

APPROVED (as corrected August 17, 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. JULY 20, 2009**

The meeting was called to order by President Doug Sorenson. Managers Doug Sorenson, John W Nelson, Ben Kleinwachter, Loren Zutz, Elden Elseth, Marvin Hedlund and Alvin Nybladh were present. Nick Drees, Connie Kalinowski, Jeff Hane, Wallace Diedrich, Ron Adrian, and Ken Johnson were also present.

Wallace Diedrich recorded the meeting with one recorder.

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

Mr. Loren Zutz requested to add to agenda item #17, Legal Counsel, (9) the Motion to Dismiss Loren Zutz from the open meeting lawsuit, filed by Jeff Hane.

Motion by Mr. Ben Kleinwachter, seconded by Mr. John W Nelson that the agenda be approved as amended to include the Motion to Dismiss Loren Zutz from the Open Meeting Lawsuit to agenda item #17 (9) Legal Counsel. Motion unanimously carried.

Brian Dwight and Julie Klocker joined the meeting at approximately 4:12 p.m.

Motion by Mr. Elden Elseth, seconded by Mr. Loren Zutz that the minutes of the June 15, 2009 meeting be approved as corrected. Motion unanimously carried.

Motion by Mr. John W Nelson, seconded by Mr. Elden Elseth that the minutes of the July 6, 2009 meeting be approved as corrected. Motion unanimously carried.

Tony Johnson joined the meeting at approximately 4:17 p.m.

Arlyn Stroble joined the meeting at approximately 4:22 p.m.

The financial report was reviewed and filed for audit purposes.

Motion by Mr. Elden Elseth, seconded by Mr. Loren Zutz that payment of the attorney bills be voted on separately. Motion failed.

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Motion by Mr. Alvin Nybladh, seconded by Mr. John W Nelson that the following bills be paid, from the Administrative funds: that payroll checks numbered 4879 through 4892 inclusive for a total of \$16,291.68; and checks numbered 14225 through 14251 and checks numbered 14265-14269 inclusive, including the service charge for a total of \$32,407.25; from the Project funds that checks numbered 1702 through 1715 for a total of \$391,487.78; from the RRWMB fund that check number 129 for a total of \$20,328.21 and from the Ditch Funds that checks numbered 2321 through 2325 for a total of \$11,334.00 be paid. Motion carried with Mr. Loren Zutz and Mr. Elden Elseth voting no.

There were no individuals present for the open forum, however, Mr. Elden Elseth discussed the permit granted him to install a 42" arch pipe, through the township road, in McCrea Township. He stated that he received a 42" circular pipe, which would increase the drainage capacity by 5% and inquired if the Board would approve the circular pipe in place of the 42" arch pipe.

Mr. Elden Elseth was directed to file an amended permit with the District for review at the next meeting of the Board, scheduled for August 3, 2009.

Arlyn Stroble brought to the Board's attention that the culvert that Angus Township was granted a permit for, was a 30" CSP, and in his opinion, is a 24" culvert.

Brian Dwight introduced Julie Klocker, Assistant Director of the Board of Soil and Water Resources Programs and Policies Division.

Julie Klocker gave a brief description of her role as the Assistant Director of the Board of Soil and Water Resources Programs and Policies Division. She stated her main focus is on legislative issues, primarily bonding bills and funding.

Mr. Elden Elseth stated that the Board of Soil and Water Resources should take a stronger position enforcing Watershed District's to treat landowners fairly during the acquisition of lands, and he also stated that he would like to see Watershed Districts follow Minnesota Statutes 117 and not 103D.

Mark Meister joined the meeting at approximately 4:55 p.m.

Mark Meister, Public Service Advisor for the Red River Watershed Management Board, briefly described some of the services he provides to the Red Board.

A discussion was held concerning the permit application of Darrell Novacek to remove a 24" culvert from a field crossing in the northwest quarter of the southwest quarter of section 24 of Angus Township. Danny Omdahl reported that Angus Township has scheduled a meeting with Darrell Novacek and Gene Tiedmann to discuss the request of Darrell Novacek.

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

1. Permit (09-025) of Darrell Novacek to remove a 24" culvert from a field crossing in the NW SW of section 24 of Angus Township;
2. Permit (09-029) of Robert Hamrick to install a high flow culvert through a field crossing on the west side of the farmyard, north side of CR #23, in the SE SW of section 12 of Angus Township.

