

RED LAKE WATERSHED DISTRICT
February 8, 2018
Agenda
9:00 a.m.

9:00 a.m.	Call to Order	Action
	Review and approve agenda	Action
	Requests to appear	Information
	January 25, 2018 Minutes	Action
	Financial Report dated February 7, 2018	Action
	Four-Legged Lake, RLWD Project No. 102A	Info./Action
9:15 a.m.	Judicial Ditch 5, RLWD Project No. 102-Neal Illies	Information
	Thief River Falls West Side FDR Project No. 178-Update	Information
	West Polk SWCD Request-Erosion Control, RLWD Proj. No.164	Info./Action
	County Ditch 1, Clearwater County, RLWD Proj. 103-Abandonment	Information
	Good Lake Impoundment, RLWD Proj. 67-Special Land Permit	Information
	Local Governmental Round Table-1W1P	Info./Action
	Pennington County Buffer Strip Ordinance	Information
	City of Thief River Falls Municipal Wastewater Treatment Center	Information
	March 2018 Board Meeting Dates	Info./Action
	Administrators Update	Information
	Legal Counsel Update	Information
	Managers' updates	Information
	Adjourn	Action

UPCOMING MEETINGS

February 15, 2018	Drainage and Waters Conference, St. Cloud
February 20, 2018	RRWMB Meeting, Ada, 9:30 a.m.
February 22, 2018	RLWD Board Meeting, 9:00 a.m.
March 7-8, 2018	MAWD Legislative Day at the Capitol
March 21-22, 2018	RRWMB March Conference-Moorhead

RED LAKE WATERSHED DISTRICT
Board of Manager's Minutes
January 25, 2018

DRAFT

President, Dale M. Nelson, called the meeting to order at 9:00 a.m. at the Red Lake Watershed District Office, Thief River Falls, MN.

Present were: Managers Dale M. Nelson, Terry Sorenson, Gene Tiedemann and Brian Dwight. Absent: Les Torgerson, Allan Page and LeRoy Ose. Staff Present: Myron Jesme and Tammy Audette and Legal Counsel Sparby.

The Board reviewed the agenda. A motion was made by Dwight, seconded by Sorenson, and passed by unanimous vote that the Board approve the agenda. Motion carried.

Clearwater County Commissioner, Neil Illies, requested to appear before the Board.

The Board reviewed the January 11, 2018 minutes. Motion by Tiedemann, seconded by Sorenson, to approve the January 11, 2018 Board meeting minutes as presented. Motion carried.

The Board reviewed the Financial Report dated January 24, 2018. Motion by Sorenson, seconded by Tiedemann, to approve the Financial Report dated January 24, 2018 as presented. Motion carried.

Staff member Arlene Novak reviewed the General Fund Budget as of December 31, 2017. Novak stated that the auditors will be in the District office on February 1st and 2nd, to complete the 2017 audit.

The Board reviewed the Investment Summary as of January 24, 2018. Staff member Arlene Novak stated that a Certificate of Deposit that matured on January 17, 2018 was reinvested with Unity Bank-CDARS program for one year, at a rate of 1.5%. An additional Certificate of Deposit will mature on February 8, 2018 through Unity Bank-CDARS program. Motion by Sorenson, seconded by Dwight, to re-invest the Certificate of Deposit that will mature on February 8, 2018 with Unity Bank-CDARS program for a 6-month term at 1.4%. Motion carried.

The Conflict of Interest policy was reviewed by the Board. Motion by Tiedemann, seconded by Dwight, to approve the Conflict of Interest Policy and have each Board member sign the Conflict of Interest policy and return it to staff member, Arlene Novak. Motion carried.

Engineer Tony Nordby, Houston Engineering, Inc., reviewed the anticipated project schedule and updated budget for the Black River Impoundment Project, RLWD Project No. 176. Nordby stated that a meeting with landowners will be held in the next month to review the proposed right-of-way numbers for the diversion ditches. Nordby stated that he has submitted information for EQIP funding and the submittal of a draft Wetland Banking Scoping document to the agencies, with the permit application to be submitted soon. The wetland banking process will take approximately one year to get through, followed by a monitoring period after construction.

As part of the permit process, the MnDNR Dam Safety department require elevations of homes downstream of the project. The archaeological study will be completed this Spring. Administrator Jesme stated that this project did receive a Project Acceleration Grant through the Flood Damage Reduction Work Group, with an additional Project Acceleration Grant to be submitted.

RRWMB Executive Director Rob Sip, updated the board on the transition and reorganization of the RRWMB since he was hired effective November 29, 2017. Mr. Sip stated that Nicky Swenson was hired as the Executive Assistant. The RRWMB will have temporary office space in Ada and will eventually be co-located within the Wild Rice Watershed District office. Sip discussed outreach, sharing of information, communication, processes and procedures on which to move forward on and the development of dialogue. Monthly RRWMB meetings will continue to be rotated throughout the watershed district offices. Sip stated that he recommended the addition of a Legislative Committee on the RRWMB, to work with legislative priorities to obtain state and federal funds. Ron Harnack retired as lobbyist for the RRWMB and was replaced by Lisa Frenette. Frenette was able to work with Mr. Harnack prior to his retirement. Sip discussed the following items: new board member orientation; development of electronic meeting packets; March Conference to be held March 21-22, in Moorhead; and RRWMB five-year funding plan.

Discussion was held on the Four-Legged Lake, RLWD Project No. 102A, Project Work Team meeting held on January 19, 2018 and the request of the Board for the Project Work Team members to try and reach a consensus on a recommended elevation for the outlet of the Four-Legged Lake system. Due to the Project Work Team's inability to reach a consensus, the District Board requested the Project Work Team members provide written comments as to the reason why they were not able to come to a consensus on certain recommended elevations. Comments are due to the District office by February 1st, with further discussion by the Board at the February 8, 2018 Board meeting.

Clearwater County Commissioner, Neil Illies, appeared before the Board to discuss the position of the Clearwater County Board regarding the Judicial Ditch 5, RLWD Project No. 102 and the resolution passed by the Clearwater County Board on June 20, 2017. Illies discussed prior lake elevations, ditch abandonment procedures, appointment of viewers and reconvening of the abandonment hearing process. Legal Counsel Sparby indicated that the District Board tabled the abandonment hearing to allow the Project Work Team to work towards a potential Flood Damage Reduction Project. Sparby further indicated that Clearwater County provided written testimony at the hearing regarding damage of Clearwater County roads due to unauthorized raising of water levels. Illies stated that the Clearwater County Board passed a resolution withdrawing the letter objecting to the abandonment of Judicial Ditch No. 5. Illies indicated that he would like to see the elevation for any future project at 1426, with an increase to 1428 for FDR.

