

**2011 REVISED DRAINAGE ORDINANCE
OF
MCCOOK COUNTY, SOUTH DAKOTA**

ADOPTED BY ORDINANCE OF
MCCOOK COUNTY BOARD OF COUNTY COMMISSIONERS
DATE: September 6, 2011
PUBLISHED: September 15, 2011 and September 22, 2011
EFFECTIVE DATE: October 12, 2011

ORDINANCE NO. 2011-01

PURPOSE OF THE ORDINANCE

Unfortunately, drainage issues between landowners can lead to conflicts between neighbors that eventually end up in the court system. The purpose of this Ordinance is to facilitate communication and cooperation between landowners involved in a drainage project, thus reducing the potential of conflict. Dealing with informed neighbors increases the likelihood that the final drainage action will minimize adverse effects to downstream landowners and benefit all parties involved.

McCook County does not incur and liability with this Ordinance. State law takes precedence over this Ordinance. The applicable state regulations are found in SDCL 46A-10A.

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ARTICLE 1
GENERAL PROVISIONS

Section 101. Title

These regulations shall be referred to as the 2011 Revised Drainage Ordinance of McCook County.

Section 102. Authority

The authority for this ordinance is promulgated under SDCL 46A-10A and SDCL 46A-11.

Section 103. Purpose

These regulations shall govern the drainage of water within the unincorporated area of McCook County and are designed to enhance and promote the physical, economic and environmental management of the county; protect the tax base; prevent inordinate adverse impacts on servient properties; encourage land utilization that will facilitate economical and adequate productivity of all types of land; lessen government expenditure; conserve and develop natural resources; and preserve the important benefits provided by wetlands.

Section 104. Interpretation, Abrogation and Severability

In interpreting and applying the provisions of these regulations, they shall be held to be the minimum requirements for the promotion of public safety, health, convenience, comfort, morals, prosperity, and general welfare. It is not the intent to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where these regulations and other regulations, easements, covenants or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall prevail. All other county regulations inconsistent with these regulations are hereby repealed to the extent of this inconsistency only. If any section, clause, provision or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

Section 105. Purpose of Catch Heads

The catch heads appearing with the sections of this ordinance are inserted simply for convenience to serve the purpose of an index. The catch heads shall be wholly disregarded by any person, office, court or other tribunal in construing the terms and provisions of this ordinance.

Section 106. Saving Clause

These regulations shall in no manner affect pending actions either civil or criminal, founded on or growing out of any regulations hereby repealed. These regulations shall in no manner affect

rights or causes of action, either civil or criminal that may have already accrued or grown out of any regulations repealed.

Section 107. Disclaimer of Liability

The degree of public and environmental protection offered by this ordinance is considered reasonable for regulatory purposes and is based on the best available scientific and engineering considerations. The application of this ordinance shall not create liability on the part of McCook County, or any officer or employee thereof.

Section 108. Definitions

For the purposes of this ordinance, certain terms and words are hereby defined. Unless otherwise noted, all terms contained in this ordinance are defined by their plain meaning.

1. ADMINISTRATIVE OFFICIAL. The person, officer or official and his authorized representative duly appointed by the Board who is responsible for the administration and enforcement of this ordinance.
2. BENEFITTED AREA. The area within a drainage district or coordinated drainage area that receives the direct benefit from the drainage projects which have been constructed, or are to be constructed, within the district or drainage area.
3. BOARD. The Board of McCook County Commissioners.
4. CONTRACTOR. Any individual, firm or corporation who performs excavation, grading, construction or installation work involving a drainage project.
5. COORDINATED DRAINAGE AREA. A defined geographic area containing one or more parcels of real property and more than one land owner which is established via a public election to provide a planned network or method of natural or man-made drainage and funded through an assessment on the benefited properties.
6. DOMINANT ESTATE. Any parcel of real property, usually at a higher elevation, which holds a common law or statutory right to drain water onto other real property.
7. DRAIN. A means of draining either surface or subsurface water through a system of ditches, pipes or tiles, either natural, man-made or natural with man-made improvements including:
 - a. CLOSED DRAIN. A man-made drain or drainage scheme utilizing pipes, tiles or other materials and constructed in such a way that the flow of

water is not visible.

