

MEMORANDUM

TO: Finance, Expenditure and Legal Subcommittee

FROM: Martin P. Cleveland

SUBJECT: Pigeon/Jones Watershed Structure #3
Easement Agreement

DATE: August 5, 2008

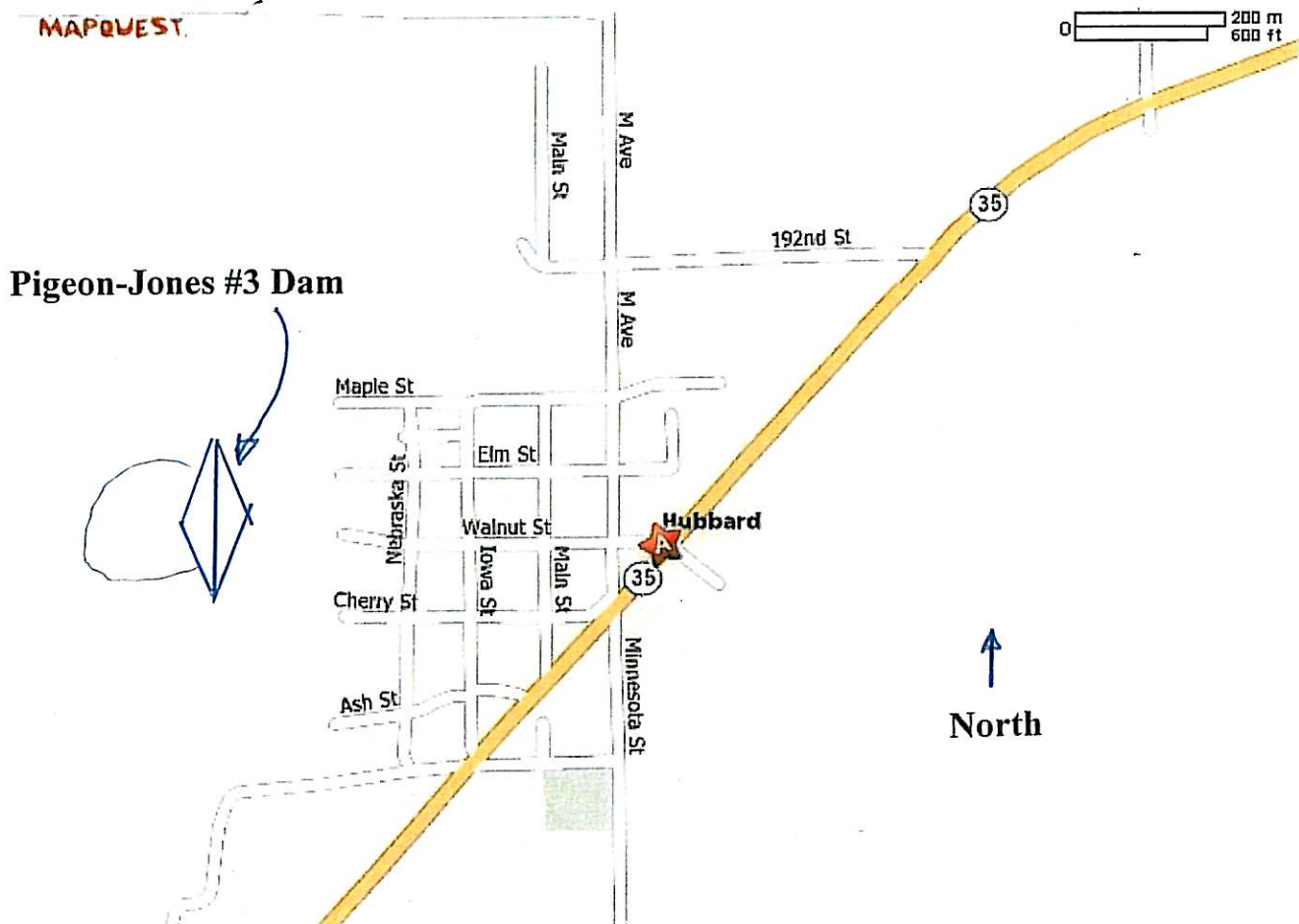
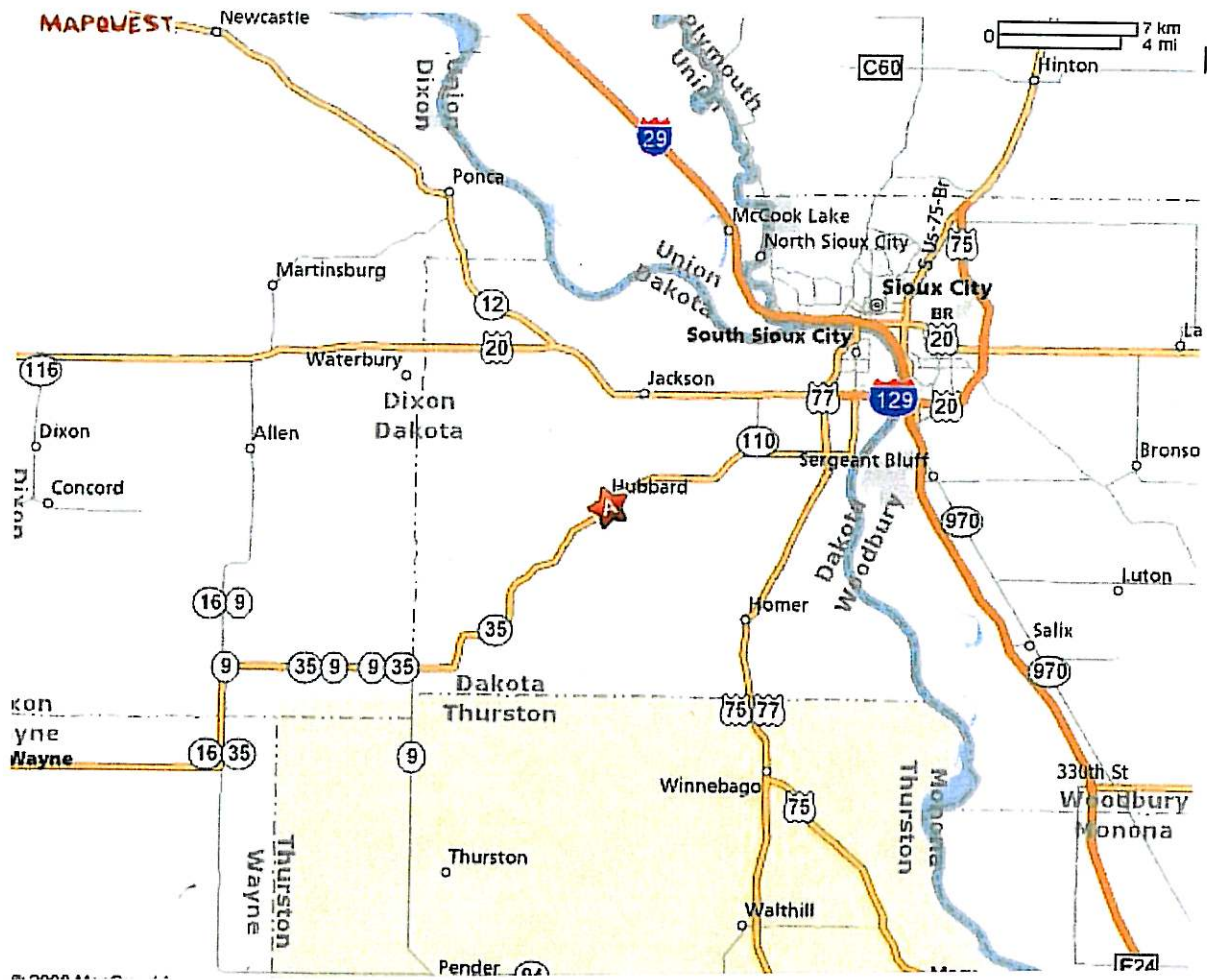
The referenced dam project is located near the west edge of Hubbard, NE, (see enclosed map). The dam was constructed on the Hartnett Family property in 2003. A free easement was provided by the Hartnett's. In early July 2008, District noticed that James and Jackie Hartnett's contractor had excavated a hole for a future house basement in the southern edge of the referenced dam site easement area. The excavated hole is 30 ft. by 70 ft by 6 ft.

