

**Minutes of the Regular Meeting of the Board of Managers
Of the Two Rivers Watershed District
Held: Thursday, September 2, 2021 @ 8:00 a.m.**

The Board of Managers of the Two River Watershed District held their regular meeting beginning at 8:00 a.m. on Thursday, August 5, 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 Scott Klein. None were absent.

Others present included District Administrator Dan Money, District Technician Tyler Coffield, Attorney Jeff Hane (Brink, Sobolik, Severson, Malm & Albright, P.A.), Engineer Jake Huwe (HDR Engineering), Engineer Blake Carlson (WSN Engineering), Wetland Specialist Mark Aanenson (Houston Engineering), and Gerald Olsonawski.

Budget Hearing:

The Annual Budget Hearing was called to order at 8:00 a.m. The hearing has been noticed 2 weeks prior in newspapers of general circulation within the District. Administrator Money presented the draft budget for 2022. A discussion of the current proposed budget items was held and budgets over the past several years were reviewed. A proposed 2022 general administrative budget of \$239,250 was proposed. After discussion by the Board of Managers, a **motion** was made by R. Anderson, **seconded** by Muir, and **unanimously approved** to adopt the 2022 budget of \$239,250.

Next the 2022 general levy was discussed. The board considered the budget that was just approved and noted that the maximum levy allowed by statute is \$250,000. A **motion** was made by R. Anderson, **seconded** by Klegstad, and **unanimously approved** to set the general levy for 2022 at \$240,000.

It was noted that the Red River Watershed Management Board has previously set their levy at 75% of their maximum which equates to \$562,357 within the Two Rivers WD. By law the District keeps ½ of the levy and send ½ to the RRWMB.

The Board of Mangers next considered the 2022 ditch and project levies for legal ditches and watershed district project of which they are responsible to maintain. Upon a **motion** by Muir, **second** by Klein, and **unanimous vote** of the Managers the following levies were certified.

Ditch or Project	2022 Levy
Middle Branch Project	\$ 6,000
North Branch Project	\$ 10,000
KCD 10	\$ 14,000
KCD 21 & KCD diversion 1 imp.	\$ 50,000
JD 10 (Kittson)	\$ 7,500
Kennedy 6	\$ 7,500
Springbrook 10	\$ 20,000
RCD 4	\$ 5,000
JD 10 (Roseau)	\$ 2,000
Total Amount To Levy	\$122,000

Outlet fees for ditches were discussed, and past outlet fees were mentioned. The City of Karlstad pays an annual fee of \$1,500 to KCD 10 to use the ditch for its' storm and sanitary sewers. In addition, a \$100 per year fee for 2021, 2022, and 2023 was approved to charge the City to allow

the pumping of excess floodwater into KCD 10. Upon a **motion** by R. Anderson, **second** by Klegstad, and **unanimous vote** of the Managers an outlet fee of \$1,600 was assessed to the City of Karlstad to be credited to Kittson County Ditch #10; an outlet fee of \$5,100 was assessed to Kittson County Ditch #10 to be credited to Springbrook #10; an outlet fee of \$7,800 was assessed to Springbrook #10 to be credited to Judicial Ditch #10.

With no further business to be conducted, the Budget Hearing was closed at 9:10 a.m. and the Regular meeting was called to order by President Sikorski.

Sikorski called for any additions or corrections to the proposed meeting agenda and the regular meeting minutes from August 5, 2021. Today's meeting agenda and the minutes of the August 5, 2021 regular meeting were approved upon a **motion** by B. Anderson, **second** by Klegstad, and **unanimous vote** of the Managers.

Treasurer's Report:

District Administrator Money presented the treasurer's report including the fund balances, accounts listing, and deposit detail. It was noted that checks written for the month include check numbers 9426 through 9446 and electronic funds transfers to PERA, MN Dept. of Revenue, and Electronic Federal Tax Payment System, as reported and contained within the report.

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

Administrator's Report:

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

Employment Policy: A question regarding employee comp time was brought to the Board for consideration. Technician Coffield is currently in the 45 day probationary period for new employees, which will end on September 16. He recently attended training which required extra time over and above the 40 hour work week. Normally comp time is awarded, however this should be clarified for Coffield because of the current probationary period. Upon a **motion** by Muir, **second** by Klein and **unanimous vote** of the Managers, the comp time was awarded to Coffield for the hours spent over and above the 40 hour work week.

