

**FOSTER COUNTY WATER RESOURCE DISTRICT
BOARD OF MANAGERS
MINUTES OF THE SPECIAL MEETING HELD ON SEPTEMBER 29, 2022
FOSTER COUNTY ASSESSMENT DRAIN NO. 1
NAVAJO ROOM OF THE CHIEFTAIN CONFERENCE CENTER**

1. ATTENDANCES

PRESENT:

Brent Bachmeier, Manager
Jeff Bata, Manager
Ronn Stangeland, Chair
Doug Zink, Vice-Chair

IN ATTENDANCE:

Danielle Koepplin, Secretary/Treasurer
Jennifer Malloy, Administrator/Engineer
Thomas Doemke, Engineer
Kale Van Bruggen, Secretary/Counsel
Trevor Vandehoven
Kevin Guthmiller
Ila Zink
Brenda Zink

See also attached, public hearing attendance sheet.

APOLOGIES:

Paul Skadberg, Manger

- 2. CALL TO ORDER & OPENING OF PUBLIC HEARING** The public hearing was called to order and opened by Board Chair Ronn Stangeland at 8:00 a.m.
- 3. PROCEDURE OVERVIEW & RECORD NOTICE REQUIREMENTS** Attorney for the District, Kale Van Bruggen, welcomed those in attendance to the public hearing. Van Bruggen explained that the purpose of the public hearing was to review Foster County Assessment Drain No. 1, to hear from the public on the proposed project, and to answer questions.

Van Bruggen reviewed the petition submitted by landowners for the Foster County Assessment Drain No. 1. Copies of the petition were made available for public inspection at the county auditor's office and mailed to landowners affected by the proposed project. The petition designates the starting point, terminus, and general course of the proposed drain via the description and map of the proposed project. The petition was signed by at least six property owners or a majority of the landowners within the proposed district whose property will be drained by the proposed drain. The Board required the petitioners to file a cash bond with the petition as security for the District's expenses should the petition be denied. Van Bruggen noted that the Board examined the line of the proposed drain.

Van Bruggen reported the Board of Managers adopted a Resolution Declaration for Construction and Maintenance of the Foster County Assessment Drain No. 1. The resolution appointed Apex Engineering to assist the Board of Managers with the project by preparing profiles, plans, and specifications of the proposed drain, estimates of the total cost in sufficient detail to allow the Board of Managers to determine the probable share of the total costs that will be assessed against each of the affected landowners, and a map or plan of the lands to be drained, showing the regular subdivision

thereof. Van Bruggen reported that Apex Engineering completed its Engineer's Report and estimated cost of the project and filed both with the Board of Managers.

Van Bruggen explained that the Board of Managers, with the assistance of the petitioners, local landowners, the engineer, legal counsel, and records provided by the Foster County Tax Assessor and Auditor's office, prepared a roster of affected landowners showing the percentage assessment against each parcel of land benefited by the proposed drain and the approximate assessment in terms of money apportioned to each. Benefits were determined in accordance with N.D.C.C. § 61-21-29 against any lot, piece, parcel, or interest in land which is either directly or indirectly benefited by the proposed drain and with the directive that no land already included in and being assessed by an existing drainage district shall be included and assessed unless it is shown that such land will be benefited by the construction of the new drain. Van Bruggen noted that if the proposed project is approved by the voting landowners, there will be a second hearing where affected landowners will have an opportunity to submit comments and evidence pertaining to the benefits or lack of benefit provided to their property and the Board of Managers, based on the record evidence, may correct or confirm the proposed roster of affected landowners.

Van Bruggen noted that as required by N.D. Century Code ch. 61-21, the Notice of Public Hearing was mailed on September 8, 2022 to all landowners proposed to be assessed for construction of the Foster County Assessment Drain No. 1 project to the address shown on the Foster County Tax Assessor's records. The Notice of Public Hearing also included the Petition, a map of lands to be drained, construction Plans for the drain, the proposed roster of affected landowners, the probable total cost of the project, and a project voting ballot and instructions. The mailed notice is evidenced by an Affidavit of Mailing on file with the District.