Administrator Jesme stated that the District had previously been approached by the Audubon Society to participate in the placement of kiosks for bird watching on District impoundments along the Highway 75 corridor. Due to the departure of staff from the Audubon Society, the

project did not move forward. As part of the original plans, the Middle Snake Tamarac Rivers Watershed District (MSTRWD) oversaw building the kiosks, which has been completed in 2017. The MSTRWD has inquired if the District would like to purchase them at a cost of \$2,500 each and install them on a few of our projects. Motion by Dwight, seconded by Tiedemann, to approve the purchase of two kiosks from the MSTRWD at a cost of \$2,500 each to be installed at the Euclid East Impoundment, RLWD Project No. 60C and the Parnell Impoundment, RLWD Project No. 81. Motion carried.

The Board reviewed correspondence from BWSR regarding Determination of Adequacy for Roseau County and Red Lake County Buffer Ordinance. Administrator Jesme stated that he participated in a conference call with the Buffalo Red River Watershed District regarding drafting of the District's buffer ordinance.

The Board reviewed correspondence from Koochiching County Commissioner Wayne Skoe, requesting participation in the District's Advisory Committee representing the Upper Red Lake area. Motion by Dwight, seconded by Sorenson, to approve the appointment of Wayne Skoe to the Upper Red Lake area on the District's Advisory Committee. Motion carried.

The MAWD Legislative Reception, Breakfast, and Day at the Capitol will be held March 7-8, 2018 in St. Paul, MN.

Legal Counsel Sparby stated that the land transaction with Craig Swanson for the Black River Impoundment, RLWD Project No. 176 was completed.

Motion by Sorenson, seconded by Dwight, to adjourn the meeting. Motion carried.

LeRoy Ose, Secretary

RED LAKE WATERSHED DISTRICT
Financial Report for February 7, 2018

Ck#	Check Issued to:	Description	Amount
online	EFTPS	Withholding for FICA, Medicare, and Federal taxes	\$ 3,874.47
online	MN Department of Revenue	Withholding taxes	729.04
online	Public Employees Retirement Assn.	PERA	2,631.74
online	EFTPS	Withholding for FICA, Medicare, and Federal taxes	22.96
	EFTPS	Listed on January 5 financial	(195.36)
	MN Department of Revenue	Listed on January 5 financial	(50.00)
36608	Voided	Check used for setup Blue Cross Blue Shield ACH payments	-
36609	Grain Bin and Gift Shop	Sales tax on TR1W1P meals	29.48
36610	Marshall County SWCD	TR1W1P Planning reimbursement	96.84
36611	Putzy's Catering	Sales tax on TR1W1P meals	25.78
36612	Rinke Noonan	(4) Registrations for Drainage & Water Conference	380.00
36613	Ace Hardware	Key	1.99
36614	Ameripride Services Inc.	Office rug rental	30.20
36615	Tammy Audette	Clean offices in January	315.00
36616	Centurylink	Telephone expense	269.94
36617	City of Thief River Falls	Electricity, water, sewer, etc.	962.75
36618	Farmers Union Oil	Gas for vehicle	48.91
36619	Houston Engineering Inc.	*See below	22,887.54
36620	Hugo's #7	TR1W1P meeting expense, Board mtg. exp. & maint.supplies	202.88
36621	Les's Sanitation, Inc.	Garbage pickup	33.70
36622	Marco Technologies, Inc.	**See below	1,781.99
36623	Messenger	Ad for TR1W1P Open Houses	70.00
36624	Minnesota Energy Resources	Heating expense	111.56
36625	McFarlane Consulting LLC	Archaeological review-Black River Impoundment	800.00
36626	Motor Vehicle Dept.	License for 4 vehicles	64.00
36627	NCPERS	Staff life insurance premium	128.00
36628	Dale M. Nelson	Mileage	33.79
36629	Northern State Bank	Safe deposit box rent	14.00
36630	Northwest Beverage	H2O for office	16.00
36631	Northwestern Mutual Financial	Deferred Compensation	346.31
36632	Olson Construction	Snow removal of parking lot in January	270.00
36633	LeRoy Ose	Mileage, lodging, meal, and per diem meals	831.23
36634	Quill Corporation	Fellowes laminator, laminate pouches,computer and copier paper	372.86
36635	Sun Life Financial	Staff life insurance premium	139.12
36636	Sjobergs Cable TV	Internet expense	74.75
36637	Thief River Falls Times	Ad for TR1W1P Open House, affidavit of publication&TR1W1p mtg.	452.34
36638	TD Ameritrade Trust Company	Deferred Compensation	69.26
36639	Gene Tiedemann	Mileage	113.15
36575	Marco	Voided Check	(305.69)
online	SelectAccount	Health and DC FSA	174.57
online	Aflac	Staff paid insurances	465.74
	Payroll		
	Check #11327 -11334		<u>12,284.10</u>
	Total Checks		\$ 50,604.94

***Houston Engineering, Inc.**

Proj. 149AA PTMapp	117.00
Proj. 149A TR1W1P	<u>22,770.54</u>
TOTAL	<u>22,887.54</u>

****Marco**

Monthly 36 month IT support	1,200.00
Monthly copier maintenance	394.49
Microsoft Office 365 monthly fee(15)	<u>187.50</u>
TOTAL	<u>1,781.99</u>

Northern State Bank

Balance as of January 24, 2018	1,162,243.08
Total Checks Written	\$ (50,604.94)
Receipt #016496 Marshall County-Delinquent tax settlement	1,487.52
Receipt #016497 Pennington County-Delinquent R & P and MH taxes	16,408.88
Receipt #016498 Polk County-Special assessments	28,026.84
Receipt #016499 Red Lake County-Delinquent R & P and special assessments	2,829.91
Receipt #016500 Itasca County-Delinquent taxes	14.51
Receipt #016501 Clearwater County-Delinquent R & P taxes and special assessments	3,070.17
Receipt #016502 Mahnomen County-Delinquent taxes	156.53
Receipt #016503 Beltrami County-Delinquent R & P and special assessments	17,456.23
Receipt #016504 State of Minnesota-Water quality grant reimbursements	5,455.00
Receipt #016505 Koochiching County-Delinquent taxes	1,252.79
Receipt #016506 CDARS-Monthly interest on CDs	1,465.83
Receipt #016507 Northern State Bank-Monthly interest	<u>650.63</u>
Balance as of February 7, 2018	<u>\$ 1,189,912.98</u>

Border State Bank

Balance as of December 31, 2017	\$ 10,594.69
Receipt #016508 Monthly interest	<u>2.25</u>
Balance as of January 31, 2018	<u>\$ 10,596.94</u>

Clearwater SWCD

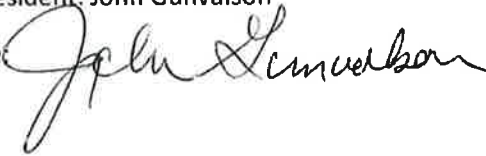
Statement to Support Four Legged Lake Level of 1427 ft

The mission of the Clearwater Soil and Water Conservation District is to promote the wise use and improvement of our county resources, in order that future generations will inherit an economically viable county that has made wise choices in resource management.

The Clearwater SWCD Board is in disagreement with the proposed new lake water level of 1424 feet. The current level of 1427 feet has not been shown to have a negative effect on the areas immediate water quality and in combination with strong landowner support to maintain current lake levels, has led to the decision of the Clearwater SWCD Board to support a level of 1427 feet.

