



4. Defendants deny that the drainage districts have taken any actions that detrimentally impact Plaintiff and deny any remaining allegations in paragraph 4.

5. Defendants state that they are not involved in providing drinking water and therefore are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 and thus deny the same.

6. Defendants are not health professionals. Thus, although Defendants are aware that such health risks have been attributed by some to nitrates, they are without knowledge or information sufficient to form an opinion as to the truth of those assertions and therefore deny the allegations in paragraph 6.

7. Defendants note that this lawsuit does not appear to have been brought by any entities along the Gulf of Mexico and, therefore, these allegations are irrelevant and violate the notice pleading standards provided in the rules. Defendants deny that they have caused or contributed to any eutrophication or hypoxic conditions in the Gulf of Mexico and any other allegations in paragraph 7 that pertain to them.

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 and therefore deny the same.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 and therefore deny the same.

10. Defendants deny the allegations in paragraph 10.

11. Defendants deny that they have failed to take any steps they are required or empowered to take and therefore deny any other allegations in paragraph 11.

12. Defendants deny the allegations in paragraph 12.

13. Defendants deny the allegations in paragraph 13.

14. Defendants deny the allegations in paragraph 14.

### **JURISDICTION AND VENUE**

15. Defendants deny the allegation in paragraph 15.

16. Defendants deny the allegations in paragraph 16.

17. Defendants deny the allegations in paragraph 17.

18. Defendants deny the allegations in paragraph 18.

19. Defendants admit the allegations in paragraph 19.

20. Defendants admit that more than 60 days have passed since the notice was post marked and mailed and Defendants deny the remaining allegations in paragraph 20.

21. Defendants admit that neither the United States nor the state of Iowa has commenced any civil or criminal action as is described in paragraph 21 and affirmatively state that any such action would have been contrary to the law and inappropriate.

22. Defendants deny the allegations in paragraph 22.

### **PARTIES**

23. Upon information and belief, Defendants admit the allegations in paragraph 23.

24. Defendants admit that Iowa Code Section 388.4 appears to allow the Board of Water Works Trustees of the City of Des Moines, Iowa to be a party to a legal action, but deny this legal action is proper.

25. Defendants admit drainage districts are overseen by Boards of Supervisors and deny any remaining allegations in paragraph 25.

26. Defendants deny the allegations in paragraph 26.

27. Defendants admit the allegations in paragraph 27.

28. Defendants admit that the Drainage Districts can construct and maintain levees, drains and ditches and can keep them in repair and deny any remaining allegations in paragraph 28.

29. Defendants admit drainage districts have the powers vested in them by the Iowa Code and Constitution, and no others, and deny any remaining allegations in paragraph 29.

30. Defendants admit that, under Iowa Code §468.89, a board of supervisors and the drainage districts the board represents may be named as Defendants for certain actions concerning the drainage districts, deny that the action brought by Plaintiff is such an action and deny any remaining allegations in paragraph 30.

31. Defendants admit that drainage districts are not proper juridical entities and are not properly amenable to this suit and deny any remaining allegations in paragraph 31.

## **FACTS**

### **A. THE NATIONAL AND STATE NITRATE PROBLEM**

32. Defendants admit water quality always is an issue, deny that they are responsible for to any such pollution, deny that they are proper parties to address such issues and deny any remaining allegations in paragraph 32.

33. Defendants deny they have contributed to any hypoxia in the Gulf of Mexico, deny they are proper parties to address any such issues in the Gulf of Mexico and are without knowledge or information sufficient to form a belief as to the truth of the causes of issues in the Gulf of Mexico and therefore deny any remaining allegations in paragraph 33.

34. Defendants admit issues of hypoxia in the Gulf of Mexico have been identified in various publications, deny the drainage districts in this case caused or contributed to any such

issues, deny they are properly charged with addressing such issues and deny any remaining allegations in paragraph 34.

35. Defendants admit issues of hypoxia in the Gulf of Mexico have been identified in various publications, deny the drainage districts in this case caused or contributed to any such issues, deny they are properly charged with addressing such issues and deny any remaining allegations in paragraph 35.

36. Defendants admit issues of hypoxia in the Gulf of Mexico have been identified in various publications, deny the drainage districts in this case caused any such issues, deny they move groundwater, deny that they are properly charged with addressing such issues and deny any remaining allegations in paragraph 36.

