



OhnstadTwichell
attorneys

Your life. Your law firm.

*Offices in West Fargo, Hillsboro, Casselton and
Page, North Dakota, and Barnesville, Minnesota*

Manfred R. Ohnstad 1914 - 1987
Bradley J. Burgum 1952 - 2010
Daniel R. Twichell 1927 - 2013
Brian D. Neugebauer 1951 - 2014

August 2, 2019

Lukas D. Andrud*
Katie J. Bertsch*
Brent T. Boeddeker*
Cailley B. Campbell*
Andrew D. Cook*
Lukas W. Croaker*
Susan L. Ellison*
Sean M. Fredricks*
Jacob L. Geiermann*
Alexander B. Gruchala*
Stephen R. Hanson II*
Robert G. Hoy*
John A. Juelson
Keven J. Kercher*
Tyler J. Leverington*
Delvin J. Losing*
Marshall W. McCullough*
Christopher M. McShane*
Elle M. Molbert*
Robert E. Rosenvold**
John T. Shockley*
Michel W. Stefanowicz
Jeffrey R. Strom
David L. Wanner
Sarah M. Wear*

Minnesota Board of Water and Soil Resources
Attn: Travis Germundson
520 Lafayette Rd N
St. Paul, MN 55155

Re: Petition to MN Board of Water and Soil Resources

Mr. Germundson:

On behalf of the Bois de Sioux Watershed District ("BdSWD"), please find the Petition to the Minnesota Board of Water and Soil Resources ("BWSR") for review and approval of an Amendment to the BdSWD Watershed Management Plan pursuant to Minn. Stat. §§ 103D.411 and 103D.729.

In summary, the amendment allows the BdSWD to create water management districts to provide an additional funding option for the BdSWD. In addition, the amendment creates the Lake Traverse Water Management District. The BdSWD respectfully requests BWSR's review and approval of the amendment pursuant to Minn. Stat. §103D.411. The BdSWD also requests notice of the hearing on the proposed amendment.

Enclosed please find the Petition Creating Water Management Districts and Engineer's Report for Lake Traverse Water Quality Improvement Project No. 1. If you have any questions or would like to discuss this matter further, please contact me.

Sincerely,

OHNSTAD TWICHELL, P.C.

Lukas Croaker, BdSWD Attorney

LWC:cms
Encl.

STATE OF MINNESOTA
Before the
BOIS DE SIOUX WATERSHED DISTRICT

In the Matter of the Bois de Sioux Watershed District's Establishment of Lake Traverse Water Quality Improvement Project No. 1

Petition to MN Board of Water and Soil Resources for Amendment to Watershed Management Plan Pursuant to Minn. Stat. §§ 103D.411 and 103D.729

The Board of Managers of the Bois de Sioux Watershed District (the "District"), at its regular meeting on Thursday, July 18, 2019, considered the attached proposed amendment (the "Amendment") to the District's Watershed Management Plan to support the establishment of Lake Traverse Water Quality Improvement Project No. 1 (the "Project"). Based on review of the Amendment and the Project proceedings, Manager Woro moved, seconded by Manager Schlomot to adopt the following Findings and Petition for approval of the Amendment of the District's Watershed Management Plan:

FINDINGS

1. On January 17, 2019, the District held a preliminary resolution hearing, pursuant to Minn. Stat. § 103D.601, on the preliminary resolution to consider the status of constructing a water quality enhancement project in the area where Traverse County Ditch No. 52 outlets into Lake Traverse, Traverse County, Minnesota, at their regular meeting held in Wheaton, Minnesota.
2. The Project is planned to be constructed in phases due to the scale of the Project. Phase No. 1 of the Project includes a new channel design grade, side slopes altered to a more stable 3:1 grade, and rock riffles to provide channel protection, aquatic habitat, and fish passage for the outlet reach of the Traverse County Ditch No. 52 downstream of MN Highway 27. Subsequent phases will focus on stabilizing the channel upstream of Phase No. 1, including the portion of the channel from the West watershed that runs along MN Highway 27 and Traverse County Ditch No. 52 in Sections 23 and 24 of Windsor Township.
3. After reviewing the District Engineer's preliminary report and hearing public comment on the Project, the Managers determined that the Project promotes the public interest and welfare and is practicable and in conformity with the District's Watershed Management Plan.
4. At the January 17, 2019, meeting, the Managers adopted the FINAL RESOLUTION CREATING LAKE TRAVERSE WATER QUALITY PROJECT NO. 1, attached as Exhibit A. The Managers also directed the District Engineer to prepare surveys, maps, and an engineering report on the Project pursuant to Minn. Stat. § 103D.711.