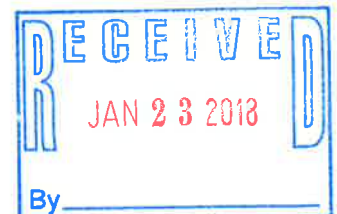
Board President: John Gunvalson

Signature:



Date:

1/18/18



Clearwater SWCD

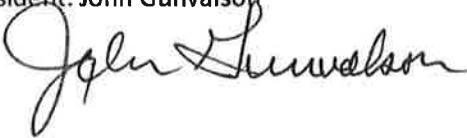
Statement to Support Four Legged Lake Level of 1427 ft

The mission of the Clearwater Soil and Water Conservation District is to promote the wise use and improvement of our county resources, in order that future generations will inherit an economically viable county that has made wise choices in resource management.

The Clearwater SWCD Board is in disagreement with the proposed new lake water level of 1425 feet. The current level of 1427 feet has not been shown to have a negative effect on the areas immediate water quality and in combination with strong landowner support to maintain current lake levels, has led to the decision of the Clearwater SWCD Board to support a level of 1427 feet.

Board President: John Gunvalson

Signature:



Date:

7/10/10

Clearwater SWCD


Statement to Support Four Legged Lake Level of 1427 ft

The mission of the Clearwater Soil and Water Conservation District is to promote the wise use and improvement of our county resources, in order that future generations will inherit an economically viable county that has made wise choices in resource management.

The Clearwater SWCD Board is in disagreement with the proposed new lake water level of 1425.5 feet. The current level of 1427 feet has not been shown to have a negative effect on the areas immediate water quality and in combination with strong landowner support to maintain current lake levels, has led to the decision of the Clearwater SWCD Board to support a level of 1427 feet.

Board President: John Gunvalson

Signature:



Date:

1/18/18

Clearwater SWCD

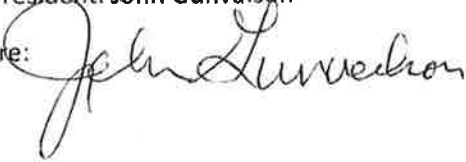
Statement to Support Four Legged Lake Level of 1427 ft

The mission of the Clearwater Soil and Water Conservation District is to promote the wise use and improvement of our county resources, in order that future generations will inherit an economically viable county that has made wise choices in resource management.

The Clearwater SWCD Board is in disagreement with the proposed new lake water level of 1426 feet. The current level of 1427 feet has not been shown to have a negative effect on the areas immediate water quality and in combination with strong landowner support to maintain current lake levels, has led to the decision of the Clearwater SWCD Board to support a level of 1427 feet.

Board President: John Gunvalson

Signature:



Date:

1/18/18

To: The Red Lake Watershed

1-23-2018

From: Dudley Township

The Dudley Town Board recognizes the request of the land owners adjacent to the west basin of 4 Legged Lake and the northwest basin of 4 Legged Lake to be left at approximately 1427; however an elevation of 1426 may be workable. Any elevation below 1426 is not acceptable.

The Dudley Township Board and the landowners would like to know what purpose of lowering 4 Legged Lake would accomplish. It is a very shallow lake that is only 5' to 6' deep with lots of swans, geese, loons, and other wildlife. Some of the landowners are concerned about their wells. 4 Legged Lake has caused very little, if any damage, to township roads, landowners homes or tillable farmland at the 1427 level.

See Minn Stat.103D.621, sub.4 With the concurrence of the governing bodies of the cities and the town boards of the towns where the drainage system is located, the managers may improve and repair a drainage system under the power granted to them in this chapter notwithstanding any provision of chapter 103E.

This says the watershed managers must have the agreement of the township before the can improve or repair the drainage system.

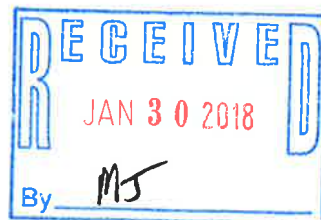
See Minn Stat.103E.005, subd 12 "Drainage system" means a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets, established and constructed by a drainage authority. "Drainage system" includes the improvement of a natural waterway used in the construction of a drainage system and any part of a flood control plan proposed by the United States or its agencies in the drainage system.

The Dudley Town Board does not concur with the lowering of our culvert on our township road without our permission.

The Dudley Town Board asks what statute gives the Red Lake Watershed the authority to move the culvert on the township road right of way without Township approval.

David Rongstad Supervisor

Rodney Bher Supervisor



Date: Monday, October 23, 2017 5:05 PM
To: <rhensnest@gvtel.com>
Subject: Fw: Power to lower a culvert

From: Steve Fenske <SFenske@mntownships.org>
Sent: Monday, October 23, 2017 12:11 PM
To: Niki Walters
Subject: Power to lower a culvert

Hi Niki,

I had a conversation with Rodney and he asked me to send an email with my response.

Question: can the county or the watershed district lower a township owned culvert under a town road?

Answer: I don't see any power given to a watershed district to lower a township culvert without the town board's agreement. This assumes there is not an emergency situation. The town board should ask the county or watershed district what statute they believe gives them power to move a township culvert within the right of way.

START HERE

Minn. Stat. ch 103D regulate watershed districts, and they are granted several powers. But I don't see a power to act within a township without the township board's consent. For example, Minn Stat. 103D.621, subd. 4 says:

With the concurrence of the governing bodies of the cities and the town boards of the towns where the drainage system is located, the managers of a watershed district where there is a drainage system may improve and repair any drainage system transferred to the watershed district under section 103D.625 by conforming to sections 429.031; 429.041, subdivisions 1 and 2; 429.051; 429.061; and 429.071.

This says the watershed managers must have the agreement of the township before they can improve or repair the drainage system. This also means they must have an identified "drainage system" to improve. A drainage system is defined as "a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets, established and constructed by a drainage authority. "Drainage system" includes the improvement of a natural waterway used in the construction of a drainage system and any part of a flood control plan proposed by the United States or its agencies in the drainage system." See Minn. Stat. 103E.005, subd. 12.

The watershed district may declare an emergency and perform work under that condition, but they must first find a clear and imminent danger to the health or welfare of the people of the watershed district. See Minn. State 103D.615. A project to reduce seasonal or occasional flooding probably would not amount to an emergency because there is no imminent threat to people.

10/23/2017

Even if the watershed or county does not have the power to lower the culvert, the town could agree to it to maintain a good relationship with other entities. You would want to make sure the DNR issued a Public Waters Work Permit if one is needed, because lowering a culvert usually requires DNR approval. You will also want to ensure the county or watershed district is paying the costs and will not assess the township for any cost.

