

APPROVED (as corrected March 16, 2009)
**REGULAR MEETING OF THE BOARD OF MANAGERS OF THE
MIDDLE- SNAKE-TAMARAC RIVERS WATERSHED DISTRICT
HELD AT 453 NORTH MCKINLEY STREET, WARREN, MN
4:00 P.M. FEBRUARY 23, 2009**

The meeting was called to order by Vice President John W Nelson. Managers John W Nelson, Alvin Nybladh, Loren Zutz, Arlyn Stroble, Ben Kleinwachter and Elden Elseth were present. Manager Doug Sorenson was not present. Nick Drees, Connie Kalinowski, Danny Omdahl, Jeff Hane, Wallace Diedrich, Ernest Pribula, Ron Sorvig and Ron Adrian were also present.

Wallace Diedrich recorded the meeting with two recorders.

Motion by Mr. Alvin Nybladh, seconded by Mr. Arlyn Stroble, that Connie Kalinowski be appointed the recording secretary for purposes of keeping the minutes of the meeting. Motion carried, with Mr. Loren Zutz and Mr. Elden Elseth voting no.

Mr. Elden Elseth requested to add to agenda item #16 Legal Counsel Report (7) a proposed resolution on the Agassiz Valley Water Management Project.

Motion by Mr. Ben Kleinwachter, seconded by Mr. Arlyn Stroble that the agenda be accepted, as amended, to include the addition of the proposed resolution on the Agassiz Valley Water Management Project, as requested by Mr. Elden Elseth. Motion unanimously carried.

Motion by Mr. Ben Kleinwachter, seconded by Mr. Alvin Nybladh that the minutes of the January 26, 2009 meeting be approved as presented. Motion carried.

The financial report was reviewed and filed for audit purposes.

Motion by Mr. Elden Elseth, seconded by Mr. Loren Zutz to withhold payment of check #1654, to Rinke-Noonan, pending further clarification. Motion carried, with Mr. Arlyn Stroble and Mr. Alvin Nybladh voting no.

Motion by Mr. Elden Elseth, seconded by Mr. Loren Zutz that the following bills be paid, excluding check #1654: from the Administrative funds: that payroll checks numbered 4816 through 4826 inclusive for a total of \$13,815.44; and checks numbered 14052 through 14084 inclusive, including the service charge for a total of \$16,653.30; from the Project funds that checks numbered 1650 through 1653 and checks numbered 1655 & 1656 inclusive, for a total of \$24,759.89; from the RRWMB funds that check numbered 127 for a total of \$3,770.44; and from the Ditch Funds that checks numbered 2301 through 2303 for a total of \$1,816.40 be paid. Motion unanimously carried.

APPROVED (as corrected March 16, 2009)

Brian Dwight and Don Buckhout of the Minnesota Board of Soil and Water Resources joined the meeting at approximately 4:07 p.m.

There were no individuals present for the open forum.

Ernie Pribula was present to discuss the farmstead ring dike that was constructed on his property by the District.

Ron Sorvig, District Employee provided the Board an overview of the construction of the Ernest Pribula ring dike, in the SW4 of section 7 of Northland Township.

After a lengthy discussion, it was the consensus of the Board, that the District Staff would do an "as-built" survey for Mr. Pribula's ring dike in the spring.

Kristine Paranica, UND Conflict Resolution Center, joined the meeting at approximately 4:35 p.m.

Ernest Pribula left the meeting at approximately 4:55 p.m.

Brian Dwight discussed the Board of Soil and Water Resources Grant with the Minnesota Center for Environmental Advocacy, for the overview of the Natural Resource Assessment for the District's Overall Plan Update, and requested the Middle Snake Tamarac Rivers Watershed District act as the fiscal agent for the State.

Motion by Mr. Arlyn Stroble, seconded by Mr. Alvin Nybladh that the Middle Snake Tamarac Rivers Watershed District act as the fiscal agent for the Minnesota Board of Soil and Water Resources Grant with the Minnesota Center for Environmental Advocacy, in the amount of \$12,630.00. Motion unanimously carried.

Motion by Mr. Ben Kleinwachter, seconded by Mr. Alvin Nybladh that the following permit be issued:

1. Permit (09-001) of the Marshall County Highway Department to widen the grade on CSAH #4 from Trunk Highway #220 easterly 5 miles to CSAH #10 and replace existing culverts in Big Woods and Bloomer Townships.

Motion carried, with Mr. Loren Zutz and Mr. Elden Elseth abstaining.

Motion by Mr. Arlyn Stroble, seconded by Mr. Alvin Nybladh that the following permit be issued:

APPROVED (as corrected March 16, 2009)

2. Permit (09-002) of the Marshall County Highway Department to widen the grade on CSAH #10 from CSAH #4 northerly 8 miles to CSAH #5 and replace the existing culverts in Parker and Bloomer Townships.

Motion carried, with Mr. Loren Zutz and Mr. Elden Elseth abstaining.