5. As directed, the District Engineer prepared an engineering report, which is on file in the District's office, describing the feasibility of the Project and estimate of the cost of the Project. The engineering report was subsequently filed with the MN Department of Natural Resources and the MN Board of Water and Soil Resources.
6. In order to provide an additional funding source for the Project, the District desires to establish a water management district. The purpose of the Amendment is to allow the District to establish water management districts, the Lake Traverse Water Management District, and water management district charges which will provide additional funding for the Project.
7. The District believes that establishment of the Lake Traverse Water Management District and development of water management district charges are appropriate steps to ensure successful establishment and implementation of the Project.
8. The District Engineer and District Attorney developed the Amendment to the District's Watershed Management Plan, attached as Exhibit B, to provide for the establishment of water management districts, the Lake Traverse Water Management District, and water management district charges to support the Project.
9. On July 18, 2019, the District approved the Amendment and petitions the MN Board of Water and Soil Resources for a watershed management plan amendment as contained herein.

Based on the foregoing Findings, the Board of Managers of the Bois de Sioux Watershed District petitions as follows:

PETITION

1. Pursuant to Minn. Stat. §§ 103D.411 and 103D.729, the Managers petition the MN Board of Water and Soil Resources to approve the Amendment to the District's Watershed Management Plan.
2. The District authorizes its Administrator to submit this petition and the Amendment to the MN Board of Water and Soil Resources for action pursuant to Minn. Stat. § 103D.411.

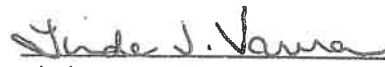
After discussion, the President called the question. The question was on the adoption of the foregoing Findings and Petition and there were 9 yeas, and 0 nays as follows:

Manager	Yea	Nay	Absent	Abstain
Linda Vavra	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Allen Wold	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Gillespie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jason Beyer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Doug Dahlen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jerome Deal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John Kappahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Steven Schmidt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Brutlag	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Upon vote, the President declared the motion passed.

**BOIS DE SIOUX
WATERSHED DISTRICT**

Date: 7-30-, 2019


Linda Vavra, President

Attest:

Date: July 30, 2019


Jamie Beyer, Administrator

Exhibit A
FINAL RESOLUTION CREATING
LAKE TRAVERSE WATER QUALITY PROJECT NO. 1

Manager WOLD introduced the following resolution and moved its adoption:

**FINAL RESOLUTION CREATING
LAKE TRAVERSE WATER QUALITY PROJECT No. 1**

WHEREAS, the Bois de Sioux Watershed District (the "District") held a preliminary resolution hearing to consider the status of constructing a water quality enhancement project in the area where Traverse County Ditch No. 52 outlets into Lake Traverse, Traverse County, Minnesota, at their regular meeting held in Wheaton, Minnesota, on January 17, 2019; and

WHEREAS, the Managers of the District directed the District Engineer to prepare a preliminary report advising the Managers whether the proposed project is feasible and estimating the cost of the project; and

WHEREAS, the District provided notice of the preliminary resolution hearing informing persons interested in the proceedings that they may speak and be heard on the proposed project; and

WHEREAS, after reviewing the Engineer's preliminary report and hearing public comment on the proposed project, the Managers determined that the proposed project promotes the public interest and welfare and is practicable and in conformity with the watershed management plan of the District.

NOW THEREFORE, BE IT RESOLVED, that the Managers of the Bois de Sioux Watershed District adopt this Final Resolution creating Lake Traverse Water Quality Project No. 1.

BE IT FURTHER RESOLVED that the proceedings to establish Lake Traverse Water Quality Project No. 1 will continue as provided under Minnesota Statutes Chapter 103D.

BE IT FURTHER RESOLVED that the Managers direct the District Engineer to prepare surveys, maps, and a report on the proposed project pursuant to Minn. Stat. § 103D.711. Upon filing of the Engineer's report with the Managers, the District shall send copies of the Engineer's report to the Director of the MN Department of Natural Resources and the Board of Water and Soil Resources for their respective review.

