

APPROVED

(as corrected Aug 20, 2007)

**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. JULY 16, 2007**

The meeting was called to order by President Doug Sorenson. Managers John W Nelson, Loren Zutz, Elden Elseth, Alvin Nybladh, Doug Sorenson, Arlyn Stroble and Ben Kleinwachter were present. Attorney Bob Albrecht, Nick Drees, Connie Kalinowski, Ron Adrian, Mark Meister, Wally Diedrich, LeRoy Vonasek, and Richard McGregor were also present.

Wallace Diedrich taped with two recorders.

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

Motion by Mr. Ben Kleinwachter, seconded by Mr. Arlyn Stroble to approve the agenda as presented. Motion unanimously carried.

Motion by Mr. Arlyn Stroble, seconded by Mr. John W Nelson to approve the minutes of the June 18, 2007 meeting as corrected. 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 4565 through 4579 inclusive for a total of \$15,184.45 and checks numbered 13441 through 13473 inclusive, including the service charge for a total of \$28,048.30; from the Project funds that checks numbered 1379 through 1388 inclusive for a total of \$39,918.32; from the Ditch Funds that checks numbered 2200 through 2203 inclusive for a total of \$4,127.50; and from the RRWMB funds that check number 115 for a total of \$17,063.55 be paid. Motion unanimously carried.

The gross salary payroll review sheets, and the total overtime hours worked were distributed.

Nick Drees reported that the Army Corps of Engineers have been supplied with the information requested of Elden Elseth in his request for a public hearing on the Army Corps of Engineers 404 permit application made by the District for the Agassiz Valley Water Resource Management Project. He also stated that the

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Minnesota Historical Society has requested a survey of the Agassiz Valley Water Resource Management Project area.

Mr. Ben Kleinwachter and Mr. John W Nelson reported on the meeting held with Jim Stengrim, who was accompanied by Wallace Diedrich, on the Breech of the Settlement Agreement suit regarding the Agassiz Valley Water Resource Management Project. No progress was made.

Attorney Bob Albrecht was directed to proceed with the next step in the Breech of the Settlement Agreement of Jim Stengrim and Others, regarding the Agassiz Valley Water Resource Management Project.

Attorney Bob Albrecht reported that the Motion for Summary Judgement of Loren Zutz regarding the PL-566 project is scheduled for the end of July; that the request for documents from the State Auditor have not been received; and that the trial of Drewes Inc regarding the Angus Oslo #4 project is scheduled to begin on January 9, 2008.

Nick Drees reported that a meeting was held on July 3, 2007 at the Minnesota Board of Soil and Water Resources office with representatives of the State Auditor's office and the Attorney General's office dealing with the issues of the State Auditors office and the District.

Nick Drees stated that the District employee's still do not know where or who is in possession of the cancelled payroll checks obtained by Loren Zutz from the Bremer Bank.

Mark Meister, of Communication Research and Consulting Services, gave an explanation of the services he will be performing on behalf of the Red River Watershed Management Board. He supplied the following email addresses for correspondence: markmeister123@msn.com or mark.meister@ndsu.edu.

Don Fulton and Luther Omdahl joined the meeting at approximately 5:00 p.m.

Nate Dalager joined the meeting at approximately 5:02 p.m., and Mark Meister left the meeting at approximately 5:02 p.m.

Motion by Mr. John W Nelson, seconded by Mr. Ben Kleinwachter that the following permits be issued, with conditions set by the Board:

1. Permit (07-031) be issued to Mark Yutzenka to install an interior trap on the north end of a 40" x 65" RC arch culvert under County Road #110, in the northwest quarter of section 4 of Alma Township;

APPROVED
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2. Permit (07-033) be issued to Robin Johnson to install a farm entrance crossing with the culvert size to be equivalent to that of the present crossing, on the east side of the farmyard, in the SE4 SW4 of section 8 of Warrenton Township;
3. Permit (07-037) be issued to Wayne Feuillerat to remove the existing 15" culvert and to replace it with a 15" culvert draining into County Ditch #38, in the SW4 SE4 of section 30 of Bloomer Township;
4. Permit (07-038) be issued to Jim Potucek to install a field crossing with a culvert equivalent to that thru CSAH #36, in the SE4 SE4 of section 18 of Comstock Township.
5. Permit (07-040) be issued to Eagle Point Township to replace a 4'x6' CSP arch with a 4'x6' CSP arch, on Marshall County Ditch #43, in the SE4 SE4 of section 13 of Eagle Point Township.

