

**Minutes of the Public Hearing of the Board of Managers
Of the Two Rivers Watershed District
Held: Tuesday, November 2, 2021 at 9:00 a.m.**

The Board of Managers of the Two Rivers Watershed District held a Public Hearing beginning at 9:00 a.m. on Tuesday, November 2, 2021. The meeting was held in the District office in the Kittson County Courthouse, 410 S. 5th Street, Hallock, MN. The purpose of the meeting was to hear the appeal of Roger Ellingson regarding permit applications 2021-22, 2021-30 and 2021-31.

Managers present included President Rick Sikorski, Vice President Roger Anderson, Secretary Daryl Klegstad, Treasurer Joel Muir, and Scott Klein. Managers Bruce Anderson and Gerald Olsonawski were absent.

Others present included District Administrator Dan Money, Attorney Jeff Hane (Brink, Sobolik, Severson, Malm & Albright, P.A.), and Engineer Blake Carlson (WSN Engineering). Participating via telephone were Roger Ellingson and Zachary Burmeister (Rinke Noonan law firm).

The meeting was called to order by President Sikorski. Sikorski then explained the purpose of the public hearing.

Attorney Jeff Hane of Brink, Sobolik, Severson, Malm, & Albright, P.A., gave an overview of how the public hearing would be held. He announced there will be a summary of the permit applications given by the District Administrator and a discussion of the technical details given by the District Engineer. Hane noted that the Board will be looking for specific information from the permit applicant regarding 1) how the changes to the volume and timing of the water will affect the downstream ditches, 2) why the applicant feels the Board of Managers is wrong about the downstream ditch capacity, and 3) why the applicant will not sign the tile agreement contained in the permit materials.

District Administrator Dan Money summarized the various permit applications that are being appealed.

2021-22: This permit application was ultimately approved for a tile drainage system with the conditions that a tile drainage agreement be signed by the applicant. This agreement has not been signed and therefore until such time the permit is not valid. Money noted that the tile system has already been installed by the applicant so therefore at the present time this is a violation of the District's Rules.

2021-30: This permit application deals with the proposed straightening of an existing coulee. It was denied because after review the District determined the downstream outlet, Kittson County Ditch #7, was not adequate. It was noted that the applicant failed to provide adequate details of the proposed construction and therefore a thorough review could not be made.

2021-31: This application was to lower an existing culvert and improve an existing road ditch. Money noted that this application was withdrawn by Mr. Ellingson at the District's August 5th meeting. At the time Ellingson stated he had changed the configuration of the pumps at that location and therefore the ditching and culvert work were not needed.

Engineer Blake Carlson discussed the technical review that was done during the review of these permit applications. He stated that he used existing technical information as a basis, including the "Basin Technical and Scientific Advisory Committee's – Paper #3". This paper indicates that generally controls are needed on tile systems to mitigate the flooding impacts of tile. Carlson also stated that air gap designs on tile outlets that are constructed through a dike or road are generally accepted to prevent discharges from tile during times of flooding and mitigate potential downstream impacts.

Carlson discussed an analysis of Kittson County Ditch #7 he did in May 2000 that indicated the ditch does not have adequate capacity. The ditch has a 22 square mile upstream drainage area. The ditches legal bottom width and side slopes equate to a ditch capacity that is less than what is needed to carry a 10-year event. Adding discharges to this ditch will cause additional flooding. Carlson also showed photos of KCD #7 during a summer flood in June of 2020. This information further shows the flooding that happens currently and the inadequacy of KCD 7 to carry flows.

Carlson indicated that tiling projects will not contribute to downstream flooding if the outlets are closed/shut off during times of downstream flooding so that there are no discharges from the tile system. The tile agreement that was made conditional is one way to help ensure that the tile is shut off. The air gap design for pumps is another way to ensure that there are no discharges.

Carlson also discussed application 2021-30 regarding the straightening of the coulee. In order to adequately review this application, Ellingson would need to supply the specific details of where the excavated spoil material would be placed and how high it would be piled. The information provided with the application was conflicting and not adequate to determine how the project would affect downstream areas.

