

**ARTICLE 1**  
**GENERAL PROVISIONS**

**SECTION 101** **TITLE**

These regulations shall be referred to as the 2013 Revised Drainage Ordinance of Charles Mix 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 Charles Mix 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.

*The specific purpose of the regulations shall be designed to address the following issues:*

1. To prevent conflicts due to drainage. To reduce the conflict between parties due to the draining of land from one area to another.
2. To reduced or prevent flood hazard. To reduce the hazard to public health and safety caused by excessive storm water runoff.
3. To reduce or prevent flood drainage. To reduced or prevent damage to public and private property, including existing streams, drainage channels, and storm water drainage facilities which may be caused by excessive storm water runoff resulting during and after land development.
4. To protect and conserve resources. To protect and conserve water and land resources by implementing beneficial design features and conservation techniques.
5. To promote economic development. To promote orderly economic development and resource utilization.

**SECTION 104** **DRAINAGE BOARD**

The Charles Mix Board of County Commissioners shall serve as the County Drainage Board. The County Auditor shall act as recorder of the official minutes of the board

**SECTION 105** **DRAINAGE BOARD RESPONSIBILITIES**

The Board does not constitute itself as a board of resolution pursuant to SDCL 46A-10A-34 and will not hear nor reach decisions in individual drainage disputes between landowners. Drainage disputes between individual landowners may take their drainage dispute to the circuit court of the county wherein the dispute exists.

**SECTION 106 INTERPRETATIONS, 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 107 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 108 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, which may have already accrued or grown out of any regulations repealed.

**SECTION 109 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 Charles Mix County, or any officer or employee thereof.

**SECTION 110 DEFINITIONS "A – E"**

***ABUT*** - *Having a common border with, or being separated from such a common border by a right-of-way, alley, or easement; for the purposes of this Ordinance the term 'abut' shall be synonymous with "adjacent" and "adjoining".*

**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.

**BOARD** - The Board of Charles Mix County Commissioners.

**CLOSED DRAIN OR BLIND 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.

**COMMISSION OR DRAINAGE COMMISSION** – Any county drainage commission created under the terms of this chapter.

**CONTRACTOR** - Any individual, firm or corporation who performs excavation, grading, construction or installation work involving a drainage project.

**COORDINATED DRAINAGE AREA** - A defined geographic area containing one or more parcels of real property and established under the provisions of this chapter 46A-11 by a board or commission to provide a planned network or method of natural or man-made drainage, or both, to benefit all parcels of real property involved.

**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.

**DRAIN** - A means of draining either surface or subsurface water through a system of ditches, pipes or tiles, natural, man-made or natural with man- made improvements.

**DRAINAGE ADMINISTRATOR** - An official duly appointed by the Board who is responsible for the administration and enforcement of this ordinance.

**DRAINAGE BOARD** - Any county board designated under the terms of SDCL 46A-10A-2 or 46A-10A-34.

**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 benefitted acres within the district.

**DRAINAGE MAP** – Any map adopted by resolution of the board that delineates the extent of county drainage, drainage project, or a coordinated drainage area.

**DRAINAGE PLAN** – A document which may illustrate by maps, charts, and other descriptive matter the policies of the board to interrelate all man-made and natural systems and activities relating to drainage under its jurisdiction.

**DRAINAGE PROJECT** - Any man-made improvements constructed or installed with the intent to drain water.

**DRAINAGE SCHEME** – A plan or system by which water is drained from one or more parcels of real property onto one or more parcels of real property.

**ENGINEER** – A professional, registered engineer.

**ENTITY** – For the purposes of this ordinance the term “entity” shall include a person, estate, trust, corporation, company, partnership, limited liability company, limited liability partnership, governmental unit or any similar organization.

**ESTABLISHED WATER COURSE** – A fixed and determinate route, either natural or man-made, by which water has flowed from one parcel of real property to another and by which water has been discharged upon a servient estate for a period of time, on such a regular basis and in such quantities as to make it a predictably continuous activity.

#### **SECTION 111 DEFINITIONS “F – P”**

**GOVERNING BODY** – A board of county commissioners, a city council, or a city commission.

**LANDOWNER** - Any individual, firm or corporation, public or private, or public agency, who has legal 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.