Sincerely,

Steve M. Fenske
Attorney; Member Services & Government Relations
Minnesota Association of Townships
805 Central Avenue East
St. Michael, MN 55376-0267
(763) 497-2330 – Main Office
(800) 228-0296 – Toll Free
(763) 497-3361 – Fax

10/23/2017

01-27-18

To: The Red Lake Watershed

From: Larry Djernes

Holst Township Supervisor

4 Legged Lake Team Member

On behalf of Holst Township, it recognizes the land owners adjacent to the southwest and northwest basins of 4 Legged Lake to be left at or near the present 1427, however a level 1426 with a bounce of 1428 I believe is acceptable. Anything below 1426 on the southwest basin would be unacceptable to the majority of landowners around the 4 Legged Lake chain. The 1426 level I believe would be a fair and just compromise in the opinion of Holst Township as a team member.

The majority of landowners in Holst Township along this drainage, landowners in Dudley Township around the lakes involved, residents of the Town of Leonard and surrounding area support this and enjoy the lakes at the present levels. With these present levels the way they have been for many, many years, the lakes have supported various waterfowl, birds, furbearers and vast wildlife which have called the lakes chain their seasonal or year round home.

Please consider a compromise of 1426 with a bounce to 1428 for the SW basin and I thank you all for letting Holst Township and myself be part of this decision process as a project team member.

Thank You,

Larry J. Djernes

Holst Township Supervisor

Clearwater County





MINNESOTA DEPARTMENT OF NATURAL RESOURCES
NORTHWEST REGION
2115 BIRCHMONT BEACH ROAD NE
BEMIDJI, MN 56601
218-308-2700

January 31, 2018

Myron Jesme
Administrator - Red Lake Watershed District
1000 Pennington Avenue South
Thief River Falls, MN. 56701

Four Legged Lakes Leonard, Minnesota

Mr. Jesme:

As you are aware the DNR letter dated September 15 gives permission to the RLWD to conduct repair work on the Judicial Ditch No. 5 system which will involve lowering the current culvert to an elevation of 1423.8. This is an elevation the culvert was at prior to an illegal raise in 1999.

We are also part of a project team that is looking at different ways to manage water levels to achieve flood damage reduction goals and natural resource enhancements in the form of wildlife habitat improvements. There are a variety of concerns being raised by the project team members about water level management on the lakes shared by JD 5 including but not limited to concerns about water access, water based recreation, and road impacts.

At the last Four Legged Lake Project Work Team meeting, after an inability of the team to come to consensus, each member of the team (including DNR, area landowners, townships, and the County) were asked to either agree to a lake level of 1425.0, with a 2 foot bump for flood water retention, or write an explanation as to why we did not agree with this elevation.

From a natural resource enhancement perspective (waterfowl habitat being the main focus) DNR believes that the elevation we approved in September would maximize wildlife enhancements on the lake but recognize this would result in tradeoffs to other concerns mentioned above.

DNR supports adhering to the processes in the Mediation Agreement of 1998 using consensus. This process involves project teams identifying and exploring all stakeholder interests and assembling a recommendation that satisfies those interests to the greatest extent possible. This includes the development of alternatives, the assessment of the impacts of those alternatives and the selection of a preferred alternative or proposed action. At this point the project team has been unable to reach consensus on a preferred lake level. Therefore the RLWD is now in a position of choosing whether to continue the project team process or move forward with a project outside of it.

If the RLWD decides to move forward on a project within the mediation context, we recommend the project team come to consensus on the alternatives to be analyzed in the environmental review process before the RLWD makes a final decision on the project.

mndnr.gov



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AN EQUAL OPPORTUNITY EMPLOYER.





MINNESOTA DEPARTMENT OF NATURAL RESOURCES
NORTHWEST REGION
2115 BIRCHMONT BEACH ROAD NE
BEMIDJI, MN 56601
218-308-2700

We look forward to continuing to work cooperatively on this project through the Project Work Team. If you have any questions, please contact Theresa Ebbenga at 218-308-2682 or Theresa.ebbenga@state.mn.us.

Sincerely,

Nathan Kestner
Regional Manager, EWR

mndnr.gov

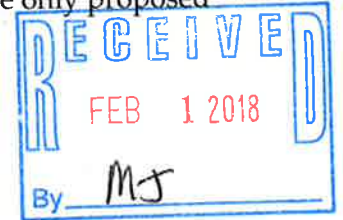


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AN EQUAL OPPORTUNITY EMPLOYER.

**FOUR LEGGED LAKES
FDR Project Team**

Letter of Explanation for why the Four Legged Lakes landowners will not agree to the only proposed consensus for a normal pool elevation of 1425' on the Southwest basin.

Submitted by: Karen Gebhardt, as landowner representative
Submitted on: January 31, 2018



When the landowners began the Abandonment Petition process, it was our common goal to preserve—at a minimum--the current lake levels (currently around 1,427' in the Southwest basin) with the understanding that these levels historically have gone up and down dependent upon rainfall and drought conditions. We were repeatedly told over the past seven years, that the ONLY other legal alternatives we had, would be to lower the lakes to the original legal elevation of 1,421', or to petition for improvement—either of which would be costly. Since none of the landowners were even aware that we were benefitted parties and financially responsible, and because we received NO benefits from that responsibility, we regarded it as patently absurd to continue to financially support or improve a project that offers us no actual benefits, and we pursued a Petition for Abandonment instead. Our Petition was reworded by the RLWD to include the possibility of abandoning the ditch project into an FDR Project—IF that worked out among all parties.

As landowners in the Flood Damage Reduction Project team—surrounded by so many governmental agencies--our main interest was to simply maintain the lakes we had. We had no understanding of how much water would be drained out of the lakes in order to allow room to retain future flood waters. However, most landowners agreed that a normal pool elevation of 1427' with a bounce to 1429' was workable. Dan Sauve's letter of 7/22/15 and his recorded testimony also supported those levels.

When we gave our final proposed compromise of 1426'/1428', which was also supported by Dudley Township, Holst Township and Clearwater Soil & Water Conservation, we were hopeful that everyone might find consensus with these levels. However, when it was not accepted by the DNR and Patty Olson, we understood that our participation in this project had to be questioned. It seemed the project elevations were being driven by the DNR preferred elevations, and over time, Patty had continued to agree to lower and lower levels as well. So it appeared to us that we were really only invited in hopes that we would agree with the DNR. That point was further driven home to us when Mr. Wright concluded the meeting by telling us that a unanimous vote of the RLWD Board could force a FDR project on us, whether we wanted one or not.

Establishing a normal pool elevation of 1,425, there will be a loss of Agricultural uses in all four basins.

- The majority of land-use around these lakes is agricultural, and as such there are pastured livestock using all four basins for a water supply.
- The sedimentary “soils” of the lake bottom have entrapped and killed livestock while watering during low water years. The only known time the “lake bottom” has dried out enough to safely support people or livestock, was in the dustbowl years of the 1930s drought.
- There are at least three landowners who either have used or plan to use the water for row crop and specialty crop irrigation, but with a receding shoreline and lowered lake levels to 1,425, irrigation may not be possible.
- The lakes are used for leech farming, and have been used sporadically for harvesting minnows as well.