- b. LATERAL DRAIN. A drain constructed after the establishment and construction of the original drain or drainage system and which flows into such original drain or drainage system.
 - c. NATURAL DRAIN. A drainage system on the surface of the ground which operates as part of a natural water course.
 - d. SURFACE DRAIN. A man-made drain on the surface of the ground.
8. DRAINAGE DISTRICT. A drainage area with multiple owners that was established under state law prior to July 1, 1985 in which all planning, construction and maintenance of the drainage system conform with a master plan for the district and are funded through an assessment on the benefited acres within the district.
 9. DRAINAGE PROJECT. Any man-made improvements constructed or installed with the intent to drain water.
 10. HYDRIC SOIL. Soil types which are formed under saturated conditions.
 11. HYDROPHITIC VEGETATION. Vegetative types typically adapted for life in saturated soil conditions.
 12. LANDOWNER OR OWNER. Any individual, firm or corporation, public or private, or public agency, which has title to real property as shown by the records of the Register of Deeds. If the real property is sold under a contract for deed and the contract is of record in the office of the Register of Deeds, both the recorded owner of the real property and the purchaser as named in the contract for deed are deemed owners of the real property.
 13. MEANDERED LAKE. Any pond, slough, or lake which has had its boundaries established by metes and bounds in the documents of record or in the survey of public lands by the government of the United States.
 14. PARCEL. A separately designated area of land delineated by identifiable legally recorded boundary lines.
 15. PERSON. An individual, firm, partnership, association, corporation, contractor or any other type of private legal relationship, and any governmental organization, which includes, but is not limited to, any agency of the United States, a state agency, and any political subdivision of the state.
 16. ROUTINE MAINTENANCE. Maintenance performed on a vested drain, existing non-vested drain, natural drain or intermittent stream.

17. SERVIENT ESTATE. Any parcel of real property, usually at a lower elevation, which is subject to a legal right allowing a dominant estate to drain water onto it.
18. STREAM. INTERMITTENT. A natural drainage channel indicated by a dot and dash blue line on the most recently published USGS 7.5 minute quadrangle maps.
19. STREAM. PERMANENT. A natural drainage channel indicated by a solid blue line on the most recently published USGS 7.5 minute quadrangle maps.
20. VESTED DRAINAGE RIGHT. A right to drain water from one property to another which has been established on the basis of SDCL 46A-10A or 46A-11 A. Any natural right acquired before July 1, 1985 is deemed vested. Drainage with man-made origins or improvements acquired prior to July 1, 1985 is deemed vested if recorded at the register of deeds office before July 1, 1992. Drainage districts are exempt from the recording requirements.
21. WATERSHED. The area of land which drains, either directly or indirectly, into a slough, pond, lake, stream or water course.
22. WETLAND. Those areas which have a predominance of hydric soil, are inundated or saturated by water for at least 15 days during a growing season, and under normal circumstances support hydrophytic vegetation.

ARTICLE 2 DRAINAGE PERMITS

Section 201. Permits Required

A drainage permit shall be required for and prior to commencing the construction or installation of the following drainage projects:

1. Any draining or filling, in whole or in part, of a pond, wetland, or lake.
2. Construction of any lateral drain.
3. Modification of any permitted drainage with the intent of deepening or widening any drainage channel, increasing the size of any drainage tile, or the extending or rerouting of any drainage work.
4. Construction or installation of a surface or closed drain.
5. Repairing, replacing or improving any drain.

Section 202. Application for a Drainage Permit

Any person required to obtain a drainage permit under this ordinance shall file an application on a form as provided by the County and the required filing fee with the Administrative Official.

The applicant shall provide a detailed site plan showing the location of the proposed construction. The site plan shall include a description of the type and size of the drain, and the location of the proposed outlet. Any application for a proposed drainage project which would empty into an existing drainage system shall include a description of the type and general location of the existing system. An application is required for each parcel within a drainage project. Drainage projects constructed as part of a drainage district or coordinated drainage area shall require one permit.

If the Administrative Official determines that the application is incomplete or if the information contained therein is insufficient to make an informed decision on the application, the application shall be returned to the applicant for revision. The Administrative Official may also require that the applicant provide a detailed survey prepared by a professional engineer or surveyor.

The applicant shall also provide copies of the complete application to other affected counties if the application is determined to be of statewide or inter-county significance.

