

February 5(a)2018.min

APPROVED (February 20, 2018)
**REGULAR MEETING OF THE BOARD OF MANAGERS OF THE
MIDDLE- SNAKE-TAMARAC RIVERS WATERSHED DISTRICT
HELD AT 453 NORTH MCKINLEY STREET, WARREN, MN
8:30 A.M. February 5, 2018**

The meeting was called to order by President John W Nelson. Managers John W Nelson, Bill Petersen, Brad Blawat, David Bakke and Robert Kovar were present. Connie Kujawa, Tony Nordby, Kyle Schlomann, Joel Praska, Tyler Larson, Dillon Nelson, and LeRoy Vonasek were also present.

Motion by Mr. David Bakke, seconded by Mr. Robert Kovar that the agenda be approved, as amended with the addition of Newfolden/Middle River and RCPP Projects. Motion unanimously carried.

Rolland Miller joined the meeting at approximately 8:32 a.m.

Motion by Mr. Bill Petersen, seconded by Mr. Robert Kovar that the minutes of the January 5, 2018 meeting be approved, as corrected. Motion unanimously carried.

Motion by Mr. Bill Petersen, seconded by Mr. Brad Blawat that the following bills be paid from the Administrative Funds that payroll checks numbered 6177 through 6181 inclusive for a total of \$6,892.21; that check numbered 17773 for a total of \$2,188.22; and Ditch Fund check numbered 3176 for a total of \$138,595.00 be paid. Motion unanimously carried.

The following permits were unanimously approved:

1. Permit (18-004) to James Jacobson to install a new field approach with a 18" culvert, off CSAH #6, NE4, Section 11, West Valley Township.
2. Permit (18-005) to Burlington Northern Sante Fe Railroad to replace 6-span timber bridge with 3-span beam bridge; SW4, Section 20, Sinnott Township.
3. Permit (18-006) to Burlington Northern Sante Fe Railraod to replace 3-span timber bridge with a single span box beam bridge; NW4, Section 8, Sinnott Township.

Motion by Mr. Robert Kovar, seconded by Mr. Bill Petersen that the Chairman be authorized to execute the payment request form with the Marshall County SWCD, in the amount of \$12,510.00 for reimbursement of costs on Watershed Ditch #7 Improvement. Motion unanimously carried.

Tony Nordby reported that last fall, test holes were drilled on the sloughing occurring, along the South side of Judicial Ditch #1, in the vicinity of 190th St NW, 1 mile from the Red River, to determine if the sloughing is occurring due to ground water seepage. He stated, in his opinion, it appears the sloughing is attributed to ground water seepage. The Board directed Tony Nordby to design a plan and an estimate of costs to repair the areas sloughing on the South side of Judicial Ditch #1.

Administrator Praska reported three beaver dams have been located on Judicial Ditch #28, in Sections 32/33, 27/26 and 23 of Como Township. He stated he discussed this matter with Davidson Construction to see if they would be available to remove the dams,

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and he was informed that Davidson Construction could remove them next week. It was the consensus of the Board, that Administrator Praska proceed with the removal of the dams and that Davidson Construction be authorized to perform the work.

Motion by Mr. Robert Kovar, seconded by Mr. David Bakke to recess the regular meeting and reconvene the recessed Hearing on the Petition of Loren and Deborah Zutz and Ron Zutz to remove properties from the Benefited area of Judicial Ditch #25-1. Motion unanimously carried.

The regular meeting was recessed and the recessed Hearing on the Judicial Ditch #25-1 was reconvened at approximately 9:10 a.m. The hearing was recorded.

Administrator Praska provided a summary of the Board action taken at the Hearing of the Petition of Loren and Deborah Zutz and Ron Zutz, to remove properties from the benefited area of Judicial Ditch #25-1, held on January 18, 2018, and presented the Findings and Order for Board action.

Motion by Mr. Bill Petersen, seconded by Mr. Robert Kovar that the following Findings and Order be adopted:

**ORDER DENYING PETITIONED ACTION FOR THE REMOVAL OF PROPERTIES
FROM THE BENEFITED AREA OF JUDICIAL DITCH #25-1**

FINDINGS

1. In approximately 1974, the District Court transferred jurisdiction over JD 25 to the District. In approximately 1975, JD 25 was split into three separate Drainage Systems: JD 25-1, 25-2 and 25-3.
2. Benefits for JD 25-1 were redetermined in September 2012 and subsequently modified by court settlement.
3. On or about November 20, 2017, Loren and Deborah Zutz and Ron Zutz petitioned the District to remove property in the S ½ of section 1 in Comstock Strip Township (T154N, R46W); the NE ¼ of section 12, Comstock Strip Township; the NE ¼ of section 8, Comstock Strip Township; the SE ¼ of section 9, Comstock Strip Township; and the NW ¼ of section 18, Numedal Township (T154N, R45W).
4. All of the petitioned properties were determined to be benefitted by JD 25-1 in the 2012 redetermination of benefits. Though petitioners appealed the 2012 redetermination as to their properties, they did not, at that time, argue that the property was not benefitted by JD 25-1 or that the Agassiz Valley Water Resource Management Project (AVWRMP), which impounds and meters waters draining from a portion of the drainage area of JD 25-1, eliminated drainage benefit. Rather, petitioners settled for a lesser benefits amount than originally determined by the viewers.
5. Petitioners, through their representative, James Stengrim, presented an argument that construction of the AVWRMP served to divert drainage from petitioners' properties from JD 25-1.
6. While it is true that the AVWRMP receives drainage waters from petitioners' lands, those same waters drain to and necessarily use portions of JD 25-1 as an outlet.