37. Defendants state that this allegation is irrelevant and contrary to applicable pleading rules, are without knowledge or information regarding what others have indicated, deny they have contributed to the issues identified and deny any remaining allegations in paragraph 37.

38. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38 and therefore deny the same.

39. Defendants state that the Strategy was published by the Iowa Department of Agriculture and Land Stewardship, the Iowa Department of Natural Resources, and the Iowa State University College of Agriculture and Life Sciences. Defendants deny that they are proper parties with power to address any such issues and deny any remaining allegations in paragraph 39.

40. Defendants deny the Strategy states “sources not currently regulated as point sources create 92% of nitrate pollution entering Iowa’s waterways”, deny page 9 states

“agricultural drainage” is a “major contributor”, deny that they are proper parties with power to address any such issues and deny any remaining allegations in paragraph 40.

41. Defendants admit that various strategies have been proposed or implemented by the state, none of which allows the lawsuit Des Moines Water Works brings and deny any remaining allegations in paragraph 41.

42. Defendants admit that various strategies have been proposed or implemented by the state, none of which allows the lawsuit that Des Moines Water Works brings and deny any remaining allegations in paragraph 42.

43. Defendants admit that various strategies have been proposed or implemented by the state, none of which allows the lawsuit that Des Moines Water Works brings and deny any remaining allegations in paragraph 43.

44. Defendants deny they have any power over how the agencies apply the law and deny the allegations in paragraph 44.

#### **B. THE RACCOON RIVER WATERSHED AND NITRATE POLLUTION**

45. Upon information and belief, Defendants admit the allegations in paragraph 45.

46. Upon information and belief, Defendants admit the allegations in paragraph 46.

47. Upon information and belief, Defendants admit the allegations in paragraph 47.

48. Upon information and belief, Defendants admit the allegations in paragraph 48.

49. Upon information and belief, Defendants admit the allegations in paragraph 49.

50. Upon information and belief, Defendants admit that segments of the North, Middle and South Raccoon Rivers are used by rafts, canoes, kayaks and other recreational water craft and deny any remaining allegations in paragraph 50.

51. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 and therefore deny the same.

52. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52 and therefore deny the same.

53. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53 and therefore deny the same.

54. Upon information and belief, Defendants admit that Cedar Creek is a tributary to the North Raccoon River and deny any remaining allegations in paragraph 54.

55. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55 and therefore deny the same.

56. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 and therefore deny the same.

57. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57 and therefore deny the same.

58. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 58 and therefore deny the same.

59. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59 and therefore deny the same.

60. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60 and therefore deny the same.

61. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 61 and therefore deny the same.

62. Defendants admit that a Total Maximum Daily Load (“TMDC”) was developed for three segments of the Raccoon River for nitrate-nitrogen and that a target of 9.5mg/L was established but deny any remaining allegations in paragraph 62.

63. Defendants deny the allegations in paragraph 63.

64. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64 and therefore deny the same.

65. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 65 and therefore deny the same.

66. Defendants are without knowledge or information sufficient to form a belief as to the truth of the estimates cited, deny they caused any such issues and deny any remaining allegations in paragraph 66.

67. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 67 and therefore deny the same.

68. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 68 and therefore deny the same.

### **C. DES MOINES WATER WORKS AND NITRATE POLLUTION**

69. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 69 and therefore deny the same.

70. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 70 and therefore deny the same.

71. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 71 and therefore deny the same.



72. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 72 and therefore deny the same.

73. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 73 and therefore deny the same.

74. Defendants deny the allegations in paragraph 74.

75. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 75 and therefore deny the same.

76. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 76 and therefore deny the same.

77. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 77 and therefore deny the same.

78. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 78 and therefore deny the same.

79. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 79 and therefore deny the same.

80. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 80 and therefore deny the same.

81. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 81 and therefore deny the same.

82. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 82 and therefore deny the same.

83. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 83 and therefore deny the same.

84. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 84 and therefore deny the same.

85. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 85 and therefore deny the same.

86. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 86 and therefore deny the same.

87. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 87 and therefore deny the same.

88. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 88 and therefore deny the same.

89. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 89 and therefore deny the same.

90. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 90 and therefore deny the same.

91. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 91 and therefore deny the same.

92. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 92 and therefore deny the same.

93. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 93 and therefore deny the same.

94. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 94 and therefore deny the same.

95. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 95 and therefore deny the same.

96. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 96 and therefore deny the same.

97. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 97 and therefore deny the same.

