



City of Grand Island

Tuesday, March 14, 2023

Council Session

Item G-3

Receipt of Official Document – Tort Claim filed by Petersen Farms Inc.

Staff Contact: Stacy Nonhof, Assistant City Attorney

Council Agenda Memo

From: Stacy Nonhof, Assistant City Attorney

Meeting: March 14, 2023

Subject: Receipt of Official Document – Tort Claim filed by Petersen Farms Inc.

Presenter(s): Stacy Nonhof, Assistant City Attorney

Background

The City of Grand Island has received a Notice of Tort Claim from Petersen Farms Inc. alleging certain claims for an incident in which occurred between the Spring of 2022 and November of 2022. Petersen Farms began experiencing adverse impacts to numerous irrigation wells during the 2022 irrigation season. Petersen Farms claims the dewatering efforts conducted by the City significantly decreased the groundwater levels in the area immediately adjacent to the dewatering operations, and lowered water levels in the vicinity of numerous Petersen Farms wells. This resulted in the damages summarized in this letter and may continue to impact groundwater levels. A copy of the claim is attached.

For a person to assert a tort claim against the City of Grand Island, a written notice of the claim must be filed with the City Clerk, Secretary or other official responsible for keeping official records. The claim must be filed within one year of the accrual of the claim, and the Council has six months to act on the claim. No suit can be filed until after the Council acts on the claim, or the six months has run.

Historically, the City of Grand Island has simply let the six months run. Not all claims result in a suit being filed, so it makes good sense to not act affirmatively in many instances. In any event, if you wish to look further into this claim, please contact the City Attorney's office, and we will provide you with any additional information we may have regarding the claim. Our recommendation is to continue to take no affirmative action on tort claims. It must be emphasized that by providing copies of alleged claims to you, we are not making an admission or representation that a claim has been properly filed in any respect. We also recommend that no comments concerning a particular claim be made during Council meetings, unless you decide to bring the matter on for formal consideration. Even then, we ask that comments be carefully considered so that the legal rights of all parties are preserved.

Discussion

This is not an item for council action other than to simply acknowledge that the claim has been received.

Recommendation

City Administration recommends that the Council take no action other than acknowledge receipt of the claim.

Sample Motion

Move to approve acknowledgement of the Tort Claim filed by Petersen Farms Inc.



Kennon Meyer
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kennon@bwjlawgroup.com

February 28, 2023

Ms. RaNae Edwards
City Clerk
P.O. Box 1968
Grand Island, NE 68802-1968

RE: Petersen Farms Inc. Tort Claim Pursuant to NEB. REV. STAT. §§ 13-901 *et. seq.*

Dear Ms. Edwards:

This firm represents Petersen Farms, Inc., in a dispute with the City of Grand Island over its dewatering efforts to support improvement of the Grand Island Central Nebraska Regional Airport. The dewatering effort, which commenced in spring 2022 and continued through November 2022, occurred directly west of the Airport along both Airport Road and Academy Road. As a result of the City's actions, Petersen Farms began experiencing adverse impacts to numerous irrigation wells during the 2022 irrigation season. In Nebraska, those using groundwater for agricultural purposes have preference over those using groundwater for manufacturing or industrial purposes. See NEB. REV. STAT. § 46-613.

The dewatering efforts conducted by the City significantly decreased the groundwater levels in the area immediately adjacent to the dewatering operations, and lowered water levels in the vicinity of numerous Petersen Farms wells. This resulted in the damages summarized in this letter and may continue to impact groundwater levels to this day.

Please let this letter serve as an official tort claim under the Political Subdivision Tort Claims Act NEB. REV. STAT. §§ 13-901 *et. seq.*, which is hereby being filed with the clerk of the City pursuant to NEB. REV. STAT. § 13-905. This letter is intended to set forth the time and place of the occurrences that have given rise to Petersen Farms' claims and to provide pertinent facts to the claims known to us currently.

