

**MIDDLE-SNAKE-TAMARAC RIVERS WATERSHED DISTRICT
NEGATIVE EIS DECLARATION**

**In the Matter of the Decision of the
Need for an Environmental Impact
Statement for the Judicial Ditch #14
Flood Damage Reduction Project, in
Marshall County, Minnesota.**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

WHEREAS, the Middle-Snake-Tamarac Rivers Watershed District (MSTRWD) acting as the local sponsor and RGU, adopted the following Negative Environmental Impact State Declaration, Findings of Fact, Conclusions of Law and Order in the matter of the decision of the need for an Environmental Impact Statement for the Judicial Ditch #14 Flood Damage Reduction Project including the installation of an: 1) impoundment site in Viking Strip Township; 2) replacement of a 60" metal culvert with 3 lines of 72" concrete culverts at a lower grade; and 3) grade stabilization of approximately 1.75 miles of the Judicial Ditch #14 system.

FINDINGS OF FACT

- A. The proposed project includes construction of an off-channel impoundment, replacement of a 60" CMP with 3-72" RCP at a lower grade, and channel grade stabilization of approximately 1.75 miles of Judicial Ditch 14 Main Branch located in the Lilac Ridge area of Marshall County near Viking, Minnesota.
- B. The Watershed Planning effort that resulted in the Proposed Alternative Project was initiated in June 2016 when the MSTRWD board made application for assistance from the Red River Retention Authority (RRRA) for Watershed Planning under the Regional Conservation Partnership Program (RCPP), administered by Natural Resources Conservation Service (NRCS). The RRRA authorized the MSTRWD to proceed in a Cooperative Agreement (No. 68-6322-16-511) with NRCS to perform Watershed Planning in the MSTRWD for the Judicial Ditch #14 Watershed Plan. The purpose of the project is to provide flood damage reduction to agricultural lands due to a 10-year 24-hour rainfall event and to reduce flood damage to public transportation infrastructure in the JD #14 sub-watershed and contribute to the overall basin wide goal of reducing peak flows to the Red River of the North by 20%.
- C. Eleven different alternatives were screened during the watershed planning process. Alternatives screened included drainage improvements, channel grade stabilization within the Lilac Ridge area, impoundments, culvert sizing and different combinations all the above. Each alternative was screened to meet/partially the purpose and need of the project based on 3 indicators used in hydraulic and hydrologic modeling efforts along with potential wetland impacts based on NWI wetland acres. Indicator 1 – "Reduce cropland inundation for flood durations between 24 and 120 hours for the 10-year, 24-hour rainfall event by 20%". Indicator 2 – "Reduce the total inundated acres for flood durations greater than 24-hours for the 10-year, 24-hour rainfall event by 25%".

Indicator 3 – “No increase in peak flow rate at the outlet of the Judicial Ditch #14 Watershed for the 10-year and 100-year 24-hour event”. Ultimately the proposed alternative as described under item A above met or partially met all 3 indicators and provided the least impact to wetlands. This method of screening was approved through the 3-step concurrence point process with the Army Corps as being the Least Environmentally Damaging Practicable Alternative (LEPDA).

- D. The first public scoping meeting was held in April 2016 at the Newfalden community center to receive public input on resource concerns within the sub watershed from the public. In addition, between 2016 to 2020, 6 project team meetings were held with planning input from local landowners, township officials, state and local agencies (Board of Water & Soil Resources (BWSR), Department of Natural Resources (DNR), Soil and Water Conservation Districts (SWCD), and MSTRWD), and Federal agencies (United States Army Corps of Engineers (USACE), Natural Resources Conservation Service (NRCS), and United States Fish and Wildlife Service (USFWS)) to screen alternatives and recommend a preferred alternative to the MSTRWD to pursue. These meetings followed guidance for project development from both NWPM Section 501.3/NWPH Section 601.3 and from the Red River Basin Project Team Handbook. In these meetings, resource concerns were scored from least to most concerning, damages were quantified, a project purpose and need was developed, and initial project strategies were screened and project alternatives were identified using Technical Paper No. 11. The alternatives were screened through further analysis based on meeting purpose and need and wetland impacts based on the National Wetland Inventory (NWI). A detailed wetland delineation investigation was performed on the preferred alternative prior to Concurrence Point #3 submittal to the USACE to concur that the selected alternative by the Project Team was the LEDPA alternative. Concurrence Point #3 approval was received from the USACE on December 11, 2020.
- E. As local sponsor, the MSTRWD initiated environmental review, in accordance with Minnesota Rules 4410.1000 subp. 3.D, by the preparation of a discretionary Environmental Assessment Worksheet (EAW) to determine if the project had the potential for significant environmental effects.
- F. Houston Engineering Inc., on behalf of the MSTRWD, prepared the EAW for the project in accordance with Minnesota Rules Chapter 4410.
- G. The EAW and supporting technical materials used in preparation of the EAW are incorporated by reference into this Record of Decision on the Determination of Need for an Environmental Impact Statement (EIS).
- H. The EAW was filed with the Environmental Quality Board (EQB) and a notice of its availability was published in the EQB *Monitor* on June 29, 2021. A copy of the EAW was sent to all persons on the EQB Distribution List and to those persons requesting a copy. Press releases announcing the availability of the EAW were sent to the local newspaper and the MSTRWD web site.
- I. The 30-day EAW public review and comment began June 29, 2021 and ended July 29, 2021 pursuant to Minnesota Rules part 4410.1600.