98. Defendants deny the allegations in paragraph 98.

99. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 99 and therefore deny the same.

100. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 100 and therefore deny the same.

101. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 101 and therefore deny the same.

102. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 102 and therefore deny the same.

103. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 103 and therefore deny the same.

104. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 104 and therefore deny the same.

105. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 105 and therefore deny the same.

106. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 106 and therefore deny the same.

107. Defendants admit tiling is permanent, deny they are the cause of any issues identified, deny they are a proper party to address such issues and deny any remaining allegations in paragraph 107 that pertain to them.

#### **D. DRAINAGE DISTRICTS GENERALLY**

108. Defendants admit that the ten named Drainage Districts are located in the North Raccoon watershed and the Des Moines Lobe geographic formation and deny any remaining allegations in paragraph 108.

109. Defendants deny knowledge as to prior glaciers, but admit land was swampy as alleged in paragraph 109.

110. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 110 and therefore deny the same.

111. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 111 and therefore deny the same.

112. Defendants admit drainage tile serves the purpose of removing storm water from fields consistent with the legislative mandate creating drainage districts and deny any remaining allegations in paragraph 112.

113. Defendants admit drainage tile serves the purpose of removing storm water from fields consistent with the legislative mandate creating drainage districts and deny any remaining allegations in paragraph 113.

114. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations as to events at the turn of the 19th century in paragraph 114 and therefore deny the same.

115. Defendants admit the allegations in paragraph 115.

116. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 116 and therefore deny the same.

117. Defendants admit drainage provided by Iowa's legislature is beneficial for agriculture, admit Iowa is agriculturally productive in part due to its land being properly drained and deny any remaining allegations in paragraph 117.

118. Defendants state that the number of pages in the code depends on how the code is divided, admit numerous sections pertain to drainage districts and that they specifically lay out their duties and obligations and deny any remaining allegations in paragraph 118.

119. Defendants admit the allegations in paragraph 119.

120. Defendants deny that paragraph 120 accurately summarizes Iowa Code Section 468.1 and deny any remaining allegations in paragraph 120.

121. Defendants admit Iowa Code § 468.50 gives the board authority to levy assessments and deny any remaining allegations in paragraph 121.

122. Defendants deny paragraph 122 accurately summarizes Iowa Code §§ 468.74, 468.527 and deny any remaining allegations in paragraph 122.

123. Defendants admit Iowa Code § 468.6 provides that two or more landowners may file in the office of the county auditor a petition for the establishment of a drainage district and deny any remaining allegations in paragraph 123.

124. Defendants deny that paragraph 124 accurately summarizes Iowa Code §§ 468.1, 468.500, 468.50 and deny any remaining allegations in paragraph 124.

125. Defendants admit Iowa's Code provides means by which a drainage district falling in two or more counties can be jointly managed by the counties and deny any remaining allegations in paragraph 125.

126. Defendants admit Iowa's Code provides procedures by which joint or inter-county drainage districts may be managed and deny any remaining allegations in paragraph 126.

**E. POINT SOURCE NITRATE POLLUTION BY THE DEFENDANT DRAINAGE DISTRICTS**

127. Defendants admit the allegations in paragraph 127.

128. Defendants admit they have facilitated installation of tiles and other means of storm water drainage as provided by Iowa's Code and deny any remaining allegations in paragraph 128.

129. Defendants admit the allegations in paragraph 129.

130. Defendants admit drainage districts are empowered to facilitate creating an infrastructure to drain storm water and deny any remaining allegations in paragraph 130.

131. Defendants admit private tiles may be connected to drainage district tiles and deny any remaining allegations in paragraph 131.

132. Defendants admit that private tiles may be connected to drainage district tiles and deny any remaining allegations in paragraph 132.

133. Defendants admit that private tiles may be connected to drainage district tiles and deny any remaining allegations in paragraph 133.

134. Defendants admit some of their tiles convey storm water to Cedar Creek and deny any remaining allegations in paragraph 134.

135. Defendants admit drainage district tiles convey storm water, admit little irrigation occurs in these districts and deny any remaining allegations in paragraph 135.

136. Defendants admit the allegations in paragraph 136.

137. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 137 and therefore deny the same.

138. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 138 and therefore deny the same.

139. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 139 and therefore deny the same.

140. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 140 and therefore deny the same.

141. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 141 and therefore deny the same.

142. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 142 and therefore deny the same.

