

This Document Prepared By:
Trudy A. Morgan, Esq.
MorganTheeler LLP
P.O. Box 1025, 1718 N. Sanborn
Mitchell, SD 57301
(605) 996-5588

BALOUN WATER SYSTEM SHARED WATER AGREEMENT

THIS AGREEMENT is made effective as of the _____ day of _____, 2024, by and between Beth A. Baloun as Personal Representative of the Estate of Cody J. Baloun, Beth A. Baloun, personally, and MaryAnn Baloun, and Perry Baloun, hereinafter collectively referred to as “parties”; WITNESSETH:

WHEREAS, all of the real property subject to this Agreement has been owned by Beth A. Baloun as Personal Representative of the Estate of Cody J. Baloun, Beth A. Baloun, personally, MaryAnn Baloun, and Perry Baloun. Collectively, the land will be referred to as “Baloun Water System” herein; and

WHEREAS, there are four (4) distinct parcels of real property comprising the major portion of the Baloun Water System, which shall be referred to herein as “Parcel 1”, “Parcel 2”, “Parcel 3”, and “Parcel 4”, and an additional “Parcel 5” (which is leased land owned by the State of South Dakota), consisting of the following property:

PARCEL 1:

TRACT A: Southwest Quarter (SW ¼) of Section Twelve (12), Township One Hundred Sixteen (116) North, Range Seventy-two (72), West of the 5th P.M., Hyde County, South Dakota. *[well head location]*

TRACT B: Southeast Quarter (SE ¼) of Section Two (2), Township One Hundred Sixteen (116) North, Range Seventy-two (72), West of the 5th P.M., Hyde County, South Dakota, containing 160 acres more or less, subject to 1.02 acres for highway right-of-way according to the United States Government survey, and as appears from the plats and records of said lands now on file in the Office of the Commissioner of School and Public Lands reserving, however, to the State of South Dakota right-of-way for irrigation ditches, canals, etc., as provided by SDCL 5-4-2, and subject to reservations and rights relating to deposits of coal, ores, metals and other minerals, asphaltum, oil, gas and other like substances, provided by SDCL 5-7-3 to 5-7-6, inclusive, and SDCL 5-2-12, and in

any law of the State of South Dakota reserving any rights of any kind in said State or any of its departments, institutions, subdivisions, funds or accounts.

TRACT C: Northwest Quarter (NW $\frac{1}{4}$) of Section Two (2), Township One Hundred Sixteen (116) North, Range Seventy-two (72), West of the 5th P.M., Hyde County, South Dakota.

TRACT D: East Half of the Northwest Quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$) of Section Four (4), Township One Hundred Sixteen (116) North, Range Seventy-two (72), West of the 5th P.M., Hyde County, South Dakota.

PARCEL 2:

Southwest Quarter (SW $\frac{1}{4}$) of Section Two (2), Township One Hundred Sixteen (116) North, Range Seventy-two (72), West of the 5th P.M., Hyde County South Dakota.

PARCEL 3:

Southwest Quarter (SW $\frac{1}{4}$) of Section Three (3), Township One Hundred Sixteen (116) North, Range Seventy-two (72), West of the 5th P.M., Hyde County, South Dakota.

Northeast Quarter (NE $\frac{1}{4}$) of Section Eleven (11), Township One Hundred Sixteen (116) North, Range Seventy-two (72), West of the 5th P.M., Hyde County, South Dakota.

Southwest Quarter (SW $\frac{1}{4}$) of Section Thirty-four (34), Township One Hundred Seventeen (117) North, Range Seventy-two (72), West of the 5th P.M., Hyde County, South Dakota.

PARCEL 4:

Southwest Quarter (SW $\frac{1}{4}$) of Section Thirteen (13), Township One Hundred Sixteen (116) North, Range Seventy-two (72), West of the 5th P.M., Hyde County South Dakota.

East Half (E $\frac{1}{2}$) of Section Twenty-three (23), Township One Hundred Sixteen (116) North, Range Seventy-two (72), West of the 5th P.M., Hyde County South Dakota.

Southeast Quarter (SE $\frac{1}{4}$) of Section Fourteen (14), Township One Hundred Sixteen (116) North, Range Seventy-two (72), West of the 5th P.M., Hyde County South Dakota.