**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.

**LEGAL DRAIN** – A drain or drainage scheme that is vested under the provisions of this chapter and chapter 46A-11; has been constructed by a person or by a unit of government under the provisions of past or present law; has been granted a drainage permit, if a permit is necessary under the provisions of this chapter and chapter 46A-11.

**LEGALLY RECOGNIZED RIVERS AND STREAMS** – For the purposes of this ordinance the following rivers and streams are legally recognized: **(ARSD 74:51:01)**

Academy Lake;  
Andes Creek;  
Benge Creek;  
Berry Spring;  
Black Timber Gulch;  
Bull Creek;  
Burks Lake;

Campbell Creek;  
Carroll Lake;  
Castalia Creek;  
Cedar Creek;  
Choteau Creek;  
Dante Lake;  
Dry Choteau Creek;

Dry Creek;  
East Fork;  
Edgerton Creek;  
Ells Creek;  
Five Mile Creek;  
Garden Creek;  
Goose Lake;

Johnson Bay/Lake Andes;  
Lake Andes;  
Lake Francis Case  
/Missouri River;  
Lake Geddes;  
Lake George;  
Lake Platte;  
Lake Wagner;  
Meadow Drain;  
Missouri River;  
Mosquito Creek;

North Bay/Lake Case  
/Missouri River;  
Owens Bay/Lake Andes;  
Pease Creek;  
Platte Creek;  
Prairie Dog Bay/Missouri  
River;  
Red Lake;  
Seven Mile Creek;  
Slaughter Creek;  
Sluiter Drain;

Snake Creek;  
Spring Creek;  
Song Hawk Lake;  
St. Francis Bay;  
St. Phillips Bay;  
Stoten Lake;  
Svatos Point/Missouri  
River;  
White Lake;  
White Swan Creek;  
Williamson Gulch;

**MODIFICATION** - For the purposes of this ordinance shall include work to any drain with the intent of deepening, widening, extending or rerouting of the drainage channel or increasing the size of any closed drain.

**MUNICIPALITY** – A city or town, however organized, as defined in § 9-1-1.

**NATURAL DRAIN** - A drainage system on the surface of the ground which operates as part of a natural water course.

**NATURAL WATER COURSE** – A fixed and determinate route by which water naturally flows from one parcel of real property to another due to the conformation of the land and by which water is discharged upon the land receiving the water. It is not necessary that the force of the flow of water be sufficient to form a channel having a well-defined bed or banks.

**OFFICIAL CONTROL** – Any ordinance, order, regulation, map, or procedure adopted by a board to regulate drainage.

**ORDINANCE** – Any ordinance, as defined in subdivision 7-18A-1(2), adopted by a board to regulate drainage of both rural urban areas to provide coordination of drainage projects, individual drainage efforts and drainage areas and to foster conformity with any county drainage plan.

**OWNER** – See Landowner

## **SECTION 112 DEFINITIONS “Q – Z”**

**PERMANENT** - A drainage project fixed and in place for a period of time exceeding six months.

**PERMITTED DRAINAGE** - Any drainage project that has been submitted to the Charles Mix County Drainage Board and has received an authorized permit to drain.

**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.

**PRIVATE DRAIN** – A drainage system or scheme designed, constructed, and maintained by a person primarily for his own benefit or a natural drain, whether or not actively maintained, that provides a benefit primarily to one person.

**ROUTINE MAINTENANCE** - Any maintenance performed on a vested other drainage, permitted or right provided:

1. The repair or replacement of a closed or lateral drain does not increase the size, capacity or length of the existing drain and the original location of the drain is not altered.
2. The removal of sediment or vegetation from a natural drain or surface drain with man-made improvements if the maintenance does not exceed the original depth and capacity of the channel, or a depth one foot, whichever is less, and the original location of the drain is not altered.

**RURAL OR RURAL AREA** – Any territory outside a municipality as defined in § 9-1-1.

**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.

**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.

**STREAM, PERMANENT** - A natural drainage channel indicated by a solid blue line on the most recently published USGS 7.5 minute quadrangle maps.

**SURFACE DRAIN** - A man-made drain on the surface of the ground.

**UNIT OF LOCAL GOVERNMENT** – A municipality as defined in § 9-1-1, an irrigation district as defined in chapter 46A-9-2, a township as defined in chapter 8-1, a sanitary district as defined in chapter 34A-5, a conservation district as defined in chapter 38-8 or other special district.