As seen on the enclosed drawings, this area is immediately south of the auxiliary spillway top of slope line. Normally, no excavations or structures are permitted in this dam easement area.

Further investigation revealed that the District did not have an easement over the entire footprint of the auxiliary spillway. The Hartnett's have agreed to provide the missing auxiliary spillway area easement the District needs in exchange for the District releasing the easement over the proposed house footprint. Enclosed is an easements agreement to provide for this exchange.

It is Management's recommendation that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed easements agreement with James and Jacqueline Hartnett for Pigeon/Jones Watershed Structure #3, subject to form as approved by District Legal Counsel.

A: Hubbard, NE

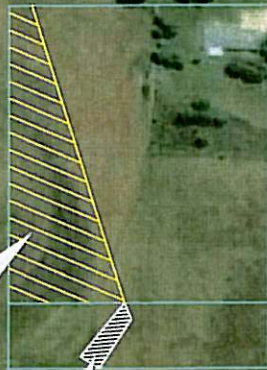


Hubbard, NE

PIGEON JONES
3 DAM

EASEMENT TO NRD

EASEMENT RELEASE AREA



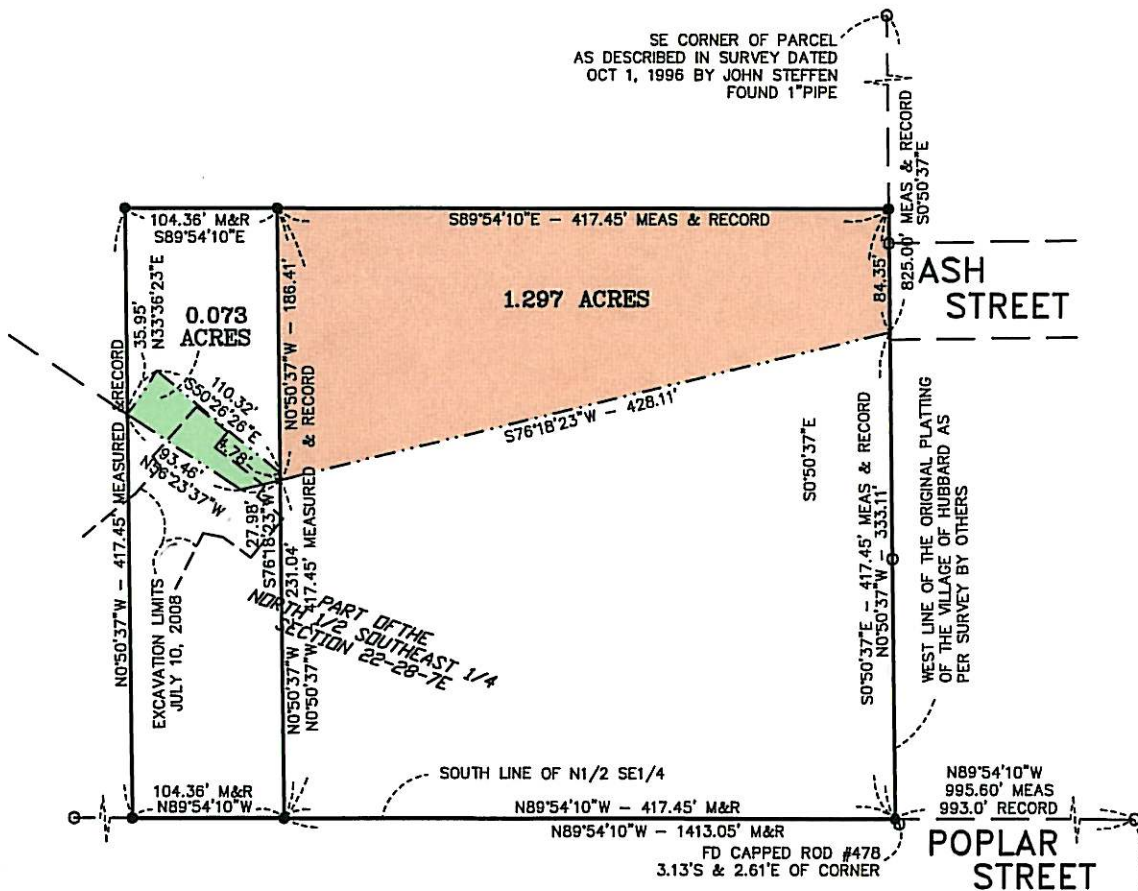
NO SCALE

Image © 2008 DigitalGlobe

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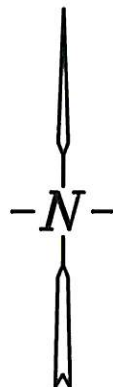
PLAT OF SURVEY OF PART OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 28 NORTH, RANGE 7 EAST, 6TH P.M., DAKOTA COUNTY, NEBRASKA



CERTIFICATION BLOCK

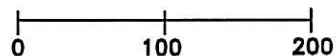
I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NEBRASKA.

