

MINUTES OF THE REGULAR MEETING OF THE BOARD OF MANAGERS OF THE BUFFALO CREEK WATERSHED DISTRICT

The Managers of Buffalo Creek Watershed District met on the 27th day of December, 2022, at 1:00 p.m., for its regular monthly business meeting and for the continued hearing on the improvement of Branches 12 and 13 of McLeod/Sibley Joint Ditch 8.

The following managers were present:

Larry Kramer
Chad Stuewe
Don Belter
Matt Melberg
Kevin Lindeman

The following managers were absent/excused:

Also attending the meeting were:

John Kolb, Attorney
Larry Phillips
Sam Munson
Al Robeck
Darrel Luthens
Dean Zimmerli
Fern Albers
Robert Ruppe
Adam Leske
Doug Krueger
Doug Renzaur
Mike Mueleners
Dustin Mueleners
Gary Berdof
Travis Bunk

President Belter called the meeting to order and announced the first order of business was the consideration of the minutes of the regular meeting of the Board of Managers held on November 22, 2022. Motion by Manager Kramer seconded by Manager Lindeman to approve the minutes with a correction to remove Fern and Gary Albers from the attendees. After discussion, the Board of Managers, by unanimous vote, approved the minutes for the meeting held on November 22, 2022, as corrected.

President Belter then called for review of the Treasurer's Report. The Treasurer, Manager Stuewe and Larry Phillips presented a written report which outlined income and expenses as follows:

December Financials:

Security Bank & Trust Co.	
Money Market Checking Account -	
Beginning Balance:	\$599,199.96

Income:

Interest earned thru November 2022	\$407.41
Deposit – State of MN, MMB	\$4,449.89
Deposit – Renville County	\$18,746.51
Deposit – McLeod County	\$89,827.89

Expenses:

To checking to cover other checks issued	\$15,919.76
Bolton & Menk – JD 15, Branch Q	\$1,052.00
Rinke Noonan – JD 8, Laterals 12 & 13	\$3,008.12
Houston Engineering – JD 8, Laterals 12 & 13	\$1,274.00

Ending Balance: \$691,395.78

Balance in Security Bank Now Account	\$1,009.35
Balance in Security Bank Savings Account - Projects	\$461.95
Total for all bank accounts:	\$692,867.08

Motion by Manager Kramer seconded by Manager Melberg to approve the Treasurer’s Report subject to audit. After discussion, and by unanimous vote, the Board of Managers approved the Treasurer’s Report subject to audit.

President Belter next called for the bills that had been presented to the Board since the last meeting. Larry Phillips reported as follows:

12/27/2022

Rinke Noonan - JD 15 Br Q	\$252.00	
Rinke Noonan - 1W1P	\$396.00	
Rinke Noonan - Retainer Fee	\$700.00	
Rinke Noonan - General Administrative Advice	\$576.00	
Rinke Noonan - JD 8 Laterals 12 & 13	\$3,269.00	\$5,193.00
Bolton & Menk - JD 15 Br Q	\$1,752.00	
Gislason & Hunter, LLP - JD 15 Br Q	\$735.00	
Ron Rinquist - Viewer/Appraiser - JD 8 Lat 12 & 13	\$1,281.13	
Schmidt Agri-Drainage - Viewer - JD 15 Br Q	\$490.00	
John Dotolo - Viewer - JD 8 Lat 12 & 13	\$1,060.00	
Ken's Excavation - Marsh Creek - clean drainage ditch	\$302.50	

parallel to Hwy 22

McLeod Publishing Group, Inc. - JD 8 Lat 12 & 13	\$900.00	
Larry Phillips - Permit Consultant	\$850.00	
Larry Phillips - 2022 Annual Conference-1 day workshop	\$150.00	
205 Miles @ .625	\$128.13	\$1,128.13
Mary Henke - Monthly Services Fee	\$350.00	
Mary Henke - Permit Viewer hours- 1.75 hrs	\$43.75	\$393.75
Linda Phillips - Monthly Fee	\$425.00	
<i>SUBTOTAL</i>	\$13,660.51	***
<i>Board Managers</i>		
Don Belter \$75.00 - 5.74 = \$ 69.26 + 8.75 = \$ 78.01	\$78.01	
Chad Stuewe \$75.00 - 5.74 = \$ 69.26 + 3.75 = \$ 73.01	\$73.01	
Larry Kramer \$75.00 - 5.74 = \$ 69.26 + 47.50 = \$ 116.76	\$116.76	
Matt Melberg \$75.00 - 5.74 = \$ 69.26 + 16.25 = \$ 85.51	\$85.51	
Kevin Lindeman \$75.00 - 5.74 = \$ 69.26 + 13.75 = \$ 83.01	\$83.01	
	\$436.30	***
	\$ 14,096.81	*****

Motion by Manager Kramer seconded by Manager Melberg to approve the bills for payment. After discussion, and by unanimous vote, the Board of Managers approved the above bills for payment.