Establishing a normal pool elevation of 1,425 will negatively impact recreational use of the lakes:

- These lakes have been used for wading and swimming since the area was settled around 1900, prior to the establishment of the ditch, and again since the 1950s when the water refilled the existing footprint of these lakes.
- The lakes are commonly used for canoeing and small motorboats in the Summer. There would be many areas in which the water could not be accessed from shore due to the sucking mud.
- The lakes are used for ice-boating, ice-skating & hockey, and snowmobiling in the winter. A diminished lake size with increased plant growth around the shoreline and throughout the middle of the lakes could impact these uses.
- These lakes have always been used for many generations for trapping beaver, muskrat and otters among others. The current elevations of the lakes continue to support this wildlife, but shallower elevations may not, and the dangerous sedimentary ring (muck) around the lakes will certainly impact trapper's ability to access safe walking areas.

Establishing a normal pool elevation of 1,425 will negatively impact aesthetics:

- Minnesota is known for its lakes, and Minnesotans are known for loving their lakes. It is a much smaller crowd that gets excited to watch a sunset over *the marsh*. A large marshland does not accurately represent the long-term geological history of the Four Legged lakes, and it should not represent the future of them either.

Environmental Impact:

- The DNR has clearly stated goals of wanting to maintain 1 foot of water in all basins to re-establish a ring-neck duck population. However, maintaining a normal pool of water at 1 foot is absolutely contrary to the goals of all landowners. The fact that the DNR has clearly stated this goal also creates great distrust among landowners that the DNR will ultimately take control over the FDR project and implement their goals despite the many objections from landowners.
- The NRCS Scoping Report indicates that there would be no impact to threatened species as there are "none." However, the lakes are currently home to many nesting swans (at last count, 56, in mid-summer of 2017.) These migratory swans are a *threatened species* in Minnesota. Why does the DNR wish to destroy a successful habitat for the Trumpeter Swan-- in order to create a habitat for another waterfowl-- the Ring-neck duck, which is not threatened in Minnesota?

Domestic Water supply impact:

- The Scoping Report indicates that there would be no impact to ground water. Since it has been over 50 years since the lake elevations were possibly less than 1423', what proof is offered that our ground water would not be impacted, and how will this be guaranteed?

Environmental Justice:

- As Clearwater County consistently ranks as one of the poorest counties in Minnesota¹, many area landowners (including "benefitted" landowners) do not have the financial wherewithal to rebuild a failed project's culvert system or to even defend their rights in this action, which appears more like a government take-over of these local lakes to pursue individual agency goals. With this particular Judicial Ditch, *no one* has ever benefitted from the project.

¹ https://en.wikipedia.org/wiki/List_of_Minnesota_locations_by_per_capita_income

**CLEARWATER COUNTY, MN
BOARD OF COMMISSIONERS
County Board Motion 2018**

	Motion By:	Motion Seconded	Vote:
Arlen Syverson District 1	✓		<i>aybs</i> /
Dean Newland District 2			
Neal Illies District 3			
John Nelson District 4		✓	
Daniel Stenseng District 5			

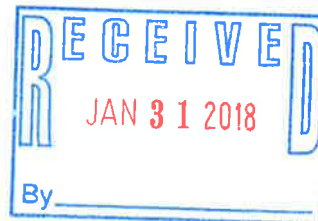
Motion: Clearwater County Board requests that the levels for the proposed RLWD Flood Reduction Project on Four-Legged Lake be between 1426 feet (88 NAVD) and 1428 feet (88 NAVD). Clearwater County accepts damages to CSAH 2 based on these levels as normal wear.

Passed: ✓ Failed: _____

-----Certification-----

I hereby certify that the foregoing is a true and correct copy of a motion presented to and adopted by the Clearwater County Board of Commissioners at a duly authorized meeting thereof, on the 30th day of January 2018, as shown by the Minutes in my possession.

Emily McDougall
Emily McDougall, Board Coordinator



Neal Illies, Clearwater County Commissioner District 3
36744 Lomand Drive
Bagley, MN 56621

January 31, 2018

Delray Sparby
312 N. Main Avenue
Thief River Falls, MN 56701

Re: Four Legged Lake

Mr. Sparby,

First, I want to thank you for listening to my questions at the RLWD meeting on Thursday. I believe you sincerely want to do the right thing and I appreciated that you treated me with respect while asking legal questions.

I have gathered several documents that I think proves the lake was raised prior to 1966 and has stayed at approximately that level to the current day. I have yet to discover any evidence that the culvert was raised after 1966.

I presented some of this evidence to the county board and after hearing both Dan Suave and I, the board voted to rescind that resolution and later withdrew the letter of objection. I have added more documents since that meeting.

Dan Suave has concurred to me that the county board has the authority to withdraw the objection letter.

I would like to share a list of the documents with you. The list is just my notes and I have not tried to pay attention to correct grammar or style, so please forgive me. I am in possession of all the documents unless otherwise noted in the list.

I spoke with Mitch Rasmussen, the MnDOT State Aid Engineer, after he was recommended by their legal department as being the authority on this type of question regarding clear zones. He was able to answer my questions and confirm what I said at the meeting. He said there is no clear zone rules regarding encroaching water in the case such as Four-Legged Lake. He told me that MN Rule 8820 dictates the clear zone for a state aid road.

My goal is to convince you that there isn't proof that the culvert was illegally raised. It appeared at the meeting 1423.8 was no longer an option but I get skeptical. If the attached is still not enough, there are statutes, case law and the Minnesota Drainage Manual on the requirements to reestablish original construction and I believe they conflict with what Mr. Jesme was saying at the meeting.

Mr. Jesme stated that we could use a point on the other side of the west culvert, and I am paraphrasing here, to establish a point of best guess at where the water was prior to the illegal raising of the culvert. However, the Minnesota Drainage Manual and case law allow, when there aren't records, that culverts, beds, and slopes can be used to help determine "original construction". We have original plans, the Houston Engineer drawings (which the costs were apparently passed onto the benefitted owners), and

depth measurements of the lake bed that all corroborate that the original construction was at approximately 1421.

The next thing I would like to address is whether the RLWD has the authority and obligation to return JD5 back to the original construction of 1921 without owners input and approval. I respectfully disagree that the RLWD has that authority without the best interests of the benefitted land owners taken into consideration and without due process of law. I can tell you all the reasons I think the RLWD does not have that authority, but the Minnesota Supreme Court addressed it much better than I can. It is the 1976 case that is cited in the abandonment section of the new Minnesota Drainage Manual, In re Petition to Abandon COUNTY DITCH NO. 13, POPE COUNTY, Minnesota, 308 Minn. 138 (1976) 242 N.W. 2 d 827. Attached is the caselaw.

Included in the case is that damage must be significant and the word "any" should not be taken literally. It also says that the drainage authority has the power to determine what is significant. It appears that the damages in that case were considerably more than anything documented in Dan Suave's letter. Even if you decide it is correct to not accept our reversal of the letter, the damages Dan Suave states are not significant on a road built in the middle of the lake. There was \$20,000 spent on rip rap, not the \$50,000 that Dan Suave stated in his testimony. I have been told this was the only money spent on erosion damage since 1964.