DOUGLAS J MORDHORST
 LICENSE NUMBER 460
 MY LICENSE RENEWAL DATE IS DECEMBER 31, 2008
 THIS SHEET COVERED BY THIS SEAL
 PLOT DATE: AUGUST 1, 2008



- INDICATES FOUND 5/8" IRON PIN UNLESS OTHERWISE INDICATED
- INDICATES FOUND IRON PIN W/ YELLOW CAP #589

SCALE: 1" = 100'



EASEMENTS AGREEMENT

This Easements Agreement ("**THIS AGREEMENT**") is made and entered into by and between the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (hereinafter called "**the NRD**"), on the one hand, and JACQUELINE M. HARTNETT and JAMES L. HARTNETT, Husband and Wife (hereinafter called "**the HARTNETTS**") on the other hand.

WHEREAS, JACQUELINE M. HARTNETT owns the portion of the SE $\frac{1}{4}$ of Section Twenty-two (22), Township Twenty-Eight North (T28N), Range Seven East (R7E) of the 6th P.M., Dakota County, Nebraska, described in the legal description attached hereto as **Exhibit A** and incorporated herein by reference (hereinafter referred to as "**the NEW NRD EASEMENT AREA**").

WHEREAS, the HARTNETTS also own the portion of the SE $\frac{1}{4}$ of Section Twenty-two (22), Township Twenty-Eight North (T28N), Range Seven East (R7E) of the 6th P.M., Dakota County, Nebraska, described in the legal description attached hereto as **Exhibit B** and incorporated herein by reference (hereinafter referred to as the "**PRESENT NRD EASEMENT AREA**") over which, in an "Easements" document (hereinafter referred to as the "**NRD EASEMENTS DOCUMENT**") dated July 16, 2003, executed by Dan and Pearl Hartnett Farms, Inc., and recorded on July 24, 2003 as Instrument No. 03-007195 in the office of the Register of Deeds of Dakota County, Nebraska, the NRD obtained

permanent easements for a soil retention and grade stabilization project referred to as Pigeon-Jones Watershed Dam #3 (hereinafter referred to as "the **GRADE STABILIZATION PROJECT**"); and,

WHEREAS, the HARTNETTS NOW request the consent of the NRD to allow the construction, maintenance and use by the HARTNETTS and their heirs, successors and assigns, of a residential structure on a portion of the **PRESENT NRD EASEMENT AREA** (such portion hereinafter being referred to as "the **HARTNETT RESIDENCE FOOTPRINT**") described and depicted in the survey attached hereto as **Exhibit C** and incorporated herein by reference, at a location wherein the NRD has constructed and now permanently operates and maintains, among other things, an auxiliary spillway for the **GRADE STABILIZATION PROJECT**.

For and in consideration of their mutual covenants, the parties agree as follows:

1) Partial Release of NRD Easements Document. The NRD, for itself and for its successors and assigns, does hereby release the HARTNETT RESIDENCE FOOTPRINT from the NRD Easements Document and the easement granted therein and disclaims all right, title and interest in and to the HARTNETT RESIDENCE FOOTPRINT. HARTNETTS, for themselves, and for their heirs, successors and assigns, hereby covenant and agree that they shall not permit or perform any construction of improvements, nor any performance of excavation, filling or deposition of materials, in the area between the HARTNETT RESIDENCE FOOTPRINT and the NRD's emergency spillway, nor on the sideslope of the emergency spillway below such area. Any destructive erosive event occurring in such area, or on such sideslope, (1) shall be presumed to have been the result of a diversion of water onto, over or across such area or sideslope, or by another action, caused or permitted by the HARTNETTS; and, (2) shall be repaired by the HARTNETTS and restored to as-built specifications, all at the HARTNETTS' sole cost and expense and within 30 days after the NRD has notified the HARTNETTS in writing of the occurrence of such destructive event, barring which the NRD may perform such repairs and restorations and have an action against the HARTNETTS, their heirs, successors and assigns, for the reasonable and necessary cost thereof. The HARTNETTS hereby release the NRD from any duty to provide lateral or subjacent support for the residence, deck or sidewalk located on the HARTNETT RESIDENCE FOOTPRINT.

