

UNAPPROVED
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. MARCH 16, 2009

The meeting was called to order by President Doug Sorenson. Managers John W Nelson, Alvin Nybladh, Arlyn Stroble, Ben Kleinwachter and Elden Elseth were present. Managers Alvin Nybladh and Loren Zutz were not present. Nick Drees, Connie Kalinowski, Jeff Hane, Wallace Diedrich, Ron Adrian, Kristine Paranica, Ken Johnson and Rodney Teigen were also present.

Mr. Elden Elseth stated he was recording the meeting for Loren Zutz.

Wallace Diedrich recorded the meeting with two recorders.

Motion by Mr. Arlyn Stroble, seconded by Mr. John W Nelson, that Connie Kalinowski be appointed the recording secretary for purposes of keeping the minutes of the meeting. Motion carried, with Mr. Elden Elseth voting no.

Kristine Paranica left the meeting at approximately 4:07 p.m.

Nate Dalagher joined the meeting at approximately 4:12 p.m.

Motion by Mr. Arlyn Stroble, seconded by Mr. Ben Kleinwachter that the agenda be accepted as presented. Motion unanimously carried.

Motion by Mr. John W Nelson, seconded by Mr. Arlyn Stroble that the minutes of the February 23, 2009 meeting be approved, as corrected. Motion unanimously carried.

Motion by Mr. Ben Kleinwachter, seconded by Mr. John W Nelson that the minutes of the March 9, 2009 meeting be approved, as corrected. Motion unanimously carried.

The financial report was reviewed and filed for audit purposes.

Motion by Mr. Elden Elseth that payment of the Attorney bills be voted on and paid separately. Motion died for lack of a second.

Motion by Mr. John W Nelson, seconded by Mr. Arlyn Stroble that the following bills be paid, including check #1654: from the Administrative funds: that payroll checks numbered 4827 through 4838 inclusive for a total of \$14,809.49; and checks numbered 14085 through 14115 inclusive, including the service charge for a total of \$58,342.32; from the Project funds that checks numbered 1654,

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1657 through 1667 for a total of \$54,065.23; from the RRWMB funds that check numbered 127 for a total of \$3,770.44; and from the Ditch Funds that checks numbered 2304 through 2305 for a total of \$139.00 be paid. Motion carried, with Mr. Elden Elden voting no.

There were no individuals present for the open forum.

Rodney Teigen joined the meeting at approximately 4:20 p.m.

Motion by Mr. John W Nelson, seconded by Mr. Arlyn Stroble that the following permit be issued:

1. Permit (09-007) to Ken Johnson to raise 2 reaches of the township road on the south side of section 31 of Middle River Township, with the elevation to be set by the District. Motion carried, with Mr. Loren Zutz and Mr. Elden Elseth abstaining.

Motion unanimously carried.

Motion by Mr. John W Nelson, seconded by Mr. Ben Kleinwachter that the following permit be issued:

2. Permit (09-009) of the Marshall County Highway Department to replace the existing bridge over the Tamarac River, ½ mile West of Stephen, in the NE4 NE4 of Section 6 of Tamarac Township.

Motion unanimously carried.

Motion by Mr. Ben Kleinwachter, seconded by Mr. John W Nelson that the following permits issued:

3. Permit (09-003) to Brian Jadeke to install drain tile, in the NW4 SE4 of section 3 of New Solem Township, provided no pumps are installed.
4. Permit (09-004) to Brian Jadeke to install drain tile on a portion of the N2 and the SE4 of section 11 of McCrea (Strip) Township and Brislet Township, provided no pumps are installed.

Motion unanimously carried.

Earl McGregor joined the meeting at approximately 4:42 p.m.

Motion by Mr. Elden Elseth, seconded by Mr. Ben Kleinwachter that the following permit be issued:

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5. Permit (09-006) to Jim Potucek to install drain tile on the North 60 acres (north side of the Melgard Coulee) in the SW4 of section 18 of Comstock Township, provided no pumps are installed.

Motion unanimously carried.

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

6. Permit (09-008) of Mark Yutrenzka to install a trap on the south side of the filed crossing, North of the Swift Coulee, East side of MN Trunk Highway #75, in the NW4, of section 2 of Warrenton Township.

Motion unanimously carried.

Earl McGregor presented a letter to the Board that he requested be recorded in the minutes, regarding the culvert that was lowered, without approval from the District, in the SW $\frac{1}{4}$ of section 32 of West Valley Township, and stated that he was directed to return the culvert to his prior elevation. He also stated that another landowner dug out the ridge and lowered a culvert in the township ditch and questioned if approval was received from the District. Mr. McGregor further stated that he has plugged and diked the township ditch. The letter was received and is on file in the District office.

Nick Drees was directed to prepare a history outlining the action that was taken and prepare possible recommendations.

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

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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 MSTRWD and Jerry VonKorff; (3) Evidence the MSTRWD has that demonstrates any Board Manager or Public Official participated in

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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.

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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.

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

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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