**VESTED RIGHT** - Any natural drainage right lawfully acquired by the owner or owners of either a dominant or servient estate prior to July 1, 1985 is deemed vested. Any drainage right lawfully acquired prior to July 1, 1985, arising from drainage which is natural with man-made modifications or entirely man-made is also deemed vested, provided the right is recorded with the Charles Mix County Register of Deeds within six years of July 1, 1985.

**WATER MANAGEMENT BOARD** – The state board created in § 1-40-15.

**WATERBODY** - A river, stream, lake, pond, slough, wetland, marsh, or other water area.

**WATERSHED** - The area of land which drains, either directly or indirectly, into a slough, pond, lake, stream or water course.

**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 hydrophilic vegetation.

## ARTICLE II DRAINAGE PERMITS

### **SECTION 201 DRAINAGE PERMITS REQUIRED**

A drainage permit shall be obtained by the owner on whose property the work is proposed, and any person, or entity, other than the owner, who is engaged as a contractor.

### **SECTION 202 PERMIT TYPES AND REQUIREMENTS**

- **General Drainage** - A permit shall be required prior to commencing the excavation for, or the construction or installation of, a drainage project.
- **Routine Maintenance** - A routine maintenance permit shall be required prior to commencing with routine cleanout or maintenance of an existing drain, whether it is a vested drainage, permitted drainage or other drainage.
- **Drainage District or Coordinated Drainage Area** - Each individual drainage project constructed as a part of a drainage district or coordinated drainage area shall require a separate permit. However, multiple applications may be reviewed as a single project and notification shall be made accordingly.

### **SECTION 203 GENERAL DRAINAGE PERMITS**

A General Drainage Permit shall be required prior to commencing the excavation for, or the construction or installation of, a drainage project including, but not limited to, the following:

1. Modification to any vested drainage, permitted drainage, or any other drainage or drain as defined herein.
2. Construction or installation of a lateral drain, surface drain or closed drain located within a contributing watershed of twenty acres or more.
3. Any drainage or filling, in whole or in part of a pond, wetland or lake, or the filling of a drain of any kind.
4. Modification to any drain within an established drainage district, coordinated drainage area, or a drainage project created pursuant SDCL Chapter 46A-10 which were not inducted in the original plans.
5. Modification to any drain within the boundaries of a municipality which drains onto a rural area outside of its municipal boundaries.
6. Construction or installation of any drain within a residential, commercial or industrial development area which drains onto a rural area outside of its boundaries.



**SECTION 204 ROUTINE MAINTENANCE PERMITS**

A Routine Maintenance Permit shall be required prior to commencing with the cleanout or maintenance of an existing drain, whether it is a vested drainage, permitted drainage or other drainage. Said work shall be limited to maintenance only and may not include activities described within Section 203.

**SECTION 205 DRAINAGE DISTRICT OR COORDINATED DRAINAGE AREA PERMITS**

Any project proposed to incorporate or expand a dully organized drainage district or coordinated drainage shall secure a drainage permit. In the case of multiple applications from within the same District or Area such applications may be reviewed as a single project and notification shall be made accordingly.

**SECTION 206 DRAINAGE APPLICTION REQUIRED DOCUMENTS**

All applications for drainage permits shall include the following information:

1. A completed application form clearly describing the proposed project;
2. Map(s) identifying the boundaries of the proposed drainage project;
3. Map(s) illustrating the benefited properties;
4. Documentation proving due notice was provided to all properties one-half (1/2) mile above and one (1) mile below the outlet of the proposed drainage.
5. A signed statement from the Applicant and Contractor, if applicable, acknowledging each parties understanding of the proposed project, the drainage ordinance, and zoning regulations applicable to the project as proposed;
6. The Drainage Administrator may also require that the applicant provide a detailed survey prepared by a professional engineer or surveyor; and
7. The applicant shall also provide copies of the complete application to other affected counties if the application be determined to be of statewide or inter-county significance.

If the Drainage Administrator 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.

Due notice shall be by depositing notification letters with the United States Postal Service no less than 10 days prior to approval of the drainage permit application. The County may recover any notification costs from the applicant.