Van Bruggen reported that the Petition, a map of lands to be drained, construction Plans for the drain, the proposed roster of affected landowners, the probable total cost of the project, Resolution Declaration for Construction and Maintenance, Resolution Approving Reports & Setting Hearing, and the Affidavit of Mailing for the Notice of Public Hearing were filed with the Foster County Auditor by Rinke Noonan, Ltd. and made available for public inspection. The Notice of Public Hearing was also published in the Foster County Independent on September 12, 2022.

Van Bruggen reported that the District will work with landowners who wish to have USDA-NRCS wetland conservation compliance concerns addressed. Van Bruggen noted that addressing wetland conservation compliance concerns with NRCS requires landowner or operator cooperation because USDA data is protected by the Federal Privacy Act. Van Bruggen noted that no participant will become ineligible due to wetlands converted by the assessment drain; however, planting on agricultural commodity on converted wetland acres constitutes a planting violation that will result in ineligibility for the crop year in which an agricultural commodity was planted. Van Bruggen noted that guidance received by the District from the FSA states that alfalfa can be planted to converted wetland acres and can be grazed; however, alfalfa cannot be harvested by mechanical means. Van Bruggen noted that the District will work with cooperating USDA participants to determine if wetlands will be impacted and if so, to consider mitigation or compensation options.

- 4. ENGINEERS' REPORT** Professional Engineer, Jennifer Malloy, presented the Engineer's Report. Malloy's presentation highlighted the starting point, general course, and terminus of the proposed Foster County Assessment Drain No. 1. Malloy reviewed the proposed grade, proposed cross-sections, LiDAR data, and proposed structure crossings and sizes. Malloy reported that structure crossings will

meet the North Dakota stream crossing standards, which for most crossings will meet the 10-year stormwater event design standard. For the grade, Malloy reported the project design aims to achieve a minimum 1-foot drop per mile. The grade is designed in order to allow landowners to make private drainage connections to the assessment drain.

Malloy also presented a map showing the watershed based upon LiDAR data and the proposed assessment district for the Foster County Assessment Drain No. 1.


Malloy discussed the existing natural drainage features in the watershed along the route of the proposed assessment drain.

Malloy reported the total project costs estimates and noted that the proposed assessment costs to the local assessment district takes into account the cost-share funding available from the North Dakota State Water Commission, Foster County and Carrington Township. Any design and construction costs incurred after an affirmative vote on the assessment drain is eligible for forty-five percent cost-share funding.

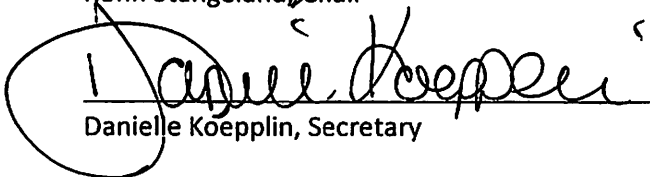
Malloy noted that some design adjustments are possible after the landowner vote as long as the project provides the same hydrologic benefit and the final design adjustments are not cost prohibitive. Malloy encouraged affected landowners to contact her early in the process to address questions regarding final project design.

5. **PUBLIC COMMENTS & QUESTIONS** Chair Stangeland then opened the floor for public comments and questions. A roster of public comments at the September 29, 2022 public hearing is attached hereto and incorporated herein as part of the public hearing record and these special meeting minutes. Attorney Van Bruggen and Engineer Malloy requested commenters identify themselves. Malloy and Van Bruggen, as representatives of the Foster County Water Resource District, offered to visit with affected landowners individually to address any questions or concerns about the proposed project. When all comments from the public in attendance had ceased, the Chair declared the public comment portion of the public hearing closed.
6. **ADJOURNMENT** All business on the public hearing and on the special meeting agenda having been completed, the Chair declared, without objection, the meeting adjourned at 9:11 a.m.

Minutes approved by the Board on October 12, 2022.



Ronn Stangeland, Chair



Danielle Koeplin, Secretary

**Foster County Water Resource District Board of Managers
Foster County Assessment Drain No. 1
Roster of Comments – Establishment Hearing
September 29, 2022**

Comment

Paul J. Straley, 345 6th Avenue N, Carrington, North Dakota:

Straley commented that there is a Texas crossing proposed but when the water reaches that crossing and heads north, there is a 48" pipe and the ground is really flat. Straley commented that there is only 6" of fall per mile in that area.