The Administrative Official shall provide notice of the application by mail to all the adjoining property owners of the proposed drainage project.

Section 203. Drainage Application Fee

A non-refundable fee of \$100.00 shall be charged for the filing of drainage applications.

Section 204. Authority of Administrative Official to Grant Drainage Permits

The Administrative Official shall have the authority to grant or deny a drainage permit for the following projects. All other drainage permit applications shall be addressed by the Board.

1. A proposed drainage project which outlets directly into *Little Vermillion, East Vermillion, West Vermillion or Wolf Creek Streams*, as delineated on the most recently published USGS 7.5 minute topographic maps or other maps deemed appropriate by the Administrative Official or Board.
2. A proposed drainage project which does not outlet into the streams in subsection (1) provided all downstream landowners for at least ½ mile straight line below from where the water leaves the property of the proposed drainage project have signed a waiver stating that they have no objection to the construction of the proposed drainage project.
3. Routine Maintenance. Drainage permits for routine maintenance shall become effective upon approval and no fee shall be charged. A permit approved by the Administrative Official shall not become effective until after five working days following the approval. Drainage permits for routine maintenance are exempt from the adjoining property owner notification requirement in Section 202.
 - a. Repair or replacement of a closed or lateral drain which does not increase the size, capacity or length of the existing drain and the original location of the drain is not altered.
 - b. Removal of sediment or vegetation from a surface drain if the maintenance does not exceed or alter the original depth and the original location of the drain is not altered
 - c. Removal of sediment or vegetation from a natural drain if the maintenance does not exceed the original depth and capacity of the channel, or a depth of two feet, whichever is less, and the original location of the drain is not altered.

The Administrative Official shall not have the authority to grant a drainage permit for a proposed project which would have inter-county significance.

Section 205. Appeals of Decisions Made by the Administrative Official

Any decision of the Administrative Official may be appealed to the Board. The applicant or any person aggrieved by a decision shall file a written appeal with the Administrative Official within fourteen (14) working days of the official's decision. Upon such filing, the Administrative Official shall forward the appeal to the Board.

Section 206. Hearing by Board

Following notification in accordance with Section 207, the Board shall conduct a public hearing on a drainage permit application or the appeal of an administrative decision.

Section 207. Notification of Board Hearing

For all hearings required pursuant to this article, the Administrative Official shall provide notice of the hearing by first class mail to all downstream landowners for at least one (1) mile straight line from the point where the water leaves the property of the proposed drainage project. The notice shall be mailed at least fourteen (14) days prior to the hearing date. At the county's direction, the applicant shall prominently post the property in a manner most visible to the nearest public right-of-way giving notice for the permit hearing; said posting shall be in place during at least ten days immediately preceding the permit hearing.

Section 208. Drainage Applications of Statewide or Intercounty Significance

When an application is determined to be of statewide or inter-county significance, the county commission or drainage board of each county affected shall make a determination on whether the permit shall be granted. Following notification in accordance with Section 207, the Board shall conduct a public hearing on such application. Approval by all affected counties is required for permit approval. In the event that one of the commissions or boards is aggrieved by the decision, the aggrieved county may petition the South Dakota Water Management Board for assistance in accordance with SDCL 46A-10A-9.1 through 46A-10A-9.5.

In determining whether the proposed drainage is of statewide or inter-county significance, the Board may consider the following criteria:

1. Proposed drainage would affect property owned by the state or its political subdivisions.
2. Proposed drainage of lakes having recognized fish and wildlife values.
3. Proposed drainage or partial drainage of a meandered lake.
4. Proposed drainage which would have a substantial effect on another county.
5. Proposed drainage which would convert previously noncontributing areas (based on twenty-five year rainfall event - four percent chance) into permanently contributing areas.

Section 209. Evaluation of Permit Applications

At a minimum, the following factors shall be considered in evaluating the impact of a proposed drainage project:

1. Flood hazard zones;
2. Erosion potential;
3. Water quality and supply;
4. Agricultural production;

5. Environmental quality;
6. Aesthetics;
7. Fish and wildlife values; and
8. Considerations of downstream landowners and the potential adverse effect thereon including consideration of the following criteria:
 - a. Uncontrolled drainage into receiving watercourses which do not have sufficient capacity to handle the additional flow and quantity of water shall be considered to have an adverse effect.
 - b. Whether drainage is accomplished by reasonably improving and aiding the normal and natural system of drainage according to its reasonable carrying capacity, or in the absence of a practical natural drain, a reasonable artificial drain system is adopted.
 - c. The amount of water proposed to be drained.
 - d. The design and other physical aspects of the drain.
 - e. The impact of sustained flows.