**SECTION 207 AUTHORITY OF DRAINAGE ADMINISTRATOR TO GRANT DRAINAGE PERMITS**

The Drainage Administrator 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 Charles Mix County Drainage Board.

1. A proposed drainage project which outlets directly from the applicants property into the legally recognized rivers and streams as defined herein and as delineated on the most recently published USGS 7.5 minute topographic maps.
2. A proposed drainage project which outlets directly into a permanent or intermittent stream not listed in subsection (1) provided all downstream landowners for at least 1/2 mile above and 1 mile below the proposed outlet have signed a waiver stating that they have no objection to the construction of the proposed drainage project.
3. A proposed drainage project which does not outlet into a permanent or intermittent stream provided all downstream landowners for at least 1/2 mile above and 1 mile below the proposed outlet have signed a waiver stating that they have no objection to the construction of the proposed drainage project.
4. A proposed drainage project which outlets directly or indirectly into a public or private road right-of-way provided the township supervisor and/or county highway superintendent has granted approval to drain into the right-of-way and all downstream landowners for at least 1/2 mile above and 1 mile below the proposed outlet have signed a waiver stating that they have no objection to the construction of the proposed drainage project.
5. Routine maintenance of any vested permitted or other drainage.

**SECTION 208    LIMITATION OF DRAINAGE ADMINISTRATOR AUTHORITY**

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

**SECTION 209    APPEALS OF DECISIONS MADE BY THE DRAINAGE ADMINISTRATOR**

Any decision of the Drainage Administrator may be appealed to the Drainage Board. The applicant or any person aggrieved by a decision shall file a written appeal with the Drainage Administrator within **ten (10)** working days of the Administrator’s decision. Upon such filing, the Drainage Administrator shall forward the appeal to the Drainage Board.

**SECTION 210    OFFICIAL MAPS**

The official map for recording all permitted and vested projects shall be the 7.5 minute topographic illustrations published by the U.S. Geological Survey. The official maps shall be on record in the county register of deeds office.

**SECTION 211    DRAINAGE PERMIT FEES**

- General Drainage - \$100.00 plus \$10 per additional non abutting parcel
- Routine Maintenance – \$25.00
- Drainage Permits issued pursuant to Section 207 shall be \$50.00
- Drainage District or Coordinated Drainage Area - \$100 plus \$10 per additional parcel

Application materials for drainage permits may be obtained at the office of the Charles Mix County Drainage Administrator.

**Section 212 DRAINAGE INSPECTION FEE**

Drainage work performed without first obtaining a required permit shall be subject to an inspection fee of \$500.00, in addition to any permit fees, and to cover additional expenses incurred by the County.

**SECTION 213 PUBLIC HEARINGS**

The Drainage Board shall set a date, time and place for a public hearing. Such date, time and place shall be set within forty-five (45) days of an application's receipt. The purpose of the hearing is to establish a record on which to decide whether the application(s) to drain shall be granted.

**SECTION 214 PUBLIC NOTICES**

For all hearings, the Board shall, at the owner applicant's expense, publish notice in a newspaper of general circulation in the area of the proposed drainage once a week for two consecutive weeks. The second and final notice shall be published not more than fifteen (15) days, or less than five (5) days, before the date set for the hearing. The Drainage Administrator shall at their discretion and at the owner applicant's expense, provide copies of the owner's completed application materials and notice of the hearing by certified letter, not less than **ten (10)** days from the date set for the hearing, to:

1. SD-DENR - Division of Water Rights;
2. USDA Natural Resource and Conservation Service;
3. U.S. Army Corps of Engineers – Regulatory Office in Pierre, South Dakota; if applicable
4. U.S. Fish and Wildlife Service – Pierre, South Dakota; if applicable
5. Any person who has notified the Board in writing of their objection to the proposed drainage project, and who has requested notification of such a hearing on the proposed drainage project.

**SECTION 215 HEARING BY BOARD**

Following notification in accordance with Section 212, the Drainage Board shall conduct a public hearing on a drainage permit application or the appeal of an administrative decision.