Straley commented that additional watershed to the north of the proposed assessment district caused by the breakout of a channel of Scotts Slough contributes water to the assessment drain and should be included in the assessment district for the project. Straley reported that there was 20" of rain this year which contributed to the breakout. Straley questioned whether the project engineers determined the assessment drain boundary in order to give one family of relatives enough votes to ensure passage of the assessment drain project.

Straley commented that the assessment drain will increase the volume of drainage downstream and will cause downstream damages.

Straley questioned whether owners of property outside the proposed assessment district could install drain tile outletting into the assessment drain without being assessed.

Straley questioned whether the ballots will be public record.

Project Engineer Jennifer Malloy noted that the public hearing that the norm for assessment districts is to limit the proposed assessment area to those lands where there is primary benefit. Malloy noted that the area north of the assessment drain, in her opinion, does not benefit from the construction of the drain. Malloy noted that ethically, she did not and would not consider the relation of landowners affected by the drain in studying the benefited area for the assessment district boundary. In addition, Malloy noted that the boundary used by Apex Engineering in developing the proposed assessment area is the same boundary developed by

the Department of Water Resources for the stream crossing study in this area and the DWR also did not include the breakout overflow from Scott Slough in its analysis.

Further, the Board notes that the 20" of rain experienced in 2022 is over three times the normal rainfall expected for this area. The conditions experienced in 2022 are not normal circumstances.

Following the public hearing, Apex investigated this concern using in field measurements, State of North Dakota LiDAR elevations and aerial imagery. Scotts Slough is north of the proposed Foster Drain #1 and flows from west to east crossing US Hwy 281 approximately 3 miles north of the ND Hwy 200 interchange. The channel from Scotts Slough meanders northeasterly of US Hwy 281 and discharges into Kelly Creek approximately 3 miles east of US Hwy 281 and approximately 6 miles north of ND Hwy 200. Scotts Slough has a natural overflow channel that flows east starting 1 mile east of US 281. During snowmelt and high precipitation events this overflow channel has been witnessed to break out into the Foster Drain #1 watershed. The LiDAR data in the overflow channel was determined to be inconclusive due to vegetation interference. Additional survey will be required to evaluate channel. See Appendices for overview map of Scotts Slough overflow. As a part of any project all breakouts and all closed basins cannot be evaluated fully. Evaluation of the land affected by the natural breakout of Scotts Slough will be looked at and addressed if applicable.

Malloy noted that the Board may consider installing gates and adopting an operations plan if there are downstream impact concerns. Malloy noted that these concerns require further analysis and are reviewed with the Department of Water Resources as part of the surface drain permit application. Malloy noted that the assessment drain will impact the timing of drainage but the watershed contributing to the downstream outlet will not be modified by the assessment drain project.

The Board's attorney Van Bruggen noted that under N.D.C.C. section 61-32-03.1(4)(g) "If the subsurface water management system will discharge into the watershed area of an assessment drain, inclusion of the relevant property into the assessment district for the assessment drain in accordance with the benefits the property receives, provided the property is not assessed already for the assessment drain. The water resource district may include the new property into the assessment district and determine the benefits and assessment amounts under chapters 61-2 and 61-16.1 without conducting the reassessment of benefit proceedings under sections 61-2-44 and 61-16.1-26; provided the property is not assessed already for the assessment drain." Van Bruggen noted similar authority exists for subsurface drainage tile with a footprint of less than 80 acres under N.D.C.C. section 61-32-03.2(3).

Van Bruggen noted that the secret ballot voting procedures do not apply to the voting procedures in chapters 61-21 and 61-16.1 and that the ballots are public records. Van Bruggen noted that the availability of the public records for inspection or copying could be made through inquiry with the Foster County Water Resource District Secretary Danielle Koepplin.

Karl Hoppe, 830 2nd Street N, Carrington, ND 58421:

Hoppe requested information on whether Drain No. 1 will tie into Kelly Creek at the existing elevation or at the repaired & cleaned out elevation. Hoppe also requested information on who will be responsible for cattail management in the future.

Hoppe requested information on how the 100% and 75% benefit property classifications were determined.

Malloy noted that the assessment drain will tie into the current elevation of Kelly Creek. Kelly Creek was recently maintained by a contractor of the Foster County Water Resource District. Malloy noted that the current watercourse connection is narrow, but the final design will be a wider bottom width with 3:1 side-slopes.