Legal Ditch Report:

- JD 10 – Kittson SWCD has requested engineering assistance through the TRWD for a proposed side water inlet on Judicial Ditch #10. The project will reduce erosion and sedimentation and bring the landowner into compliance with the buffer law. Kittson SWCD will also provide cost share for the project through state funding that is available. Upon a **motion** by R. Anderson, **second** by Muir and **unanimous vote** of the Managers, authorization was approved to hire Blake Carlson of WSN to provide engineering services for the project.
- Several beaver dams need to be removed on SD 49, the North Branch Project, and KCD 10. Also a slough has been discovered on KCD 10 and needs to be repaired. Staff were directed to hire contractors to perform the necessary work.
- JD 3 - Money and Coffield attended a meeting with a landowner and his two renters in sections 30 and 31 of Svea township to discuss the buffer law, JD 3 cleanout, and certain culverts on JD 3.

- As discussed at several prior TRWD Board meetings, the landowner is out of compliance with the buffer law. Further, his field ditches are the cause of numerous sediment deltas that have formed in the ditch. Prior action of the Board is to charge the landowner for the removal of the sediment. Also, prior action of the Board is to install several side water inlets to alleviate the problem using several sources of cost share funding. Future maintenance of the structures will be the responsibility of the TRWD, and maintenance of the grass buffer will be the responsibility of the landowner. Another option for the landowner is to install a 1-rod wide grass buffer the entire length alongside the ditch. The landowner will consider the options and let the TRWD know how he would like to proceed.
- The issue of a private crossing in section 30 was revisited. The renter/landowner request the failing culvert be replaced by the TRWD, as the ditch authority. It was noted the ditch law states this is the responsibility of the landowner. District engineer Carlson gave a memo review of this culvert and its hydraulic capacity. The Board of Managers ruled that the private crossing is the responsibility of the landowner.
- The TRWD survey of the ditch shows a box culvert under the township road located between sections 30 and 31 is higher than the legal ditch grade. The landowner has requested a small pipe be installed alongside the box culvert to allow the ditch to drain down to its legal elevation. Engineer Carlson has been consulted and concurs that this would have positive effect. Upon a **motion** by Klein, **second** by R. Anderson and **unanimous vote** of the Managers, it was approved to install an 18” culvert at this location.
- Staff was directed to hire a contractor to complete the work, including the installation of side water inlets where agreed, the cleaning of accumulated sediment deltas within the ditch, and the installation of an additional 18” culvert at ditch grade between sections 30 and 31.

Program Report:

MAWD: The MN Association of Watershed Districts is seeking resolutions from member districts. These will be used to formulate their legislative agenda for 2022. The Board held discussion and did not have any strong opinions on any issues for the time being. One suggestion to give MAWD would be for stronger support for state bonding money to fund the DNR’s Flood Hazard Mitigation Grant program at a higher level. The annual amount in applications far outweighs the amount that is generally made available, and flood damage reduction projects are not getting funded. Money will research and possibly write a draft resolution regarding this issue and send it in to MAWD.

Permitting Procedures: Attorney J. Hane brought up for discussion a review of the process the TRWD uses to review and act on permit applications. Several steps are taken to ensure proper and thorough review and comply with the open meeting law. Hane will put together a draft permit application review document based upon our current review process and present it at the October meeting.

Board appointment: Gerald Olsonawski was in attendance at the meeting. He has applied to Kittson County in response to their advertisement to fill the current vacant position. Kittson County will do the appointment next week, and Olsonawski attended to observe and become familiar with the operations of the TRWD. If appointed his first official meeting would be October 7th, 2021.

Project Report:

Klondike Clean Water Retention Prj. #11:

- Right of Way – Several landowners have signed the right of way agreements that were recently sent out. Hane, Money, and Huwe have been meeting with landowners to answer questions. Hane posed the question of the amount of title work the Board would like done by either an update of the abstract, or simply order an ‘owners and encumbrances’ report. A **motion** was made by Klein, **seconded** by Klegstad, and **unanimously approved** to order the owners and encumbrances report for right of way costs that are less than \$5,050 and for anything above that amount to update the abstract. Work will continue and updates will be provided as needed.
- Permitting – Mark Aannenson from Houston Engineering provided a handout and gave an update regarding wetland permits from the US Army Corps of Engineers and the State of Minnesota – wetland conservation act (WCA). Field work has been completed and it appears that under WCA there will be about 180 acres of impact from fill by constructing the dike. Options for mitigation/replacement wetlands are most likely available by using the ‘Quick’ site. Under the USACE permit about 150 acres will be regulated however the ‘Quick’ site will not be able to be used for mitigation. Therefore, other options will need to be considered. Once the permit applications are submitted comments will be forthcoming from the agencies. Updates will be provided as these permits move forward. A **motion** was made by Klegstad, **seconded** by Klein and **unanimously approved** to allow the District Administrator to sign the two wetland applications on behalf of the TRWD.
- Funding – Information was provided on funding sources. An application to the Lessard Sams Outdoor Heritage council for \$1.3 million is pending, and Money presented to the LSOHC. Preliminary ranking shows it to be 15th on the project list out of 50 applications. About \$6 million has been procured of the \$13 million needed for phase 1 construction. Application has been made to the MN DNR through their Flood Hazard Mitigation grant program, and this will be addressed through the legislative bonding process in 2022.
- Natural Resources Enhancements – These include providing fish habitat, various fen protection and restoration efforts, and water quality improvements. The fish and fen components are tied to the funding received from LSOHC.