143. Defendants deny the allegations in paragraph 143.

144. Defendants admit that nitrate is a soluble ion of Nitrogen, which is water soluble, occurs naturally in the environment and is used for plant and aquatic life nutrition and deny any remaining allegations in paragraph 144.

145. Defendants deny the allegations in paragraph 145.

146. Defendants deny the allegations in paragraph 146.

147. Defendants deny the allegations in paragraph 147.

148. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 148 and therefore deny the same.

149. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 149 and therefore deny the same.

150. Defendants admit tiles convey storm water as they are designed to do, and are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 150 and therefore deny the same.

151. Defendants deny the allegations in paragraph 151.

152. Defendants deny the allegations in paragraph 152.

153. Defendants deny the allegations in paragraph 153.

154. Defendants admit that drainage district tiles transport storm water and deny any remaining allegations in paragraph 154.

155. Defendants deny the allegations in paragraph 155.

156. Defendants deny the allegations in paragraph 156.

#### **F. INJURY AND DAMAGES TO DES MOINES WATER WORKS**

157. Defendants admit they lack legal authority to regulate nitrate and deny any remaining allegations in paragraph 157.

158. Defendants are without knowledge or information sufficient to form a belief as to the truth of any damage to the Des Moines Water Works, but deny that Defendants are the cause of any such damage or are empowered to address any such damage as alleged in paragraph 158.

#### **I. CLEAN WATER ACT**

159. Defendants hereby incorporate their responses to paragraphs 1 through 158 as if fully restated herein.

160. Defendants admit the Clean Water Act was created to protect the waters of the United States, admit the Clean Water Act establishes a National Pollutant Discharge Elimination System (“NPDES”) to regulate certain point source discharges into navigable waters and deny any remaining allegations in paragraph 160.



161. Defendants deny the allegations in paragraph 161.

162. Defendants admit the Clean Water Act so states and deny any remaining allegations in paragraph 162.

163. Defendants deny paragraph 163.

164. Defendants admit “pollutant” is defined to include “industrial, municipal, and agricultural waste discharged into water” under 33 U.S.C. § 1362(6) and deny any remaining allegations of paragraph 164.

165. Defendants admit 33 U.S.C. § 1362(12) so states and deny any remaining allegations of paragraph 165.

166. Defendants admit 33 U.S.C. § 1362(7) so states and deny any remaining allegations of paragraph 166.

167. Defendants admit certain storm water is excluded from Clean Water Act permitting and deny any remaining allegations in paragraph 167 to the extent that they are inconsistent with 33 U.S.C. §1362(14).

168. Defendants admit 33 U.S.C. § 1342 allows the Administrator to issue a permit for the discharge of a pollutant from certain point sources to a navigable water and deny any remaining allegations of paragraph 168.

169. Defendants deny paragraph 169 accurately summarizes 33 U.S.C. § 1362(11) and deny any remaining allegations in paragraph 169.

170. Defendants deny paragraph 170 accurately summarizes 33 U.S.C. § 1342(a) and deny any remaining allegations in paragraph 170.

171. Defendants admit 33 U.S.C. § 1342(b) provides mechanisms by which a state may administer its own NPDES permit program and deny any remaining allegations in paragraph 171.

172. Defendants admit that the IDNR administers the federal NPDES program and deny any remaining allegations in paragraph 172.

173. Defendants admit that 40 C.F.R. §122.2 so states and deny any allegations in paragraph 173.

174. Defendants deny the allegations in paragraph 174.

175. Defendants admit that segments of the Raccoon River are navigable and deny any remaining allegations in paragraph 175.

176. Defendants admit that segments of Cedar Creek are navigable and deny any remaining allegations in paragraph 176.

177. Defendants deny the allegations in paragraph 177.

178. Defendants deny the allegations in paragraph 178.

179. Defendants admit that the named Drainage Districts are managed or jointly managed by the Sac County Board of Supervisors, Buena Vista Board of Supervisors and Calhoun County Board of Supervisors and deny any remaining allegations in paragraph 179.

180. Defendants deny the allegation in paragraph 180.

181. Defendants deny the allegations in paragraph 181.

182. Defendants deny the allegations in paragraph 182.

183. Defendants deny the allegations in paragraph 183.

184. Defendants deny the allegations in paragraph 184.

185. Defendants deny the allegations in paragraph 185.

186. Defendants deny the allegations in paragraph 186.

WHEREFORE, the Defendants respectfully request that Count I of the Complaint be dismissed at Plaintiff's sole cost and expense and that fees and costs be assessed in the Defendants' favor.