PARCEL 5:

Northwest Quarter (NW ¼) Section Thirteen (13) Township One Hundred Sixteen (116) North, Range Seventy-two (72), West of the 5th P.M., Hyde County South Dakota.

WHEREAS, portions of the Baloun Water System will be transferred as follows:

PARCEL 1: Owned by the Estate of Cody J. Baloun.

PARCEL 2: Owned by Beth A. Baloun.

PARCEL 3: Owned by MaryAnn Baloun as Seller and Beth A. Baloun as Buyer under the Contract for Deed dated the 22nd day of May, 2018, and recorded with the Hyde County Register of Deeds on the 27th day of September, 2018 in Book 35, Pages 553-562 at 11:30 o'clock a.m.

PARCEL 4: Owned by Perry Baloun.

PARCEL 5: Owned by the State of South Dakota and currently leased to one or more of the owners of the other parcels.

WHEREAS, on PARCEL 1 - TRACT A, there exists an artesian water well pit and distribution system which services certain pastures located on all five parcels for livestock watering purposes; and

WHEREAS, one of the conditions for the transfer of the Baloun Water System real property is a shared use agreement between the owners of the property for use of the water; and

WHEREAS, it is the intention and purpose of the undersigned parties that the water well pit, access, and distribution system shall continue to be used and operated to provide water for each of the parcels and the property within each parcel as it is currently being utilized, even though the parcels may have separate ownership, and that the well pit and water distribution system shall continue to be used for the watering of grazing livestock and to further assure the continuous and satisfactory operation and maintenance of the well and water distribution system for the benefit of the present and future owners, their heirs, successors and assigns of the properties connected thereto; and

WHEREAS, the said water well is deemed to be of limited capacity, all parties agree to refrain from any expansion or extension of the current water distribution system, except as herein provided, and to govern consumption through the existing water distribution system so as to maintain reasonable volume and head pressure to all parcels. Further, all parties agree to govern themselves according to principles of reasonable use, refrain from avoidable waste and abstain from any and all commercial irrigation; and

WHEREAS, the parties hereto desire to enter this Agreement for the purpose of reducing to writing their respective rights and obligations pertaining to said well and water distribution system.

NOW THEREFORE, in consideration of the promises and covenants herein contained, it is agreed that the well and water distribution system shall be used by the parties to this Agreement, as well as by all future owners and occupants of said parcels, upon the following terms and conditions:

1. Perpetual Use for Life of the Well. Unless this Agreement is terminated, the parties in perpetuity, their heirs, successors, and assigns, for the exclusive benefit of the respective parcels of real estate, and for the exclusive use of the individuals and agricultural livestock thereon, are hereby granted the right in common with the other parties to this Agreement, to the use of the well water and distribution system located on PARCEL 1 for use for watering grazing livestock. This Agreement shall endure as long as said well shall continue to flow. In no event, shall the use include any commercial irrigation. This Agreement shall *also apply to PARCEL 5 only for so long as such parcel is leased (or purchased) from the State of South Dakota by any of the owners of PARCELS 1, 2, 3 or 4.* No rights shall otherwise inure directly to the State of South Dakota or any other lessee, transferee, or assignee.

2. No Interference with Use. The owners of PARCELS 1, 2, 3, 4, and 5 shall refrain from any expansion or extension of the current water distribution system except as herein provided. Without exception, the owners of all parcels shall refrain from interfering with the reasonable volume and head pressure to other parcels, and each party shall govern water consumption so as to maintain reasonable volume or head pressure to all parcels. Further, all parties agree to govern themselves according to principles of reasonable use, and refrain from avoidable waste.

3. Consumption Ratio/Limited Expansion. The owner of PARCEL 1, TRACT A may expand or extend the current water distribution system only for agricultural purposes. Such purposes include, but are not limited to, additional pasture taps or additional cattle yards or feedlots. The cost of such expansion to the system shall be solely the responsibility of the parcel owner expanding the system. Such expansion will not be allowed if it significantly interferes with providing adequate volume or head pressure to any other parcel. In no event, may a parcel owner, except PARCEL 1, TRACT A, consume more than his commensurate share of total water flow available from the well pit and water distribution system, to-wit:

A. In the event PARCEL 5 is leased by an owner of PARCELS 1, 2, 3 or 4, the water distribution proportion shall be as follows:

Twenty percent (20%) for PARCEL 1,
Tract A: Six percent (6%);
Tract B: Six percent (6%);
Tract C: Six percent (6%); and
Tract D: Six percent (2%)

Twenty-seven and five-tenths percent (27.5%) for PARCEL 2,
Twenty percent (20%) for PARCEL 3,
Twenty-seven and five-tenths percent (27.5%) for PARCEL 4, and
Five percent (5%) for PARCEL 5,

- B. In the event PARCEL 5 is not leased by an owner of PARCELS 1, 2, 3 or 4, the water distribution proportion shall be as follows:

Twenty-one percent (21%) for PARCEL 1,
Tract A: Six and three-tenths percent (6.3%);
Tract B: Six and three-tenths percent (6.3%);
Tract C: Six and three-tenths percent (6.3%); and
Tract D: Two and one-tenths percent (2.1%)
Twenty-nine percent (29%) for PARCEL 2,
Twenty-one percent (21%) for PARCEL 3, and
Twenty-nine percent (29%) for PARCEL 4

4. Shared Operation Cost. The owners of PARCEL 2, PARCEL 3, PARCEL 4, and the tenant of PARCEL 5, as of the date of this Agreement, shall each pay or cause to be paid promptly to the owner of PARCEL 1, their proportionate share of all expenses for the operation and maintenance of the well and any pumping equipment that may become necessary as identified in subparagraph (A) and (B) below, it being understood that the owner of PARCEL 1 shall pay the percent allocated in subparagraphs (A) and (B) below. Shared expenses include the cost of electricity for pumping, repairs and maintenance on said well and water distribution system.

- A. In the event Parcel 5 is leased by an owner of PARCELS 1, 2, 3 or 4, the water distribution proportion shall be:

Twenty percent (20%) for PARCEL 1,
Tract A: Six percent (6%);
Tract B: Six percent (6%);
Tract C: Six percent (6%); and
Tract D: Two percent (2%)
Twenty-seven and five-tenths percent (27.5%) for PARCEL 2,
Twenty percent (20%) for PARCEL 3,
Twenty-seven and five-tenths percent (27.5%) for PARCEL 4, and
Five percent (5%) for PARCEL 5,

- B. In the event Parcel 5 is not leased by an owner of PARCELS 1, 2, 3 or 4, the water distribution proportion shall be:

Twenty-one percent (21%) for PARCEL 1,
Tract A: Six and three-tenths percent (6.3%);
Tract B: Six and three-tenths percent (6.3%);
Tract C: Six and three-tenths percent (6.3%); and
Tract D: Two and one-tenths percent (2.1%)

Twenty-nine percent (29%) for PARCEL 2,
Twenty-one percent (21%) for PARCEL 3, and
Twenty-nine percent (29%) for PARCEL 4

5. Utility Costs/Default. The owners of PARCEL 1, TRACTS B, C, and D, and PARCEL 2, PARCEL 3, PARCEL 4, and the tenant of PARCEL 5, shall each pay to the owner of PARCEL 1, TRACT A, their proportionate share (i.e., the applicable percentages identified in paragraph 4, above) of the applicable cost of energy for the operation of the well and water distribution system. It is the agreement of the parties hereto that the payment for costs, which shall be paid in the percentages set forth in paragraph 4 above, shall be made not later than the 10th day of each succeeding month during the term of this Agreement. In the event that any such payment remains unpaid for a period of ten (10) days, the owner of PARCEL 1, TRACT A may terminate the supply of water to any deficient parcel until all arrearages in payment are received. Upon such curative action, the supply of water shall be restored.

6. Repair Responsibility. Each of the parties hereby agree that they will promptly repair, maintain, and replace all water pipes or mains serving their respective parcels. In the case of a partial system failure, the parties affected by the partial system failure will share the repair cost.

7. Shared Repair/Replacement Cost. The cost of any removal or replacement of pre-existing site improvements on an individual parcel necessary for system operation, maintenance, replacement, improvements, inspection or testing, damaged as a result of repair of the well or water distribution system maintenance will be borne proportionately between or among parties affected by damages and the improvements and such parties shall share the responsibilities of site improvements, including costs to remove and replace common boundary fencing or walls damaged as a result of repair. In the event a new well would need to be drilled to replace the existing well and the new well can be located in the property to use the existing pipes and distribution system, the parties shall share the cost of the new well proportionately among them.

