

APPROVED (June 18, 2007)
REGULAR MEETING OF THE BOARD OF MANAGERS OF THE
MIDDLE- SNAKE-TAMARAC RIVERS WATERSHED DISTRICT
HELD AT 453 NORTH MCKINLEY STREET, WARREN, MN
7:00 P.M. MAY 21, 2007

The meeting was called to order by President Doug Sorenson. Managers John W Nelson, Loren Zutz, Doug Sorenson, Arlyn Stroble, Alvin Nybladh, Elden Elseth, and Ben Kleinwachter were present. Attorney Jeff Hane, Nick Drees, Connie Kalinowski, Ronald J Adrian, Danny Omdahl, Luther Omdahl, Brian Dwight, Philip Omdahl, LeRoy Vonasek, Curtis Carlson, Wallace Diedrich and Robert Osowski were also present.

Wallace Diedrich recorded the meeting with three recorders.

Motion by Mr. John W Nelson, seconded by Mr. Ben Kleinwachter, that Connie Kalinowski be appointed the recording secretary for purposes of keeping the minutes of the meeting. Motion unanimously carried.

Mr. Loren Zutz sought clarification of the agenda if the data practice letter from Brink, Sobolik, Severson, Malm & Albrecht; and the letter to the Marshall County Commissioners from the District employees would be addressed under item (#13) Managers.

Motion by Mr. Arlyn Stroble, seconded by Mr. Alvin Nybladh to approve the agenda as presented, with the clarifications noted. Motion unanimously carried.

Motion by Mr. Ben Kleinwachter, seconded by Mr. Arlyn Stroble to approve the minutes of the April 16, 2007 meeting as presented. Motion unanimously carried

Motion by Mr. Loren Zutz, seconded by Mr. Elden Elseth to approve the minutes of the May 7, 2007 permit meeting as presented. Motion unanimously carried.

The financial report was reviewed to be filed for audit purposes.

Motion by Mr. John W Nelson, seconded by Mr. Alvin Nybladh that the following bills be paid,: from the Administrative funds: that payroll checks numbered 4537 through 4550 inclusive for a total of \$14,797.16, and checks numbered 13369 through 13405 inclusive, and including the service charge for a total of \$31,082.24; and from the Project funds that checks numbered 1350 through 1362 inclusive for a total of \$21,733.91; and from the Ditch Funds that checks numbered 2190 and 2194 inclusive for a total of \$3,477.92 be paid. Motion unanimously carried.

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Motion by Mr. John W Nelson, seconded by Mr. Alvin Nybladh that the following permits be issued:

1. Permit (07-013) be issued to Leif Aakre repair or replace the defective 24" concrete culvert with a culvert of the same size, in the NW4 of section 2 of Vega Township, and to extend and widen the crossing in the NW4 of section 2 of Vega Township;
2. Permit (07-014) be issued to Marshall County Highway Department to renew permit (03-043) to replace the culverts on Marshall County Ditch #41 under CSAH #21 in the SW corner of section 31 of Warrenton Township, with the equivalent sizes or those recommended by the Engineer for the District.

Motion unanimously carried.

Robert Osowski discussed the permit (#07-010) that was denied. He stated that the 18" culvert draining into the main branch of Judicial Ditch #29, in the SE4 of section 14 of Fork Township is not of sufficient size and would like permission to replace it with a larger culvert.

Motion by Mr. Loren Zutz, seconded by Mr. Ben Kleinwachter that the permit (07-010) be issued to Robert Osowski to replace the 18" culvert with a 24" culvert in the SE4 of section 14 of Fork Township, at station 85+92. Motion unanimously carried.

Bob Honek, Allan Honek, Helen Honek and others discussed the removal and relocation of the culvert in section 14 of Tabor Township on Watershed Ditch #5.

Nick Drees explained the policy that was used in determining where and how many culverts were installed on Watershed Ditch #5.

Motion by Mr. Elden Elseth, seconded by Mr. Ben Kleinwachter to restore the drainage to Helen Honek's property by installing a 15" culvert with a trap, on the property line at approximate station 378+73, on the ditch right of way, with the costs of the installation split 50% by Bob Honek and 50% by the District's Watershed Ditch #5 funds. Motion unanimously carried.

Bob Honek, Allan Honek, Helen Honek and others left the meeting at approximately 8:00 p.m.

Robert Osowski left the meeting at approximately 8:00 p.m.

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Luther Omdahl reported that he has planted over 2000 trees on the gravel pits in the west half of section 13 of Brislet Township, on District property.