The meeting was opened for comments from attendees. Zachary Burmeister of Rinke Noonan mentioned the following points:

- Regarding KCD 7, he noted that an improvement project initiated in 1949 apparently was not completed. He asked what the reason for the recent improvement petition was that has been received by the TRWD.
- He questioned if a culvert inventory should be completed. Discussion was held regarding the District's current culvert inventory and explanation was given regarding the value of analyzing existing culverts to understand how water flows through a subwatershed.
- Questions were asked about the conditional tile agreement, and whether enforcement would be initiated after two violations or after three. The Board of Managers indicated that it would be after 2.
- He asked the question of why there is an additional requirement of an air gap on pumps that outlet through a road/dike. It was noted that this is an automatic way to address the problem. It was also noted that the installation has been completed, and that the pump in question does have the air gap design.
- Burmeister stated the permit language states there are 5 pump locations, but there are actually 6. Money indicated that is a typo and it will be corrected on the final permit.
- A question was asked why the placement of the spoil is important. Carlson replied depending on where it is placed, it could speed the water up enough and eliminate ponding that currently occurs which would increase downstream impacts. The information that was submitted with the application does not answer the questions of location and height of the spoil and therefore we cannot adequately assess the change to the volume of water and peak flow of the proposal.
- Questions were asked about the KCD 7 improvement petition and the process that will be undertaken to move forward. There is no definite timeline for this process. Questions were also asked about the review of the adequacy of KCD 19. This ditch was not surveyed or technically reviewed, however there is visual evidence that currently bank sloughing and erosion is happening.

Roger Ellingson provided the following questions and statements:

- 2021-30: Ellingson stated that he thought the fill/spoil material was all to be placed on the north side of the channel. He also mentioned that the fill material would be placed in the old channel.
 - o TRWD staff & Engineer Carlson noted that this information was contrary to what had been submitted with the application, which showed a general drawing with spoil banks on both sides of the channel.
- Effect of Tile: Ellingson stated that tile installations can reduce flood damages and increase long term flows. He also stated that storage is created with a tile system.

- KCD 7: Ellingson stated that he has zero argument that it is inadequate, but he stated that the ditch needs to be fixed. He said that if it is improved, then all property in the benefitted area will pay for it, his property included. He stated it is unfair that any landowner should have to make sacrifices and limit their drainage because KCD 7 is not being improved. It was noted that there is currently a ditch improvement petition for KCD 7 and the TRWD is following drainage law with regard to the petition.
- 2021-45: A permit was granted to Ellingson that is conditional upon him signing an agreement with the TRWD that states if he violates the terms of the permit twice then his pumps will be removed and outlets sealed for a period of 1 year. Ellingson stated he is willing to sign the agreement, however he wants a guarantee that KCD 7 will be improved within 2 years.
 - o Manager R. Anderson answered Ellingson that the TRWD must follow the process set by MN Statute 103E and there is no way to make such a guarantee. Attorney Hane noted that the TRWD has received the petition from landowners and has appointed the engineer, who is currently gathering data to make a determination regarding the adequacy of the outlet.
- Ellingson stated that the culvert through U.S. Highway 75 acts as a throttle for the water from his tile system.
 - o Engineer Carlson responded that to say the highway culverts throttle the flow is not accurate. In order to truly analyze the situation, the hydraulic details of the culverts need to be looked at and in fact he noted that the culverts are likely oversized.
 - o Manager Klein stated that the subsurface drainage will add additional water to a system that is already undersized, and the concern is that at times when there is flooding occurring it is not prudent to add more water and that is why the requirement to not discharge during flooding. Carlson clarified the only time the pumps need to be shut off is when there is flooding occurring downstream to the Red River.
- Ellingson responded that he only is willing to abide by the pumping restriction for a 2 year period and not any longer.
- Ellingson described a situation in Dodge County, MN along a meandering channel with setback levies.
 - o Carlson replied that it is not a comparable situation and reiterated it is likely the Highway 75 culvert is oversized, not undersized and therefore will not restrict water from the tile system. He stated in this case the ditch channel is the limiting factor for analyzing the flows.
 - o Carlson also stated that even if KCD 7 is improved, there will surely be times when downstream flooding is occurring and the tile pumps will need to be shut off. Therefore a 2 year limit on the condition is not feasible.
 - Ellingson stated that he would be OK with the condition but then also stated that he is opposed to the requirement of an air gap on pump number 3.
 - Administrator Money noted that although Ellingson has not signed the agreement and technically does not yet have a permit, the tile system has already been installed by Ellingson and it does include the air gap on pump #3.

