

**BOIS DE SIOUX WATERSHED DISTRICT
BOARD MEETING MINUTES
July 18, 2024**

CALL TO ORDER The meeting was called to order by President Vavra at 8:04 a.m. Present in the District Office: Linda Vavra, Doug Dahlen, Ben Brutlag, John Kapphahn (arrived later), Steven Schmidt, and Allen Wold. Engineer Chad Engels, Engineer James Guler, and Attorney Lukas Croaker were also present. Absent: Jason Beyer, Jerome Deal, Scott Gillespie, Administrator Jamie Beyer, and Engineer Technician Troy Fridgen.

AGENDA Upon motion by Wold, seconded by Dahlen and carried unanimously, the agenda was approved.

CONFLICT OF INTEREST No conflicts of interest were declared.

CONSENT AGENDA Upon motion by Wold, seconded by Dahlen and carried unanimously, the Consent Agenda was approved, including claims of:

Braun Intertec	\$ 9,439.50	Ohnstad Twichell	\$ 21,299.95
Digital Guru	\$ 9.90	Purchase Power Pitney Bowes	\$ 603.75
Frontier	\$ 78.85	Raguse Family Partnership	\$ 30,850.00
Grant SWCD	\$ 3,300.27	Riverwatch/C-T Schools	\$ 2,949.72
Jamie Beyer	\$ 4,441.00	Tri County Coop	\$ 311.08
John Riley Construction	\$506,269.25	True North	\$ 10,589.46
Midwest Contracting	\$ 17,195.35	Wagner Company	\$ 945.00
Moore Engineering	\$191,317.95	West Otter Tail SWCD	\$ 3,616.66
			\$803,217.69

PUBLIC COMMENT No public comment was stated.

FINAL HEARING: GCD #21 IMPROVEMENT Upon motion by Dahlen, seconded by Wold and carried unanimously, the Final Hearing on the Improvement Petition, Amended Detailed Survey Report, DNR's Final Advisory Report, Viewers' Report on the Redetermination of Benefits and Damages, and Amended Viewers' Report on the Improvement and Separable Repair of Grant County Ditch #21 (GCD #21) was reconvened. Attorney Lukas Croaker recounted some of the preceding events, including the District's receipt of a Petition for Improvement, initial final hearings held and continued November 17 and December 21, 2023; January 25, 2024; February 15, 2024; and June 17, 2024.

KAPPAHNN ARRIVES Board Manager John Kapphahn arrived at the meeting (8:12 am).

Engineer James Guler provided information on project design. A landowner requested that the existing tile be abandoned, instead of removed. District Engineer Chad Engels stated that leaving the tile could make an argument in the future that it was not abandoned through the project proceedings and must be repaired. Since the recess of the June 17, 2024 hearing, Viewers met/discussed parcel drainage conditions with landowners and farm operators, and made adjustments to the Amended Viewers' Report. Attorney Dean Zimmerli asked if adjustments to the drainage coefficient had been made on Branch 2; engineering staff confirmed that changes were made. No further comments or questions were presented by the public. Upon motion by Kapphahn, seconded by Dahlen and carried unanimously, the Improvement Petition, Amended Detailed Survey Report, DNR's Final Advisory Report, Viewers' Report on the Redetermination of Benefits and Damages, and Amended Viewers' Report on the Improvement and Separable Repair of Grant County Ditch #21 (GCD #21) were approved and the project was established. Attorney Croaker stated he would finalize the Findings of Fact and Order Establishing the Improvement of GCD #21 by including the public comment from the hearing. Upon motion by Wold, seconded by Kapphahn and carried unanimously, the hearing was closed.

FINAL HEARING: LIGHTNING LAKE OUTLET NO. 1 Upon motion by Wold, seconded by Dahlen and carried unanimously, the Final Hearing on the Engineer's Close-out Report for Lightning Lake Outlet Project No. 1 was reconvened. Attorney Lukas Croaker provided a summary of past procedural events. Engineer James Guler relayed DNR staff satisfaction with the project as built. Updated costs and project financing sources were presented. Upon motion by Dahlen, seconded by Schmidt and carried unanimously, the final Pay Application No.

2 in the amount of \$17,195.35 was approved. Ownership of the rock weirs is transferred to the Department of Natural Resources and ownership of the concrete box culverts is transferred to Stonybrook Township. The District will have no further responsibility in the project.