A discussion was held concerning the Breach of the Settlement Agreement on the Agassiz Valley Water Resource Management Project by Jim Stengrim.

Motion by Mr. Doug Sorenson, seconded by Mr. John W Nelson that the District's attorney draft a second letter to Jim Stengrim for relief from his activities undermining the District's effort to construct the project, and that this letter be forwarded to each Manager for review at the next meeting of the Board scheduled for June 4, 2007. Motion carried with Mr. Ben Kleinwachter, Mr. John W Nelson, Mr. Doug Sorenson and Mr. Alvin Nybladh voting yes and Mr. Arlyn Stroble, Mr. Loren Zutz and Mr. Elden Elseth voting no.

Brian Dwight, from the Board of Soil and Water Resources, requested that he also receive a copy of the draft letter to Jim Stengrim regarding the Breach of the Settlement Agreement on the Agassiz Valley Water Resource Management Project.

A discussion was held whether Managers are subject to the supervision of the Board. Attorney, Jeff Hane, stated that MN Statutes 13D.05 states that Managers are not subject to the Board and therefore can not close the meeting to discuss the conflict of interest issues with Mr. Loren Zutz and Mr. Elden Elseth.

Attorney, Jeff Hane, reported that the original Findings of Fact and Order of the Board on the PL-566 Snake River Flood Control Project was never amended following the Special Verdict by the District Court on the Yutrzenka and Englestad appeal and suggested that Board consider amending the original Findings of Fact and Order.

Motion by Mr. John W Nelson, seconded by Mr. Arlyn Stroble that Attorney, Jeff Hane, be directed to amend the original Findings of Fact and Order of the PL-566 Snake River Flood Control Project to incorporate the Special Verdict of the Yutrzenka and Engelstad appeal as follows:

Amended Findings of Fact and Order
Regarding Snake River PL-566 Project
Pursuant to Minnesota Statutes 103D.611

The above entitled matter came on before the Board of Managers on the 21st day of May, 2007, during their regular monthly meeting at 7 o'clock p.m. at the District Offices in Warren, Minnesota.

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WHEREAS, the Board issued finding of fact and order regarding Snake River PL-566 Project pursuant to Minnesota Statutes 103D.611, which order was dated July 30, 2001, and filed July 31, 2001, and

WHEREAS, landowners, Donald Yutrzenka and Mark Yutrzenka, and landowners, Randy Engelstad and Joan Engelstad, appealed said order, and

WHEREAS, A Judgment Pursuant to Special Verdict on the Yutrzenka appeal was filed and entered on April 22, 2003 in the amount of \$125,315.00, and a Judgement Pursuant to Special Verdict on the Engelstad's appeal was filed and entered on April 22, 2003 in the amount of \$188,690.00 and,

WHEREAS, said Judgments have been paid, and

WHEREAS, Judgments Pusurant to Special Verdict on the Yutrzenka and the Engelstad appeals were entered on April 28, 2003, the judgments provided that no benefits shall be assessed to the property owned by Donald Yutrzenka and/or Mark Yutrenka, and Randy Engelstad and/or Joan Engelstad,

THEREFORE BE IT RESOLVED, the Board of Managers of the Middle Snake Tamarac Rivers Watershed District hereby amends the findings of fact and order regarding Snake River PL-566 Flood Control Project pursuant to Minnesota Statutes 103D.611 so that the damages and benefits previously set forth in the Exhibits attached to said Order with regard to the Engelstad and Yutrzenka properties are removed, and the damages and benefits as set forth in the Court's Judgments and recited hereto are substituted for the same.

BE IT FURTHER RESOLVED, the District is to prepare an Assessment Statement listing the property and corporations benefited, said statement is to be filed with the Auditor of Marshall County.

Motion unanimously carried.

Brian Dwight, of the Minnesota Board and Soil Water Resources, discussed with the Board the guidelines and the process to update the 10 year overall plan of the District.

Brian Dwight left the meeting at approximately 9:20 p.m.

Correspondence was distributed from Jim Stengrim regarding legal representation; from the Red River Basin Commission concerning a summer tour; from the University of Minnesota concerning a Shoreland Education Program; from the Minnesota Association of Watershed District's concerning a summer tour on June 28-June 20, 2007; and from the Northwest Service Cooperative regarding digital technology courses.

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Data Practice Requests from Jim Stengrim were distributed.

Mr. Loren Zutz and Mr. Elden Elseth stated they feel they are being harassed by the data practice request of Tracy Anderson.