**SECTION 216 PERMITTING CONSIDERATIONS**

The decision whether to grant or deny a permit is based on a public interest review of the probable impact of the proposed activity and its intended use. When evaluating drainage permit application the Board shall consider, but not be limited to, the project's impact on the following in accordance with SDCL 46A-10A-20 as amended:

1. Does the land receiving the drainage remains rural in character;
2. Is the land being drained used in a reasonable manner;

3. The drainage does not create an unreasonable hardship or injury to the owner of the land receiving the drainage;
4. The drainage is natural and occurs by means of a natural water course or established water course;
5. The owner of the land being drained does not substantially alter on a permanent basis the course of flow, the amount of flow, or the time of flow from that which would occur; and
6. No other feasible alternative drainage system is available that will produce less harm without substantially greater cost to the owner of the land being drained.

In addition to the standards prescribed within state statute the Charles Mix County Drainage Board shall consider the proposed project potential impacts upon the following:

1. Flood hazards and/or floodplains;
2. Erosion;
3. Water quality and supply;
4. Agricultural concerns;
5. General environmental concerns;
6. Aesthetics; and
7. Servient landowners.

#### **SECTION 217 BOARD DECISIONS**

The Board shall rule on the application(s) within thirty (30) days after its hearing. The Board shall make their decision known in writing to the applicant(s). If the application(s) is denied, the written notification shall include the reasons for the Board's determination. No permit shall be granted until the owner applicant has reimbursed the county of all expenses incurred by the County.

#### **SECTION 218 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 219 EMERGENCY PROVISIONS**

The requirement for a hearing and notice thereon may be waived by the Board in order to process applications for temporary emergency drainage. A hearing shall be conducted at the earliest opportunity if the emergency drainage is to be permanent.

#### **SECTION 220 EXPIRATION OF DRAINAGE PERMITS**

A drainage permit shall expire and become null and void if the authorized construction is not commenced within 365 days of the effective date of the permit.

**SECTION 221 PRESERVATION OF LANDOWNERS RIGHTS AND SOVEREIGN IMMUNITY**

The granting or denial of a drainage permit shall in no way affect the legal rights which may otherwise exist between a landowner and any other property (dominant or servient estate). The County, in considering permit applications, shall be protected by the Doctrine of Sovereign Immunity and shall not be subject to any cause of action or claim brought by any person alleging an impact caused by the water which is the subject of the permit application.

**SECTION 222 COMPLIANCE WITH LAWS OR REGULATIONS NOT AFFECTED BY PERMIT APPROVAL**

A permit approved under the provisions of this ordinance shall in no way remove any responsibility on the part of any landowner, tenant or contractor to comply with all applicable local, state or federal laws or regulations.

**SECTION 223 DRAINAGE APPLICATIONS OF STATEWIDE OR INTERCOUNTY SIGNIFICANCE**

When an application is determined to be of 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 212, the Drainage 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-10A9.5.

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 225 CREATION AND DEVELOPMENT OF DRAINAGE PROJECTS AND DISTRICTS**

Please refer to Appendix I for a summation of State statutes addressing these activities.

**ARTICLE III**  
**ADMINISTRATION AND ENFORCEMENT**

**SECTION 301** **POWERS AND DUTIES**

The Drainage Administrator is hereby authorized and directed to enforce all the provisions of this ordinance and establish rules for its administration. The Drainage Administrator in conjunction with the Charles Mix County Commissioners may designate technical officers and/or inspectors, attorneys, or other employees that shall be authorized to assist in the administration and enforcement of this ordinance.

**SECTION 302** **DISTURBING PUBLIC RIGHT-OF-WAYS PROHIBITED**

No person or contractor shall cut a ditch within a public right-of-way, remove silt or soil, alter, obstruct, or otherwise disturb such right-of-way in any way. Such activity shall be a violation of this ordinance and state statute. Any person may request the County Highway Superintendent or Township Board of Supervisors to authorize the clean out and maintenance of a public right-of-way or ditch in order to restore it to its original condition.

**SECTION 303** **RIGHT OF ENTRY**

Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the Drainage Administrator or an authorized representative has reasonable cause to believe that there exists upon any premises an ordinance violation, the Drainage Administrator or an authorized representative may enter such premises at all reasonable times to inspect the same or to perform any duty imposed upon the Drainage Administrator by this ordinance, provided that if such property be occupied, the Drainage Administrator shall first present proper credentials and request entry; and if such property be unoccupied, the Drainage Administrator 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 Drainage Administrator or an authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Drainage Administrator 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 Drainage Administrator or an authorized representative for the purpose of inspection and examination pursuant to this ordinance.