Section 210. Conditions to Permits

Conditions may be attached to a drainage permit to ensure that the proposed drainage is accomplished in accordance with the purposes of this ordinance.

Section 211. Expiration of Drainage Permits

A drainage permit shall expire and become null and void if the authorized construction is not commenced within two (2) years of the effective date of the permit.

ARTICLE 3
DRAINAGE DISTRICTS, COORDINATED DRAINAGE AREAS, DRAINAGE
PROJECTS AND DRAINAGE BASIN UTILITY DISTRICTS

Section 301. Application for Repair Work on a Drainage District

In the event that maintenance is required in a drainage district in which three or more landowners have voluntarily contributed to the cost of previous maintenance, at least sixty percent of the resident landowners served by the drain may file a petition with the County Auditor requesting the Board to take action regarding the necessary repairs. Such petition shall include a map which shows the boundaries of the benefitted area of the district in which assessments will be made to cover the cost of the proposed work, the official name or number of the district, the initial and terminal points and general or exact course of the drain, a description of the proposed maintenance, a site plan showing the location of the maintenance, and a statement that the owners agree to future maintenance and assessment of the drain by the Board. All maintenance work and assessments shall be completed in accordance with SDCL 46A-10A and 46A-11.

Section 302. County Action on Maintenance Petition

Upon receipt of a petition to maintain an existing drainage district, the Board shall set a date for a public hearing upon the request. The hearing shall be held within 30 days of the receipt of the petition. Any interested person may appear at the hearing in regard to the petition.

Section 303. Application When Drainage District Extends Into More Than One County

When the drainage district extends into more than one county, the application shall be made to the county which had jurisdiction over the original drainage district. If the original county with jurisdiction is unknown, application for repair work shall be made to all counties affected.

Section 304. Abandonment of Drainage District

Any drainage district established prior to July 1, 1985 may be abandoned and abolished after a petition has been filed with the County Auditor by not less than 25 percent of the drainage district property owners. The petition shall include the name of the drainage district. The Board shall publish notice and hold a hearing in conformance with SDCL 46A-10A. If less than a majority of drainage district owners petition for the abandonment of a drainage district, the Board shall schedule an election in accordance with 46A-10A-43 at which the property owners within the district shall decide the fate of the district.

Section 305. Petition for Coordinated Drainage Area

When the landowners of an area propose to develop a coordinated network of drainage projects, a petition shall be filed with the County Auditor requesting the formation of a coordinated

drainage area. The petition shall be signed by not less than 25 percent of the landowners within the area and shall conform to the requirements set forth in SDCL 46A-10A-49. The petition shall include an accurate survey and map verified by a licensed surveyor which shows the boundaries and area of land included within the limits of the proposed coordinated drainage area. The petition shall also detail the type or types of drainage projects that will be included in the proposed area. The Board shall place the proposed coordinated drainage area map in a convenient public office for at least twenty days for examination by those having an interest in the application, and shall set a date for a hearing on the petition.

Section 306. Hearing on Coordinated Drainage Area

The Board, after publishing notice of the hearing, shall hold a hearing on the proposed coordinated drainage area at which any interested person may appear. If the Board is satisfied that the proposed drainage area is in the public interest and that all requirements of SDCL 46A-10A have been met, it may approve the creation of the coordinated drainage district pending the assent of a majority of the landowners within the drainage area at an election to be held within one month of the hearing. However, if the landowners signing the petition represented a majority of the resident landowners in the proposed district, no election need be held.

Section 307. Notice of Hearing

The Board, prior to holding a hearing on a petition to establish a coordinated drainage area, shall publish notice of the hearing in a newspaper of general circulation in the area affected. The notice shall be published at least 14 days in advance of the hearing date.