Mr. Loren Zutz stated that this portion of the meeting could be disciplinary in nature and inquired of Attorney, Jeff Hane, the procedure to close the meeting to pursue disciplinary actions of the staff regarding a letter sent by the District employees to the Marshall County Commissioners.

Danny Omdahl, Connie Kalinowski and Ron Sorvig stated they did not want to close the meeting.

Jeff Hane warned the Managers that the employee's letter to the Marshall County Commissioners could be a "whistle-blower" issue in nature since the letter spoke of an alleged violation of MN Statute Chapter 13. He suggested that the Managers do not seek disciplinary action against the staff.

A lengthy and heated discussion regarding the actions of Mr. Loren Zutz in obtaining the District's employee's cancelled payroll checks from Bremer Bank, a letter to the Marshall County Commissioners from the District employees, and the invitation of the Marshall County Commissioners to the District employee's to attend their meeting on May 8, 2007, was held.

Mr. Doug Sorenson requested that Mr. Loren Zutz and Mr. Elden Elseth provide the Board with any and all documents and or correspondence they have in their possession regarding Kathy Dockter, Assistant Director of Special Investigations of the State Auditors office.

Nick Drees reported that the ridge culvert on Judicial Ditch #14 appears to be in tact and that only slope repair appears to be necessary.

Nick Drees reported that landowners have requested cleanout of "plugs" in Judicial Ditch #16.

Motion by Mr. Ben Kleinwachter, seconded by Mr. Alvin Nybladh that the District, upon landowner approval, spot clean approximately 3 miles of Judicial Ditch #16, where necessary. Motion carried, with Mr. Arlyn Stroble abstaining.

Nick Drees reported on the Brandt/Angus Project Work Team meeting held on April 26, 2007. He stated the next Project Work Team meeting is scheduled for June 28th, 2007. He also stated that the June 19th, 2007, Red River Watershed

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Management Board meeting, in Warren, will include a tour of the Brandt/Angus site.

Motion by Mr. Arlyn Stroble, seconded by Mr. John W Nelson that the District submit to the Red River Watershed Management Board the Step 1 submittal for the Brandt/Angus Coulee project. Motion unanimously carried.

Nick Drees reported that the District has entered into the Purchase Option with Eileen Stancyk for the properties in section 18 of Brandt Township; and that HDR Engineering is conducting a preliminary survey of the Brandt/Angus Coulee project.

It was the consensus of the Board that all land rental agreements with the District be recorded in the respective Counties.

Nick Drees announced that all rental payments have been received on the properties owned by the District, with the exception of the Hess lands, in the NE4 of section 12 of McCrea (Strip) Township, rented by Loren Zutz.

Mr. Loren Zutz questioned whether the rental payment is payable in two installments or all up front.

After discussion it was decided that Mr. Loren Zutz make a one time rental payment on the Hess property, due June 1, 2007,

A discussion was held concerning supplying water to the stock ponds of David Jadeke, in section 14 of Brislet Township to offset loss of water from the coulee supplying water to his cattle. The Board stated that they are apportioning up to \$9000.00 for a new well or an enhancement to an existing well as part of the Agassiz Valley Water Resource Management Project and no additional funding will be provided for stock ponds.

Nick Drees reported that the Agassiz Valley Water Resource Management Project Work Team met on April 26, 2007, and that there appears to be 2 issues left to resolve. The first issue is the establishment of grasses as Natural Resource Enhancements, and the second issue is local property taxes.

Mr. Ben Kleinwachter left the meeting at approximately 9:40 p.m.

A discussion was held on using a one time, in lieu of tax payment on the Agassiz Valley Water Resource Management Project to offset the loss of taxes to the lands acquired for the Project.

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Nick Drees reported that he has been in contact with the landowner along the Off Channel Storage Site for a tract of land needed to repair the gully that has formed in section 14 of Comstock Township. He stated the landowner is willing to sell a tract of land consisting of approximately 2 acres to the District.

A letter from the City of Warren requesting the District set the lien on the properties benefited by the PL-566 flood control project was distributed.

Motion by Mr. Arlyn Stroble, seconded by Mr. John W Nelson that following Order on the properties benefited by the PL-566 Flood Control Project be adopted:

Order Apportioning Costs of Improvement and Establishing the Lien

WHEREAS, the Board of Managers hereby directs the Auditor of Marshall County to assess costs and expenses of the Establishment of Snake River PL-566 Flood Control Project in the sum of \$420,320.00.