Motion by Mr. Arlyn Stroble, seconded by Mr. Elden Elseth that the following permit issued:

3. Permit (09-005) of the Marshall County Highway Department to remove the existing bridge on CSAH #15 (Spaulding Road), and replace with (2) lines of 12' x 14' box culverts, in the NE4 NE4, Section 2 of Boxville Township.

Motion unanimously carried.

Motion by Mr. Arlyn Stroble, seconded by Mr. Elden Elseth that the following permit be tabled, pending information from the landowners downstream;

4. Permit (09-006) of Jim Potucek to install drain tile in the SW4 of section 18 of Comstock Township.

Motion unanimously carried.

A discussion was held on the District setting a policy in regards to tile drainage.

Kristine Paranica, Director of the UND Conflict Resolution Center, discussed that the goal of Phase 1 of the Minnesota Board of Soil and Water Resources PRAP recommendation, is to identify a list of topics that appear to be concerns of the managers and staff through one-on-one interviews.

Motion by Mr. Ben Kleinwachter, seconded by Mr. Alvin Nybladh that the District accept the UND Conflict Resolution Center proposal for Consultation and Interviews, in the amount of \$1,153.76, to begin Phase 1 of the Minnesota Board of Soil and Water Resources PRAP recommendation to address the conflicts addressing the District. A roll call of votes was taken, with Mr. Elden Elseth, Mr. Arlyn Stroble, Mr. Loren Zutz, Mr. Alvin Nybladh, Mr. John W Nelson and Mr. Ben Kleinwachter voting aye.

The News and Views of the Red River Watershed Management Board was distributed.

Correspondence was distributed from the Minnesota Association of Watershed District concerning the Legislative Breakfast scheduled for March 19, 2009 in St. Paul; from the Minnesota Viewers Association concerning the Annual

APPROVED (as corrected March 16, 2009)

membership; and from Kay Anderson thanking the District for the farmstead ring dike constructed on her property.

Motion by Mr. Ben Kleinwachter, seconded by Mr. Arlyn Stroble that the District pay \$125.00 for the annual membership dues to the Minnesota Viewers Association. Motion unanimously carried.

Bids received for the land rental of the District property in sections 11 and 14 of Sandsville Township were publically opened and read:

BIDDER	AMOUNT
Nathan Weslowski	14,300.00
Pierce-Rosendahl Farms	11,101.00
DJR Farms, Inc	15,500.00
DMS Ag, Inc	15,435.00
John W Copp	14,000.00

Motion by Mr. Elden Elseth, seconded by Mr. Ben Kleinwachter to accept the high bid of DJR Farms, Inc., in the amount of \$15,500.00, for the land rental of the District properties in section 11 and 14 of Sandsville Township, for a 3 year term. Motion carried, with Mr. Arlyn Stroble abstaining.

Loren Zutz stated that he has been in contact with R & R Railroad and Burlington Northern Railroad regarding providing Randy Engelstad access to his lands in Section 1 of Boxville Township. He stated that Harvest States will work in cooperation with the District in providing Randy Engelstad access.

Data Practice Requests received since the January 2009 board meeting were distributed and are as follows:

1. PO Box 56, Borup, MN: for clarification of the District's response to previous data practice request and basis for redaction in previous request;
2. PO Box 56, Borup, MN: explanation of redactions from previous data practice request;
3. Tracy Anderson; for copies of Jim Settlement offer on the MSTRWD/Stengrim Breech of Contract lawsuit;
4. PO Box 56, Borup, MN: for copies of the District's schedule of meetings for 2006, 2007, 2008 and 2009;
5. Elden Elseth: (1) for all emails between the District Attorney, Jerry VonKorff, and litigants Attorney, Eric Barsch, concerning the interpretation of the Agassiz Valley Settlement Agreement; (2) copy of retainer between

APPROVED (as corrected March 16, 2009)

MSTRWD and Jerry VonKorff; (3) Evidence the MSTRWD has that demonstrates any Board Manager or Public Official participated in violation of the Agassiz Valley Settlement Agreement; (4) copies of notes from the mediation session on the MSTRWD/Stengrim lawsuit that references the \$55,000 settlement proposal of Jim Stengrim;

6. Elden Elseth: to inspect the study of the Snake River upstream of the diversion structure, upstream of Warren, and a copy of any written material.

Nick Drees reported that a meeting was held with the landowners along Judicial Ditch #75. He stated that a yet to be determined strip of right-of-way needs to be obtained from landowners to complete the proposed FEMA project.

Motion by Mr. Loren Zutz, seconded by Mr. Elden Elseth that the District offer \$2,400.00 per acre, to the landowners along Judicial Ditch #75, for additional permanent right of way. Motion unanimously carried.

Tracy Anderson joined the meeting at approximately 6:30 p.m.

Nick Drees reported that the Project 60 Work Team is scheduled to meet on March 2, 2009, at 9:30 a.m., at Alvarado, Minnesota; that 2 meetings were held in Newfolden regarding the District's Overall Plan and as part of the District's Overall Plan, an open house for the Melgard/Swift Coulee subwatershed is scheduled for February 26, 2009, at 10:30 a.m., at the Warren City Hall; that a Project Work Team meeting on the CD#3/Swift Coulee Watershed is scheduled for February 26, 2009 at 1:00 p.m., at the Warren City Hall; and a Project Work Team meeting on the proposed Brandt/Angus project is scheduled for March 6, 2009, at 9:30 a.m., at the Bremer Bank, in Warren, Minnesota.