Section 308. Coordinated Drainage Area Election

Any election regarding a coordinated drainage area shall be held in conformance with SDCL 46A-10A-50 through 46A-10A-54. The board or commission shall give ten days' notice of an election by publication in an official newspaper in the proposed coordinated drainage area. The vote shall be taken by ballot in a form provided by the Board. The ballot shall include the question on whether a coordinated drainage area should be established and a note informing voters that all costs of the drainage area will be paid by the landowners within the area. Establishment of the area shall be effective upon the approval of a majority of landowners within the district. If a majority vote against the establishment of the drainage area, no further proceedings may be taken on a similar request for a period of two years.

Section 309. Assessment of Costs to Coordinated Drainage District

All costs associated with the coordinated drainage area shall be paid by the landowners within the district. The County may perform necessary construction and/or maintenance and recover the costs by assessing the benefitted landowners within the coordinated drainage area.

ARTICLE 4 DRAINAGE COMPLAINTS

Section 401. Jurisdiction on Drainage Disputes

Any landowner may take a drainage dispute directly to circuit court. However, pursuant to SDCL 46A-10A-34, the Board may address any drainage disputes in the unincorporated area of McCook County. The Board may provide that certain types or categories of drainage disputes will not be heard by the Board and must be taken directly to circuit court.

Section 402. Filing a Complaint

Any landowner in the county may file a drainage complaint by setting forth the facts of the drainage dispute in writing and submitting it to the Administrative Official. The complaint shall include the name and address of the complainant, the location of the property which has suffered damage or may suffer damage and the location of the property against which the complaint is being registered. When possible the complaint should detail the type and location of work, and when the work occurred. The Board may require that a drainage dispute include expert reports from a professional engineer or surveyor.

Section 403. Administrative Official to Offer Possible Resolution, Decision on Jurisdiction by Board

Upon receipt of a drainage complaint the Administrative Official shall make an investigation of the facts, offer a recommendation for resolution to the parties involved and, if requested by any affected party, forward the complaint to the Board for a hearing. The Board shall make a determination whether they will accept jurisdiction over the particular type or category of drainage which is set forth in the complaint. If the Board does not accept jurisdiction the dispute may be taken to circuit court. If the Board does accept jurisdiction a date for a public hearing on the drainage complaint shall be set.

Section 404. Hearing on Complaint

When a hearing has been scheduled the Board shall notify all affected parties of the date and time for the hearing. Any interested individual shall have the opportunity to appear and be heard. The Board may make a decision regarding the drainage dispute at the hearing, may defer the item pending additional information from either of the disputing parties, or may hold additional hearings on the dispute.

Section 405. Appeal of Board Decision

Any affected party may appeal the Board's decision on a drainage dispute to circuit court.

ARTICLE 5 ADMINISTRATION AND ENFORCEMENT

Section 501. Powers and Duties

The Administrative Official is hereby authorized and directed to enforce all the provisions of this ordinance and establish rules for its administration. The Administrative Official may designate technical officers and/or inspectors or other employees that shall be authorized to assist in the administration and enforcement of this ordinance.

Section 502. Right of Entry

Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the Administrative Official or an authorized representative has reasonable cause to believe that there exists upon any premises an ordinance violation, the Administrative Official or an authorized representative may enter such premises at all reasonable times to inspect the same or to perform any duty imposed upon the Administrative Official by this ordinance, provided that if such property be occupied, the Administrative Official shall first present proper credentials and request entry; and if such property be unoccupied, the Administrative Official shall first make a reasonable effort to locate the owner or other persons having charge or control of the property and request entry. If such entry is refused, the Administrative Official or an authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Administrative Official or an authorized representative shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any property shall fail or neglect, after proper request is made as herein provided, to promptly permit entry thereon by the Administrative Official or an authorized representative for the purpose of inspection and examination pursuant to this ordinance.

Section 503. Stop Order and Injunction

Whenever any work is being done contrary to the provisions of this ordinance, the Administrative Official may order the work stopped by notice in writing served on any persons engaged in or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Administrative Official to proceed. In the event of a violation or threatened violation of this ordinance, the Board, may institute injunction or other appropriate action or proceedings, in addition to other remedies, to prevent the unlawful construction or use of any drainage work.

Section 504. Violation and Penalty

Any person or his contractor draining water without a permit, if a permit is required under the provisions of this ordinance, is guilty of a Class 1 misdemeanor. In addition to or in lieu of any

criminal penalty, a court may assess against any person violating the provisions of this section a civil penalty not to exceed one thousand dollars per each day of violation.