Motion carried, with Mr. Alvin Nybladh abstaining on permit (07-040).

Don Fulton discussed the request of Jim Potucek to lower the culvert and/or enlarge the culvert in the north road ditch of County State Aid Highway #14, at section corner 1/12 and 6/7 of McCrea and Comstock Townships.

Motion by Mr. Arlyn Stroble, seconded by Mr. Alvin Nybladh that the following permits be tabled for further information:

6. Permit (07-032) of Ronald Pape to lower a field crossing culvert and clean the west MN Trunk Highway #220 road ditch, in the NE4 of section 13 of Esther Township;
7. Permit (07-036) of Eugene Jorgenson to increase a 18" CSP to a 24" CSP under the field crossing on the 1/2 mile line, south side of CSAH #19, in section 27 of Alma Township;
8. Permit (07-039) of Jim Potucek to lower and or enlarge the culvert in the north road ditch of CSAH #14, at section corner 1/12 and 6/7 of McCrea and Comstock Townships.

Motion unanimously carried.

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

APPROVED
(as corrected Aug 20, 2007)

9. Permit (07-034) of Gerald Anderson to remove the 15" culvert and replace it with an 18" culvert into Branch B, of Judicial Ditch #20, in the SE4 of section 1 of Oak Park Township.

Motion carried, with Mr. John W Nelson abstaining.

Motion by Mr. Ben Kleinwachter, seconded by Mr. Loren Zutz that the following permit be issued:

10. Permit (07-035) be issued to Oak Park Township to replace a 24" CSP with a 24" culvert with trap thru the township road and the agricultural levee, in the NW4 NE4 of section 32 of Oak Park Township.

Motion carried, with Mr. John W Nelson abstaining.

Mark Abramson and Todd Maki joined the meeting at approximately 6:00 p.m.

Don Fulton left the meeting at approximately 6:00 p.m.

Correspondence was distributed from the Minnesota Viewers Association concerning a seminar scheduled for July 19, 2007 at Owatonna, Minnesota; from the U.S. Geological Survey regarding two reports now available; from the West Polk SWCD concerning an open house scheduled for July 19, 2007 at the Highland Park Complex in Crookston, Minnesota; the monthly "News and Views" of the Red River Watershed Management Board; and from Solbrekk concerning a document management seminar scheduled for July 18, 2007, at Golden Valley, Minnesota.

At the request of Mr. Loren Zutz, he wished to discuss the censure imposed on Mr. Elden Elseth at the June 18, 2007 regular meeting of the Board.

A discussion was held on the reasons for the censure.

Data Practice requests from Jim Stengrim, Dan Omdahl, Elden Elseth and Loren Zutz, and the District's responses were distributed.

A discussion was held concerning the District employee's payroll checks obtained by Loren Zutz from the bank in Warren. Mr. Elden Elseth stated that he has seen the checks and guaranteed the Board that no one else has seen the checks. Neither Mr. Loren Zutz or Mr. Elden Elseth would state where the employee payroll checks are presently.

A discussion was held concerning the Watershed Board of Managers removing Board members who have violated their oath of office.

APPROVED
(as corrected Aug 20, 2007)

Motion by Mr. John W Nelson, seconded by Mr. Arlyn Stroble that the District's legal council be directed to research the removal of board members by a competent tribunal council. Motion carried, with Mr. Loren Zutz and Mr. Elden Elseth abstaining.

Nick Drees stated that the documents and/or materials requested from managers, Mr. Loren Zutz and Mr. Elden Elseth, have not been received.

Nick Drees reported on the mowing and spraying of the legal drainage ditches of the District. He stated that there is approximately 120 miles of legal drainage ditches to be mowed, and approximately 80 miles to be sprayed.

Nick Drees reported that he has been contacted by the Federal Emergency Management Agency regarding the request for FEMA assistance on Judicial Ditch #75.