- J. During the 30-day public review and comment period, the MSTRWD received three (2) letters containing written comments and one (1) email response stating they have no comment from the Minnesota Department of Agriculture. Comments were received from the following parties:
- a. Nathan Kestner, Regional Manager, NW Region – Ecological and Water Resources, Minnesota Department of Natural Resources (DNR)
 - b. Karen Kromar, Project Manager, Environmental Review Unit, Resource Management and Assistance Division, Minnesota Pollution Control Agency (MPCA)
- K. Written comments received and Houston Engineering’s responses, on behalf of MSTRWD are compiled in **Appendix A** and incorporated by reference into this Record of Decision on the Determination of Need for an EIS.
- L. Responses provided by the DNR and MPCA will be incorporated into the final Engineer’s Report, the permitting process, and final design for the Proposed Project as applicable.
- M. The Rules of the Minnesota Environmental Quality Board set forth the following standards and criteria (Minnesota Rules part 4410.1700, subps. 6 and 7) to which the effects of a project are to be compared to determine whether it has the potential for significant environmental effects:
- a. Type, extent and reversibility of the environmental effects;
 - b. Cumulative potential effects of related or anticipated future projects;
 - c. Extent to which the environmental effects are subject to mitigation by ongoing regulatory authority; and
 - d. The extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, including other EISs.
- N. Based on the information contained within the EAW and provided in written comments received and in the responses to those comments, MSTRWD has identified no unmitigated environmental effects for the Judicial Ditch #14 Flood Damage Reduction Project.

CONCLUSIONS OF LAW

1. Middle-Snake-Tamarac Rivers Watershed District, which is the RGU for the project, has fulfilled the procedural requirements of law and rule applicable for the need of a Discretionary EAW.
2. There are adequate and appropriate state and local regulations governing the activities of this project that will limit and control environmental effects, specifically the impacts to wetlands, public waters, and rare/natural resources.

3. It has been determined that the proposed project does not present a potential for environmental impacts of such significance that an Environmental Impact Statement would be required.

ORDER

Based on the above Findings of Fact and Conclusions and the entire record of this matter:

The Middle-Snake-Tamarac Rivers Watershed District Board of Managers hereby makes a Negative Declaration on the need for an Environmental Impact Statement. An EIS is not required for the Judicial Ditch #14 Flood Damage Reduction Project in Marshall County, Minnesota.

Any Findings that might properly be termed Conclusions and any Conclusions that might properly be termed Findings are hereby adopted as such.

Dated this 16th day of August 2021

Attest:

**MIDDLE-SNAKE-TAMARAC RIVERS
WATERSHED DISTRICT**



Brad Blawat,
Board of Managers Secretary



John Nelson,
Board of Managers President

Appendix A

MARSHALL COUNTY, MN, JUDICIAL DITCH 14 FLOOD DAMAGE REDUCTION PROJECT
EAW COMMENTS/RESPONSES

COMMENT ID	PUBLIC COMMENT/ AGENCY REVIEW	Comment Topic	ORIGINAL REVIEW COMMENT	RESPONSE
1	MnDNR	Surface Water Hydrology	Installation of a culvert 5 feet below the current elevation through the beach ridge may cause head cutting through the ridge and upstream into the JD 14 system. It also may move more sediment from the ditch bottom downstream, aggrading the lower end of JD 14 and potentially influencing flooding in that area. If sediment is mobilized, it could also have undesirable effects in channel of the South Branch Snake River.	The existing JD14 channel grade near Lilac Ridge Road is 0.31%. While the proposed grade stabilization does lower the channel, the design channel grade is 0.1% with a flatter side slope. The stabilization will reduce sediment transport potential in the system.
2	MnDNR	Surface Water Hydrology	Sediment movement could create turbid water quality from the ditch improvements on the culvert at the beach ridge. The increased sediment/turbidity would not meet today's standards for water quality on improvements to ditch systems.	The grade stabilization will flatten the grade through the ridge which will reduce sediment transport potential in the system and the downstream proposed culvert at the impoundment inlet will minimize peak flows downstream and force water into the impoundment site causing sediment to settle out and improve water quality when water is released back into the ditch system. Also see comment 1.
3	MnDNR	Surface Water Hydrology	The outlet of JD 14 is the South Branch Snake River. The South Branch currently has unraveling banks, indicating it is an unstable system. It is possible that additional flows resulting from higher conveyance capacity through the beach ridge could accelerate this problem.	The project was designed to have reduced flows at the outlet of the JD14 system. The impoundment site offsets any increases in peak flows through the ridge and shows flood damage reduction benefits on peak flows for the range of synthetic events analyzed for both spring and summer events.
4	MnDNR	Surface Water Hydrology	The DNR suggests that the potential impacts mentioned in Comments 1-3 be assessed further and that the project design/operations be configured to avoid them.	The design report documents the analysis of 24-hour and 10-day synthetic events for existing and with project conditions. The analysis indicates no adverse impacts to the JD14 system
5	MnDNR	Groundwater Hydrology	The EAW notes there are no springs within the project area. However, in early coordination discussions MDNR has noted that groundwater discharge is the mechanism by which many wetlands in the project area receive water. The Lilac Ridge area contains a complex of high quality groundwater-fed wetlands. Groundwater flows through and down the beach ridge system, picking up minerals and increasing in pH as it filters through the ridge and exits into the adjoining wetlands.	Impacts to these groundwater fed wetlands will be analyzed through the permitting process and alterations to the project designs if necessary may occur. If such changes will reduce these impacts and still meet the projects overall goals.
6	MnDNR	Groundwater Hydrology	The unique hydrology of beach ridges makes the wetlands within the project area sensitive to excavation below the water table. In its current configuration JD 14 already cuts through Lilac Ridge, likely intercepting shallow groundwater and removing it from the beach ridge system and lowering the water level in wetlands adjacent to the ditch. Expanding the capacity of JD 14 and excavating to permanently lower the ditch bed by from 1 to 5 feet will increase this effect.	The existing conditions of the groundwater fed wetlands on site indicate that the previous construction of JD 14 had minimal to no impacts on the hydrology of these wetlands. The project proposers will maintain continued coordination with the DNR during the permitting phase of the project to identify ways to minimize or avoid these impacts on the hydrology regime of the wetlands and other rare features within the project area.
7	MnDNR	Groundwater Hydrology	Table 10 of the EAW identifies 9 water-supply wells within one mile of the project. There is some potential that the water-level effects discussed above could also impact these wells. Water-level effects should be reviewed to determine likelihood of impact and identify opportunities to avoid or mitigate the impacts if necessary.	The project will alter surficial flows of runoff on a temporary basis after rainfall events. Components of the project will not have an adverse impact to subsurface wells in the area.