## II. CHAPTER 455B

187. Defendants hereby incorporate their responses to paragraphs 1 through 186 as if fully restated herein.

188. Defendants deny the allegations in paragraph 188.

189. Defendants deny the allegations in paragraph 189.

190. Defendants admit paragraph 190 accurately quotes portions of Iowa Admin. Code r. 567-60.1 and deny any remaining allegations in paragraph 190.

191. Defendants state chapter 455B defines water pollution as “the contamination or alteration of the physical, chemical, biological, or radiological integrity of any water of the state by a source resulting in whole or in part from the activities of humans, which is harmful, detrimental, or injurious to public health, safety, or welfare...” and deny any remaining allegations in paragraph 191.

192. Defendants deny that paragraph 192 accurately summarizes Iowa Code § 455B.186(1) and deny any remaining allegations in paragraph 192.

193. Defendants admit Iowa Code § 455 so defines “pollutant” and “other waste” and deny any remaining allegations in paragraph 193.

194. Defendants state IDNR Rule 60.2 states “any addition” rather than “an addition,” admit the remainder of the quote accurately restates IDNR Rule 60.2 and deny any remaining allegations in paragraph 194.

195. Defendants deny Iowa Code § 455B.171 so states and deny any remaining allegations in paragraph 195.

196. Defendants admit that return flow from irrigated agriculture and agricultural storm water is excluded from the definition of “point source” under the Iowa Administrative Code and deny any remaining allegations in paragraph 196.

197. Defendants Iowa Code § 455B.171(37), not (39) contains the language quoted in paragraph 197 and deny any remaining allegations in paragraph 197.

198. Defendants admit Iowa Admin. Code r. 567-62.1(1) so states and deny any remaining allegations in paragraph 198.

199. Defendants admit Iowa Admin. Code r. 567-60.2 so states and deny any remaining allegations in paragraph 199.

200. Defendants deny paragraph 200 accurately summarizes Iowa Admin. Code r. 567-64.4(1) and deny any remaining allegations in paragraph 200.

201. Defendants admit Iowa Admin. Code r. 567-60.2 so states and deny any remaining allegations in paragraph 201.

202. Defendants admit Iowa Admin. Code r. 567-60.2 so states and deny any remaining allegations in paragraph 202.

203. Defendants admit Iowa Admin. Code r. 567-60.2 so states and deny any remaining allegations in paragraph 203.

204. Defendants admit paragraph 204 conveys the meaning of a portion of IDNR Rule 64.3 and deny any remaining allegations of paragraph 204.

205. Defendants state Iowa Code § 455B.111(3) provides citizen standing and deny any remaining allegations of paragraph 205.

206. Defendants deny § 455B.171(18) relates to paragraph 206, deny Des Moines Water Works has been injured by the Drainage Districts, deny they have violated Iowa Code 455B and deny any remaining allegations in paragraph 206.

207. Defendants admit the Raccoon River is a river in Iowa, admit the Raccoon River falls under the definition of “water of the state” in Iowa’s code and deny any remaining allegations in paragraph 207.

208. Defendants deny the allegations in paragraph 208.

209. Defendants deny the allegations in paragraph 209.

210. Defendants deny the allegations in paragraph 210.

211. Defendants deny the allegations in paragraph 211.

212. Defendants deny the allegations in paragraph 212.

213. Defendants deny the allegations in paragraph 213.

214. Defendants deny the allegations in paragraph 214.

215. Defendants deny the allegations in paragraph 215.

216. Defendants deny the allegations in paragraph 216.

WHEREFORE, the Defendants request that Count II of Plaintiff’s Complaint be dismissed at Plaintiff’s sole cost and expense and that fees and costs be assessed in the Defendants’ favor.

### **III. PUBLIC NUISANCE**

217. Defendants hereby incorporate their responses to paragraphs 1 through 216 as if fully restated herein.

218. Defendants deny the allegations in paragraph 218.

219. Defendants deny paragraph 219 accurately states the purpose of the Drainage Districts under Iowa Code § 468 and deny any remaining allegations in paragraph 219.

220. Defendants deny the allegations in paragraph 220.

221. Defendants deny the allegations in paragraph 221.

222. Defendants deny the allegations in paragraph 222.

223. Defendants deny the allegations in paragraph 223.

224. Defendants deny the allegations in paragraph 224.

225. Defendants deny the allegations in paragraph 225.

226. Defendants admit Iowa Code § 455B.262(2) states the water resources of the state should be put to beneficial use and deny any remaining allegations in paragraph 226.

