

May18(a)2020.min

**APPROVED (June 1, 2020)**  
**REGULAR MEETING OF THE BOARD OF MANAGERS OF THE**  
**MIDDLE-SNAKE-TAMARAC RIVERS WATERSHED DISTRICT**  
**HELD VIA CONFERENCE CALL**  
**DUE TO STATE WIDE "STAY-AT-HOME" COVID-19 ORDER**  
**8:30 A.M. May 18, 2020**

Chairman, Mr. John W Nelson, called for a roll call of Managers. Managers Bill Petersen, David Bakke, Brad Blawat, Roger Mischel and John W Nelson acknowledged their presence. Manager Robert Kovar was not present. Others attending the conference call were: Tony Nordby, Joel Praska, Tyler Larson, Kyle Schlomann, Connie Kujawa, Dillon Nelson, Jeff Beaudry and Jeff Hane. Chairman Nelson stated a quorum of the Board is participating and called the meeting to order.

Motion by Mr. Bill Petersen, seconded by Mr. David Bakke that the agenda be amended, with the addition of JD #14 RCPP and clarification of Permit (20-034). Chairman Nelson called for a roll call of votes, and by unanimous vote the Board approved the agenda. Managers Nelson, Petersen, Mischel, Blawat and Bakke voted yea, with no nay votes.

Motion by Mr. Brad Blawat, seconded by Mr. Bill Petersen the minutes of the May 4, 2020 meeting be approved as corrected. Chairman Nelson called for a roll call of votes, and by unanimous vote the Board approved the May 4, 2020 Board meeting minutes as corrected. Managers Nelson, Petersen, Mischel, Blawat and Bakke voted yea, with no nay votes.

The financial report was reviewed and filed for audit purposes.

Motion by Mr. Bill Petersen, seconded by Mr. David Bakke the following bills be paid: from the Administrative Funds; payroll checks #6472-6482 inclusive for a total of \$17,355.47; checks #18605-18632 inclusive, including the service charge and ACH withdrawal, for a total of \$41,073.37; from the Project Funds: checks numbered 3105-3112 inclusive for a total of \$50,055.46; and from Ditch Funds: checks #3358-3361 inclusive and including the service charge, for a total \$1,630.00. Chairman Nelson called for a roll call of votes, and by unanimous vote the Board approved the May 18, 2020 payment of bills. Managers Nelson, Petersen, Mischel, Blawat and Bakke voted yea, with no nay votes.

Jeff Beaudry informed the Board, the 24" culvert in Section 4 of Bloomer Township is still plugged. He stated this was brought to the attention of the Administrator last spring and questioned when it will be taken care of. Administrator Praska informed the Board, a contractor was in the area last week and removed the sediment from in front of the 24" culvert and adjacent 36" culvert. The Board directed Administrator Praska to locate a contractor, immediately, to clean the culvert.

Jeff Beaudry left the call at approximately 8:50 a.m.

Motion by Mr. Brad Blawat, seconded by Mr. David Bakke the following permit be approved:

1. Permit (20-031) to Brian Jensen to move an existing 24" centerline culvert, under 320<sup>th</sup> Ave, approximately 350' South, section line 28/29, Augsburg Township.

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Chairman Nelson called for a roll call of votes, and by unanimous vote the Board approved Permit (20-031). Managers Nelson, Petersen, Mischel, Blawat and Bakke voted yea, with no nay votes.

The following permit was Administratively approved and reviewed:

2. Permit (20-032) to replace a 24" RCP and 36" CSP township road centerline culverts with the same size and at the same elevation; Section corner 21/22 28/27 Helgeland Township.

Motion by Mr. Bill Petersen, seconded by Mr. Roger Mischel the following permit be DENIED:

3. Permit (20-033) Larry Rud to replace a 60" CSP township road centerline culvert, section, with a 60" culvert, same elevation; section line 33/34, Helgeland Township.

Chairman Nelson called for a roll call of votes, and by unanimous vote the Board DENIED Permit (20-033), since the drainage area constitutes a 24" culvert to be sufficient. Managers Nelson, Petersen, Mischel, Blawat and Bakke voted yea, with no nay votes.

Motion by Mr. Roger Mischel, seconded by Mr. Brad Blawat the following permit be approved:

4. Permit (20-034) to Ed Honek to install a new crossing with an 18" culvert, ~ 200' South of the existing crossing, NE NE, Section 14, Northland Township.

