized under the State of Minnesota.

**11. Recitals.** The recitals set forth above are incorporated herein and are made part of this Agreement.

**12. Recording.** This Agreement shall be recorded with the Renville County Recorder on the Lippert Property.

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

**14. Governing Law.** This Agreement shall be governed by the laws of Minnesota.

**15. Legal Representation.** Rinke Noonan, Ltd. represents the Drainage Authority with regard to this Agreement. The other Parties are hereby advised to seek independent legal advice prior to execution of this Agreement.

**16. Severability.** If one provision of this Agreement is held invalid, that shall not affect any other provision of this Agreement.

## **EXHIBIT B**

**17. Enforceability.** This Agreement's provisions are for the benefit of the Parties. No third parties shall have any rights to enforce or be deemed a beneficiary of any provisions of this Agreement.

**THIS INSTRUMENT DRAFTED BY:**

Rinke Noonan, Ltd. (KRV)  
1015 W. St. Germain St., Suite 300  
P.O. Box 1497  
St. Cloud, MN 56302-1497  
(320) 251-6700  
File No. 11726-0281

*[signature pages to follow]*

**EXHIBIT B**

**SIGNATURE PAGE TO  
CONSERVATION EASEMENT AND RIGHT-OF-ENTRY**

**JAMES E. LIPPERT AND CAROL J. LIPPERT  
TRUST UNDER AGREEMENT DATED JULY  
19, 2018**

James E. Lippert, Co-Trustee

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2025, before me, a Notary Public for this County, personally appeared James E. Lippert, Trustee of the James E. Lippert and Carol J. Lippert Trust under Agreement dated July 19, 2018.

Notary Public  
My Commission Expires: \_\_\_\_\_



**EXHIBIT B**

**SIGNATURE PAGE TO  
CONSERVATION EASEMENT AND RIGHT-OF-ENTRY**

GRANTEE:  
RENNVILLE COUNTY BOARD OF  
COMMISSIONERS, AS COUNTY DRAINAGE  
AUTHORITY FOR RENNVILLE COUNTY

By David Hamre  
Its: Chairperson

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2025, by David Hamre, the Chairperson of the Renville County Board of Commissioners, acting as County Drainage Authority for Renville County, on behalf of the organization.

Notary Public  
My Commission Expires: \_\_\_\_\_

**EXHIBIT B**

**Exhibit A**

That property in Renville County, Minnesota, described as follows:

The West Half of the Southeast Quarter of Section 28, Township 116 North, Range 35  
West;

PID 27-00801-00

**EXHIBIT B**

**Exhibit B**

**[Depictions from the Final Plans & Specifications]**