

IOWA FARM BUSINESS

Des Moines Sunday Register MAY 6, 1984

SECTION F
FARM
CLASSIFIED ADS

Copyright 1984, Des Moines Register
and Tribune Company

Iowa farmland washes away as soil erosion dispute rages on

By GENE ERB

Register Business Writer

CHELSEA, IA. — Frances Waterbury says she doesn't know much about soil erosion, but she knows when she's been buried by water.

She knows, too, that the problems on her 106-acre farm near here began about 10 years ago after the nearby "creek" began filling with silt from the fields above.

Once low but reasonably dry, her farm gets swamped every time there's a good rain now. Muddy water rushes down the twisting creek bed, hits the county road culvert near Waterbury's house and gushes over the paved road and over the banks, flooding her property, she says.

"See that place? There used to be a pond there. That's all filled in now. Last summer, it was five inches deep coming over the road," said Waterbury, 65.

But having her farm turned into swampland because of erosion from plowed hills above is just one of the problems officials hope to resolve with a lawsuit against owners of the eroding land.

The primary defendant in the lawsuit is H & L Partnership, operated by John Harder of Cedar Rapids. It's the first lawsuit of its kind here and one of only a handful filed in Iowa since enactment of state soil conservation enforcement measures in 1971.

Government officials turned to the courts in an effort to get Harder to institute soil conservation measures on his 300-acre farm. The suit contends that erosion in some areas exceeds 40 tons per acre per year, while the legal limit is 5 tons per acre per year. And officials add that much of the land never should have been cleared and plowed in the first place.

Harder did not return calls to the Sunday Register. However, his attorney, Michael Donohue of Cedar Rapids, said:

"John just bought the farm two years ago. It was leased out to a tenant two years ago. It was in [the payment-in-kind program] one year ago. Most of the problems are long-term problems. He didn't cause the problems and he hasn't actually farmed the land since purchasing it two years ago."

Asked what Harder plans to do about the lawsuit, Donohue said he's considering several alternatives. He declined further comment.

County records show Harder purchased the land on contract from Ludvick and Mary Ann Sheda on Nov. 17, 1981. The Shedas purchased the land

on contract from the conservatorship of Charles Ludvick on Dec. 28, 1978, records show. Officials said the previous owners were named as defendants in the suit in the event that Harder defaults on his contract and the land goes back to the Shedas or to the Ludvick estate.

District conservationist John Nicholson said it's true that there were erosion problems in the area before Harder purchased the land, but the problems grew dramatically after he bought it.

"He's bulldozed a lot of trees out, moving toward the creek, trying to reclaim as much acreage as possible. But the closer to the creek you get, the steeper it is. It wasn't farmed as heavily before the present owner took the land. It was rotated, and some of it was left in pasture," said Nicholson.

"He told the district commissioners that he wants as much of it in row crops as possible for the ASCS subsidies. He wants his crop base as large as possible."

A Government Accounting Office (GAO) survey of eight counties in Iowa, including Benton County where Harder owns land, found that Harder was the second-largest Benton County recipient of in-kind payments in 1983, receiving 107,757 bushels of corn valued at \$344,822.

Golden Grain Enterprises, which state officials say Harder has an interest in, was the largest recipient, receiving 185,981 bushels of corn valued at \$595,140.

The survey did not include Tama County, but Agricultural Stabilization & Conservation Service (ASCS) officials there said Golden Grain Enterprises received 12,760 bushels of corn there. The corn would have been worth \$40,832 at \$3.20 per bushel.

Steven Norby, the assistant attorney general who filed the suit on behalf of the conservation district, said: "I think the soil losses are relatively high, and I think it's an unfortunate situation in the sense that this is not an area that was traditionally in row crops. It had been in pasture and timber for years."

"It is unfortunate that the decision was made to go row crops. Our present regulatory ability is good, but doesn't go as far as one might wish."

Officials say Harder has made no effort to comply with requests and orders to begin conservation measures, although they've been trying to get him to do something for more than a year, and he's promised to cooperate on several occasions.

In fact, said Nicholson, Harder



Tama County employee Dwight Surber sinks into silt caused by erosion, which also has led to several accidents near this Chelsea roadside.



Warnings signs were added...



... But that's small consolation to Frances Waterbury, whose property has been damaged.

cleared more trees from the land last fall, and there have been complaints that he is doing the same thing on other farms he operates, including a complaint from the Iowa Conservation Commission that Harder's farming practices are threatening a state marshland about a mile west of Waterbury's place.

Norby said records show that Harder owns or has an interest in about 2,230 acres in Tama County, 939 acres in Benton County and 728 acres in Iowa County. Norby and county officials said the land is listed under his name, his wife's name, other individ-

uals' names and the names of several partnerships and corporations, including H & L Partnership, Golden Grain Enterprises, Dellington Farms Inc. and The Northern Trust Co.