Chairman Nelson called for a roll call of votes and by unanimous vote, Permit (20-034) was approved. Managers Nelson, Petersen, Mischel, Blawat and Bakke voted yea, with no nays.

Motion by Mr. Brad Blawat, seconded by Mr. David Bakke the following permit be approved, with District staff to set the elevation:

5. Permit (20-035) to Aaron Knoll to install a field crossing with a 55" x 73" CMPA on Judicial Ditch #15, Branch B, at station 95+00; SW SE, Section 4, Viking Township.

Chairman Nelson called for a roll call of votes and by unanimous vote, Permit (20-035) was approved. Managers Nelson, Petersen, Mischel, Blawat and Bakke voted yea, with no nays.

Mike Rosendahl and Mark Judovsky joined the call at approximately 9:10 a.m.

Administrator Praska reported Technician Larson completed the survey of the line ditch in Section 6 of Tabor Township and the results have been presented and explained to Mark Judovsky and Mike Rosendahl. Technician Larson stated 3 locations have been identified as being high. Administrator Praska stated he has advised Mike Rosendahl to lower the 3 specific areas. Attorney Jeff Hane stated Minnesota follows the "rule of reasonable use" with regard to diversion or obstruction of surface water. He stated 3 criteria must be met, 1) there is a reasonable necessity; 2) reasonable care is taken to avoid harm; 3) there is a clear link between harm and activity. He also stated the District does not need to act as a referee in landowner disputes regarding field drainage.

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After a lengthy discussion and comments from Mark Judovsky, Mark Judovsky's Attorney, Russ Melland and Mike Rosendahl, Attorney Jeff Hane reviewed a proposed Findings and Order for Board consideration.

Motion by Mr. Roger Mischel, seconded by Mr. Bill Petersen the following Finding and Order be adopted:

In the Matter of the Drainage Dispute  
between Judovsky and Rosendahl

**FINDINGS AND ORDER**

The above-entitled matter came on before the Board at its regular meeting on May 18, 2020, at the Offices of the Middle Snake Tamarac Rivers Watershed District, 453 North McKinley Street, Warren, MN 56762. Due to the COVID-19 pandemic, the meeting was held telephonically. The following persons appeared via telephone before the Board: Mark Judovsky and Mike Rosendahl.

The Board heard from the following staff members who summarized the results of the survey: Technician Larson, Technician Omdahl and Administrator Praska.

In addition, the following persons spoke to issues with regard to the dispute: Attorney Jeff Hane and Attorney Russ Melland for Mark Judovsky.

The Board, having reviewed the survey in this matter and having discussed the survey results with the staff and with the parties, the Board considered:

- 1) The extent to which each party's use of their property was reasonable;
- 2) The degree of harm proven by each party; and
- 3) The existence of clear link, if any, between activities by the parties and the harms proven.

having deliberated with regard to the same, the Board issues its

**FINDINGS OF FACT**

- 1) It is not within the mission of the Watershed District to reach a finding of compliance or non-compliance in this dispute. It is not appropriate for the District to enter into field drainage disputes involving small elevations and limited damages without clear evidence of harm directly caused by diking or drainage. The focus of the District is public drainage and private drainage involving significant and clear harms.
- 2) The Board is less inclined to act as an arbitrator between neighbors if it perceives that other avenues are available to help those parties. In this instance, additional avenues might be available such as the cleaning of existing field ditches and/or the cleaning and grading of road ditches.

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- 3) Other dispute resolution mechanisms are available to the parties. If the parties request and the Board approves, Watershed staff may be made available to provide limited mediation services. Mediation services by the staff would require a Mediation Agreement between the parties and compensation for Staff time. But the parties are able to avail themselves to the courts if they desire.

**ORDER**

THEREFORE, the Board declines to take further action on this issue.

Chairman Nelson called for a roll call of votes and by unanimous vote, the Finding was approved and adopted. Managers Nelson, Petersen, Mischel, Blawat and Bakke voted yea, with no nays.

Administrator Praska reported Mike Rosendahl has submitted a letter stating he wishes to withdraw his "After the Fact" permit application. It was the consensus of the Board the permit application be marked null and void and filed with Permits.

Attorney Jeff Hane, informed the Board that Judovsky and Rosendahl may request the District act as a mediator to address the dispute in Section 6 of Tabor Township, however, he advised a Mediation Agreement be entertained and executed by the Board, if the Board approves the District staff to assist in the matter.