Malloy noted that if the assessment drain is established, the Foster County Water Resource District will be responsible for repair & maintenance of the drain. Malloy noted that the maintenance needs will be informed, in part, by comments and feedback from local landowners of the drain. Malloy noted that the Century Code authorizes an operation & maintenance assessment levy with a maximum of \$4/acre and that any repair or cleaning out projects that cost in excess of the \$4/acre per year maximum multiplied by six years require a vote of the affected landowners.

Malloy noted that the 75% reduction in benefit classification was determined based upon the Board's determination that landowners further away from the assessment drain (1 mile or more) would need to invest more out-of-pocket investment in drainage improvements to directly connect to the assessment drain. The 75% reduction reflects a proximity ratio applied by the Board.

Allan Scanson, Vice-Chair, Foster County Board of Commissioners:

Scanson commented that he struggles to understand the stream crossing standard determination for the crossing at the Bordulac Road. Scanson stated that the existing crossing is a 30" culvert and that the water has never overtopped the roadway at that crossing.

The results of the Department of Water Resources stream crossing study are contained in the April 27, 2022 letter to the Foster County Water Resource District and in the April 27, 2022 Technical Memorandum from Aaron Carranza, P.E. (Regulatory Division Director) and Joe Morrisette (Water Resource Engineer) to Andrea Travnicsek, Ph.D. (Director) and John Paczkowski, P.E. (State Engineer). Other attendees at the public hearing reported that water is obstructed at the Bordulac Crossing and often sits above the elevation of the existing 30' culvert crossing for extensive periods of time, even if it does not overtop the roadway itself.

Trevor Vandehoven, 7528 Highway 200, Carrington, ND 58421:

Vandehoven expressed support for the assessment drain project, but noted concerns with the crossing at Highway 200 and whether it is capable of handling the assessment drain improvement. Vandehoven noted that he has a cattle operation that will be split in half if more water is held on his property longer. Vandehoven questioned whether an improvement would be needed in Kelly Creek in order to avoid holding water on his property.

Vandehoven questioned what the construction plans would entail for the spoil piles.

Malloy noted that further evaluation downstream of the proposed assessment drain was required in order to address the question and would be required for the surface drain permit application. Malloy noted that for the spoil piles, topsoils will be stockpiled and placed on top of any clay or spoil piles which will be spread within the easement area. Stormwater runoff grades will be maintained in order to ensure there is no obstruction with the easement area created by the assessment drain construction.

Following the public hearing, Apex investigated this concern using field measurements, State of North Dakota LiDAR elevations, and aerial imagery. See Appendices for an overview map of the immediate downstream crossings.

The proposed Foster Drain #1 outlets into Kelly Creek 1 mile north of ND Hwy 200 and approximately 7 miles east of Carrington. There is an existing double 8'x5' box culvert installed at the ND Hwy 200 crossing, this box culvert was installed in 1948 and has had minor improvements completed since installation. Preliminary evaluation of the ND Hwy 200 using LiDAR data indicates the crossing meets the 25-year design event but does not meet the current crossing standards of a 50-year design event. A request was sent to the NDDOT for previous H&H reports, no records were on file for this crossing.

The watershed area of the ND 200 crossing was calculated using the USGS StreamStats tool and was found to be 114 square miles. The watershed of Foster Drain #1 is 23 square miles, this shows the watershed of Foster Drain #1 is 20% of the total watershed.

Tollefson Curve crossing was modeled using the peak flow rate from the USGS StreamStats and stream characteristics from LIDAR data the existing installed pipes do not meet the North Dakota stream crossing standards for the 10-year design event. Preliminary evaluation indicates 4 additional 48" Corrugated Steel Pipes installed 1.5 feet lower than the existing culverts would be required to meet the 10-year event without overtopping the road.