One of the wells adversely impacted by the dewatering efforts is known as the Maders well (Nebraska Department of Natural Resources ("DNR") well registration number G-040885). The location of this well is depicted on the attached image, marked Exhibit A, along with the location of the field serviced by said well. In June 2022, the Maders well was forced to cease operating and was unable to irrigate the 34-acre soybean field it served. As a result, Petersen Farms suffered a substantial reduction in crop yield for the field. In addition to the Maders well, Petersen Farms also experienced reduced output at four other wells in the vicinity of the dewatering effort during the 2022 irrigation season due to the groundwater level reduction. These are colloquially known as the North Erion (DNR well registration number G-072589), South Erion (DNR well registration number G-009690), Wichern (DNR well registration number G-025153), and North Home (DNR well registration number A-007060C) wells. They are depicted on the attached Exhibit B. The field associated with the North Erion well also experienced

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soybean crop yield loss during the summer of 2022 as a result of decreased water levels leading to reduced well output.

Petersen Farms has calculated and quantified the yield loss at both the Maders and the Erion fields, which are set forth on the attached Exhibit C. Petersen Farms has suffered \$31,483.81 in crop yield loss damages due to the City's dewatering activity and demands that the City provide compensation for these damages.

Last summer Petersen Farms attempted to resolve this matter with City representatives. At the time of the is writing water wells have not rebounded to levels predating the City's dewatering efforts. Petersen Farms has been left with no choice but to drill a new well in the proximity of the Maders well. This new well is needed to access groundwater no longer available through the Maders well. At this time we estimate that it will cost Petersen Farms approximately \$15,727.50. Petersen Farms demands that the City provide compensation for the entirety of any damages associated with drilling a new well to a depth and location that will allow it to replace the irrigation supply it can no longer access via the Maders well. Please note that the exact cost is not known at this time, as the drilling work has not yet been completed.

Finally, in addition to the impacts that were experienced during the 2022 growing season, Petersen Farms remains uncertain of the potential long-term impacts of the City's dewatering efforts on all of its wells in the vicinity of the Airport. Petersen Farms intends to hold the City liable for any future damages resulting from permanent changes to groundwater levels caused by the City's dewatering activity.

In sum, at this time Petersen Farms demands \$47,211.31 in damages that it has suffered due to the City's dewatering efforts. Please let us know if the City requires any additional information regarding this claim.

Sincerely,



Kennon G. Meyer

cc: Laura McAloon, Grand Island City Attorney
Keith Kurz PE, Interim Public Works Director
Northern Dewatering, Inc.
S.J. Louis Construction, Inc.



Processed by State of Nebraska Department of Natural Resources Data(Bank) 2/3/2023 10:55:17 AM

Subsection: NWSE Section: 34 Township: 12 Range: 9W

Footage: 1539 feet from the South section line and 1982 feet from the East section line.

Latitude: 40° 57' 51.63" Longitude: -98° 19' 39.98"



Legend (/dynamic/Images/MapGroundWaterLegend.png)

Zooming – 3 options

- Double click on Map to zoom in
- Plus(+) and minus(-) signs in upper left corner of map also zoom in and out. Hover with mouse over area and when pointer disappears, click. Plus is on top and minus is below it.
- Click on map and use mouse wheel to zoom in or out.

Panning – Moving around map

Click on map and hold, drag mouse direction to move map

DISCLAIMER

<https://nednr.nebraska.gov/dynamic/Geo2LegalCalc/Geo2LegalCalc/Location?Latitude=40.96434162&Longitude=-98.32777153>