**BOIS DE SIOUX
WATERSHED DISTRICT**

Date: JAN. 17., 2019

Linda J. Vavra
Linda Vavra, President

Attest:

Date: JAN. 17, 2019

Jamie Beyer
Jamie Beyer, Administrator

The motion for the adoption of the foregoing Resolution was duly seconded by Manager DAHLEN. On roll call vote the following managers voted aye: ALL PRESENT. The motion carried unanimously, and the Resolution was duly adopted.

Date Approved: JAN. 17, 2019

EXHIBIT B
AMENDMENT TO THE
BOIS DE SIOUX WATERSHED MANAGEMENT PLAN

AMENDMENT
TO
BOIS DE SIOUX WATERSHED DISTRICT OVERALL PLAN
(May 2003)

PART V. PROJECTS

G. WATER MANAGEMENT DISTRICTS

1. ESTABLISHMENT OF WATER MANAGEMENT DISTRICTS UNDER
MINN. STAT. § 103D.729

- (a) **Overview.** The Bois de Sioux Watershed District (the “BdSWD”) may establish one (1) or more water management districts (WMD) in the territory within the watershed, for the purpose of collecting revenues and paying the costs of projects initiated under Minn. Stats. §§ 103B.231, 103D.601, 103D.605, 103D.611, or 103D.730. The BdSWD may establish WMDs by amending its Overall Plan, dated May 2003. Before the BdSWD may use this funding method, Minn. Stat. § 103D.729 requires that the watershed district describe the area to be included in the WMD, provide the amount to be charged, describe the method(s) used to determine the charges, and specify the length of time the WMD is expected to remain in force.
- (b) **Procedure to Create Water Management Districts.** The Board of Water and Soil Resources (BWSR) has provided draft guidance as to the procedure to create a WMD. This process involves eight (8) steps. The first two (2) steps are addressed through the revision of the Watershed Management Plan. The remaining steps must be completed prior to the watershed district collecting funds for the WMD. The following procedure is used to create a WMD:
- (1) Amend the watershed district plan to create a water management district. The amendment must include the following:
- Description of the area to be included in the water management district;
 - The amount of funds to be raised by charging the water management district (total amount is necessary if fixed time for the water management district to be effective, otherwise annual maximum amount);
 - The method that will be used to determine the charges; and
 - The length of time the water management district will be in force – in perpetuity is acceptable.