Tile Drainage:

Discussion regarding the District’s current policies on tile drainage was held. Permits are required for new systems that drain an area greater than 20 acres. Current policies regarding tile include requirements that there be no pumping or discharges from the tile system when there is flooding occurring on downstream ditches and watercourses. As more and more tile systems are permitted, the enforcement of this requirement is becoming difficult. Board members and staff have witnessed that numerous pumps continue to run when there are large scale flooding events, and the permit holders need to be contacted to shut them off.

The Board discussed their concerns that many watercourses do not serve as an adequate outlet when flooding is occurring. Board members would like to consider enforcement options to better ensure these systems do not add to flooding on ag land. R. Anderson and S. Klein mentioned an option that after two documented violations, the permit be revoked and the pumps pulled and the tile outlets be sealed off. Attorney Hane mentioned an option of amending the District’s Rules to better enforce these permit conditions. He also mentioned this could be accomplished by requiring

a contract or agreement be signed by the applicant. New policies would need to be documented in the meeting minutes, and in the case of a rule change a public hearing would need to be held.

A **motion** was made by R. Anderson, **second** by Klein and **unanimously approved** to a “Resolution Regarding Policy to Prevent or Limit Downstream Flooding Associated with Sub-Surface Drainage and to Preserve Adequate Outlets Used by Sub-Surface Drainage”. The resolution is hereby attached to and incorporated as a part of these minutes.

Attorney Hane, Engineer Carlson, and Administrator Money were directed to prepare a policy statement regarding the resolution and to prepare a tile drainage agreement to be used with all future tile permits that are approved by the Two Rivers Watershed District. Downstream flooding will continue to be defined as it was according to the Board meeting minutes of September 5, 2012. The agreement will indicate that after two discharge violations, any pumps will be pulled and tile outlet will be sealed off. The District will have the right to enter onto lands, perform the work, and collect costs to do the work.

Permits:

The Board acted on the following permits. The review and comments of the permit committee were carefully considered and taken into consideration. Any comments provided by members of the committee, road authorities, or affected landowners have been recorded 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>
2021-37	Brian Dahl Motion Klegstad, Second B. Anderson – Unanimous ;	Davis 25	Tile Drainage	Denied
Findings of the Board were 1) that the downstream outlet is a private ditch and landowner comments were against the project, 2) the downstream private ditch does not have adequate capacity, and the change in the hydrology and timing of flows will cause the downstream channel to be wetter more frequently, 3) other better alternatives exist to dispose of the water that will be discharged from the tile. Two possible options are to either send it south to Judicial Ditch 10 or to the west in the south road ditch of MN Highway 11.				
2021-41	Kittson Co. Hwy Dept Motion Klein, Second Klegstad – Unanimous ;	Granville 13	Bridge replacement CSAH 6	Approved
Permit review group found that the project will not significantly alter the channel that is currently present under the bridge. One comment was that a staff gage that is attached to the current bridge should be surveyed and the elevation carried forward to a new staff gage on the new bridge.				
2021-45	RRV LLC Motion Klein, Second B. Anderson – Unanimous ;	Davis 8, 16, 17, 18, 20	Tile Drainage	Approved
Conditions: 1) No discharges are allowed from the tile system when downstream flooding is occurring. 2) Pump #3 must have an ‘air gap’ design as indicated in the submitted materials. 3) The permit is not valid until a Tile Drainage Agreement is signed by the applicant(s) and filed with the TRWD. 4) As-Built plans and specifications must be filed with the TRWD. Findings of the Board were 1) Prior engineering studies/reports indicate KCD #7 is currently under sized with limited capacity and KCD #19 experiences erosion problems, therefore discharges should be managed.				
2021-46	Tegner Township Motion B. Anderson, Second Klegstad – Unanimous ;	Tegner 27-28	36” center line cmp	Approved
Condition 1) The application was made for a 36” vert, however in applying the District’s culvert sizing policy it was determined that the culvert can be no larger than a 24” culvert.				