2) Grant of New NRD Easements Area. The HARTNETTS, for themselves and for their heirs, successors and assigns, do hereby grant to the NRD the following permanent easements in, on, under, over and across the NEW NRD EASEMENT AREA:

i) *FLOOD CONTROL DAM EASEMENT:* The HARTNETTS hereby grants to the NRD the permanent, full, and free right, liberty and authority to enter upon the portion of the NEW NRD EASEMENT AREA more particularly described in the legal description attached hereto as Exhibit "D" and incorporated herein by this specific reference and depicted in the diagram attached hereto as Exhibit "E" and incorporated herein by this specific reference (hereinafter referred to as "the **DAM EASEMENT AREA**") and use the DAM EASEMENT AREA for the construction, operation, maintenance, repair, and inspection of a flood control dam and spillways (hereinafter referred to collectively as "the **DAM**"), and for the permanent storage and temporary detention, either or both, of waters and sediment impounded by the DAM. This easement for flood control dam also includes the right of the NRD to control vegetation, animals, fish, and insects in the portion of the DAM EASEMENT AREA occupied by the DAM; to fence all or part of the portion of the DAM EASEMENT AREA occupied by the DAM; and, to have the air space above the portion of the DAM EASEMENT AREA occupied by the DAM free from obstruction to such height as will permit passage and operation of the NRD's machinery. There is reserved to the HARTNETTS, and their heirs, successors and assigns and their permittees, the permanent reserved right and privilege after final completion of construction of the DAM to construct, operate, maintain, repair, modify, replace, regulate and use a recreational bicycle and pedestrian trail across the top of the DAM and centered generally along its centerline, such activities by the HARTNETTS to be in accordance with generally-accepted engineering practices and pursuant to plans and specifications submitted to and approved by the NRD (such approvals to not be withheld unreasonably). No other structures shall be erected nor improvements made, nor shall any other excavation, filling, boring, nor any dumping, storage of personal property, cultivation or animal grazing, be performed or permitted, in, on, under or across

the portion of the DAM EASEMENT AREA occupied by the DAM without the prior written consent of the NRD.

ii) *IMPOUNDMENT EASEMENT*: The NRD is hereby granted the permanent, full, and free right, liberty and authority to enter upon and use the portion of the NEW NRD EASEMENT AREA upstream of the DAM for the permanent storage and temporary detention, either or both, of any waters and sediment impounded, stored or detained by operation of the DAM. The NRD, and its successors and assigns, are hereby permanently and absolutely released from liability for loss of or damage to any property or crops of the HARTNETTS, or their heirs, successors and assigns, in the NEW NRD EASEMENT AREA which may be caused directly or indirectly by waters or sediment impounded, stored or detained by the DAM. No structures shall be erected nor shall any excavation, filling, boring, nor any dumping, or storage of personal property be performed or permitted in the portion of the NEW NRD EASEMENT AREA upstream of the DAM without the prior written consent of the NRD; provided, however, this covenant shall not be construed as preventing the HARTNETTS from:

(1) Dredging or otherwise removing silt, debris, or other accumulated materials from time to time from the portion of the NEW NRD EASEMENT AREA upstream of the DAM;

(2) Excavating, placing, filling or maintaining rock, sheet-pilings or other revetments for the purpose of temporary or permanent bank protection in the portion of the NEW NRD EASEMENT AREA upstream of the DAM,

(3) Constructing, installing or maintaining buried or overhead utility lines in the portion of the NEW NRD EASEMENT AREA upstream of the DAM; and/or,

(4) Constructing, installing or maintaining a recreational bicycle and pedestrian trail in the portion of the NEW NRD EASEMENT AREA upstream of the DAM,

if, prior to commencing any such activities, the HARTNETTS shall obtain the written approval by the NRD of the plans and specifications for such activities, which approvals shall not be withheld unreasonably; and, provided, lastly, that

this covenant shall not be construed as preventing the HARTNETTS from constructing, installing or maintaining vegetated landscaping, low-voltage lighting, boat ramps, decks, recreational equipment, fish habitat, buoys, gazebos, portable or floating docks or boat lifts in the portion of the NEW NRD EASEMENT AREA upstream of the DAM, as preventing the HARTNETTS from withdrawing water from such portion for any beneficial purposes or from introducing water into the portion of the NEW NRD EASEMENT AREA upstream of the DAM from time to time to raise the level of the surface water therein.

iii) *EASEMENT FOR SEEPAGE, BREACH-routing and spillway re-entry:* The NRD is hereby granted the permanent, full, and free right, liberty and authority to enter upon and use the portion of the NEW NRD EASEMENT AREA downstream of the DAM for the flowage of water and sediment which originates, emanates, discharges, seeps or spills from the DAM, its principal or emergency spillways or its pool, including, without limitation, water or sediment that appears as surface or subsurface flow, seepage, percolation or springs. The NRD, and its successors and assigns, are hereby permanently released from liability for loss of or damage to any property, structures or crops of the HARTNETTS, or their heirs, successors and assigns, which may be caused directly or indirectly by such waters or sediment.