8. Prior Consent. The consent of all parties to pay a proportionate share of costs shall be obtained prior to embarking upon expenditures for system maintenance or replacement, except in emergency situations. An arbitrator shall be chosen by the parties; shall be consulted in the event the parties cannot agree regarding the said expenditures; and the arbitrator's decision shall be definitive.

9. Reinstate After Curative Action. It is the agreement of the parties that they shall permit a party to this Agreement to cure a default of payment or other obligation and shall permit water distribution service to be reinstated upon such curative action.

10. Access Easement. Each of the parties to this Agreement does hereby grant to the other, his heirs, successors and assigns, such easements over, across and through the respective parcels as shall be reasonably necessary for the maintenance of the well, maintenance of water pipes, pumping equipment, mains, electrical wiring, and conduit consistent with the purposes of this Agreement over the most direct and expeditious route possible and attempting to cause as little damage or disruption as possible. Each party shall have the right to act to correct an

emergency situation and shall have access to the pertinent Parcel in the absence of the other. An emergency situation shall be defined as the failure of any shared portion of the system to deliver water upon demand.

11. No Impairment to Access. No party may install landscaping or improvements that will impair the use of said easements.

12. Exclusive Use. Only those parcels of real estate hereinabove described and the improvements located thereon shall be permitted to receive water from said well and pumping equipment; and each of the parties hereto does hereby covenant and agree that he/she will not allow or permit other persons, other than guests, to take, draw, use or receive water from the well, nor permit other persons to connect to the pipes or mains serving his/her respective parcel.

13. Impossible/Unnecessary. In the event the referenced well shall become contaminated and shall no longer supply water suitable for agricultural purposes and it is impossible or economically probative to replace well water or reinstate a well, or in the event that the owners of PARCEL 1, TRACTS B, C, or D, and PARCEL 2, or PARCEL 3, or PARCEL 4, or PARCEL 5 no longer wish to utilize well water or water from the well located on PARCEL 1, TRACT A, then the rights and obligations of the parties created by this Agreement shall cease and terminate in accordance with the terms and conditions hereinafter described.

14. Termination. The respective rights and obligations of the parties shall continue until the parties who wish to terminate their participation in this Agreement have executed and filed a written statement of termination at the Office of the Register of Deeds of the County of Hyde, State of South Dakota. Upon termination of participation in this Agreement, the owner of each parcel which is terminated from the Agreement shall have no further right to the use of the well or well water. The terminated parties shall disconnect their respective lateral connection from said water system, adequately seal the water system and shall have no further obligation to pay for maintenance and related expenses incurred thereafter. The costs of disconnection from the well and water system shall be borne by the owner of the pertinent parcel.

15. Monitor. The owner of each parcel is individually responsible for monitoring the quality and nature of the water in the well and water distribution system. No parcel owner guarantees, warrants, or makes any representation whatsoever regarding the quality of water delivered through the water distribution system to any other parcel.

16. Term. The term of this Agreement shall be perpetual, except as herein limited.

17. Run with the Land. The benefits and burdens of this Agreement shall endure for so long as the well continues to flow and shall constitute a covenant running with the parcels of land herein described as PARCELS 1, 2, 3, and 4; and shall be binding upon the heirs, successors in title and assigns of the parties hereto.

18. Counterparts. This Agreement may be executed in separate counterparts, all of which executed counterparts shall constitute one complete document.

19. Electronic Copy. The parties hereto agree that execution of a facsimile or electronic copy of this Agreement shall have the same force and effect as an executed original and shall be binding upon the parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the day and date first above written.

Beth A. Baloun, personally, and as Personal
Representative of the Estate of Cody J. Baloun

STATE OF SOUTH DAKOTA
COUNTY OF _____ SS

On this the _____ day of _____, 2024, before me, the undersigned officer, personally appeared Beth A. Baloun, personally, and as Personal Representative of the Estate of Cody J. Baloun, known to me, or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.

My Commission Expires:
(seal)

Notary Public

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

MaryAnn Baloun

STATE OF SOUTH DAKOTA
SS
COUNTY OF _____

On this the _____ day of _____, 2024, before me, the undersigned officer,
personally appeared MaryAnn Baloun, known to me, or satisfactorily proven to be the person
whose name is subscribed to the within instrument and acknowledged that she executed the same
for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.