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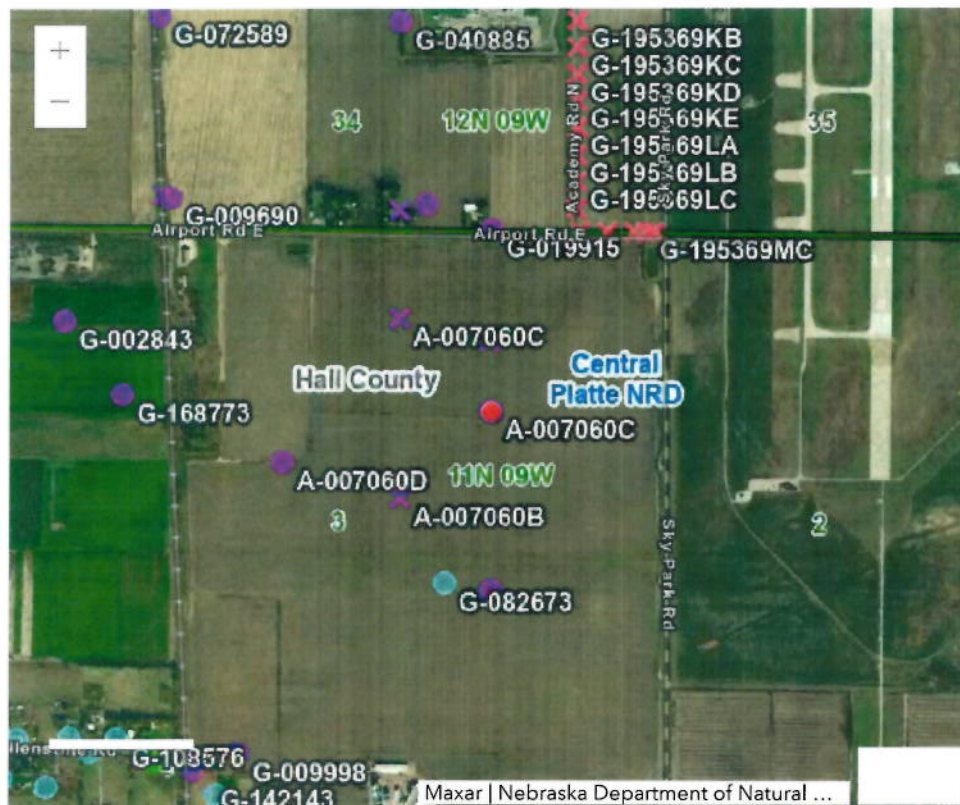


Processed by State of Nebraska Department of Natural Resources Data(Bank) 2/3/2023 11:00:40 AM

Subsection: NENE Section: 3 Township: 11 Range: 9W

Footage: 1309 feet from the North section line and 1309 feet from the East section line.

Latitude: 40° 57' 23.41" Longitude: -98° 19' 31.27"



Legend (/dynamic/Images/MapGroundWaterLegend.png)

Zooming – 3 options

- Double click on Map to zoom in
- Plus(+) and minus(-) signs in upper left corner of map also zoom in and out. Hover with mouse over area and when pointer disappears, click. Plus is on top and minus is below it.
- Click on map and use mouse wheel to zoom in or out.

Panning – Moving around map

Click on map and hold, drag mouse direction to move map

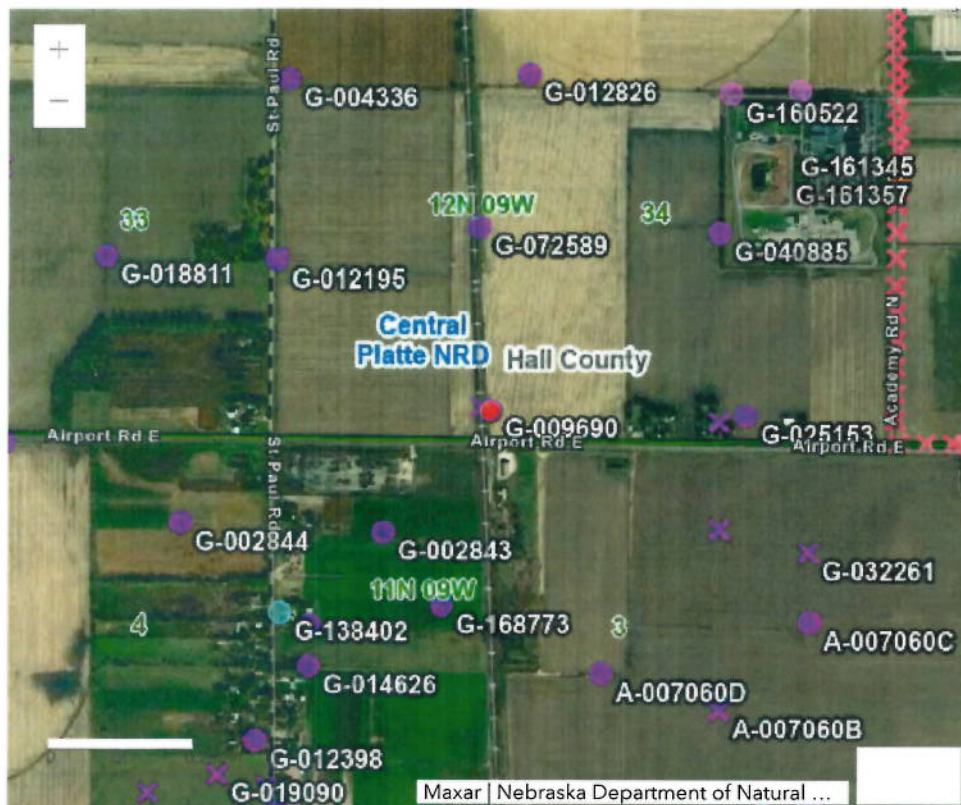
DISCLAIMER

Processed by State of Nebraska Department of Natural Resources Data(Bank) 2/3/2023 10:57:47 AM

Subsection: SESW Section: 34 Township: 12 Range: 9W

Footage: 226 feet from the South section line and 1631 feet from the West section line.