Nick Drees reported that a tour was held of the Brandt/Angus site on June 28, 2007. He stated that the step 1 submittal to the Red River Watershed Management Board has been submitted, and that the District should receive a response from the Red River Watershed Management Board on July 19, 2007.

Nate Dalager, HDR Engineering, gave a brief update on the status of the proposed Brandt/Angus project.

It was the consensus of the Board, to add the Brandt/Angus project to the agenda of the August 6, 2007, permit meeting.

Ronald J Adrian, Houston Engineering, stated that the Engineer's report for the Agassiz Valley Water Resource Management Project should be completed approximately 3 weeks after the receipt of the Army Corps of Engineers 404 permit.

A discussion was held on the Agassiz Valley Water Resource Management Project concerning converting CRP contracts to a more native mixture.

Nick Drees stated that he has received a request from K & K Trucking to purchase material from the properties owned by the District in section 13 of Brislet Township.

The Board stated that they were not interested in selling material from their properties.

Philip Omdahl requested to extend his contract with the District for 1 year to remove the commodities and machinery from the site, acquired by the District for

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the Agassiz Valley Water Resource Management Project in section 13 of Brislet Township.

Motion by Mr. Elden Elseth, seconded by Mr. Ben Kleinwachter that Philip Omdahl be granted a 1 year extension, expiring on June 30, 2008, for the removal of commodities and machinery from the site in section 13 of Brislet Township. Motion unanimously carried.

Motion by Mr. John W Nelson, seconded by Mr. Arlyn Stroble that the Board recess the regular meeting for purposes of holding a public hearing on the PL-566 retainage of Contractors, KGM Contracting and Riley Brothers, Inc. Motion unanimously carried.

The regular meeting was recessed at approximately 8:03 p.m.

Pursuant to MN §103E.555, the public hearing on the PL-566 Retainage of KGM Contractors and Riley Brothers, Inc., convened at 8:03 p.m.

The following were present: Mr. Ben Kleinwachter, Mr. John W Nelson, Mr. Doug Sorenson, Mr. Alvin Nybladh, Mr. Loren Zutz, Mr. Elden Elseth, Mr. Arlyn Stroble, Mark Abramson and Todd Maki of KGM Contractors, Ronald J Adrian, Attorney Bob Albrecht, Connie Kalinowski, LeRoy Vonasek, and Wallace Diedrich.

Mark Abramson and Todd Maki, of KGM Contracting, stated their position regarding the payment of the retainage held by the District for the works completed on the PL-566 project.

Motion by Mr. Arlyn Stroble, seconded by Mr. Elden Elseth that the District pay the retainage of KGM Contractors, Inc.

A discussion was held on the motion.

Attorney, Bob Albrecht, addressed the Board and wished to close the hearing for purposes of discussing litigation strategy.

Motion by Mr. Arlyn Stroble, seconded by Mr. Alvin Nybladh that the hearing be closed for purposes of discussing litigation strategy with the District's legal council. Motion unanimously carried.

The hearing was closed at approximately 8:31 p.m.

Motion by Mr. Arlyn Stroble, seconded by Mr. John W Nelson that the hearing be reopened. Motion unanimously carried.

APPROVED
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The hearing was reopened at approximately 8:55 p.m.

Mr. Arlyn Stroble moved to amend his motion and seconded by Mr. Elden Elseth that the following Order's to pay the retainage to KGM Contractors, Inc and Riley Brothers Construction be signed.

ORDER PURSUANT TO MINN. STAT. §103E.555

The above-entitled matter came on before the Board of Managers on the 16th day of July 2007, during the regular monthly meeting at the District Office in Warren, Minnesota. It concerns the contract payment estimate and construction progress reports prepared by representative of the Natural Resources Conservation Service regarding the work by the contractor KGM for the construction of Phase III-B of the Snake River PL-566 flood control project.

WHEREAS, the engineer has made a report to the drainage authority using the documents prepared by the NRCS showing the contract price, the amount paid on certificates, the unpaid balance, and the work that is completed under the contract, and

WHEREAS, due notice has been given pursuant to statute, and

WHEREAS, any party objecting to the acceptance of the contract has been heard, and

WHEREAS, the Board of Managers hereby determines that the work of the contract has been completed in accordance with the plans and specifications, and

WHEREAS, the NRCS, knowing and understanding that the above-named contractor has not yet provided to the District a final release of all claims, has encouraged the District to make payment in full on the contract pursuant to the above-referenced Statutes,

THEREFORE, the Board of Managers hereby orders that payment be made of the balance due in the sum of \$184,991.62 to the contractor KGM.