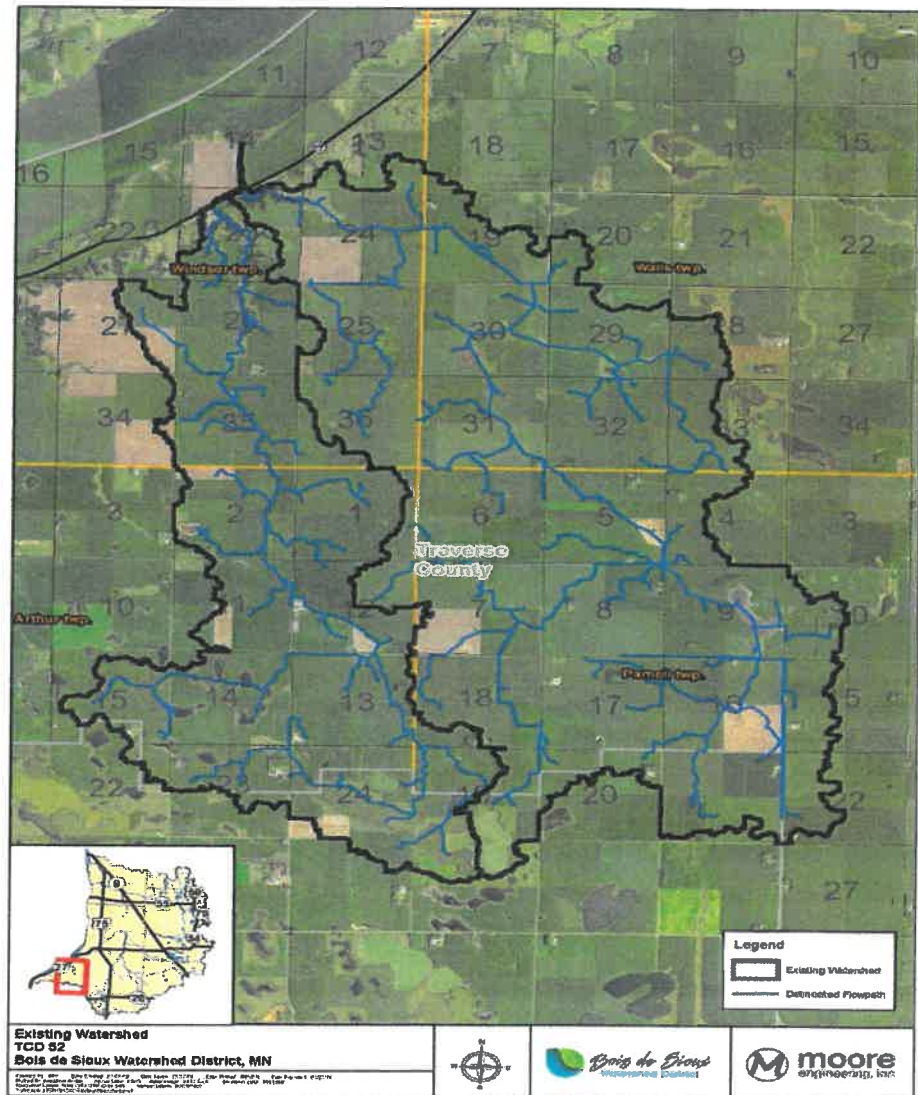
- (2) Approval of the plan amendment under Minn. Stat. § 103D.411 or as part of a revised plan under Minn. Stat. § 103D.405. The procedure for the amendment is as follows:
 - Revised plan or petition and amendment is sent to BWSR;
 - BWSR gives legal notice and holds a hearing, if requested;
 - BWSR orders approval or prescribes plan or amendment; and
 - BWSR notifies BdSWD Managers, counties, cities, and SWCDs.
- (3) Watershed district refines methodology for computing charges.
- (4) Watershed district determines and sets charges for all properties within the water management district after identifying the scope of the project and determines method(s) for funding the project.
- (5) Watershed district develops collection method. This collection method may be done by the county, private vendor, or by the watershed district.
- (6) Watershed district holds a hearing, orders the establishment of a project in the water management district, and initiates the charges.
 - Projects implemented must be ordered by the managers;
 - Order for the project must specify funding method(s); and
 - Watershed district must notify counties, cities, and towns within the affected area at least ten (10) days prior to a hearing or decision on projects implemented in accordance with Minn. Stat. § 103D.601.
- (7) Watershed district establishes a separate fund for proceeds collected from the method of charging.
- (8) Any disputes may be resolved by BWSR at the request of local government units pursuant to Minn. Stat. § 103B.101, Subd. 10.

2. LAKE TRAVERSE WATER MANAGEMENT DISTRICT

- (a) **Purpose.** The purpose of this amendment is to allow the BdSWD to create a WMD to provide an additional funding option for the Lake Traverse Water Quality Improvement Project (the “Project”).
- (b) **Lake Traverse Water Management District Overview.** The BdSWD hereby establishes the Lake Traverse Water Management District (Lake Traverse WMD) to provide an additional funding option for the Project. The Project is planned to be constructed in phases due to the scale of the

Project. Phase No. 1 of the Project includes a new channel design grade, side slopes altered to a more stable 3:1 grade, and rock riffles to provide channel protection, aquatic habitat, and fish passage for the outlet reach of the Traverse County Ditch No. 52 downstream of MN Highway 27. Subsequent phases will focus on stabilizing the channel upstream of Phase No. 1, including the portion of the channel from the West watershed that runs along MN Highway 27 and Traverse County Ditch No. 52 in Sections 23 and 24 of Windsor Township.

- (c) **Lake Traverse WMD Area.** The area to be included in the Lake Traverse WMD is any area that lies within the watershed of the Project. The figure below provides an illustration of the watershed area of the Lake Traverse WMD. In instances where the watershed boundary crosses portions of a parcel, only the area of the parcel that lies within the watershed will be included within the Lake Traverse WMD.