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7. Petitioners presented no evidence of any modification of their property to prevent beneficial drainage from the property from regularly using JD 25-1 as an outlet.
8. Upon receipt of the petition, the Board directed its engineer to review the petition, investigate conditions within the drainage area of JD 25-1 and to offer an opinion of whether waters from the petitioners' property have been diverted from the drainage system, or the property cannot significantly or regularly use the drainage system; and whether the property is benefited by the drainage system.
9. The engineer provided report dated November 30, 2017, and was present at the hearing to present his opinion. The engineer's report is incorporated into these findings by reference.
10. The engineer's opinion is that JD 25-1 continues to provide benefit to the properties petitioned for removal.
11. The Board noticed and held a public hearing on the petition pursuant to statutes section 103E.805. The hearing was convened on January 18, 2018. The Board received its engineer's report, a report of its staff and public comment from those present at the hearing.
12. Upon the completion of public comment, the Board closed the public comment portion of the hearing.
13. Upon consideration of the petition and evidence presented, the Board reviewed the decision criteria found in statutes section 103E.805, specifically:

At the hearing, the drainage authority shall make findings and shall direct, by order, that the petitioners' property be removed from the drainage system if the drainage authority determines:

- (1) that the waters from the petitioners' property have been diverted from the drainage system, or that the property cannot significantly or regularly use the drainage system;
- (2) that the property is not benefited by the drainage system; and
- (3) that removing the property from the drainage system will not prejudice the property owners and property remaining in the system.

14. The Board also reviewed the drainage code, statutes chapter 103E, description of drainage benefit found in statutes section 103E.315, which states:

The viewers shall determine the amount of benefits to all property within the watershed, whether the property is benefited immediately by the construction of the proposed drainage project or the proposed drainage project can become an outlet for drainage, makes an outlet more accessible, or otherwise directly benefits the property.

15. The Board determined, by 6-1 vote, after considering all of the evidence presented in the hearing, that:
 - a) waters from the petitioners' properties have not been diverted from the drainage system and still regularly use portions of JD 25-1 as an outlet;
 - b) the properties are benefited by the drainage system; and

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- c) the removal of the property, as proposed, will prejudice other owners of property in the drainage system by shifting additional costs of the drainage system to properties remaining in the system.
16. After the Board's determination, above, the Board approved a motion to continue the hearing to its regular meeting on February 5, 2018 and directed its staff to prepare findings and an order consistent with the record of proceedings.
17. Evidence of all actions in this matter, including affidavits of publication and mailing are present in the record of proceedings and are incorporated into these findings by reference.

ORDER

- A. The petition of Loren and Deborah Zutz and Ron Zutz to remove property in the S ½ of section 1 in Comstock Strip Township (T154N, R46W); the NE ¼ of section 12, Comstock Strip Township; the NE ¼ of section 8, Comstock Strip Township; the SE ¼ of section 9, Comstock Strip Township; and the NW ¼ of section 18, Numedal Township (T154N, R45W) from Judicial Ditch (JD) 25-1 of Marshall, Pennington and Polk Counties, Minnesota, is hereby **DENIED**.
- B. The properties shall remain on the benefit rolls of JD 25-1 as determined by the 2012 redetermination of benefits and subsequently modified by court settlement.

After discussion and upon vote, the President declared the Findings and Order passed by the following votes: 5 yeas, (Bakke, Blawat, Kovar, Nelson, Petersen) 0 nay, and declared the Findings and Order adopted.

Motion by Mr. Robert Kovar, seconded by Mr. Bill Petersen that the hearing on the Petition of Loren and Deborah Zutz and Ron Zutz to remove properties from the Benefited area of Judicial Ditch #25-1 be closed and the regular meeting of the Board of Managers be reconvened. Motion unanimously carried.

The hearing was closed and the regular meeting reconvened at approximately 9:25 a.m.

Administrator Praska reported the minutes of the public hearing, held on January 18, 2018, on the District's Buffer Rule/Ordinance need the signature of the District Secretary so they can be forwarded, along with the District's Buffer Rule/Ordinance, to the Board of Soil and Water Resources for final approval. Mr. David Bakke was directed to sign the minutes.

Administrator Praska reported the Marshall County Sentence to Serve crew has begun to remove debris on the Middle River, within the City of Newfolden and the District has committed \$1,000.00 towards the project.

Administrator Praska reported the Audubon Minnesota received a grant to control invasive hybrid cattails in impoundment sites. He stated Audubon Minnesota sprayed the cattails at the Agassiz Valley Water Resource Management Project last fall, and are in the process of putting together bid packets to mow and remove the cattails from approximately 550 acres within the west side of the Agassiz Valley Water Resource Management Project. Administrator Praska stated the proposed work is to be completed by March 15, 2018.