More importantly from that case is the statement, "it was not practical to restore the ditch so that it functioned as intended, it was unreasonable to base assessments for repair on benefits originally but no longer derived." I have no doubt that legislative intent when drafting 103E was not to make the people pay for something they would not benefit from, as is truly the case with Four-Legged Lake. Also, Subd. 3 of 103E.811 states "The petition must designate the drainage system proposed to be abandoned and show that the drainage system is not of public benefit and utility because the agricultural property that used the drainage system has been generally abandoned or because the drainage system has ceased to function, and its restoration is not practical." I don't think anyone can claim that there is a public benefit in the original construction, that the original construction is still functioning. Restoration is not only impractical, but many state and federal agencies would probably not allow it to be drained.

The case also addresses Dan Suave's speculation on flooding if a project isn't in place and Patty Olson's concerns of damages. The court says, "the possibility is too speculative and the benefit too indirect to require continued maintenance of the ditch."

Let's get the 1423.8 and the draining of the lake off the table and concentrate on what is real and what can legally happen. I believe this only leaves the abandonment.

My recommendation is to continue the abandonment process and set a date to reconvene the hearing. With the county's withdrawal of any damage claims, there is no further need for viewers. Accept our motion to withdraw the objection letter as evidence and/or allow me to testify as a county commissioner that \$20,000 spent on maintenance, over 53 years, on a road built through a lake is not significant.

The Flood Reduction Project, if you want my support and I believe the board's support, must go on its own merits and not be pushed through with idle threats of draining the lake. I cannot support any

project in our county if it is going to be done with threats from the RLWD. I can see several benefits of the FDR but will not support it if the abandonment proceeding isn't completed soon.

The RLWD has a statutory obligation to proceed with the abandonment process and there is a statutory obligation to protect the benefitted owner's interests (they aren't interested in paying for the ditch to be reconstructed). In fact, this is the only reason there is a drainage authority.

If this isn't the right avenue to try to convince you and the RLWD board, please let me know and I will display the information at the public meeting on February 8th.

Again, I want to thank you for listening to me with an open mind and hope I didn't offend you by what I have written but I wanted to be candid, so more time isn't wasted. I believe if we can get the abandonment out of the way and build back some of the trust of the citizens, we can have a successful flood reduction project very soon and on its own merits.

Thank you,

Neal Illies

Clearwater County Commissioner

Evidence of the water levels for Four Legged Lake in chronological order.

By Neal Illies

Prior to 1921 – Was a lake

Evidence - Photo of lake and train trestle, plat maps

1921 – Ditch begins to be established at levels approximately 1421

Evidence – original drawings, bottom depth survey (see RLWD notes 12/16/16), Houston Engineering drawing.

1939 – Aerial photo taken

Evidence – shows a dry lake bed except a couple small potholes, shows what appears to be the original ditching. Nothing relevant other than to show it was dry at one time, no documented cause, was dry years and several other area lakes were down what appears to be several feet.

1959 – Aerial photo taken

Evidence – shows the lake at a much lower level than today, appears to be the same level at the 1960 aerial photo.

1960 – Aerial photo taken and measurements

Evidence - Aerial photo combined with the on top of ice measurement of 1424.55 (1988 datum) shows the lake shore placement would be at that level, 2.5 feet lower than today. The measurement is according to document 1964 CSAH road plan overlay on 2015 Google Earth PDF, I have not seen the actual document of that measurement but Suave should be able to produce the original document as I believe it was taken for preparation of the 1964 project.

1966 – Aerial photo taken

Evidence – shows a level much higher than the 1959 or 1960 photos. The Arcmap overlay polygon closely matches that of today's level. Using that same overlay polygon shows the water is higher on the shoreline than the 1960 photo.

1968 – Enbridge(Lakehead) completes Line 3 project

Evidence – PDF print out of the Enbridge's Line 3 replacement brochure, this could be the reason it was raised to cover the pipe with water. Enbridge is concerned that lowering the water more than 2 feet would expose their pipe (see 12-15-17 RLWD notes). I never see the pipes exposed in any of the aerial photos.

1969 – 2010 DNR OHWL report

Evidence - USGS shows a level of 1427 (1929 datum) 1428.13(1988 datum), 2010 DNR Report (Southwest Basin), I have also seen the original 1969 topo map that this data came from.

1969 – USDA Roger Lehmann report for growing wildrice(from RLWD).

Evidence – 2nd page in states the water is 3 feet below the road on CSAH 2. 4th page in states the current elevation is at 1429.5 (I assume this would be 1929 datum), does not say what basin.

1972 – 2010 DNR OHWL report

Evidence – USGS shows a level of 1428(1929 datam) 1429.13 (1988 datum) , 2010 DNR report (Northeast basin)

1972 – Landsat satellite images available

Evidence – Not the best resolution compared to aerial photos but can clearly see the lake levels. These images are taken several times a year since 1972 so there are thousands of images that are available. Could not find any in the several hundred that I viewed between 1972 and 2003 that resemble the 1960 aerial photo. All appear to be like today's photos vs 1959/1960 photos.

1972 – Aerial photo (received from Nate 1/26/2018)

Evidence – Clearly shows high water levels vs 1959/1960 photos, possibly even higher than today's photos show. It is a tiff file with good resolution.

1975 – Photo (received from Nate 1/26/2018)

Evidence - Appears to be a satellite photo, not great resolution compared to a regular aerial photo but still shows higher water levels vs 1959/1960 photos.

1982 – Aerial photo (received from Nate 1/26/2018)

Evidence – Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos.

1984 – Aerial photo

http://geo.lib.umn.edu/Aerial_Slides/Clearwater/Dudley/Section%2017/MN029_Dudley_Section%2017_2000.jpg

Evidence – When overlay of current level polygon, matches very close, does not match the 1960 level polygon. Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos.

1985 - Aerial photo (see 1984 – Aerial photo for website)

Evidence – When overlay of current level polygon, matches very close, does not match the 1960 level polygon. Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos.

1986 - Aerial photo (see 1984 – Aerial photo for website)

Evidence – When overlay of current level polygon, matches very close, does not match the 1960 level polygon. Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos.

1987 - Aerial photo (see 1984 – Aerial photo for website)

Evidence – When overlay of current level polygon, matches very close, does not match the 1960 level polygon. Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos.

1988 - Aerial photo (see 1984 – Aerial photo for website)

Evidence – When overlay of current level polygon, matches very close, does not match the 1960 level polygon. Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos.

1989 - Aerial photo (see 1984 – Aerial photo for website)

Evidence – When overlay of current level polygon, matches very close, does not match the 1960 level polygon. Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos.

1990 - Aerial photo (see 1984 – Aerial photo for website)

Evidence – When overlay of current level polygon, matches very close, does not match the 1960 level polygon. Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos.

1991 - Aerial photo (see 1984 – Aerial photo for website)

Evidence – When overlay of current level polygon, matches very close, does not match the 1960 level polygon. Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos.

1991 – DNR Shallow lake report (Received from Tammy, DNR, 1/26/2018)

Evidence – states water level is 4.92 ft below the benchmark, however does not say what the benchmark elevation is. However if it is the same benchmark as used in 2011 it would be 1430.06 (1929 datam, which if that is the case then the water level would be 1426.27(1988 datam)

1992 - Aerial photo (see 1984 – Aerial photo for website)

Evidence – When overlay of current level polygon, matches very close, does not match the 1960 level polygon. Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos.