That this amount be assessed pro rata, upon lands, corporations, and municipalities which have participated in the total benefits as determined, said assessments to be made payable in annual installments over a period of (20) years, with interest at the rate of (5.00%) per annum on the unpaid assessments to be collected with each installment.

That the Auditor of Marshall County is further directed to prepare and record in the office of the County Recorder's offices an additional tabular statement in substance as provided in M.S.A. 103D and 103E and all of the provision of Section 103E relating to collection of payments shall apply thereto.

That upon filing of the tabular statement, the installments and interest shall be due and payable and shall be entered on the tax lists and collected the same as the original lien.

That the Auditor of Marshall County is hereby directed to forward the sums collected from the assessments each year to the Treasurer of the Middle Snake Tamarac Rivers Watershed District.

That the Treasurer of the District is to deposit said proceeds from the levy in the PL566 Construction Repayment Fund for the Snake River PL-566 Flood Control Project, and that the Treasurer is authorized to pay from this fund, the amounts received, to the City of Warren.

Motion carried, with Mr. Loren Zutz abstaining.

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Mr. Loren Zutz reported that he met with a representative of Harvest States regarding access to the lands owned by the District and Randy Englestad in section 1 of Boxville Township, and that they are willing to work with the District and Randy Englestad to provide access to the lands.

Nick Drees distributed an update of Legislative actions on policy issues and funding, and member District's activities of the Red River Watershed Management Board.

Nick Drees reported on the status of the farmstead ring dike cost share program. He stated that one ring dike is nearing completion, one property owner is in the process of securing funding, and that to secure a portion of the funds allocated by Legislature, that additional ring dikes will need to be ready to be constructed.

A discussion was held concerning the ring dike constructed on the Leland Anderson property in section 7 of Vegas (Strip) Township, apparently in violation of Marshall County Zoning Ordinances and the encroachment on the Minnesota Department of Transportation right of way. It was the consensus of the Board that no "after-the-fact" permit will be granted for the works done.

Nick Drees was directed to send Leland Anderson a letter, stating the District's policy on issuing "after-the-fact" permits.

Nick Drees reported no new progress on remapping of the Marshall County Flood Plain for FEMA.

Nick Drees stated that he has been contacted by the Water Resource Center in Mankato to assist in a tillage transact survey for 2007 in cooperation with the Board of Soil and Water Resources for the West Marshall County SWCD. He stated they would reimburse the District \$1,155.00. It was the consensus of the Board that the Administrator decide whether to participate or not.

Nick Drees reported that the District has not received word from FEMA regarding Judicial Ditch #75 or State Ditch #3; that the spoil in the NW4 of section 4 of Bloomer Township on State Ditch #3 has been staked and is awaiting the contractor; and that he has not heard from the Board of Water and Soil Resources concerning funding for the culvert inventory grant submitted by the District.

Jeff Hane reported that the District is holding the retainage on KGM Contractors and Riley Brothers for works done on the PL-566 Snake River Flood Control Project. He stated that the Natural Resource Conservation Service and the

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Minnesota Department of Natural Resources would like to close out these contracts.

It was the consensus of the Board to do what is necessary to get the contracts finalized.

Jeff Hane reported that there has been no word on the Summary Judgement of Drewes, Inc. regarding the Completion Project of Angus Oslo #4.

The draft 2006 Annual report was distributed.

Motion by Mr. Arlyn Stroble, seconded by Mr. John W Nelson that 2006 Audit performed by Brady Martz and Associates be added to the June 4, 2007 permit meeting for review. Motion unanimously carried.

Motion by Mr. John W Nelson, seconded by Mr. Alvin Nybladh that the District retain the services of Brady Martz to perform a program audit on the PL-566 Snake River Flood Control Project. Motion unanimously carried.

Motion by Mr. Arlyn Stroble, seconded by Mr. Alvin Nybladh that the District continue the claims made policy on Engineering for the District, with the Minnesota Joint Underwriting Association, for an additional year, Motion unanimously carried.

Nick Drees announced that the bid proposals for the 2007 construction season were opened and are in the process of being tabulated.

The next meeting of the Board of Managers was set for June 4, 2007, to review permit applications, to review the draft letter to Jim Stengrim regarding the Breach of Settlement Agreement and for purposes of reviewing the 2006 audit by Brady Martz and Associates.

Motion by Mr. John W Nelson, seconded by Mr. Elden Elseth that the meeting be adjourned. Motion unanimously carried.

The meeting was adjourned at approximately 11:45 p.m.

Connie Kalinowski
Recording Secretary

Ben Kleinwachter
Secretary