My Commission Expires:
(seal)

Notary Public

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Perry Baloun

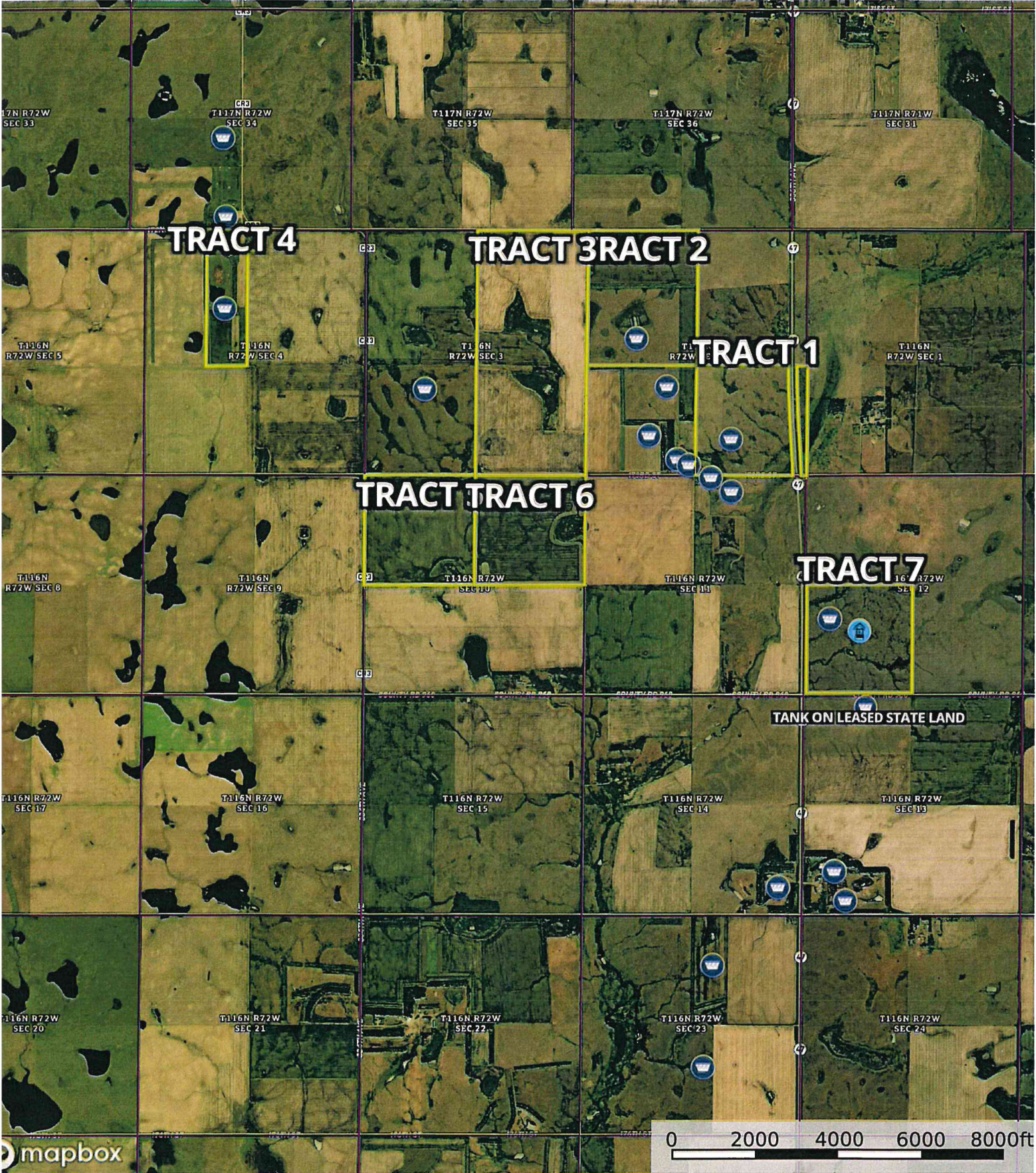
STATE OF SOUTH DAKOTA
COUNTY OF _____ SS

On this the _____ day of _____, 2024, before me, the undersigned officer, personally appeared Perry Baloun, known to me, or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.

My Commission Expires:
(seal)

Notary Public



Water Tank

Well

Boundary 8

Boundary 4

Boundary 2

Boundary 1

Boundary 3

Boundary 5

Boundary 6

Boundary 7