Latitude: 40° 57' 38.81" Longitude: -98° 20' 02.14"



Legend (/dynamic/Images/MapGroundWaterLegend.png)

Zooming – 3 options

- Double click on Map to zoom in
- Plus(+) and minus(-) signs in upper left corner of map also zoom in and out. Hover with mouse over area and when pointer disappears, click. Plus is on top and minus is below it.
- Click on map and use mouse wheel to zoom in or out.

Panning – Moving around map

Click on map and hold, drag mouse direction to move map

DISCLAIMER

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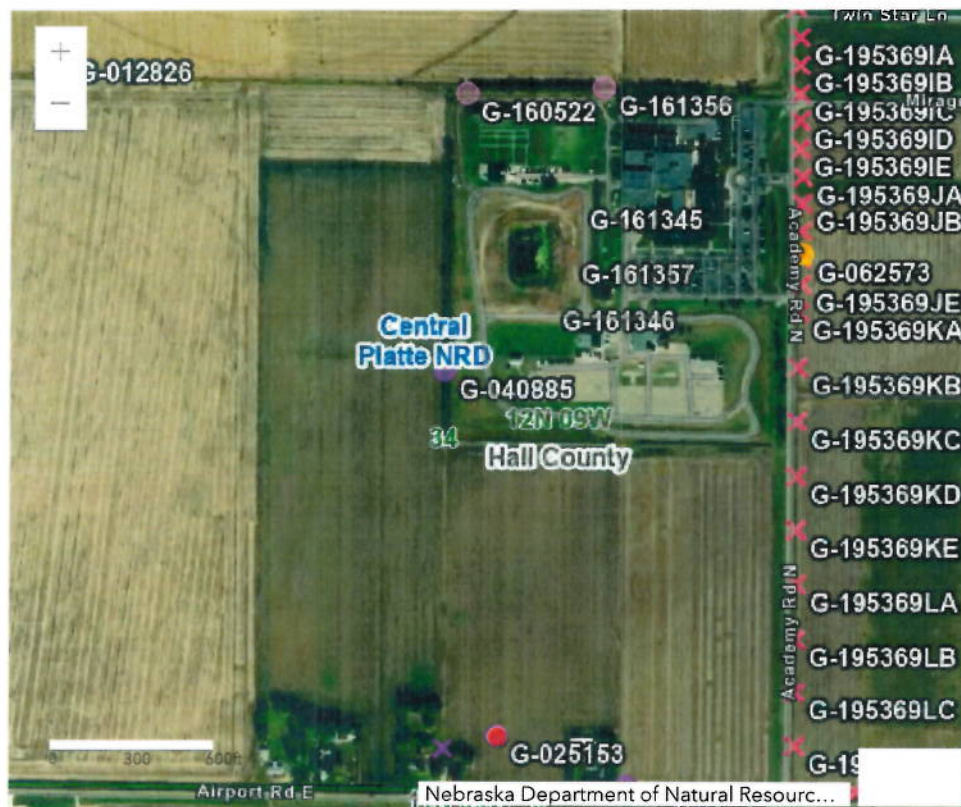
1/2

Processed by State of Nebraska Department of Natural Resources Data(Bank) 2/7/2023 9:12:14 AM

Subsection: SWSE Section: 34 Township: 12 Range: 9W

Footage: 200 feet from the South section line and 1781 feet from the East section line.

Latitude: 40° 57' 38.37" Longitude: -98° 19' 37.43"



Legend (/dynamic/Images/MapGroundWaterLegend.png)

Zooming – 3 options

- Double click on Map to zoom in
- Plus(+) and minus(-) signs in upper left corner of map also zoom in and out. Hover with mouse over area and when pointer disappears, click. Plus is on top and minus is below it.
- Click on map and use mouse wheel to zoom in or out.