President Belter called any new permits:

None

President Belter next called for discussion of old business:

Laterals 12 & 13 of McLeod/Sibley Joint Ditch 8 Improvement. On an approved motion by Manager Kramer, seconded by Manager Lindeman, the Board recessed its regular meeting and reconvened the hearing on the petitioned improvement of Laterals 12 and 13 of McLeod/Sibley Joint Ditch 8.

Kolb presented an engineer report addendum to the Board clarifying that the damages recommended by the viewers should be applied to the separable maintenance cost rather than the cost of improvement.

Following discussion, Manager Kramer moved, seconded by Manager Stuewe to rescind the Board's findings found in section 4 of the original deliberation guide related to cost/benefit analysis of the project; to receive the engineer's report addendum dated December 17, 2022; and to revise the findings as follows:

4. The estimated benefits are greater than the total estimated costs, including damages.
 - A. Opinion of Cost of Improvement from Engineer = \$646,800 (FER P. 20)
 - B. Damages, if any, awarded by viewers = \$0 for Improvement (\$10,380 to be applied to the Separable Maintenance cost determined by the engineer)(FER addendum)
 - C. $A + B = \$646,800$
 - D. Opinion of Cost of Separable Maintenance ($\$564,800 + \$10,380$) = 575,180 (FER P. 21 and FER addendum)
 - E. $C - D = \$71,620$
 - F. Improvement Benefits Determined by Viewers = \$88,203

After discussion and on a vote, the motion passed 3-0 with Managers Melberg and Lindeman abstaining.

Kolb then explained that during the initial public hearing the Board made affirmative findings on each of the requirements for establishing the project. However, based on the prior finding, now rescinded, regarding the cost/benefit of the project, the Board directed Kolb to draft findings and an order dismissing the petitioned project because it did not meet the cost/benefits requirements of the drainage code. Now that the Board has taken an action to correct its finding related to cost/benefit analysis, there is no reason for the Board not to establish the project. Statutes section 103E.341 states "The drainage authority **shall establish**, by order, a proposed drainage project if it determines that:

- (1) the detailed survey report and viewers' report have been made and other proceedings have been completed under this chapter;
- (2) the reports made or amended are complete and correct;
- (3) the damages and benefits have been properly determined;
- (4) the estimated benefits are greater than the total estimated cost, including damages;
- (5) the proposed drainage project will be of public utility and benefit, and will promote the public health; and
- (6) the proposed drainage project is practicable.

Kolb noted that the Board has now made an affirmative finding on all six of the requirements. Therefore, there is no basis upon which the Board may dismiss the project.

Following discussion, Manager Kramer moved, seconded by Manager Stuewe to direct staff to prepare findings and an order consistent with the proceedings, including responses to all comments received through the public comment process; that the draft findings and order be written to affect adoption and confirmation of the viewers' and engineer's reports and addenda and establishment of the project as petitioned herein; and that the hearing be further continued to the Board's regular meeting on January 24, 2023, at 1:00 p.m., at the Glencoe City Center, Suite 103, Glencoe City Center, 1107 11th Street E., Glencoe, MN or by adjournment to an appropriate time on the Board's agenda, at which meeting we will consider findings and an order as discussed.

After discussion and on a vote, the motion passed unanimously with all members voting in favor of the motion. The President announced the hearing in recess/continued to the date, time and location approved in the motion.

On an approved motion by Manager Melberg, seconded by Manager Lindeman, the Board reconvened its regular meeting. President Belter called for additional old business.

One Watershed, One Plan. Phillips and Melberg updated the Board on the status of the planning process. Kolb suggested a workshop for the Board, inviting McLeod SWCD staff, to review current planning documents and priorities. Kolb believes the planning process has proceeded to a point where it would be beneficial for the Board to gather more detailed information about the plan and its contents.

JD 15 Branch Q Improvement. Kolb updated the Board to inform it that all required filings are completed and the Board can schedule and hold a final hearing in the proceedings. Renville County staff has reserved room 116/117 at the Renville County Government Center on the afternoons (3-6) of January 30, 31, February 1, 2, and 3 for the Branch Q hearing and acceptance hearings for Branches A, S and M20 (discussed below). Kolb is prepared to provide final hearing notices and mail owners' reports. Kolb has coordinated with Renville County staff to provide notices and cost information to the owners of project affect by a possible separable maintenance decision.