8	MnDNR	Effects on Local Wetlands and Rare Plant Communities	<p>Deepening the ditch may affect the Minnesota public-water wetlands adjacent to JD 14, as well as non-public-water wetlands in the vicinity. As proposed, the bottom of the ditch would be at least 10 feet lower than the adjacent Public Water Wetlands. Increasing the shallow groundwater discharge by regrading the ditch deeper could potentially dewater these nearby wetlands, all of which are listed as rare plant communities in Tables 12 and 13 of the EAW.</p>	<p>As mentioned previously, the permitting phase will include avoidance and mitigation measures to minimize the projects overall impacts on the natural features in the area including public waters, adjacent wetlands, and other rare features. The project proposers will coordinate with DNR staff to implement measures to reduce impacts, identify design changes to avoid impacts, and mitigation options for replacement or mitigate unavoidable impacts.</p>
9	MnDNR	Effects on Local Wetlands and Rare Plant Communities	<p>Two types of fens, Prairie Rich Fen and Rich Fen Seepages, are found in and adjacent to Lilac Ridge. They both depend on continuous groundwater coming through this beach ridge system and the distinct water chemistries created by this system. These wetland fens are likely considered rare natural communities under the Minnesota Wetland Conservation Act, which would increase permitting complexity for this project. The Minnesota Wetland Conservation Act Rare Natural Communities provision requires that "A replacement plan for activities that involve the modification of a rare natural community as determined by the Department of Natural Resource's natural heritage program must be denied if the local government unit determines that the proposed activities will permanently adversely affect the natural community." (Minnesota Rule 8420.0515, subp. 3). Since this outcome could prevent the project from moving forward, DNR suggests the District explore means to avoid modification of the rare natural communities in the area.</p>	<p>Avoidance and minimization of impacts, to every extent possible, of rare features such as native plant communities and fen habitats will be identified as the project design/plans reach their final stages. The unavoidable impacts to these features will be addressed during the permitting phase of the project and impacts will be mitigated per the conditions provided in both Federal and State permits.</p>
10	MnDNR	Permits and Approvals	<p>The discussion of permits and approvals should include a MDNR work in public waters permit to cross or immediately adjacent to multiple Minnesota public water wetlands. Minnesota Public Water Rule 6115.0200, subpart 3H prohibits excavation in cases where "the excavation would cause increased seepage of water which would lower the water level of public waters and result in subsurface drainage".</p>	<p>The Project Proposer will work with the MnDNR Area Hydrologist to submit all required project information to obtain a Public Works Permit for all work that impacts Minnesota Public Waters.</p>
11	MnDNR	Permits and Approvals	<p>Any wetlands drained or filled under the Minnesota Wetland Conservation Act on MDNR land would require authorization from MDNR as the local government unit (LGU).</p>	<p>The project proposer will follow all requirements under the Wetland Conservation Act including identifying the correct LGU for each of the wetlands being impacted from the proposed project. The DNR, regardless of LGU status, will be included in throughout the permitting process.</p>
12	MnDNR	Permits and Approvals	<p>Due to the abundance of groundwater-fed wetlands, MDNR will require additional data on geological conditions, groundwater levels, and flow direction throughout the project area. The district will be required to demonstrate the project could be accomplished without lateral drainage of adjacent public waters and nearby groundwater-fed wetlands.</p>	<p>Discussions with the DNR about hydrology impacts to adjacent wetlands will be conducted leading up to application submissions for permits. The permitting phase will be utilized to address any design change requirements to maximize wetland impact minimization measures while also maintaining the overall project goals.</p>
13	MnDNR	Permits and Approvals	<p>For both the public water work and WCA permits, MDNR will require a robust alternatives analysis describing the project purpose and need, alternatives considered, and how it is designed to be the least impact alternative and how impacts are avoided.</p>	<p>Coordination with the DNR will be maintained leading up to permit acquisition to identify all alternatives to the project's design that will minimize and avoid wetland impacts to the greatest extent possible while also maintaining overall project goals.</p>
14	MnDNR	Permits and Approvals	<p>The proposed project includes work on MDNR lands. Prior to public water permit approvals, MDNR will require documentation of right-of-way boundaries or application for easements for any activities on state land.</p>	<p>The proposer will coordinate with the DNR to provide all necessary documentation and information about state lands through the design phase and prior to obtaining permit approvals.</p>