Motion unanimously carried.

Motion by Mr. Alvin Nybladh, seconded by Mr. Marvin Hedlund that the following permit be granted:

3. Permit (09-034) of David Kallock to raise the township road, west of MN Trunk Hwy #220, to an elevation 6" below MN Trunk Hwy #220, in a graveled state, with the north and slopes of County Ditch #39 to remain at the same continual grade, in the NE NE of section 5 of Oak Park Township. Motion carried, with Mr. John W Nelson abstaining.

Motion by Mr. Loren Zutz, seconded by Mr. Elden Elseth that the following permits be granted:

4. Permit (09-035) of Tony Johnson to remove the crossing and a 60" CSP on the north line of the section, on Judicial Ditch #20 Main, in the NW NW of section 18 of Warrenton Township, provided approval is received from the Marshall County Highway Department. The file is to acknowledge that this crossing and culvert were installed as part of the original repair and that the crossing and culvert will not be re-installed in the future.
5. Permit (09-036) of Tony Johnson to install a crossing, with a 24" culvert in the east ditch of County Road #21, in the SW SW of section 6 of Warrenton Township;
6. Permit (09-037) of Ken L Johnson to raise the farm driveway 6" above the spring flood elevation of 2009, from the east edge of the farmyard ringdike to the township road, thence southerly, approximately ¼ mile, to the section corners in the SE SE of section 14, thence easterly approximately ¼ mile in the SW SW of section 13 of Big Wood Township;
7. Permit (09-038) of the Minnesota Department of Transportation to regrade eroded areas and install rip rap at the culvert area on the west side of MN Truck Highway #220, and to regrade and rip rap eroded areas on the east

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side of MN Truck Highway #220, on section line 16/15 of Eagle Point Township;

8. Permit (09-039) of Stroble Farms to install a dry field crossing on the West side of the township road, in the SE NE, of section 18 of Angus Township;
9. Permit (09-040) of Stroble Farms to install a crossing with an 18" culvert at the binsite in Angus, in the SW SW, of section 9 of Angus Township;
10. Permit (09-041) of Stroble Farms to lengthen (2) 24" existing township road intersection culverts, in the SW SW, of section 18 of Angus Township;
11. Permit (09-042) of McCrea Township to remove a 30" culvert and replace with a new 30" culvert, approximately at the northerly $\frac{3}{4}$ mile line, N2, between sections 7/8 of McCrea Township.

Motion unanimously carried.

Motion by Mr. Elden Elseth, seconded by Mr. Marvin Hedlund that the following permits be denied:

12. Permit (09-030) of Mark P Anderson to remove a 36" RCP between sections 34 and 35; to remove a 24" CSP at the SE SW; to remove a 24" CSP between sections 35/26, all on the south line of said sections, on the north side of County Road #5 and to replace the culverts with larger sizes as recommended by the District, in sections 34, 35 and 36 of Eagle Point Township. Permit was denied pending review by Marshall County and the culvert sizing should be recommended by Marshall County.
13. Permit (09-031) of David Woinarowicz to install culverts in the NW NW of section 26 and NW NW of section 25 of Eagle Point Township, with the District to recommend the culvert size. Permit was denied at the request of the David Woinarowicz.

Motion unanimously carried.

A discussion was held concerning the drainage issues along Marshall County Ditch #7 in Eagle Point Township. The Board directed Danny Omdahl to contact Marshall County expressing the Districts desire to participate in helping them find a solution to alleviate the water issues in Eagle Point Township.

The Full and Final Release of All Claims, signed by Ernest Pribula for the farmstead ring dike constructed in the SW4 of section 7 of Northland Township, was distributed.

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The following data practice requests were distributed:

1. From post office box 56, Borup, Minnesota requesting the Administrator review the Flood Hazard Mitigation Grant Agreement for the Agassiz Valley Water Resource Management Project and copy the pages specific to paying attorney fees;
2. From post office box 467, Park Rapids, Minnesota requesting a copy of the Supplemental Dam Breach Report for the Agassiz Valley Water Resource Management Project and a copy of the approved board meeting minutes where the Supplemental Dam Breach Report was presented.

Nick Drees reported that the FEMA repair of Judicial Ditch #75 will be started soon; that he has obtained an agreement with Parker Township and they are willing to split the costs to repair the sloughs along Judicial Ditch #29, in Parker Township, on a 50/50 basis.