Attorney Hane asked all those in attendance whether they had any further comments or new information to enter into the hearing record.

- Attorney Burmeister commented on the terms of the permit, specifically the requirement of signing the tile agreement. He would like to ensure that his client does not sign the agreement in perpetuity and that there is something in place that addresses the inadequate outlet on KCD 7.

- Manager Klein stated that the tile agreement does not only apply to this particular permit, but going forward it will be a requirement on all tile permits issued by the TRWD.
- Ellingson stated that he understands KCD is an inadequate outlet and that it needs to be fixed. He further stated he would like to hold private discussion with attorney Burmeister.

At 10:36 a.m. the Board of Managers agreed to recess the meeting for 5 minutes.

The meeting was re-convened at 10:44 a.m.

Ellingson stated he would like to re-submit a permit to straighten the coulee located in the southwest portion of the property and outlets into KCD 7. If this work can be approved by the TRWD, he would sign the tile permit agreement.

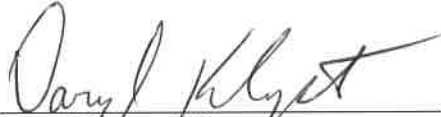
Attorney Hane clarified that the TRWD understanding is:

- 1) That Ellingson's request for reconsideration would be withdrawn, and
- 2) The TRWD Board of Managers would need to receive an application to review the material prior to making any determination regarding the straightening of the coulee.

Ellingson will prepare and submit a new permit application and the TRWD will review and act on it. If a permit can be issued for the improvement to the coulee, the TRWD understands that Ellingson will withdraw the request for reconsideration.

With no other matters to come before the Board of Managers, the meeting was adjourned at 10:54 a.m.

Attest:



Daryl Klegstad, Secretary



Rick Sikorski, President

**Minutes of the Regular Meeting of the Board of Managers
Of the Two Rivers Watershed District
Held: Thursday, November 4, 2021 @ 8:00 a.m.**

The Board of Managers of the Two Rivers Watershed District held their regular meeting beginning at 8:00 a.m. on Thursday, November 4, 2021. The meeting was held in the District office in the Kittson County Courthouse, 410 S. 5th Street, Hallock, MN.

Managers present included President Rick Sikorski, Vice President Roger Anderson, Secretary Daryl Klegstad, Treasurer Joel Muir, Bruce Anderson, and Gerald Olsonawski. Scott Klein was absent.

Others present included District Administrator Dan Money, Engineer Jake Huwe (HDR Engineering), Mark Aanenson (Houston Engineering), and Engineer Blake Carlson (WSN Engineering).

The meeting was called to order by President Sikorski. Sikorski then called for any additions or corrections to the proposed meeting agenda and the regular meeting minutes from September 2, 2021. There was discussion regarding the 'resolution regarding policy to prevent or limit downstream flooding associated with sub-surface drainage and to preserve adequate outlets used by sub-surface drainage'. Changes were suggested to draft wording. The resolution language was tabled until the December meeting.

Today's meeting agenda and the minutes of the September 2, 2021 regular meeting, excluding the above mentioned resolution, were approved upon a **motion** by Muir, **second** by B. Anderson, and **unanimous vote** of the Managers.

Treasurer's Report:

Money presented the treasurer's report for both September 2021 and for October 2021, including the fund balances, accounts listing, and deposit detail. It was noted that checks written for the two months include check numbers 9447 through 9488 and electronic funds transfers to PERA, MN Dept. of Revenue, and Electronic Federal Tax Payment System, as reported and contained within the reports.

The September treasurer's report was approved upon a **motion** by Olsonawski, a **second** by Klegstad, and a **unanimous vote** by the Board.

The October treasurer's report was approved upon a **motion** by Klegstad, a **second** by B. Anderson, and a **unanimous vote** by the Board.

Klondike Clean Water Retention Prj – Wetland Permits:

Mark Aanenson, wetland specialist from Houston Engineering (HEI), was in attendance to discuss the status of the state Wetland Conservation Act wetland application and also the federal Clean Water Act section 404 wetland application. They were hired previously by the TRWD and have completed wetland delineations, work needed to prepare and submit wetland permit applications, and work related to submitting materials to the US Army Corps of Engineers needed to determine their jurisdiction on certain wetlands. To date, contracts amounting to \$87,545 have been completed for this work. Detailed information on the proposed impacts and the necessary mitigation activities was provided.