Dillon Nelson, HDR Engineering, reported they are waiting to hear from the Minnesota Department of Natural Resources regarding the railroad crossing/culverts within the City

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of Newfolden; they are working with the City of Newfolden to put together a newsletter informing the residents of the progress in removing the City of Newfolden from the floodplain and the alternatives, and that HDR Engineering will be attending the City Council meeting in Newfolden, Minnesota, tonight.

Tony Nordby reported the Step 2 review points on the Judicial Ditch #14 RCPP and Judicial Ditch #19 RCPP projects have been submitted to the NRCS and the Step 3 review points should be completed this month.

Administrator Praska reported two data practice requests have been received and the requested documentation has been forwarded to the requestor.

Motion by Mr. Robert Kovar, seconded by Mr. Brad Blawat that the District advertise and solicit bids for equipment rental for the 2018 construction season. Motion unanimously carried.

Administrator Praska reported the Minnesota Department of Transportation will be doing road work on Minnesota Trunk Highway #1 and are requesting to curb the cement slab, on the District property, south of the District office.

Motion by Mr. Brad Blawat, seconded by Mr. David Bakke to allow the Minnesota Department of Transportation to curb the cement slab on the District property, adjacent to Minnesota Trunk Highway #1. Motion unanimously carried.

Administrator Praska reported the Red Lake Watershed District will purchase two kiosks, for a total of \$5,000.00, from the District, provided all signage is completed; that he has submitted a grant application to the Northwest Regional Sustainable Development Partnership to assist with printing and installation costs of the kiosks; and that he will be drawing up the agreement for the Use and Occupancy of the residence at the Agassiz Audubon property. The Board stated they want the Use and Occupancy agreement to address liability matters as well.

Motion by Mr. Bill Petersen, seconded by Mr. Brad Blawat that the funds received, in 2013, for the Birding Trail, in the amount of \$500.00 each, be returned to Kittson County, Two Rivers Watershed and the Roseau River Watershed, respectively. Motion unanimously carried.

Administrator Praska reported he attended the Administrators meeting, held in Fertile, Minnesota and inquired of other Watershed Administrators how they pay for permitting expenses. He stated he was informed other watersheds pay for permit expenses as part of their project fund levy. Administrator Praska stated he will discuss this with the District's Auditor and that this matter will be up for discussion after the 2017 audit is completed on the District's finances.

Administrator Praska announced that Engineer Technicians, Kyle Schlomann and Tyler Larson, will be receiving AutoCad training, on Wednesday, Feb 7, 2018, at Houston Engineering, in Thief River Falls and that Kyle Schlomann will be attending the Water Quality Training Seminar at the UMC campus, in Crookston, on March 21, 2018.

Administrator Praska reported he contacted the renter of the hayland at the Agassiz Valley Water Resource Management Project, in section 7 of Comstock Township, and informed him of the concerns the Board has with his farming practices and inquired if he

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would be able to make his rental payment for 2018. Administrator Praska stated the renter acknowledged he will be making the rental payment, due April 1, 2018.

A discussion was held concerning phantom emails being received by some of the Board managers. Administrator Praska was directed to contact the District's IT person to see if there is a way to determine where the emails are originating.

Motion by Mr. Robert Kovar, seconded by Mr. Bill Petersen that the regular meeting be recessed and the recessed hearing on the Amended Rules of the District, be reconvened. Motion unanimously carried.

The regular meeting was recessed and the recessed hearing on the Amended Rules was reconvened at approximately 10:08 a.m.

Motion by Mr. Robert Kovar, seconded by Mr. Brad Blawat that the hearing on the Amended Rules of the District, be recessed until 11:00 a.m., March 19, 2018, and that the regular meeting be reconvened. Motion unanimously carried.

The Hearing on the Amended Rules was recessed and the regular meeting was reconvened at approximately 10:13 a.m.

Mr. John W Nelson announced the Drainage and Wetland Conference will be held on February 13, 2018, in St. Cloud, Minnesota and inquired if any manager would be attending. The managers, present, stated they would not be attending.

Correspondence from the Minnesota Association of Watershed Districts regarding the Legislative Reception, Breakfast, and Day at the Capitol was distributed. Connie Kujawa reported she has reserved rooms at the Embassy Suites for March 7, 2018.

It was announced the Red River Watershed Management Board meeting is scheduled for February 20, 2018, at the Wild Rice Watershed District, in Ada, Minnesota.

Tony Nordby announced a committee meeting regarding the Oslo Access is scheduled for 1:30 p.m., on February 13, 2018, at the Houston Engineering office in Grand Forks, North Dakota.

The following meetings were announced:

February 13, 2017-Drainage & Wetland Conference, St. Cloud
February 20, 2018-Regular Meeting, 8:30 a.m., District Office
March 5, 2018-Regular Meeting, 8:30 a.m., District Office
March 7-8, 2018-Legislative Breakfast, St. Paul

Connie Kujawa
Recording Secretary

David Bakke
Secretary