Panning – Moving around map

Click on map and hold, drag mouse direction to move map

DISCLAIMER

<https://nednr.nebraska.gov/dynamic/Geo2LegalCalc/Geo2LegalCalc/Location?Latitude=40.96065700&Longitude=-98.32706500>

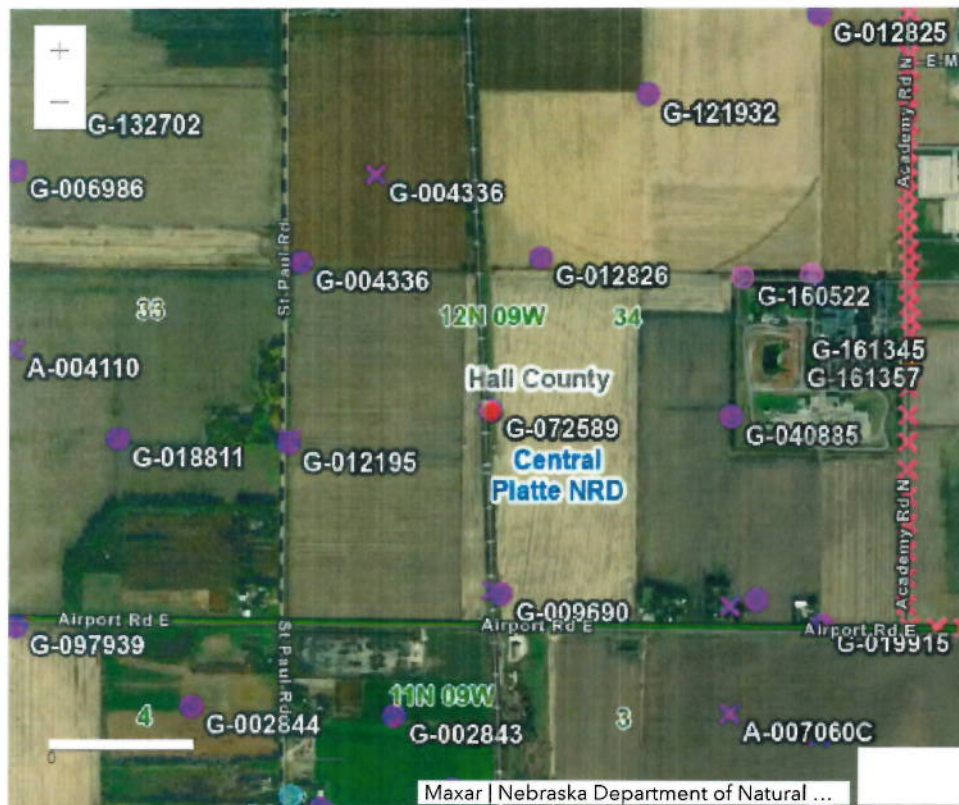
1/2

Processed by State of Nebraska Department of Natural Resources Data(Bank) 2/3/2023 10:56:22 AM

Subsection: NESW Section: 34 Township: 12 Range: 9W

Footage: 1568 feet from the South section line and 1542 feet from the West section line.

Latitude: 40° 57' 52.08" Longitude: -98° 20' 03.20"



Legend (/dynamic/Images/MapGroundWaterLegend.png)

Zooming – 3 options

- Double click on Map to zoom in
- Plus(+) and minus(-) signs in upper left corner of map also zoom in and out. Hover with mouse over area and when pointer disappears, click. Plus is on top and minus is below it.
- Click on map and use mouse wheel to zoom in or out.

Panning – Moving around map

Click on map and hold, drag mouse direction to move map

DISCLAIMER

<https://nednr.nebraska.gov/dynamic/Geo2LegalCalc/Geo2LegalCalc/Location?Latitude=40.96446667&Longitude=-98.33422222>

1/2

FIELD NAME	FIELD ACRES	ACTUAL BUSHELS	BUSHELS PER ACRE	PROJECTED BUSHELS*	BUSHEL DIFFERENCE (actual - projected)	COOP PRICE/BU	TOTAL \$ AMOUNT
Wichern	17	1,331	78.3				
Erion	65	4,028	62.0	5,089.1	1,061.1	\$13.71	\$14,547.92
Mader	35	1,505	43.0	2,740.3	1,235.3	\$13.71	\$16,935.88

\$31,483.81



*Using Wichern actual bushels per acre