In making this ORDER, the Board makes no acknowledgement that KGM has any legitimate claims, in tort or in contract, against the District, and if said claims do exist, in making this payment, the Board of Managers does not acknowledge that KGM has perfected any alleged claims by proper perfection pursuant to the terms and conditions of the contract at issue.

ORDER PURSUANT TO MINN. STAT. §103E.555

The above-entitled matter came on before the Board of Managers on the 16th day of July, 2007, during the regular monthly meeting at the District Office in Warren, Minnesota. It concerns regarding the contract payment estimate and construction progress reports prepared by representatives of the Natural Resources Conservation

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Service regarding the work by the contractor Riley Brothers Construction for the construction of Phase II of the Snake River PL-566 flood control project.

WHEREAS, the engineer has made a report to the drainage authority using the documents prepared by the NRCS showing the contract price, the amount paid on certificates, the unpaid balance, and the work that is completed under the contract, and

WHEREAS, due notice has been given pursuant to statute, and

WHEREAS, any party objecting to the acceptance of the contract has been heard, and

WHEREAS, the Board of Managers hereby determines that the work of the contract has been completed in accordance with the plans and specifications, and

WHEREAS, the NRCS, knowing and understanding that the above-named contractor has not yet provided to the District a final release of all claims, has encouraged the District to make payment in full on the contract pursuant to the above referenced Statutes,

THEREFORE, the Board of Managers hereby orders that payment be made of the balance due in the sum of \$462,477.97 to the contractor Riley Brothers Construction.

In making this Order, the Board makes no acknowledgment that Riley Brothers Construction has any legitimate claims, in tort or in contract, against the District, and if said claims do exist, in making his payment, the Board of Managers does not acknowledge that Riley Brothers Construction has perfected any alleged claims by proper perfection pursuant to the terms and conditions of the contract at issue.

Motion unanimously carried.

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

The hearing was adjourned at approximately 8:56 p.m.

Motion by Mr. Ben Kleinwachter, seconded by Mr. Alvin Nybladh that the regular meeting be reconvened. Motion unanimously carried.

The regular meeting was reconvened at approximately 8:56 p.m.

The program audit performed by Brady Martz for the PL-566 project was distributed.

Nick Drees reported that the request of the City of Warren and Marshall County for removal from the 100 year flood plain (LOMR) has been accepted. The City of Warren and surroundings areas have now been removed from the 100 year flood plain.

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It was announced that the Red River Watershed Management Board meeting is scheduled for July 17, 2007 at the Wild Rice Watershed District in Ada, Minnesota. The District's activity report was distributed.

Nick Drees reported that the Peter Solem and Travis Bushaw farmstead ring dikes have been completed, with the exception of some possible seeding.

Nick Drees reported on the Minnesota Association of Watershed Districts summer tour hosted by the Ramsey-Washington Watershed District.

Connie Kalinowski reported that the 2006 Annual Reports were mailed on July 13 and July 16, 2007.

A discussion was held concerning the dikes along Polk County State Aid Highway #23, in section 10 of Angus Township.

A discussion was held on the culvert, through the township road, plugged by Tabor Township in the NW4 of section 17 of Tabor Township.

It was the consensus of the Board that Tabor Township be advised that the plugged culvert in the NW4 of section 17 of Tabor Township be either unplugged or replaced with a culvert equivalent to the size presently in place and at the same elevation. The District Administrator was directed to send a letter to Tabor Township.

The next permit meeting, with the addition of the Brandt/Angus project, was set for August 6, 2007, at 4:00 p.m., at the District office.

The next regular meeting of the Board of Managers was set for August 20, 2007 at 4:00 p.m., at the District office.

Motion by Mr. Arlyn Stroble, seconded by Mr. John W Nelson that the meeting be adjourned.

The meeting was adjourned at approximately 9:22 p.m.

Connie Kalinowski
Recording Secretary

Ben Kleinwachter
Secretary