1993 - Aerial photo (see 1984 – Aerial photo for website)

Evidence – When overlay of current level polygon, matches very close, does not match the 1960 level polygon. Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos.

1994 - Aerial photo (see 1984 – Aerial photo for website)

Evidence – When overlay of current level polygon, matches very close, does not match the 1960 level polygon. Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos.

1995 - Aerial photo (see 1984 – Aerial photo for website)

Evidence – When overlay of current level polygon, matches very close, does not match the 1960 level polygon. Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos.

1996 - Aerial photo (see 1984 – Aerial photo for website)

Evidence – When overlay of current level polygon, matches very close, does not match the 1960 level polygon. Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos.

1997 - Aerial photo (see 1984 – Aerial photo for website)

Evidence – When overlay of current level polygon, matches very close, does not match the 1960 level polygon. Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos.

1998 - Aerial photo (see 1984 – Aerial photo for website)

Evidence – When overlay of current level polygon, matches very close, does not match the 1960 level polygon. Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos.

1999 - Aerial photo (see 1984 – Aerial photo for website)

Evidence – When overlay of current level polygon, matches very close, does not match the 1960 level polygon. Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos.

2000 - PDF with photos of a culvert replacement (received from Dan Suave)

Evidence – Shows three photos, one of a man appears to be measuring, other shows the bottom on the hole (I see no other culvert underneath), the third shows the old culverts removed . There is text written but according to Dan he does not know who wrote it. The text is dated 9-2000

2000 - Aerial photo (see 1984 – Aerial photo for website)

Evidence – When overlay of current level polygon, matches very close, does not match the 1960 level polygon. Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos.

2003 Aerial photo (received from Nate 1/26/2018)

Evidence - Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos. This is post the alleged raising of the culvert and it appears to be approximately the same level as all previous photos back to 1966.

2006 (based on file name) Aerial photo (received from Nate 1/26/2018)

Evidence - Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos. This is taken after the alleged raising of the culvert and it appears to be approximately the same level as all previous photos back to 1966, possibly down slightly but still higher than the 1959/1960 photos but the resolution is poor so hard to determine, is also irrelevant since it is after the alleged raising of the culvert.

2008 (based on file name) Aerial photo (received from Nate 1/26/2018)

Evidence - Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos. This is taken after the alleged raising of the culvert and it appears to be

approximately the same level as all previous photos back to 1966. This was taken after the alleged raising of the culvert.

2009 (based on file name) Aerial photo (received from Nate 1/26/2018)

Evidence - Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos. This is taken after the alleged raising of the culvert and it appears to be approximately the same level as all previous photos back to 1966. This was taken after the alleged raising of the culvert.

2010 (based on file name) Aerial photo (received from Nate 1/26/2018)

Evidence - Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos. This is taken after the alleged raising of the culvert and it appears to be approximately the same level as all previous photos back to 1966. This was taken after the alleged raising of the culvert.

2011 DNR Shallow lake report (received from Tammy 1/26/2018)

Evidence – show a benchmark of 1430.06 (1929 datum). Since this is in 1929 datum I would assume the benchmark was originally set prior to using 1988 datum. See 1991 – DNR Shallow lake report

2013 (based on file name) Aerial photo (received from Nate 1/26/2018)

Evidence - Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos. This is taken after the alleged raising of the culvert and it appears to be approximately the same level as all previous photos back to 1966. This was taken after the alleged raising of the culvert.

2015 (based on file name) Aerial photo (received from Nate 1/26/2018)

Evidence - Clearly shows high water levels vs 1959/1960 photos. Appears to be approximately the same level as in today's photos. This is taken after the alleged raising of the culvert and it appears to be approximately the same level as all previous photos back to 1966. This was taken after the alleged raising of the culvert.

2017 – DNR Shallow lake report

Evidence – shows a change in the benchmark to 1437.24 (1988 datum), water level 1428.12

Evidence to prove the illegal raising of culvert – NONE. I have not found any evidence in my searching or received data from Dan Sauve, DNR, and RLWD that there was a significant water level change of 3.3 feet (1423.8 to 1427.1) at anytime after 1966.

Lots of hearsay including: (I am paraphrasing because the sayings have varied each time I have heard them or seen them in documents.)

Dan Suave : his employees could walk down to the culvert on CSAH 2

Dan Sauve: higher levels have caused documented damage to the road. (Dan does not provide any documents to prove a correlation, the county spent approximately \$20,000 for riprap, only repair since he could remember.)

Dan Suave: That the new replaced culvert was placed on top of an old one. (See 2000 - PDF with photos of a culvert replacement. This does not show a lower culvert below the culvert bed and it shows the old culvert removed, in fact the cement part still is at the scene as of last fall(2017).

Dan Suave: High levels than 1423.8 encroach onto the clear zone. (MnDot State Aid Manger, Mitch Rasmussen said there are no standards like this. The standards are in rules 8820. I read the entire chapter and it says nothing like the comments Dan makes about safety violations because of water encroachment. Mitch is going to send me an email to document our conversation.

Myron Jasme : That an angry man, thought he was a township official, stated at the 2010 stormed off and said he ordered it raised. This person is thought to be Les Hinricks, Dudley Township, I talked to Les regarding this and he denies saying that at the meeting. He said he was present during the replacement of the culvert and the culvert was replaced at the same level.

Myron Jasme : Told me twice that the prior to the culvert illegally raised that Four Legged Lake was in the top ten percent for wildlife and afterward there was a huge decline in wildlife population. He also makes this statement during a meeting and it is in the meeting minutes. When I requested that, by email, for that report Myron told me that I would have to contact the DNR. I did contact Dave Rave with the DNR Wildlife. Rave told me that he has no report like that nor ever said that. He told me that there

were 12 nesting pairs of Ringneck ducks 15 years prior to the illegal raising and 6 pairs of Ringneck ducks 15 years after. I asked if that there is a correlation between the water levels and the change, he said there is no correlation. He did not have any elevation data to give me.

Dan Suave: The elevation was at 1423.8 prior to the illegal elevation in 1998/1999. (Has not provided any documents that would show this.)

Myron Jasme: The culvert is perched (no evidence of the reason or the intent that the culvert was placed the way it is but doing a google search it does appear to be a common practice in a situation like this vs a more expensive type of culvert).

Myron Jasme: The exit of the culvert shows an established level of 1423.8 (no evidence such as soil borings, statement does not agree with the Houston Engineering study. I could not find any legal precedent that says a legal ditch system could be returned to the "best determined prior level" or whatever he says.

308 Minn. 138
Supreme Court of Minnesota.

In re Petition to Abandon COUNTY DITCH NO. 13, POPE COUNTY, Minnesota.

No. 45701.

|
April 9, 1976.