**SECTION 304** **ACTIVITIES WITHOUT NOTICE**

The Charles Mix County Drainage Board may at any time and on its own motion, without notice, remove silt, debris, weeds and other vegetative growth, repair damaged structures, retard and/or restore an unapproved drainage or may take any other action as necessary to maintain the approved drainage improvements.

**SECTION 305 STOP ORDER AND INJUNCTION**

Whenever any work is being done contrary to the provisions of this ordinance, the Drainage Administrator 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 Drainage Administrator 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 306 ASSESSMENT AGAINST PROPERTY**

Any and all costs associated with the replacement, repair, restoration, or reconstruction to a condition prior to the work performed in violation of this ordinance may be assessed against all of the landowners real property. Assessments shall be levied in the same manner and method as other assessments pursuant to SDCL 46A-10A and 46A-11.

**SECTION 307 INSPECTION FEES**

Any person performing work without a permit as required under Section 203 shall pay an inspection fee of \$500 in addition to the permit fee. These fees are in addition to the remedies set forth in other sections of this ordinance and may be assessed and collected in the same manner set forth in Section 305.

Any person performing work without a permit as required under Section 204 shall pay an inspection fee of \$250 in addition to the permit fee. These fees are in addition to the remedies set forth in other sections of this ordinance and may be assessed and collected in the same manner set forth in Section 305.

**SECTION 308 VIOLATION AND PENALTY**

Any person draining water without a permit is guilty of a Class 1 misdemeanor and may be subject, in addition to any criminal penalty, a civil penalty not to exceed \$1000 per day of violation. Any person violating any other provisions of this ordinance is guilty of a Class 2 misdemeanor and shall be punished pursuant to SDCL 7-18A-2. Each and every day the violation continues may constitute a separate offense. Violating the terms and conditions of a permit, or violating the ordinances which constitute the permit system, is punishable by a maximum \$100 fine, thirty (30) days in jail, or both.

**SECTION 309 OTHER VIOLATIONS PURSUANT TO STATE STATUTE**

In addition to violations and penalties set forth in Section 308, South Dakota statutes provide for additional offenses and penalties as detailed within Appendix II.

## APPENDIX I

### ADDITIONAL SOUTH DAKOTA STATUTES OF VIOLATIONS AND PENALTIES

The Board adopts this ordinance through its authority to do so pursuant to SDCL 46A-10A-46. South Dakota statutes provide landowners procedures to create and develop drainage plans and districts in order to promote more efficient and uniform drainage management of their property. More specifically, the following are different district development and plan procedures that can be utilized by landowners:

- a. Established Drainage Districts pursuant to SDCL 46A-10A-43 to 43.4 as amended and creation of Board of Trustees to govern these districts.
- b. Coordinated Drainage Areas pursuant to SDCL 46A-10A-98 to 123 as amended. SDCL 46A-10A-47 to 55 as amended.
- c. Drainage Projects pursuant to SDCL 45A-10A-57 to 97 as amended.
- d. Drainage Basin Utility Districts pursuant to SDCL Chapter 46A-10B as amended.



## APPENDIX II

### ADDITIONAL SOUTH DAKOTA STATUTES OF VIOLATIONS AND PENALTIES

In addition to violations and penalties set forth in Section 308, South Dakota statutes provide for the following offenses and penalties:

- a. SDCL 31-32-7 Destruction, etc., of highway grade or ditch – Violation as misdemeanor.
- b. SDCL 31-32-8 Civil liability for violating preceding sections.
- c. SDCL 31-32-9 Duty of governing body to remove obstructions or repair – Recovery of expense from wrongdoer – Temporary obstruction for building purposes.
- d. SDCL 31-32-1 Intentionally damaging highway or bridge – Felony.
- e. SDCL 31-12-44 Repairs for wind and water erosion assessed to private landowner.
- f. SDCL 31-21-13 Obstruction of ditch as misdemeanor.
- g. SDCL 31-21-12 Civil liability for obstruction of ditch.
- h. SDCL 31-21-11 Entry upon land for maintenance of ditch.
- i. SDCL 31-32-3.1 Intentional dumping on highway right-of-way prohibited – Violation as misdemeanor.