**FINAL HEARING:
LAKE TRAVERSE
WATER QUALITY
IMPROVEMENT
PROJECT NO. 1
PHASE #3**

Upon motion by Kapphahn, seconded by Dahlen and carried unanimously the Final Hearing on the Engineer's Close-out Report for Phase 3 of the Lake Traverse Water Quality Improvement Project No. 1 was reconvened. Attorney Lukas Croaker provided a summary of past procedural events. Engineer James Guler presented progress on final punchlist items. At the June 21, 2024 board meeting, Landowner Representative Mr. Kevin Pederson stated concerns about how site conditions were left both between seasons and at the completion of the project, and was not satisfied with responses from engineering staff and the contractor. The contractor was asked by engineering staff to address Mr. Pederson's invoice for the work he completed on the site on the Pedersons' property. The contractor agreed to pay a portion of the invoice; however, Mr. Kevin Pederson withdrew his invoice, stating that his intent was to bring awareness of the level and value of time he spent addressing loose ends, and strongly emphasized that the board and engineering staff more closely monitor construction site activities. Upon motion by Dahlen, seconded by Kapphahn and carried unanimously, a final payment to the contractor, in the amount of \$29,392.56, was approved. There is still seeding and vegetation maintenance being completed on the project by Traverse County SWCD. Upon motion by Dahlen, seconded by Schmidt and carried unanimously, the hearing was closed.

**FINAL HEARING:
MUSTINKA RIVER
& REDPATH FLOOD
IMPOUNDMENT
PHASE 2A**

Upon motion by Kapphahn, seconded by Dahlen and carried unanimously, the Final Hearing on the Engineer's Close-out Report for Phase 2A of the Mustinka River Rehabilitation and Redpath Flood Impoundment Project was reconvened. Engineer James Guler stated that the contractor has not completed the final punchlist items; the contractual final completion date was July 1, 2024. Upon motion by Kapphahn, seconded by Dahlen and carried unanimously, the hearing was recessed and will be continued August 15, 2024.

**WCD #SUB-1
IMPROVEMENT**

Attorney Lukas Croaker presented an update on the Construction and Maintenance Agreement provided by BNSF. The agreement was previously approved by the District subject the the District's attorney continuing to negotiate terms with BNSF. The drainage authority's maintenance of the crossing is limited to the contractor's warranty and routine sediment removal in the new culvert. Complete replacement of the culvert in the future, and maintenance of the crossing in perpetuity, is not the responsibility of the District, but statutorily the responsibility of the railroad utility. Engineer James Guler recommended that closeout procedures for the Improvement of WCD #Sub-1 be initiated. Upon motion by Kapphahn, seconded by Brutlag and carried unanimously, a closeout hearing was scheduled for August 15, 2024.

BDSWD NO. 5

Staff have discussed options for the construction of BdSWD Ditch No. 5, to address road access and flooding at the Stevens/Traverse County line. In consideration of the DNR's written response to the project's preliminary design, Attorney Lukas Croaker has identified five options for project development; the recommended option is that the property owner petition the DNR requesting to have the public waters in Section 24 removed from the public waters inventory and public waters map, as the field depression does not meet the statutory definition of a public waters, specifically, the definition of a natural watercourse or altered natural watercourse.

GCD #3 REPAIR

Engineer James Guler responded to DNR staff project design changes, and is awaiting a written response from the DNR regarding the District's responses. Attorney Croaker stated that DNR approval is not needed to proceed with the District's portion of the repair of GCD #3 but the County will need approval for its culvert work. Grant County Highway staff have asked for time to pursue state aid to fund replacement of culverts, required in their position as a road authority.

**MUSTINKA RIVER
& REDPATH FLOOD
IMPOUNDMENT
PHASE 2B**

Engineer James Guler provided an update on construction of Phase 2B of the Mustinka River Rehabilitation and Redpath Flood Impoundment Project. Substantial completion for the project is dated November 27, 2024. Upon motion by Kapphahn, seconded by Brutlag and carried unanimously, payment of Pay Application No. 2, in the amount of \$506,269.25, was approved.

DORAN CREEK

Right of Entry Agreements have been drafted for Doran Creek Restoration Project landowners. An informal landowner meeting will be held in Campbell, MN in an effort to provide information about the upcoming surveys, and gather landowner signatures.

BUFFER CONTRACT Attorney Lukas Croaker drafted a Professional Services Contract for Ms. Angelica Hopp, to facilitate buffer implementation support services. Upon motion by Kapphahn, seconded by Wold and carried unanimously, the agreement was approved. Ms. Angelica Hopp is having the agreement reviewed by her legal representation.