15	MnDNR	Red River Basin Mediation Agreement Project Team Process	<p>The permitting complexities of the proposed project demonstrate the ongoing need to use the "project team" process established under the Red River Basin Mediation Agreement. While a project team was organized for this project, it has not been meeting regularly, and concerns regarding natural resource impacts that MDNR communicated previously have not been fully addressed. Thus, it appears there is still a need to discuss and resolve the potential permitting challenges we have identified. MDNR recommends the District reactivate the project team to develop further detail on impacts and investigate project design modifications and/or additional alternatives that could avoid these impacts.</p>	<p>The first public scoping meeting was held in April 2016 at the Newfolden community center to receive public input on resource concerns within the sub watershed from the public. In addition, between 2016 to 2020, 6 project team meetings were held with planning input from local landowners, township officials, state and local agencies (Board of Water & Soil Resources (BWSR), Department of Natural Resources (DNR), Soil and Water Conservation Districts (SWCD), and MSTRWD), and Federal agencies (United States Army Corps of Engineers (USACE), Natural Resources Conservation Service (NRCS), and United States Fish and Wildlife Service (USFWS)) to screen alternatives and recommend a preferred alternative to the MSTRWD to pursue. These meetings followed guidance for project development from the Red River Basin Project Team Handbook. In these meetings, resource concerns were scored from least to most concerning, damages were quantified, a project purpose and need was developed, and initial project strategies were screened and project alternatives were identified using Technical Paper No. 11. The alternatives were screened through further analysis based on meeting purpose and need and wetland impacts based on the National Wetland Inventory (NWI). A detailed wetland delineation investigation was performed on the preferred alternative prior to Concurrence Point #3 submit to the USACE to concur that the selected alternative by the Project Team was the LEDPA alternative. Concurrence Point #3 approval was received from the USACE on December 11, 2020. The proposer will coordinate with DNR through the permitting process to address these concerns.</p>
16	MPCA	Permits and Approvals	<p>Please note that the 401 Water Quality Certification becomes an enforceable component of the associated federal license or permit – issued under either Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act. The scope of a Clean Water Act Section 401 Certification is limited to assuring that a discharge from a federally licensed or permitted activity will comply with water quality requirements. Revisions to the Section 401 rule became effective in September 2020, and now require applicants to request a pre-filing meeting from the certifying agency at least 30 days prior to submitting a 401 Water Quality Certification request. The MPCA is the certifying authority in the State of Minnesota.</p>	<p>The project proposer will follow the requirements laid out under the Clean Water Act including the revisions recently put into effect under Section 401. A request to the MPCA for a pre-filing meeting will be submitted 30-days prior to submitting 401 Water Quality Certification requests.</p>
17	MPCA	Permits and Approvals	<p>Also, please keep in mind that in accordance with Minnesota Statutes, the Project should include the MPCA as a regulator of all surface waters as defined by Minn. Stat. § 115.01, subd. 22. Waters of the state. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof. Even though there may be surface waters that are determined to be USACE non-jurisdictional, or exempt from the Wetlands Conservation Act, all surface waters are regulated by the MPCA and any surface water impact needs to be described in the application and may require mitigation.</p>	<p>The project proposer will coordinate with the MPCA to apply for and obtain any require permits under Minn. Stat. § 115.01, subd. 22.</p>
18	MPCA	Water Resources	<p>The 325.75 acre flood control project involves considerable work within the JD14 ditch system which requires a Minnesota Department of Natural Resources (DNR) Public Waters permit.</p>	<p>The Project Proposer will work with all agencies to obtain all required project permits as required by law.</p>

19	MPCA	Water Resources	<p>It should be noted that the National Pollutant Discharge Elimination System/State Disposal System General Construction Stormwater permit (CSW Permit) only covers work areas above the Ordinary High Water Level (OHWL) of the DNR Public Waters permit jurisdiction. Due to the impairment of the public water, work above the OHWL that will result in disturbance of 50 or more acres will require that the Stormwater Pollution Prevention Plan for the Project be reviewed and approved by the MPCA prior to obtaining CSW Permit coverage.</p>	<p>A Stormwater Pollution Prevention Plan will be developed by the project proposer and approved by the MPCA prior to obtaining a CSW permit coverage.</p>
20	MPCA	Water Resources	<p>Because JD14 has construction-related impairments, the CSW Permit requires additional Best Management Practices (BMPs) not mentioned in the EAW. These include stabilizing any temporarily and/or permanently inactively worked soils within seven days even if work will resume in the area. This includes stabilizing any soil stockpiles on the site. Also, temporary ponding will be required where five or more acres drain to a common location.</p>	<p>Erosion control and SWPPP plan sheets will be developed and included in the final project plans to address these concerns.</p>
21	MPCA	Water Resources	<p>The CSW Permit also requires that disturbance within 50 feet of an existing natural buffer to any surface water, including wetlands at the site, have redundant (double) downgradient sediment controls installed during construction to protect these water bodies from sediment discharges.</p>	<p>Erosion control and SWPPP plan sheets will be developed and included in the final project plans to address these concerns.</p>
22	MPCA	Noise	<p>The MPCA recommends that the Project proposer ensure that equipment is appropriately muffled during use, and that the construction activities take place during daytime hours (7:00am to 10:00 pm) to the extent possible.</p>	<p>The recommendations to muffle equipment during construction will be adopted to every extent possible. All construction activities will occur within the daytime hours recommended by the MPCA.</p>
23	MPCA	Noise	<p>The MPCA notes that the EAW describes that the Project is exempt from the state noise standards described in Minn. R. ch. 7030. It is unclear to the MPCA which part of Minn. Stat. § 116.07, subd. 2a, applies to the Project, as there are no roadways or road construction activities directly associated with this proposed work, and it does not fall under any of the other exempt categories. In this case the point is irrelevant, as there will not be any long-term noise impacts, but the MPCA emphasizes that the project would not be exempt.</p>	<p>The project does not apply to the exemption listed under Minn. Stat. § 116.07, subd. 2a or any other exemption categories.</p>
24	Mn Dept. Ag.	General	<p>The Minnesota Department of Agriculture has no comments to make on the JD 14 - Liliac Ridge Water Management Project EAW. We believe the project supports the interests of agricultural land protection in the watershed.</p>	<p>n/a</p>