2021-47 Ryan Schwenzefier Hampden 1 Straighten Coulee Denied
Motion Klein, Second B. Anderson – Unanimous; The permit review group made recommendations and the following findings were made: 1) There is an active head cut located downstream near KCD #22 that is actively eroding. Therefore this project would add to and exacerbate that problem and therefore the head cut should be repaired prior to this project. 2) The proposed design would speed up the flow and potentially cause erosive velocities – therefore the engineer’s review recommendations should be followed. 3) The downstream outlet is adequate and this project could be approved once the existing erosion problems are addressed and the design is modified.

2021-48 Myles Efta Polonia 15 Replace 30” w/ 24”cmp Approved
Motion Klegstad, Second Klein – Unanimous; Condition 1) The application was made for a 24” culvert, however in applying the District’s culvert sizing policy it was determined that the culvert can be no larger than an 18” culvert.

2021-49 MNDOT US hwy 75 culverts, road Tabled

2021-50 Kittson Co. Hwy Dept. Peatland 24 replace 18”&24” w/30” Approved
Motion Klegstad, Second B. Anderson – Unanimous; Findings of the Board that the open end area of the proposed culvert is the same as the combined open end area of the existing culverts, and the culvert size conforms to the District’s culvert sizing policy.

Permits that have been acted on by the Permit Review Group are listed below. Complete findings and permit review comments are on file with the TRWD.

2021-34	Brian/Alex Anderson	Svea 26	replace 18” w/24”; lower grade	Approve
2021-36	Roy Stewart	Clow 13	Field Crossing size TBD	Approve
2021-38	Merle Schwenzefier	Hampden 2	two 18” side water inlets	Approve
2021-39	Ryan Schwenzefier	Hampden 2	24” side water inlet	Tabled
2021-40	David Stusynski	Deerwood 18	18” side water inlet	Approve
2021-42	Dean Johnson	Springbrook 22	tile drainage	Approve
2021-43	Davis Township	Davis 7-18	replace 48” with 24”	Tabled
2021-44	Lee Pemberton	McKinley 5	install crossing w/18” cmp	Approve

With no other matters to come before the Board of Managers, the meeting was adjourned.

Attest:


 Daryl Klegstad, Secretary


 Rick Sikorski, President

September 2, 2021

Motioned by Manager R. Anderson, seconded by Manager Klein, the following resolution, numbered 2021-02, passed upon a 6-0 vote of the Board of Managers of the Two Rivers Watershed District.

**RESOLUTION OF THE BOARD OF MANAGERS OF THE
TWO RIVERS WATERSHED DISTRICT
REGARDING POLICY TO PREVENT OR LIMIT DOWNSTREAM FLOODING
ASSOCIATED WITH SUB-SURFACE DRAINAGE AND TO PRESERVE ADEQUATE
OUTLETS USED BY SUB-SURFACE DRAINAGE**

WHEREAS, within the Two Rivers Watershed District (TRWD) the number of permit applications submitted for the installation of tile drainage has increased dramatically, and this trend only appears to be one that will last indefinitely; and,

WHEREAS, the Board of Managers is tasked with the responsibility of managing the drainage of waters within the District in a manner that does not cause or contribute to downstream flooding conditions, and;

WHEREAS, the Board of Managers has endorsed *Basin Technical and Scientific Advisory Committee (BTSAC) Briefing Paper #2*, which discusses both the potential benefits and adverse impacts of subsurface drainage. Further, the Red River Watershed Management Board, an entity with a number of member watershed districts in the Minnesota Red River Basin, has endorsed *BTSAC Briefing Paper #2*, and;

WHEREAS, the Board of Managers wants to permit the installation and operation of tile drainage wherever possible when installed and operated in a manner that will take advantage of the potential positive benefits described in *BTSAC Briefing Paper #2* whenever possible; and,

WHEREAS, as described in *BTSAC Briefing Paper #2*, downstream channels can be adversely affected by tile system discharges occurring during times of downstream flooding. Within the TRWD there are existing drains (including private ditches, coulees, rivers, and legal ditches) of particular concern that are undersized, especially when receiving more than moderate rain events or follow-on rain events. The Board of Managers has determined that extreme care must be taken to ensure that watercourses downstream from tile installations are adequate to handle excess flows from subsurface drainage systems; and,

WHEREAS, data that has been collected between 1993 and 2020 indicates that moderate to large rain events and significant lasting cycles of rain have been more frequent in the region; and,