NORTH OTTAWA Mr. Truman Raguse has requested that rent for North Ottawa Cell B(3) be returned. The cell could not be farmed due to late spring impoundment operations. Upon motion by Wold, seconded by Kapphahn, and carried unanimously, the refund was approved. Engineer James Guler discussed the operations and maintenance manual that was originally drafted by WSN. Engineering staff met to discuss needed operational changes based on recent summer rainfall events and operation of the impoundment. There are also a number of repairs to the impoundment and outlet channels that are needed. Moore Engineering will identify the range of short- and long-term repairs and improvements that need to be made. Moore Engineering will also prepare a scope to complete a feasibility study of an additional outlet ditch along the north side of the impoundment. A meeting with North Ottawa landowners is scheduled for August 30, 2024, in Wendell, MN to discuss operations, repairs, and potential improvements to the impoundment and its operation.

TWELVEMILE CREEK District staff will bring a Twelvemile Creek Project Team strategy recommendation to the next board meeting.

RRRA CONF. Brian Fuder, Executive Director of the Red River Retention Authority, provided an update of the organization and upcoming joint conference.

2024 LEGISLATIVE CHANGES Information included in board packets described policies instituted during the 2024 legislative session. BWSR staff added language to the Minnesota Watersheds bill that implemented a large number of changes to the Wetland Conservation Act. The DNR expanded the definition and application of a Public Waters designation to new areas of currently private lands. BWSR gained new government authority over private lands through a new regulatory policy on perennial and intermittent streams. BWSR staff will soon release their draft of how they intend to regulate intermittent and perennial “watercourses” (these may or may not contain standing or flowing water). These private land areas are new – they do not meet the definition of Public Waters. The relevant EPA definitions are:

Year-round streams (perennial) typically have water flowing in them year-round. Most of the water comes from smaller upstream waters or groundwater while runoff from rainfall or other precipitation is supplemental.

Seasonal streams (intermittent) flow during certain times of the year when smaller upstream waters are flowing and when groundwater provides enough water for stream flow. Runoff from rainfall or other precipitation supplements the flow of seasonal stream. During dry periods, seasonal streams may not have flowing surface water.

These initiatives have interrelated consequences; their initiation triggers an avalanche of subsequent cascading government activities. For example, the designation of “public waters” results in requirements for double-sided 50’ buffers, MPCA chemistry and biological water quality monitoring and standards, impairment designations that oftentimes hinder the very projects that can improve water quality, DNR minimum water level designations, etc. It is important to note that county shoreland ordinances will then apply to new wetlands and public waters – so the expansion of these designations also amplifies the application of county zoning rules and restrictions. BWSR staff are designing a new “stream mitigation” system, under which LGU’s and private landowners will be required to replace and create new streams, similar to the wetland banking system, a system that ensure they will continue to add more private land to their own regulating authority.

These three major campaigns – to change wetland rules, to expand the definition of public waters, and to authorize government rule over new areas of private land – were not vetted through the Drainage Workgroup. What is certain, is that each of these three areas will have a direct and dramatic impact to both Minnesota watershed and drainage authority project feasibility, permitting, design, and cost – and will have impacts both for LGU’s and private landowners.

A final grave outcome: in their efforts to regulate “watercourses,” BWSR and DNR are asserting authority to make rules and decisions that apply to land outside the physical banks of the watercourses; **BWSR and DNR are asserting authorities to control what landowners do in the entire**

subwatershed/dry land upstream and adjacent to their proposed watercourses. This is a dramatic shift. They are also asserting an authority to not only regulate surface activities - but also subsurface activities.

Upon motion by Wold, seconded by Dahlen and carried unanimously, District staff are authorized to work further on the implications of these policies to the District.

Kapphahn motioned to not waive the monetary limits on tort liability established by Minn. Stat. § 466.04. Dahlen seconded. Motion passed unanimously.

Board managers discussed possible Minnesota Watersheds resolution ideas. The discussion focused on the importance of proposing legislation that would protect information contained in watershed district permit applications and permits as nonpublic data or private data under the Minnesota Government Data Practices Act.

**COMMENT
LETTERS**

Upon motion by Wold, seconded by Dahlen and carried unanimously, staff are authorized to submit comment letters on BWSR's Nonpoint Funding Priority Plan and the Clean Water Council Fund Recommendations for the next Biennium.

**ANNUAL POLICY
REVIEWS**

Upon motion by Wold, seconded by Dahlen and carried unanimously, Data Access Policies, Records Retention Schedule, and Conflict of Interest Disclosure Policies were subjected to annual review and readopted without change.

**DISTRICT
ENGINEER**

Discussion occurred on appointing Engineer Guler as the District's lead engineer as he is the engineer of record and overseeing the completion of most of the District's projects. Engineer Engles will continue providing engineering services to the District. Wold motioned, seconded by Kapphahn, to designate James Guler as District Engineer. Motion carried.

The meeting was adjourned.