- (d) **Probable Cost – Annual Charges.** Phase No. 1 of the Project is estimated to cost seven hundred fifty thousand dollars (\$750,000). The maximum assessment for the Lake Traverse WMD will be capped at seventy five thousand dollars (\$75,000) annually. The Lake Traverse WMD will be the primary funding source for the Project. Additional funding sources have been pursued and will continue to be pursued as the opportunity arises.
- (e) **Method to Determine Charges.** Multiple methods were considered in the process of calculating assessments for the Lake Traverse WMD. The assessment methods are further described as follows:
- (1) **Simple Distribution of Cost:** the total project cost equally distributed on a per acre basis to all parcels within the Lake Traverse WMD.
 - (2) **Distribution of Costs Based on Size of Contributing Watershed:** the Lake Traverse WMD is separated into two (2) distinct watersheds, the Traverse County Ditch No. 52 watershed and West watershed, which meet together and utilize a common outlet into Lake Traverse. A method was proposed that distributes project cost to each watershed based on percentage of total contributing area. Each parcel in the two (2) watersheds is evenly assessed on a per acre basis.
 - (3) **Distribution of Costs Based on Sediment Loading:** the assessments are based on the amount of sediment a parcel contributes to Lake Traverse.
 - (4) **Distribution of Costs Based on Runoff Volume:** the assessments are based on the volume of runoff on a per acre basis that a parcel contributes to the outlet. The erosion and channel degradation experienced in the watershed has been exacerbated through the addition of man-made channels that allow previously non-contributing areas to discharge into Traverse County Ditch No. 52. This discharge accelerated the rate of erosion of Traverse County Ditch No. 52.
 - (5) **Lake Traverse WMD Method:** a combination of methods 1, 2, and 4 were utilized in calculating assessments for the Lake Traverse WMD. Method 3 was not utilized as the purpose of the Project is to mitigate erosion, not sedimentation. The Lake Traverse WMD is further described as follows:
-

The distribution of charges is based on estimated runoff volume for the 10-year 24-hour rainfall event using depth from Atlas 14. Runoff is calculated utilizing SSURGO Soils and Land use data from the National Land Cover Database. Land use types are consolidated into four (4) categories including Developed, Cultivated Crops, Natural Areas (excluding wetlands/open water), and Wetlands/Open Water. Each of these land use types are assigned curve numbers based on the hydrologic soil group (A, B, C, D, A/D, B/D, or C/D). The table below shows the selected curve numbers for each combination of land use and hydrologic soil group.

Table 1 Curve Numbers by land use and hydrologic soil group data

Land Cover Type	Hydrologic Soil Group						
	A	B	C	D	A/D	B/D	C/D
Developed	54	70	80	85	69.5	77.5	82.5
Cultivated crops	64	74	81	85	74.5	79.5	83
Natural Areas (excluding wetlands/open water)	39	61	74	80	59.5	70.5	77
Wetlands/open water	98	98	98	98	98	98	98

The Traverse County Ditch No. 52 watershed and West watershed were analyzed separately for contribution of flow to the shared outlet. When parcels contribute to both the Traverse County Ditch No. 52 watershed and West watershed, the parcel is split accordingly. Non-contributing areas were identified within each watershed for both the 10 and 100-year events. Areas that do not contribute during a 100-year event were removed from the assessment pool, while areas that do not contribute during a 10-year event were included at half of the rate of areas that contribute for events smaller than the 10-year event. Based on the selected curve number, an average runoff depth per parcel is calculated. This calculation is used with the parcel area (with noncontributing areas taken into account) to get total runoff generated by each parcel in acre-feet. A reduction factor is applied to account for the estimated cost difference between the Traverse County Ditch No. 52 watershed and West watershed project costs, as well as a reduction based on the portion of the total area of each watershed. Parcel runoff volume with the reduction factors applied is then divided by the total sum of all runoff to get the percentage of the total distributed cost assigned to that parcel. In instances where a parcel contributes to both the Traverse County Ditch No. 52 watershed and West watershed, the cost assigned to the portion contributing to the West watershed is combined with the cost assigned to the portion contributing to the Traverse County Ditch No. 52 watershed.

- (f) **Duration of Lake Traverse Water Management District.** The Lake Traverse WMD will remain in existence in perpetuity. Annual assessment of charges may vary from no charges to the maximum amount of seventy five thousand dollars (\$75,000) per year. The calculation may be adjusted at the discretion of the BdSWD Board of Managers. After these phases are constructed, the funds will be used to maintain the Project.

- (g) **Use of Funds.** The primary use of the funds collected from charges within Lake Traverse WMD will support construction, implementation, operation, and maintenance of the Project.