Kolb presented a draft order for the final hearing. After discussion, Manager Melberg moved, seconded by Manager Kramer to set the final hearing date for Wednesday, February 1, 2023, at 3:00 p.m., in meeting rooms 115/116 at the Renville County Government Center in Olivia, Minnesota; to adopt the draft order for final hearing as modified and to authorize Kolb to take actions necessary to provide notice and deliver mailings as required by statute. After further discussion and upon a vote, the Board adopted the order for the final hearing and approved the motion unanimously.

JD 15 Branches A, S and M20 Improvements, Contract Acceptance Hearings. Kolb discussed the status of contracts for the Branch A, S and M20 improvements. Like the Branch Q improvement, the Branches A and S improvement are engineered by Bolton and Menk. The Branch M20 improvement is engineered by Houston Engineering. The M20 engineer's closure

report has been filed. The Branches A and S engineer's closure reports are anticipated in a few weeks.

County staff has reserved room 116/117 at the Renville County Government Center on the afternoons (3-6) of January 30, 31, February 1, 2, and 3 for the acceptance hearings for Branches A, S and M20. Kolb is prepared to provide acceptance hearing notices.

After discussion, Manager Melberg moved, seconded by Manager Kramer to set the acceptance hearings for the Branches A and S improvements for Wednesday, February 1, 2023, at 4:30 p.m., in meeting rooms 115/116 at the Renville County Government Center in Olivia, Minnesota and to authorize Kolb to take actions necessary to provide notice and deliver mailings as required by statute. After further discussion and upon a vote, the Board approved the motion unanimously.

After discussion, Manager Kramer moved, seconded by Manager Melberg to set the acceptance hearings for the Branch M20 improvement for Wednesday, February 1, 2023, at 5:30 p.m., in meeting rooms 115/116 at the Renville County Government Center in Olivia, Minnesota and to authorize Kolb to take actions necessary to provide notice and deliver mailings as required by statute. After further discussion and upon a vote, the Board approved the motion unanimously.

JD 15 Branch P1 Improvement Update. Phillips provided an update on the status of construction for the Branch P1 improvement and reviewed the ISG engineering update for the project. The contractor has been given an extension to complete remaining work in early 2023 based on site condition delays during construction.

JD 15 Branch P1 Improvement, Temporary Damage Payment Authorization. Kolb and Phillips reported to the Board and shared a summary from the engineer (ISG) of temporary damages related to the construction in 2022. Seth Sparks (Renville County Drainage Inspector) had inquired whether temporary damages could be authorized for payment now, rather than waiting for the completion of the work. Damages awarded in the proceedings, based on viewers recommendation were \$70,326.00, subject to adjustment at final acceptance. The viewers recommended temporary damage value was \$600/ac based on one year full rental (\$300/ac/yr) and two years partial rental (\$150/ac/yr) rate. Kolb discussed several options for payment, including offsetting assessments. It is Renville County's practice to make cash payment as part of project costs rather than to offset assessment, as it is a cleaner process. Typically, damages would not be paid until after project acceptance. However, Sparks has received several calls from landowners inquiring about early payment.

After discussion, Manager Kramer moved, seconded by Manager Melberg to authorize the payment of damages to the owners identified in the ISG report according to the viewers' recommended damage formula and to authorize Kolb to coordinate with Renville County staff for the payment of the damage award. Further damages to be considered to properties impacted

by construction in 2023 at the final acceptance hearing. After further discussion and upon a vote, the Board approved the motion unanimously.

President Belter next called new business:

None

President Belter next called Manager/staff reports:

Phillips updated the Board on Collins Tree Service schedule for channel maintenance and tree removal. Phillips has also engaged Ed Picha to perform supplemental work. Phillips has sent notices to affected landowners in anticipation of the work. Work will start near Plato and continue to the Crow River. Manager Melberg inquired whether additional funds could be budgeted to perform more work if conditions allow. Kolb recommended that Phillips work with the contractors to determine what additional work could be accomplished and at what cost and to report at the January meeting. Kolb advised the Board that it could make a budget adjustment at that time by authorizing use of reserve funds to pay for the additional work.

Phillips reported on tabled permit 2022-7 indicating that the applicant is still obtaining the easements required to implement the proposed project.

Kolb reported on AMC and MAWD efforts to address DNR proposed amendments to the drainage code.

There being no further business to come before the Board, upon motion duly made, seconded and unanimously carried, the Board of Managers adjourned the meeting until the next regular meeting of the Board of Managers on Tuesday, January 24, 2023, at 1:00 p.m., in person, in the Board's meeting room in the Glencoe City Center.

Matt Melberg, Secretary