The next steps in the permitting processes will be to come up with a plan that shows where and how many acres of wetland the TRWD will be mitigating for the loss of wetlands due to construction. There are potentially around 300 acres of wetland that will need to be restored. This will require field data collection, preparing and submitting detailed information on mitigation sites, summarizing information regarding impacts, and coordination between HEI, HDR, TRWD, USACE, Kittson SWCD,

and the DNR regarding all permit applications. Several options were discussed, including utilization of the 'Christian' section to restore wetlands, or abandonment of one or more legal ditch laterals to achieve restoration. The Board indicated the Christian section should be looked at first and the ditch abandonment second, however no definite decisions were made at this time regarding a mitigation strategy.

An estimate for the next steps needed was provided to the Board, which amounted to \$18,500. Upon a **motion** by R. Anderson, **second** by Olsonawski, and **unanimous vote** of the Managers, the quote for \$18,500 to perform the tasks listed in the quote was approved.

Administrator's Report:

District Administrator Money gave a report on the following and distributed a handout:

Program Report:

Personnel Committee: Annual employee performance and wage reviews are normally reviewed by the committee prior to the December meeting each year. It was noted that the personnel committee is normally made up of 3 Board members, and because of recent events there currently is only 1 person on the committee. The Board appointed Managers Sikorski, Klegstad and Olsonawski to the committee, and Administrator Money was directed to schedule a meeting of the committee and the staff prior to the December meeting.

MN Association of Watershed Districts: The annual MAWD conference is held each year in December, and it was announced that this year it will be held virtually and not in person. MAWD would like each member district to appoint two delegates and one alternate to vote on resolutions and also on MAWD business. Managers Olsonawski and R. Anderson were appointed as delegates. It was noted there is a \$99 registration fee for each person attending. The Board authorized registrations for the two delegates and for the administrator to attend.

Ross #7 – Farm Lease Agreements: Farm lease agreements at the Ross #7 project were discussed. The agreement with Carl Gaukerud expires at the end of the year, and Gaukerud has expressed interest in continuing with a new contract. The Board discussed rental rates and also discussed the length/term of the agreement. A **motion** was made by B. Anderson, **seconded** by Klegstad and **unanimously approved** to enter into a 3 year agreement at a rate of \$40/acre.

Board of Managers: It was noted that Manager Muir will not be seeking another term on the Board, however there has not been any applications to take his place. He will serve until the end of 2021. Discussion was held and a number of potential replacements were mentioned. Statutorily it is up to Kittson County to appoint a replacement.

Legal Ditch Report:

JD 3 & JD 10 – side water inlets: As discussed at past meetings, a project is occurring to install up to 8 side water inlets on Judicial Ditch #3 and another to install one side water inlet on JD 10. 75% funding is available through Kittson SWCD and additional funding is available through several sources including the ditch funds, riparian aid the TRWD receives from the state, or water quality grant funding through the RRWMB. Upon a **motion** by Muir, **second** by B. Anderson and **unanimous vote** of the Managers, approval was given to enter into a contract with Kittson SWCD for each project, accept 75% cost share, and authorize the Administrator to sign all documents on behalf of the District. The Board of Managers directed the Administrator pay the remaining 25% of the cost of the project from the riparian aid funds that are received from the State of Minnesota.

KCD 21: As a part of the cleanout of KCD #21 that was done this past year, buffers will need to be re-established alongside the ditch where they were disturbed by construction activity. Kittson SWCD has a cost share program that will pay 75% of the seeding, which the District is eligible to apply for. Upon a **motion** by R. Anderson, **second** by Klegstad, and **unanimous vote** of the Managers, approval was given to apply to KSWCD for 75% cost share and the Administrator was authorized to sign the cost share agreements for this project.

Manager Olsonawski left the meeting at 10:00 a.m.

Several permit violations were discussed as follows:

Permit application 2021-37: This application to install a tile drainage system was previously denied because of the determination that the proposed outlet was not adequate. An alternate outlet was proposed however the applicant has not to date re-submitted the application with the suggested changes. It has come to the attention of the District that the tile was installed even though the applicant knew that the permit had been denied. The Board of Managers directed staff to refer the matter to the District Attorney to proceed with enforcement actions.