Administrator Praska reported he contacted the Marshall County SWCD to see if they have funding for the installation of 12 side inlet pipes, on Judicial Ditch #15, in sections 19 and 30 of New Solum Township. The Marshall County SWCD responded they would not be able to assist the District in funding since the lands are not tillable, but a landowner could request funding. Administrator Praska stated other funding could be possible through the Red River Watershed Management Board's Clean Water funds. The estimated cost of the 12 side inlet culverts would be approximately \$30,000.00 to \$40,000.00 and the RRWMB Clean Water funds would cover 75% of the cost. He asked the Board for permission to approach the RRWMB for funding. After discussion, the Board took no action on this matter until the area is viewed by the Managers.

Tony Nordby reviewed the revised plan to repair the slough on the South slope of Judicial Ditch #1, in section 20 of Higdrem Township. He reported a 12' top with a 3:1 back slope would eliminate the placement of dirt on the Nelson's drain tile. He stated to keep the lines clean, an additional 35' of easement would be necessary. Administrator Praska reported Steve Nelson is acceptable to the revised plan if the additional easement does not encompass current drain tile lines in section 20 of Higdrem Township. Tony Nordby also reported a portion of Judicial Ditch #1 is part of the Red River Ag Levee system and he has had conversations with the MN Department of Natural Resources and the North Dakota Water Commission regarding the proposed work. He stated to stay in compliance with the Red River Ag Levee Findings, the excess spoil dirt would be placed where it would not interfere with the Red River Ag Levee system.

Engineer Jerry Pribula, Pribula Engineering, joined the call at approximately 10:23 a.m.

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Jerry Pribula gave an update on the Repair of Polk County Ditch #175 project. He reported the side inlet culverts have been extended; additional rip rap is being added to the inlets; they are tapering the field side to the inlets to prevent erosion; and are leveling the spoil and seeding. A discussion was held concerning the placement of the side inlet culverts. Chairman Nelson stated in viewing the area, it appears the spillways are not placed at the field elevation. Engineer Pribula stated they will address this matter. Technician Omdahl informed the Board, the District staff will perform an inspection of the project, before final payment is made, to determine if the works meet the plan specifications.

Jerry Pribula disconnected from the call at approximately 10:33 a.m.

Brian Kasprick joined the meeting to discuss the erosion occurring in his fields from waters overtopping the south spoil of Polk County Ditch #43 Lateral 1, in Section 16, Angus Township. He is requesting a grade be established on the spoil to prevent waters from leaving the system. After a lengthy discussion, Technician Omdahl stated he will prepare a report outlining the issues and possible solutions. The report will be presented to the Board and Brian Kasprick.

Brian Kasprick left the call at approximately 10:53 a.m.

Attorney, Jeff Hane, left the call at approximately 10:53 a.m.

Chairman Nelson announced he will be leaving the conference call and turned the meeting over to Vice President Mr. Bill Petersen. John W Nelson left the call at approximately 10:53 a.m.

Vice President, Mr. Bill Petersen, presided over the meeting.

Dillon Nelson, HDR Engineering, stated he will be submitting the Step 2 Submittal, on the Newfolden Project, to the Red River Watershed Management Board, at the May 19, 2020 meeting and to the Flood Damage Reduction Work Group on May 27, 2020.

Tony Nordby gave an update on the Alternative Screening document on the Judicial Ditch #14 RCPP Project. He reported to suffice agencies and try to reduce environmental impacts. Additional alternatives have been modeled and added to the screening alternatives. He stated to keep the process moving forward, he and Administrator Praska will need to figure out how to set up meetings with landowners and the project team while adhering to the COVID-19 guidelines.

Administrator Praska reported he received a data practice request and the requested documentation has been furnished.

Administrator Praska reported a 3<sup>rd</sup> and 4<sup>th</sup> meeting was held on the 1W1P. He distributed resolutions for the Board to review, supporting the submittal of the grant application to the Board of Water and Soil Resources for a planning grant to develop a comprehensive watershed management plan and a resolution to enter into a Memorandum of Agreement with Marshall County, Polk County, Marshall County SWCD and the Polk County SWCD.