227. Defendants admit the Iowa Code recognizes groundwater as precious and vulnerable natural resource and the protection of groundwater is essential to the health, welfare, and economic prosperity of citizens of the state, admit the Iowa Code states all persons have a right to lawful use of groundwater unimpaired by the activities of any person which render the water unsafe or unpotable, deny they have violated these provisions of the Iowa Code and deny any remaining allegations in paragraph 227.

228. Defendants deny the allegations in paragraph 228.

229. Defendants deny the allegations in paragraph 229.

230. Defendants deny the allegations in paragraph 230.

231. Defendants deny the allegations in paragraph 231.

232. Defendants deny the allegations in paragraph 232.

233. Defendants deny the allegations in paragraph 233.

WHEREFORE, Defendants request that the Count III of the Plaintiff's Complaint be dismissed at Plaintiff's sole cost and expense and that fees and costs be assessed in the Defendants' favor.

#### **IV. STATUTORY NUISANCE**

234. Defendants hereby incorporate their responses to paragraphs 1 through 233 as if fully restated herein.

235. Defendants deny the allegations in paragraph 235.

236. Defendants admit that the drainage districts are in Sac, Calhoun and Buena Vista Counties and deny any remaining allegations in paragraph 236.

237. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 237 and therefore deny the same.

238. Defendants deny the allegations in paragraph 238.

239. Defendants deny the allegations in paragraph 239.

240. Defendants deny the allegations in paragraph 240.

241. Defendants deny the allegations in paragraph 241.

WHEREFORE, Defendants request that Count IV of Plaintiff's Complaint be dismissed at Plaintiff's sole cost and expense and that fees and costs be assessed in the Defendants' favor.

#### **V. PRIVATE NUISANCE**

242. Defendants hereby incorporate their responses to paragraphs 1 through 241 as if fully restated herein.

243. Defendants deny the allegations in paragraph 243.

244. Defendants deny the allegations in paragraph 244.

245. Defendants deny the allegations in paragraph 245.

WHEREFORE, Defendants request that Count V of Plaintiff's Complaint be dismissed at Plaintiff's sole cost and expense and that fees and costs be assessed in the Defendants' favor.

#### **VI. TRESPASS**

246. Defendants hereby incorporate their responses to paragraphs 1 through 245 as if fully restated herein.

247. Defendants deny the allegations in paragraph 247.

248. Defendants deny the allegations in paragraph 248.

249. Defendants deny the allegations in paragraph 249.

250. Defendants deny the allegations in paragraph 250.

251. Defendants deny the allegations in paragraph 251.

252. Defendants deny the allegations in paragraph 252.

WHEREFORE, Defendants request that Count VI of Plaintiff's Complaint be dismissed at Plaintiff's sole cost and expense and that fees and costs be assessed in the Defendants' favor.

#### **VII. NEGLIGENCE**

253. Defendants hereby incorporate their responses to paragraphs 1 through 252 as if fully restated herein.

254. Defendants deny the allegations in paragraph 254.

255. Defendants deny the allegations in paragraph 255.

256. Defendants admit drainage tile conveys water including nutrients the water may contain just as the legislature provided and deny any remaining allegations in paragraph 256.

257. Defendants deny the allegations in paragraph 257.

258. Defendants deny the allegations in paragraph 258.

259. Defendants deny the allegations in paragraph 259.



260. Defendants deny the allegations in paragraph 260.

261. Defendants deny the allegations in paragraph 261.

WHEREFORE, Defendants request that Count VII of Plaintiff's Complaint be dismissed at Plaintiff's sole cost and expense and that fees and costs be assessed in the Defendants' favor.

#### **VIII. TAKING WITHOUT JUST COMPENSATION**

262. Defendants hereby incorporate their responses to paragraphs 1 through 261 as if fully restated herein.

263. Defendants deny the allegations in paragraph 263.

264. Defendants admit they operate as directed by the Legislature and deny any remaining allegations in paragraph 264.

265. Defendants admit the allegations in paragraph 265.

266. Defendants deny the allegations in paragraph 266.

267. Defendants admit the allegations in paragraph 267.

268. Defendants admit that the drainage systems put in place are permanent structures and deny any remaining allegations in paragraph 268.