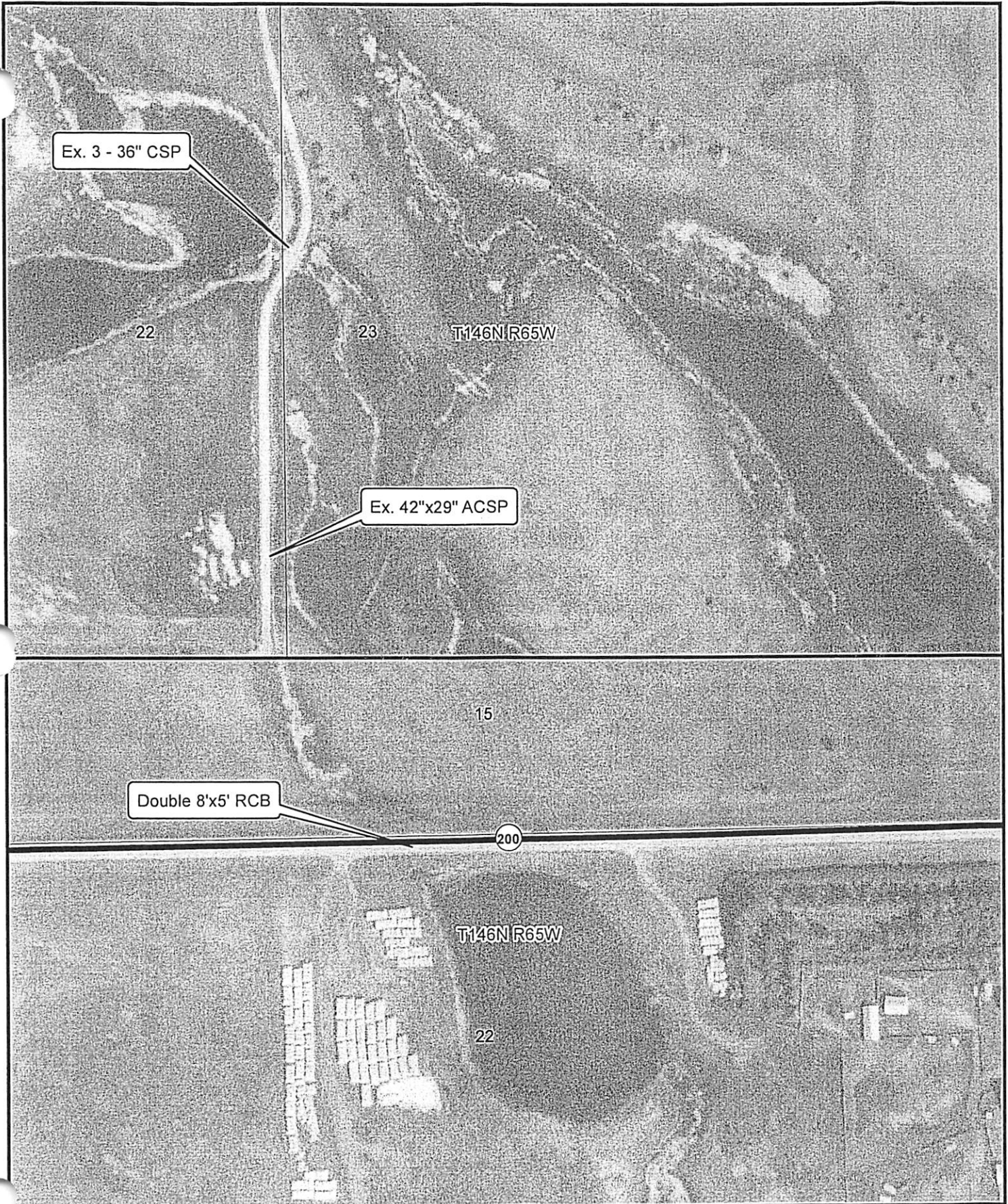
The Foster County Water Resource District Board has received confirmation from the Township road authority that another culvert will be installed in the township roadway. The Board will also consider and address the overflow culvert with Tollefson Dam.