Permit 1795: This application was approved in 2018 to install a tile drainage system. Certain conditions were placed upon the permit placing restrictions on the pumped outlet. Work was noticed this fall that the pump has been altered and is not in compliance with the terms of the permit. The Board of Managers referred the matter to the District Attorney to proceed with enforcement actions.

KCD #13: This matter was discussed at recent Board meetings. Kittson County has undertaken work that changed the ditch grade and cross section which after review by the District Attorney and District Engineer appears to be a ditch improvement under MN Statute 103E. The county, however, is viewing it as a repair under the same statute. The Board of Manager discussed the situation and reviewed the available information. The Managers decided to reserve the right to investigate this further, but at this time will not pursue the matter as a violation of the Rules of the Two Rivers Watershed District. The Administrator was directed to ask the county for the pertinent information that was used by the county to make their determination that it was a repair. No permits will be issued by the TRWD for any work on this ditch that is at the recently changed grade and cross section unless the proper proceeding as detailed by statute is first completed to establish the current ditch grade as the legal ditch grade.

Manager Muir left the meeting at 12:00 pm.

Permits:

The Board reviewed the following permits which have previously been approved by the permit review group. The review and comments of the permit review group were carefully considered and taken into consideration and comments by members of the group, road authorities, or affected landowners have been filed with the permit documentation in the District office. Conditions, if any, are listed on the permit sent to the individual.

<i>App. #</i>	<i>Applicant</i>	<i>Location</i>	<i>Purpose</i>	<i>Action</i>
2021-39	Ryan Schwenzefier	Hampden 2	24" side water inlet	Approved
2021-51	Ron Anderson	Thompson 10	Grade Stabilization/ 30" cmp	Approved
2021-52	George Hanson	N. Red River 2	Tile Drainage	Approved
2021-53	Strata Corp.	Norway 32	dewatering gravel pit	Approved
2021-54	MNDOT	Davis 7	culvert	Approved
2021-55	Steve Emery	Peatland 12	crossing w/18" cmp	Approved
2021-57	Jon Langen	Tegner 31	water line to residence	Approved
2021-58	John Harder	Barto 2	crossing w/18" cmp	Approved
2021-59	John Harder	Barto 11	crossing w/18" cmp	Approved

The following permit applications were referred to the Permit Review Group for further review and action;

2021-49	MNDOT	US hwy 75	culverts, road	Tabled
2021-56	Bill Sugden	Hampden 14 & 23	tile drainage	Tabled
2021-60	Justin Dagen	Jupiter 27	tile drainage	Tabled
2021-61	Brian Jensen	Hampden 16	tile drainage	Tabled
2021-62	Brian Jensen	North Red River 12	tile drainage	Tabled
2021-63	Luther Anderson	Eagle Point 4	side water inlet (x2)	Tabled

Project Report:

Klondike Clean Water Retention Prj. #11:

- Engineering
 - HDR Engineering has been working with the District on various project aspects including DNR concerns with the operating plan and Lateral 6 SD 72. J. Huwe has also been working on permits, including the various road permits and providing information regarding wetland permits.
- Permitting
 - Road hearings are still needed with Polonia Township and with Roseau County (the road authority for Juneberry Township). Engineer Huwe provided a map showing the proposed changes and the proposed alternate routes. The Board discussed and approved the proposed changes to be presented at the road hearings.
 - The TRWD has presented petitions to alter existing legal ditches, and is waiting to hear from the SD 72 and SD 95 joint ditch authorities to set the dates for the public hearings that will be held.
 - Work on the Environmental Assessment Worksheet is ramping up as staff are preparing the necessary information. The 26 question document should be completed and ready to go out for comments by the end of the year.
- Funding
 - Lessard Sams Outdoor Heritage Council: The LSOHC in 2020 approved a grant request from the TRWD in the amount of \$1.9 million. In 2021 the TRWD made another request, and at the present time the LSOHC is recommending another \$854,000 be approved. Upon a **motion** by B. Anderson, **second** by Klegstad, and **unanimous vote** of the Managers, the grant funding for both applications was accepted by the Board and the District Administrator was authorized to sign all grant documents on behalf of the Board.

With no other matters to come before the Board of Managers, the meeting was adjourned at 1:35 pm.

Attest:


Daryl Klegstad, Secretary


Rick Sikorski, President