A discussion was held concerning the culvert sizes along Judicial Ditch #14, Branch E. Nick Drees reported that the ditch is not large enough to handle the water and suggested that Houston Engineering be directed to look into the culvert sizing.

Nick Drees reported that the landowners along County Ditch #175 have expressed their desire to drain waters northerly into Judicial Ditch #75.

A discussion was held and it was decided a more feasible alternative would be to drain waters from County Ditch #175 into Watershed Ditch #5. An agreement from downstream landowners would be needed to improve the drainage on County Ditch #175.

Nick Drees reported that Higdem and Sandsville Townships want the spillways along the branch of Judicial Ditch #1 put back to the original grade. The District will stake the height and length of the spillways to the original grade.

Nick Drees updated the Board on the status of the Brandt/Angus project. He reported that the Brandt/Angus Project Work Team met two weeks ago on permitting. On the issue of funding he stated that there is no State Bonding money available at present and that he would address the Red River Watershed Management Board tomorrow on obtaining monies from them for land acquisition.

A discussion was held on talks with the landowner of Section 19 of Brandt Township on reaching an agreement on purchasing the property. Nick Drees was directed to seek funding for the land acquisition for the Brandt/Angus project

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at the Red River Watershed Management Board meeting scheduled for July 21, 2009.

Brian Dwight reported that on Project 60, there has been 100% participation in the RIM Program offered to the landowners along Project 60.

Motion by Mr. John W Nelson, seconded by Mr. Alvin Nybladh that the Chairman be directed to sign the Update to the Workplan of the District's Overall Plan with the Minnesota Board of Soil and Water Resources. Motion unanimously carried.

Nick Drees reported that the embankment of Phase 1 of the Agassiz Valley Water Resource Management Project is completed; that the Wetland Mitigation (Phase 3) is approximately 60% complete and should be completed next week; that Zavoral Construction is requesting a reduction in the retainage on their contract for Phase 1; that the drop structure on Phase 2 is completed and that Davidson Construction has completed 1 mile of the 3 miles on the North side.

Brian Dwight and Julie Klocker left the meeting at approximately 7:30 p.m.

Motion by Mr. John W Nelson, seconded by Mr. Ben Kleinwachter that a hearing on the Agassiz Valley Water Resource Management Project, to reduce the retainage on the contract with Zavoral Construction be scheduled for 3:30 p.m., August 3, 2009, at the District office, and that notice be given to the affected Counties and the Surety Company, and that publication of said hearing be made. Motion unanimously carried.

Motion by Mr. Ben Kleinwachter, seconded by Mr. John W Nelson that the amendment to the Grant Agreement with the Minnesota Department of Natural Resources, for the Agassiz Valley Water Resource Management Project, for \$2.5 million dollars, be signed. Motion unanimously carried.

Motion by Mr. Ben Kleinwachter, seconded by Mr. Alvin Nybladh that the Extension to the PL-566 Grant Agreement with the Natural Resources Conservation Service be signed. Motion unanimously carried.

Nick Drees reported that the joint meeting of the Red River Watershed Management Board and the Red River Joint Water Resource Board is scheduled for July 21, 2009, at the Blue Moose, in East Grand Forks, and that a tour of various projects will also be conducted. The News and Views were distributed.

It was announced that the Marshall County Commissioners would be making 2 appointments to the Districts Board of Managers at their regular meeting scheduled for July 21, 2009. The terms of Mr. Elden Elseth and Mr. Loren Zutz expire on August 27, 2009.

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The 2010 District budget was distributed for the Board to review.

Motion by Mr. Elden Elseth, seconded by Mr. Loren Zutz that the 2010 budget hearing, adoption of the 2010 budget and the permit meeting be scheduled for September 1, 2009. Motion carried unanimously.

Motion by Mr. John W Nelson, seconded by Mr. Ben Kleinwachter that the proposed 2010 budget be adopted on August 3, 2009. Motion unanimously carried.

Mr. Elden Elseth requested a copy of the Agassiz Valley Water Resource Management Supplemental Dam Breach report.

Jeff Hane reported that he has conducted title work for the properties on the east end of the Agassiz Valley Water Resource Management Project; and that the briefs have been completed on the Agassiz Valley Water Resource Management Project (Stengrim) case, and are available at the District office.