iv) *EASEMENT FOR INGRESS AND EGRESS:* The NRD is hereby granted the permanent, full, and free right, liberty and authority to use the NEW NRD EASEMENT AREA for ingress and egress for the purpose of exercising rights and privileges granted by this document.

v) *ADDITIONAL PROVISIONS:* This Agreement shall be subject to the following additional provisions, to-wit:

(1) The HARTNETTS shall not be responsible for operation or maintenance of the DAM.

(2) The DAM shall be constructed with a top elevation approximately 1,205.0 feet above mean sea level (hereinafter called "**m.s.l.**"), referenced to the National Geodetic Vertical Datum of 1929

(hereinafter called "**NGVD**") and with a conservation pool elevation approximately 1,195.0 feet above m.s.l., NGVD.

(3) The portion of the boundary of the NEW NRD EASEMENT AREA that is denominated by the contour line at elevation 1205.0 feet above m.s.l., NGVD shall follow subsequent lateral changes in the location of such contour line resulting from naturally-caused excavations or fills, resulting from fills approved in writing by the NRD pursuant to this document, or resulting from excavations performed or permitted by the HARTNETTS with or without such approval.

(4) The NRD shall have no duty or responsibility to prevent evaporation of any waters detained by the DAM, nor to dredge accumulated silt or debris from the NEW NRD EASEMENT AREA; and, the NRD shall have no duty or responsibility to maintain any certain water level(s) in the EASEMENT AREA.

(5) Nothing contained in this document shall be construed as precluding the HARTNETTS and their heirs, successors and assigns from subdividing the NEW NRD EASEMENT AREA, subject to the easements contained in this document.

(6) The consideration recited herein shall constitute payment in full for any and all damages sustained by the HARTNETTS and their heirs, successors and assigns by reason of the NRD's non-negligent exercise of the rights or privileges herein expressly granted or reasonably implied.

(7) The HARTNETTS waives compliance by the NRD with the notice and other provisions of the Uniform Procedure for Acquiring Private Property for Public Use (Sec. 25-2501, R.R.S. 1943, et seq.)

(8) The easements provided herein shall be deemed to run with the land and shall be binding upon the HARTNETTS and their heirs, successors and assigns.

(9) The HARTNETTS, for themselves and for their heirs, successors and assigns, covenants that they are the owner of the NEW NRD EASEMENT AREA and that it has the right to convey the above-described easements over the same; that said premises are free and clear of all liens

and encumbrances except easements of record; and, that it will warrant and defend the NRD's title to the above-described easements against the lawful claims and demands of all persons whomsoever.

(10) This document shall not be construed to pass to the NRD any fee simple interest or title.

(11) Nothing contained herein shall be construed as permitting the NRD to authorize public access to any portion of the NEW NRD EASEMENT AREA for any purpose other than for construction, operation, maintenance, repair or replacement of the DAM.

(12) The HARTNETTS warrants that no verbal or written representations or inducements have been made or given by the NRD, or by any of its officers, agents or employees, other than as may be recited in this document.

3) No Obstructions. Notwithstanding any provision herein or in the NRD EASEMENTS DOCUMENT to the contrary, the NRD covenants and agrees that it will not plant any trees in the PRESENT NRD EASEMENT AREA and/or the NEW NRD EASEMENT AREA.

4) Further Assurances. Each party hereby covenants and agrees that it will from time to time at the written request of the other and without further consideration, duly execute and deliver to the other such instruments as may be reasonably required to give full effect to the agreements of the parties contained in this Easements Agreement.

Dated as of this _____ day of _____, 2008.

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

By _____
General Manager

JACQUELINE M. HARTNETT

JAMES L. HARTNETT

State of Nebraska)
) ss.
County of _____)

On this _____ day of _____, 2008, before me, a Notary Public, personally came JOHN WINKLER, General Manager of the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and he acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said district.

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

State of Nebraska)
) ss.
County of _____)

On this _____ day of _____, 2008, before me, a Notary Public, personally came _____, JACQUELINE M. HARTNETT and JAMES L. HARTNETT, Wife and Husband , to me personally known to be the identical persons whose names are affixed to the above and foregoing instrument, and acknowledged the same to be their voluntary act and deed.

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public