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Motion by Mr. Roger Mischel, seconded by Mr. Brad Blawat the following resolution be adopted:

**RESOLUTION OF THE BOARD OF MANAGERS  
OF THE MIDDLE-SNAKE-TAMARAC RIVERS WATERSHED DISTRICT  
Supporting a One Watershed, One Plan Project**

**WHEREAS**, the Minnesota Board of Soil and Water Resources has developed policies for coordination and development of comprehensive watershed management plans, also known as One Watershed, One Plan, consistent with Minnesota Statutes, Chapter 103B.801, Comprehensive Watershed Management Planning Program; and

**WHEREAS**, Minnesota Statutes, Chapter 103B.301, Comprehensive Local Water Management Act, authorizes Minnesota Counties to develop and implement a local water management plan; and

**WHEREAS**, Minnesota Statutes, Chapter 103D.401, Watershed Management Plan, authorizes Minnesota Watershed Districts to develop and implement a watershed management plan; and

**WHEREAS**, Minnesota Statutes, Chapter 103C.331, subdivision 11, Comprehensive Plan, authorizes Minnesota Soil and Water Conservation Districts to develop and implement a comprehensive plan; and

**WHEREAS**, the counties, soil and water conservation districts within the Middle-Snake-Tamarac Rivers Watershed District have interest in developing a comprehensive watershed management plan.

**NOW, THEREFORE, BE IT RESOLVED**, that Middle-Snake-Tamarac Rivers Watershed District recognizes and supports watershed-scale planning efforts consistent with Minnesota Statutes, Chapter 103B.801, also known as One Watershed, One Plan; and

**BE IT FURTHER RESOLVED** that Middle-Snake-Tamarac Rivers Watershed District welcomes the opportunity to collaborate with the counties, soil and water conservation districts, and watershed districts within the Middle-Snake-Tamarac Rivers Watershed District for watershed-scale planning efforts in the future; and

**BE IT FURTHER RESOLVED** that the Middle-Snake-Tamarac Rivers Watershed District supports an application to the Board of Water and Soil Resources for a planning grant to develop a comprehensive watershed management plan and anticipates entering into a Memorandum of Agreement with the counties, soil and water conservation districts, and watershed districts within the Middle-Snake-Tamarac Rivers Watershed District, to collaborate on this effort, pending selection as a recipient of a planning grant.

Vice President Petersen called for a roll call of votes and by majority vote, the Resolution supporting a One Watershed One Plan project was adopted. Managers Petersen, Mischel, and Blawat voted yea, with Bakke abstaining.

Motion by Mr. Roger Mischel, seconded by Mr. Brad Blawat, the Chairman and Administrator be authorized to execute the One Watershed One Plan Memorandum of Agreement with Marshall County, Polk County, Marshall County SWCD and the Polk County SWCD.

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Vice President Petersen called for a roll call of votes and by majority vote, the execution of the Memorandum of Agreement was adopted. Managers Petersen, Mischel, and Blawat voted yea, with Bakke abstaining.

Administrator Praska gave the following update on the current status of the District Impoundments: Brandt/Angus - water is being released from North and South outlets. He stated a flapgate is leaking and will need to be resealed; Off Channel Storage Site is empty. There is some sloughing occurring and it appears the outlet gates leak when closed, so they will be inspected; Agassiz Valley Water Resource Management Project - the outlet gate is open; AO #1 - is empty; and AO #4 - is open and water is being released slowly. Administrator Praska reported:

- Klopp Construction replaced and installed the South office entrance door;
- Marshall County is advertising for 2 positions to the Board of Managers;
- Jessica Olson will install bee hives on the District property at the Agassiz Valley Water Resource Management Project, AO #4, Brandt/Angus and Off Channel Storage Site.

Manager Mischel reported the Red River Watershed Management Board meeting will be held via conference call, on May 19, 2020.

The following meetings were announced:

June 1, 2020-Regular Meeting-8:30 a.m., District Office or electronic means  
June 15, 2020-Regular Meeting-8:30 a.m., District Office or electronic means

Motion by Mr. Brad Blawat, seconded by Mr. Bill Petersen the meeting be adjourned. Vice President Petersen called for a roll call of votes, and by unanimous vote the Board approved the adjournment. Managers Petersen, Mischel, Blawat and Bakke voted yea, with no nay votes.

The meeting was adjourned at approximately 11:28 a.m.

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Connie Kujawa  
Recording Secretary

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Roger Mischel  
Secretary