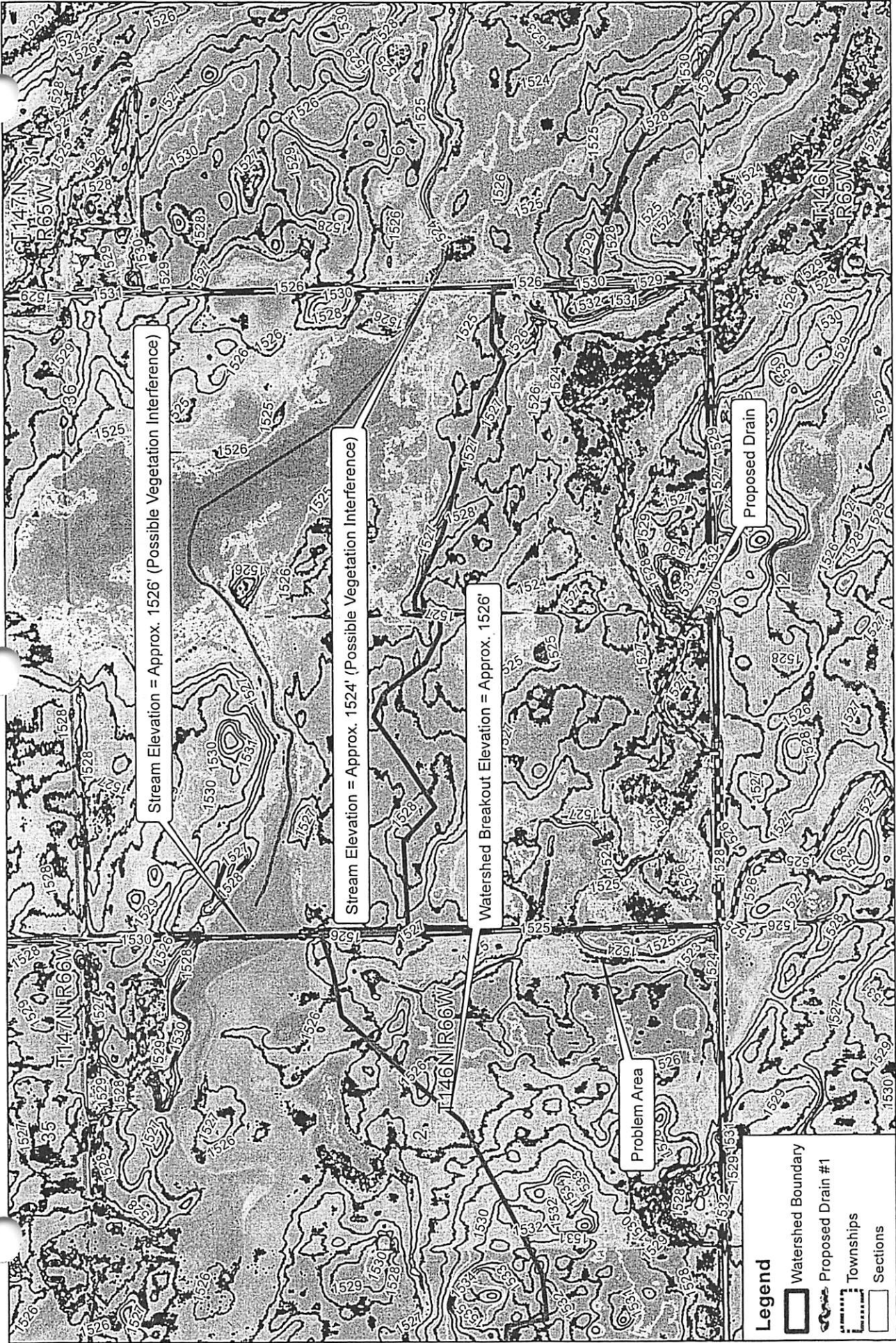
Easements:

Multiple landowners asked whether the assessment drain channel could be farmed.

Van Bruggen noted that if the project passes the weighted landowner assessment vote, the Board will proceed to negotiate and acquire easements for the assessment drain channel right-of-way and right-of-entry. As part of the Board's review, the Board will approve easement language that will address the rights and restrictions of the easement grantor.

Van Bruggen noted that there is concern with farming in an assessment drain channel; the farming methods cause an obstruction to the drain. Van Bruggen noted that under N.D.C.C. section 61-16-1.5, if the water resource board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or tenant, the board may notify the landowner by registered mail at the landowner's post-office address of record and send a copy to the tenant. The notice will specify the nature and extent of the obstruction and the board's opinion as to the cause and must state that if the obstruction is not removed within such period as the board determines, the board may procure removal of the obstruction and assess the cost of the removal against the property of the landowner responsible. Van Bruggen noted that there are other procedures in the statute for landowners to request a hearing on the matter with the board and to appeal the determination.





Foster County Drain #1 Scotts Slough Breakout

Legend

	Watershed Boundary
	Proposed Drain #1
	Townships
	Sections