Officials added that Harder appears to have purchased some of the land for the Mormon Church, because a portion of the taxes have been paid by the church's real estate division in Salt Lake City, Utah.

Nicholson said the most recent complaints about Harder's farming practices have come from Jim Ledvina, an area farmer, and the Iowa Conservation Commission. But there is little of-

ficials can do about the new complaints until the complainants have enough evidence of damage to their property to file legal loss claims against Harder.

Bob Kurtt, a Conservation Commission wildlife biologist, said his agency will be monitoring siltation at Otter Creek Marsh for the next couple of years to compile evidence of damage there.

"We're pretty concerned about what he's doing to the land above the marsh, because we have a pretty valuable resource there," said Kurtt.

"He's cleared off all the timber just

north of the marsh here. It was basically burr oak and shag bark hickory, mature trees probably 18 to 20 inches in diameter and 60 to 80 feet tall. I think he started clearing last fall and finished this spring. I went by a couple weeks ago, and he was burning a large pile of trees and brush."

Kurtt said he fears Harder's farming practices could ruin the 1,100-acre wetland area, which attracts hunters in the fall and bird watchers in the spring. "He is really using some bad

EROSION

Please turn to Page 4F

State uses search warrant to take soil measurements

EROSION

Continued from Page One

management practices . . . and causing a lot of problems for a lot of people."

Ledvina, a dairy farmer with 300 acres and 200 cows, said Harder is ruining the farm adjacent to his.

"You'd have to see the hill. It's pretty steep. There were some nice oak trees and hickory trees. He just took them down and pushed them up behind the barn," Ledvina said. "It's just destruction as far as I'm concerned."

"In another area, he just took the trees down right along the ditch and shoved them right into the ditch without any regard to where the water would go . . . He's going right up to the edge of ditches to expand his corn base."

"For the next generation, it'll be practically gone. It's just too bad there are people like him around."

The current action against Harder began in March 1983 with a complaint to the county engineer by Waterbury, who has suffered through a remarkable string of accidents caused by flooding over the road near her house.

Four years ago, a car hit the deep water rushing over the road. The driver lost control. The car careened off a rose bush and crashed into Waterbury's house, tearing an inside stairway from the wall and making a shambles of her living room.

"It was a noise that sounded like thunder . . . Such a noise! Then I heard glass breaking," Waterbury told the local newspaper at the time.

Since then, there have been three more water-caused crashes: A truck rammed her fence. A car hit her mailbox. And just 12 weeks ago, a car smashed into her garage, ripping one side away and demolishing her \$800 John Deere mower.

Following Waterbury's complaint, Tama County engineer Robert Gumbert filed a legal loss claim with the conservation district, claiming that sediment from the Harder property had filled up two culverts under the road near Waterbury's house.

Gumbert claimed the sediment, more than three feet deep in some places, has caused water and mud to flow over the county road, creating a slippery condition that causes cars to slide out of control. The latest accident victim, whose car chopped off a corner of Waterbury's garage, has filed a negligence claim against the county.

"The conservation board told the county engineer to try to get the people involved to comply voluntarily. When that failed, we received an official complaint from the county engineer Oct. 5, 1983," said Nicholson.

Harder initially said he would take care of the problem, Nicholson said, but he didn't, and he "would never answer any correspondence from the county engineer or from us."

In February, conservation district officials, armed with a search warrant, went on Harder's property and neighboring farms to take erosion measurements. Nicholson said it was the first time the attorney general's office has had to obtain a search warrant to make such measurements.

On March 22, the conservation district issued administrative orders directing Harder and other farmers to correct problems found on their land. The worst problems were found on Harder's property, and he was given until April 15 to begin the required soil conservation work, which Nicholson estimated would cost about \$25,000, with Harder paying roughly \$6,250 and the state paying the balance.

Coincidentally, Nicholson saw Harder in the Tama County ASCS office the day the order was issued: "He was there on other business . . . I asked him to come over to my office to talk about [the erosion problem]. I tried to explain to him what was happening and what he needed to do."

Nicholson said Harder responded by telling him in vulgar language that he didn't have to mess "around with that."

He added that all Harder had to do to comply with the order was to apply for state assistance for the erosion control work by April 15. Under state law, the state will pay 75 percent of the cost for any non-voluntary erosion control work.

However, Harder did not apply for assistance, or make any move to correct the problem. So on April 18, Norby filed suit.

Norby said Donohue told him that Harder plans to comply with the order, "so we are not pursuing the litigation now . . . but we want the record to be clear, particularly if someone else buys the land . . . and we want to make sure that our agreement is enforceable."

Informed late last week that Harder still hadn't taken any action to comply with the order, he said, "We'll just have to rely on his good faith, I guess."