WHEREAS, sub-surface system discharges that occur during downstream flooding conditions have the potential to do substantial harm by contributing to erosion and embankment damage, contributing to the flooding of lands including dwellings, crops and fields, and contributing to infrastructure damage including that to roads, culverts and bridges; and,

WHEREAS, the Board of Managers since 2012 has adopted a policy of allowing landowners to install tile drainage consistent with the overall rules and policies of the District, issuing permits which require that subsurface drainage systems (tile drainage) do not discharge waters during conditions of downstream flooding; and,

WHEREAS, since the adoption of this policy, the District managers and staff have witnessed and have been informed of numerous instances where operators of tile drainage

have continued to discharge tiled waters into outlets that are experiencing downstream flooding conditions, and have failed (even after reasonable request) to cease said discharges; and,

WHEREAS, the statutory powers of the District to enforce its rules are limited to "injunction and other appropriate order," with no statutory provision for the collection of attorney fees and costs, and the District is without power to fine violators or otherwise enforce its rules without significant cost, and further the District is virtually without power to promptly stop violators contemporaneous to their violations; and,

WHEREAS, it is in the public's best interest and the interest of all downstream landowners to have enforcement of the policy that tile drainage not discharge waters into outlets that are experiencing conditions of downstream flooding;

NOW THEREFORE, BE IT RESOLVED that in order to prevent downstream flooding and/or limit the exacerbation of downstream flooding, and in order to allow sub-surface drainage applicants to avail themselves to less-than-adequate outlets, it is the policy of Two Rivers Watershed District to require all sub-surface drainage operators to cease the discharge of sub-surface waters when downstream flooding conditions.

In order to enforce this requirement, all sub-surface drainage permit Applicants are hereby required to enter into an Agreement with the Watershed District adhering to the following terms and conditions:

1. Applicant agrees to only operate the tile system(s) outlined in their Permit Application when there are no conditions of downstream flooding as defined in the Permit. When downstream flooding conditions arise, Applicant(s) agrees to cease all discharges of sub-surface drainage and not continue the same until downstream flooding has subsided.

2. Applicant understands and agrees that if the Applicant is notified (by text, email, website posting, voice, or messaging, whether by Watershed District personnel or by third parties) that downstream flooding conditions exist, and downstream flooding conditions do exist, then Applicant must immediately cease all discharging of sub-surface drainage and not continue the same until downstream flooding has subsided. If an operator of sub-surface drainage is found to have violated this provision, they shall be notified by certified mail of the same.

3. Applicant agrees that if, after notice and hearing before the Board of Managers, Applicant is found to have violated this Agreement on more than two separate occasions, if so ordered Applicant will remove each pump found to have been operated in violation of this Agreement, seal the outlet, cease all operation of a pump at that location for one calendar year (365 continuous days), and any additional work necessary to prevent any discharge from the sub-surface system. Likewise, for gravity systems operated in violation of this policy, Applicant agrees that, if, after notice and hearing before the Board of Managers, Applicant is found to have violated this Agreement on more than two separate occasions, if so ordered Applicant will seal the gravity outlet at that location and perform any additional work necessary to prevent any discharge from the sub-surface system for one calendar year (365 continuous days).

4. Applicant agrees that if, having been ordered to remove one or more pumps, or ordered to seal one or more gravity outlets, Applicant fails to promptly remove each pump or seal each outlet found to have been operated in violation of the Agreement, Applicant hereby grants to Watershed District the right to enter upon Applicant's premises, remove Applicant's pump(s), cap or otherwise seal the pump station and/or cap or otherwise seal the gravity outlet, take possession of Applicant's pump(s) for one year, and recover from the Applicant all of Watershed District's costs associated with the same, including all attorney's fees, legal and professional, and contractor costs. After the one-year removal or seal term, all restoration of the tile system to its permitted function (such as re-installation of any pump(s) and/or

unsealing of gravity systems) shall be Applicant's responsibility and at Applicant's sole expense. In the event of further litigation over Applicant's compliance with this Agreement, the prevailing party shall be entitled to recovery all attorney's fees and costs. Applicant agrees that all disputes regarding the enforcement or interpretation of this Agreement shall be litigated in Kittson County District Court.

5. Applicant acknowledges that the Permit issued by Watershed District to Applicant under the above-referenced Permit Application is conditional and may be revoked by the Watershed District if Applicant repeatedly violates the terms and conditions of the permit.

I certify that the above resolution was adopted by the Two Rivers Watershed District Board of Managers at their regular monthly meeting held on Thursday, September 2, 2021.



Dan Money, District Administrator



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