Motion by Mr. Ben Kleinwachter, seconded by Mr. Alvin Nybladh that Mr. Elden Elseth be the District's representative on the CD #3/Swift Coulee Watershed Project Work Team, and that Mr. Loren Zutz be the alternate. Motion unanimously carried.

Motion by Mr. Alvin Nybladh, seconded by Mr. Arlyn Stroble that the District advertise for bids for Phase 2 of the Agassiz Valley Water Resource Management Project, with the bid opening scheduled for March 26th, 2009, at 1:00 p.m., at the District Office. Motion unanimously carried.

Nick Drees reported that some parcels in the City of Warren benefited by the Snake River PL-566 project have changed and the District is working with the Marshall County Auditor's office in addressing this issue.

Mr. Ben Kleinwachter reported on the Legislative Briefing held on February 17, 2009, in St. Paul, Minnesota.

APPROVED (as corrected March 16, 2009)

Motion by Mr. Elden Elseth, seconded by Mr. Arlyn Stroble that Nick Drees be authorized to hire summer employment, as necessary. Motion unanimously carried.

Motion by Mr. Ben Kleinwachter, seconded by Mr. Alvin Nybladh that the secretary be directed to publish in the Crookston Times, Roseau Times, Stephen Messenger, Warren Sheaf, Thief River Times and the Kittson County Enterprise, for 3 consecutive weeks, the notice for bids of equipment rental for the 2009 construction season, with bids to be publicly opened on May 18, 2009, at 1:00 p.m., at the District office. Motion unanimously carried.

Attorney, Jeff Hane, reported that the Managers suit dismissed by the Federal Court has now been appealed by Managers Elden Elseth and Loren Zutz to the 8th District Court of Appeals; that the Minnesota Court of Appeals in the Agassiz Valley Water Management Project (Stengrim case) have reprimanded the case back to the District Court; that the PL-566 Riley case is scheduled for trial in late spring; that KGM Contractors is awaiting payment from the Natural Resources Conservation Service; that Drewes, Inc, has filed an appeal to the Minnesota Court of Appeals regarding the Angus/Oslo #4 project; and that discovery is pending regarding the alleged Open Meeting Lawsuit filed by Jim Stengrim and the cross claim of Loren Zutz.

Mr. Elden Elseth presented a resolution requesting the District seek and hire independent counsel to review the case concerning the Agassiz Valley Water Resources Management Breach of the Settlement Agreement against Jim Stengrim.

Motion by Mr. Elden Elseth, seconded by Mr. Loren Zutz that the District adopt the resolution presented by Mr. Elden Elseth.

After discussion the following motion was entertained.

Motion by Mr. Ben Kleinwachter, seconded by Mr. Arlyn Stroble that the resolution presented to the Board by Mr. Elden Elseth be tabled until the Board can discuss the matter with Mr. Jerry VonKorff, the District's Attorney. Motion unanimously carried.

Attorney, Jeff Hane, stated that pursuant to Minnesota Statutes 13D subd 3 (b), that the meeting be closed for purposes of discussing strategies and theories regarding the Stengrim litigation; the Drewes, Inc case; the Stengrim Settlement and the PL-566 Riley case.

Motion by Mr. John W Nelson, seconded by Mr. Ben Kleinwachter that the meeting be closed. Motion unanimously carried.

APPROVED (as corrected March 16, 2009)

The meeting was closed at approximately 8:27 p.m.

Motion by Mr. Ben Kleinwachter, seconded by Mr. Loren Zutz that the meeting be reopened.

The meeting was reopened at approximately 9:52 p.m.

After discussion, the tabled resolution proposed by Mr. Elden Elseth, and the motion previously entertained by Mr. Elden Elseth, seconded by Mr. Loren Zutz, the Board of Managers voted unanimously to adopt the following proposed resolution;

RESOLUTION

Resolved that the Middle Snake Tamarac Rivers Watershed District Board of Managers seek and hire independent legal counsel to review our current case concerning the Agassiz Valley Settlement Agreement against Mr. James Stengrim and request that the counsel assess our legal position as well as make recommendations as to what course of action we should take. This independent counsel may be recommended by Mr. Jerry VonKorff or Mr. Jeff Hane but should not be associated by their law firms. This independent legal counsel should be skilled in constitutional law and/or in ANTI-SLAPP statutes of Minnesota.

In light of current media attention to this case and in light of possible legal exposure to liability we believe this would be a prudent action to protect the District and the taxpayers of this District.

Motion by Mr. Elden Elseth, seconded by Mr. Ben Kleinwachter that the meeting be adjourned.

The meeting was adjourned at approximately 10:04 p.m.

Connie Kalinowski
Recording Secretary

Ben Kleinwachter
Secretary