Mr. Loren Zutz stated that he has several questions for the District's legal counsel regarding the briefs in the Stengrim case on the Agassiz Valley Water Resource Management Project, citing ethical problems.

Mr. Loren Zutz was directed to submit his questions in writing to Mr. Jerry VonKorff and to also provide copies to the Board.

Mr. Elden Elseth requested a copy of the brief in the PL-566 (Riley) case.

Jeff Hane reported that he has drafted the purchase agreements for the properties needed for the Brandt/Angus project; that the briefs are done in the Angus Oslo #4, Drewes case, and he is waiting to hear a date for arguments from the Court of Appeals; and that he is also waiting on the ruling in the PL-566 (Riley) case.

Jeff Hane stated that he has been in discussion with the District Administrator regarding the issue of the plugged culvert in section 17/16 of Tabor Township. He stated that Nick Drees is contacting the landowners, therefore, he has not sent Tabor Township a letter regarding this matter.

Jeff Hane reported that a letter has been received from Mike Peterka stating he does not want the lands purchased for the Agassiz Valley Water Resource Management Project as a land sale, but he would prefer a land swap.

A discussion was held on Mike Peterka's request. Jeff Hane was directed to send Mike Peterka a letter stating the District does not have any land available for a land swap and that the District is willing to help alleviate the drainage problems.

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Jeff Hane reported that numerous motions have been filed regarding the proposed Open Meeting lawsuit filed by Jim Stengrim and that a hearing has been scheduled for August 4, 2009.

Jeff Hane reported that Tom Ritoch has filed a Motion with the District Court appealing the District's decision to not issue a permit to modify the road access to the bin site located in the NW SW, of section 17 of Sandsville Township.

An email from Jim Stengrim was distributed regarding his complaint that the District's legal counsel did not state a reason why the statute does not apply to the District Administrator classifying a real property appraisal as public data.

Mr. Loren Zutz stated he wanted to go on record stating he was not with the majority on Mr. Hanes decision. Mr. Zutz also stated he is not an attorney and did not make the determination as to if the statute applied or not.

Jeff Hane reported that he received a letter from Loren Zutz's attorney, Paul Sortland, stating he thinks the District's insurance carrier and Mr. Zutz could reach an agreement on the Stengrim Open Meeting lawsuit. Jeff Hane stated he has forwarded a letter to the District's insurance carrier.

Mr. Loren Zutz discussed the Motion to Dismiss filed in the proposed Open Meeting lawsuit of Jim Stengrim and inquired if Jeff Hane is representing him, since he filed the motion. Jeff Hane reported he is not representing Mr. Zutz, but he is representing the District.

Nick Drees reported that the District has met with a representative from FEMA on damages caused during the spring 2009 flood and are waiting to hear if funds will be available for the repairs; that Murray Goodwin is requesting to lower the south spoil on the ditch constructed in Angus Township that blew out this spring; that the tour scheduled with the Red River Watershed Management Board and the Red River Joint Water Board will depart from the Blue Moose, in East Grand Forks at 1:00 p.m.

Mr. Loren Zutz inquired if the rental agreement on the PL-566 Diversion project were open to bids and when the current agreement expires, as he knows of a party interested in renting it in the future.

Mr. Loren Zutz requested a copy of the rent agreement.

There was no Administrators report.

Chairman, Doug Sorenson, announced that the next meeting of the Board of Managers will held on August 3, 2009, with the reduction in retainage hearing of Zavoral Construction scheduled for 3:30 p.m., and the regular meeting to be held

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following the hearing to adopt the proposed 2010 budget and to review permit applications; and the regular board meeting is scheduled for 4:00 p.m., August 17, 2009, at the District office.

Jeff Hane stated that pursuant to Minnesota Statutes 13D.05 subd (b) Attorney/Client Privileges that the meeting be closed for purposes of discussing the answers to the interrogatories and production of documents regarding the Open Meeting (Stengrim) lawsuit and to discuss the Appeal filed by Tom Ritoch and the Plaintiffs MSTRWD response for Production of Documents.

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 9:42 p.m.

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

The meeting was reopened at approximately 10:28 p.m.

Motion by Mr. Marvin Hedlund, seconded by Mr. Alvin Nybladh that the meeting be adjourned. Motion unanimously carried.

The meeting was adjourned at approximately 10:29 p.m.

Connie Kujawa
Recording Secretary

Ben Kleinwachter
Secretary