269. Defendants deny the allegations in paragraph 269.

270. Defendants deny the allegations in paragraph 270.

271. Defendants deny the allegations in paragraph 271.

272. Defendants admit drainage districts benefit the public health and welfare by draining land and deny any remaining allegations in paragraph 272.

273. Defendants admit the drainage districts have not directly compensated the Des Moines Water Works and deny any remaining allegations in paragraph 273.

274. Defendants deny the allegations in paragraph 274.

275. Defendants deny the allegations in paragraph 275.

WHEREFORE, Defendants request that Count VIII of Plaintiff's Complaint be dismissed at Plaintiff's sole cost and expense and that fees and costs be assessed in the Defendants' favor.

#### **IX. DUE PROCESS AND EQUAL PROTECTION**

276. Defendants hereby incorporate their responses to paragraphs 1 through 275 as if fully restated herein.

277. Defendants deny the allegations in paragraph 277.

278. Defendants admit they are not subject to suit and deny any remaining allegations in paragraph 278.

279. Defendants deny the allegations in paragraph 279.

280. Defendants deny the allegations in paragraph 280.

281. Defendants deny the allegations in paragraph 281.

282. Defendants deny the allegations in paragraph 282.

WHEREFORE, Defendants request that Count IX of Plaintiff's Complaint be dismissed at Plaintiff's sole cost and expense.

#### **X. INJUNCTIVE RELIEF**

283. Defendants hereby incorporate their responses to paragraphs 1 through 282 as if fully restated herein.

284. Defendants deny the allegations in paragraph 284.

285. Defendants note that Des Moines Water Works does not state what has caused it to suffer any damage of any kind in paragraph 285. Thus, Defendants cannot admit or deny whether Des Moines Water Works has ever suffered any injury of any kind as appears to be

alleged in paragraph 285. Defendants deny they have caused any injury to Des Moines Water Works.

286. Defendants admit the drainage systems put in place are perpetual and permanent and deny any remaining allegations in paragraph 286.

287. Defendants deny the allegations in paragraph 287.

288. Defendants deny the allegations in paragraph 288.

289. Defendants deny the allegations in paragraph 289.

290. Defendants deny the allegations in paragraph 290.

WHEREFORE, Defendants request that Count X of Plaintiff's Complaint be dismissed at Plaintiff's sole cost and expense.

#### **AFFIRMATIVE DEFENSES**

1. Some or all of Plaintiff's claims are barred by the applicable statutes of limitations.

2. Plaintiff's claims are expressly barred by the Clean Water Act and Iowa's Code.

3. Defendants are not proper party defendants.

4. Defendants are immune from Plaintiff's claims pursuant to Iowa law.

5. Some or all of Plaintiff's claims are barred by the doctrine of laches.

6. Some or all of Plaintiff's claims are barred by the Doctrine of Prescriptive Easement.

7. Some or all of Plaintiff's claims are barred in whole or in part by the Political Question Doctrine.

8. Some or all of Plaintiff's claims are barred by preemption by state and/or federal law.

9. Plaintiff's claimed injuries were caused in whole or in part by others whose actions were not controlled by or related to Defendants. Such actions are the superseding, supervening and/or intervening cause of Plaintiff's injuries and/or damages and, therefore, Plaintiff may not recover from Defendants as a matter of law.

10. Plaintiff's claimed injuries were caused in whole or in part by Acts of God. Such Acts are the superseding, supervening and/or intervening cause of Plaintiff's injuries and/or damages and, therefore, Plaintiff may not recover from Defendants as a matter of law.

11. Plaintiff's claims are barred to the extent that they have failed to mitigate and/or minimize their damages, if any.

12. Comparative fault may apply to some or all of Plaintiffs' negligence claims, which would reduce or bar such claims.

13. Plaintiff's claims are barred as Plaintiff assumed the risk.

14. The relief sought by Plaintiff is, in whole or in part, within the particular expertise of, and is being addressed by, federal and state governments and their relevant agencies such as the United States Environmental Protection Agency and the Iowa Department of Natural Resources and, thus, this Court should decline to exercise jurisdiction over this matter pursuant to the doctrine of primary jurisdiction.

15. Plaintiff's claims are barred, in whole or in part, by their failure to exhaust administrative remedies.

16. Plaintiff's claims are barred by Iowa Code § 455E.6.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon the parties to this action by serving a copy upon each party listed below on May 22, 2015, by

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