Landowners petitioned for abandonment of a county drainage ditch and obtained an order from county board of commissioners authorizing such abandonment. From an order of the District Court, Pope County, Thomas J. Stahler, J., vacating order of board, landowners appealed. The Supreme Court, Peterson, J., held that power of county board of commissioners to authorize abandonment of a drainage ditch is limited by statute if ditch serves any useful purpose, but purpose served must be substantial, and board has discretion to balance purpose served against costs of continued maintenance of ditch; accordingly, where deterioration of ditch and of conditions incident thereto, such as a culvert under a township road, had substantially changed function and benefits of ditch, and it was not practical to restore ditch so that it functioned as intended, it was unreasonable to base assessments for repair on benefits originally but no longer derived, and board had discretion to authorize abandonment of ditch on grounds that restoration was not practical.

Reversed.

West Headnotes (4)

[1] **Water Law** → Vacation or abandonment of drains

Phrase “any useful purpose,” within statute requiring county board of commissioners to deny a petition for abandonment of a drainage ditch if ditch serves any useful purpose, must be read with reference to grounds which may be asserted for abandonment. *M.S.A. § 106.661*.

Cases that cite this headnote

[2] **Water Law** → Vacation or abandonment of drains

Power of county board of commissioners to authorize abandonment of a drainage ditch is limited by statute if ditch serves any useful purpose, but purpose served must be substantial, and board has discretion to balance purpose served against costs of continued maintenance of ditch. *M.S.A. §§ 106.471, subd. 4(c), 106.661*.

Cases that cite this headnote

[3] **Water Law** → Vacation or abandonment of drains

Although drainage ditch functioned to some extent, where it had ceased to function as it was designed to do in that, during past 60 years, deterioration of ditch and conditions incident thereto, such as a culvert under a township road, had substantially changed function and benefits of ditch, and it was not practical to restore ditch so that it functioned as intended, it was unreasonable to base assessments for repair on benefits originally but no longer derived, and county board of commissioners had discretion to authorize abandonment of ditch on ground that restoration was not practical. M.S.A. §§ 106.471, subd. 4(c), 106.661.

Cases that cite this headnote

^[4] **Water Law** — Vacation or abandonment of drains

A county board of commissioners must have discretion to authorize abandonment of a drainage ditch when it has ceased to function as intended and restoration is not practical. M.S.A. §§ 106.471, subd. 4(c), 106.661.

Cases that cite this headnote

**827 *138 Syllabus by the Court

Minn.St. 106.661, which limits power of a county board to authorize abandonment of a drainage ditch if the ditch serves ‘any *139 useful purpose,’ means that the purpose served must be substantial, and the board has discretion to balance the purpose served against the costs of continued maintenance of the ditch.

Attorneys and Law Firms

Winter, Lundquist, Sherwood & Athens, and Marvin E. Lundquist, Wheaton, for appellants.

Holmquist & Holmquist and Roy W. Holmquist, Benson, for respondents.

Heard before OTIS, PETERSON and YETKA, JJ., and considered and decided by the court en banc.

Opinion

**828 PETERSON, Justice.

Landowners who petitioned for abandonment of a county drainage ditch pursuant to Minn.St. 106.661 and obtained from the Board of County Commissioners of Pope County an order authorizing such abandonment appeal from an order of the district court which vacated the board’s order. We reverse.

The statute provides that ‘if it appears the ditch serves Any useful purpose to any lands or property or the general public, the petition for abandonment shall be denied.’ (Italics supplied.) The district court found after a trial de novo that the ditch did benefit some property and concluded that the board had exceeded its statutory power. The question presented on appeal is whether the word ‘any’ is to be read so literally as to require continued maintenance of the ditch, however speculative or insubstantial the benefits or however inequitable the assessments therefor. We think there is room within the statutory framework for the exercise of judgment by the county board.

County Ditch No. 13 is a 20-inch, buried title conduit approximately *140 1/2 mile in length, which was installed in 1916 to drain the overflow waters of Cyrus Lake to the northeast into the Chippewa River, thus diverting such waters from their natural flow across lowlands to the southeast. A portion of Cyrus Lake is traversed by a New Prairie Township road running east and west. That portion of Cyrus Lake located north of the road is a slough known as Danielson Lake. The culvert under the road has collapsed or become plugged with sediment. Consequently, the New Prairie Township road acts as a dike separating the waters of Danielson Lake from the southern portion of Cyrus Lake. County Ditch No. 13 is located north of this dike and, to the extent it is operative, functions only to drain Danielson Lake.

The buried title conduit which constitutes the ditch is itself in a serious state of disrepair. The viewers appointed by the board of county commissioners assumed that the ditch was functioning to some extent because they observed upwelling of water from two intermediate breaks. But the outlet into the Chippewa River was not visible because it was below the surface of the river. Although the viewers located the outlet by probing with a stick, they could not determine if any water was emitted therefrom. One of these viewers testified, and the district court found, that the ditch operates at approximately 50 percent of capacity. However, this viewer acknowledged that he was 'just guesstimating.' There is no reliable evidence to show the extent to which the ditch is functioning.

Whatever the extent to which the ditch is functioning, the benefits derived from its continued maintenance appear insubstantial, particularly in relationship to the assessments borne by those landowners whose property is not benefited. The district court found that the ditch benefited (1) two landowners, Donald Thompson and DeWayne Larson; (2) New Prairie Township and Pope County Roads; and (3) the sewage disposal system of the city of Cyrus.

The Thompson and Larson properties are located south of New Prairie Township road. So long as the culvert under the road remains *141 plugged, this property is isolated from the drainage ditch. If the ditch were abandoned and Danielson Lake had no outlet, it is conceivable that the level of the slough would rise above the New Prairie Township road and drain to the south across the Thompson and Larson properties. However, in the decade since the culvert became plugged and the dike formed, there is evidence of only one occasion when Danielson Lake threatened to overflow the New Prairie Township road. That occurred in 1972, after a period of heavy rainfall. To prevent an imminent overflow, the road was built up approximately 3 feet. Granted that this is a recurrent possibility, nevertheless, the possibility is too speculative and the benefit too indirect to require continued maintenance of the ditch.

With respect to the New Prairie Township and Pope County roads, both of which abut Danielson Lake, the district court found that standing water tends to cause deterioration of the roadway. Since Danielson **829 Lake will not be completely drained even if the ditch is maintained, the benefit derived by these roads is limited to the additional deterioration caused by the higher levels which might result if the ditch were abandoned. This benefit appears relatively minimal.

Finally, the district court found that the ditch was a direct outlet for effluent from a sewage filtration plant operated by the city of Cyrus north of the New Prairie Township road. The evidence does not reveal whether the city applied for or received permission to make this sewage connection pursuant to Minn.St. 106.561. If this use is not permitted, it is not protectable under the abandonment provisions. If it is a permitted use we must presume that the requirements of Minn.St. 106.561, subd. 3, were followed and the city assessed for the benefits derived. Yet the December 1972 assessment for repair of the ditch shows only a small percentage of the costs being borne by the city. This recent assessment thus confirms that any benefit derived by the city is relatively insubstantial.

The assessments levied on the Thompson and Larson properties *142 and on the New Prairie Township and Pope County roads are likewise a small percentage of the total costs. Although the precise amounts are not clear from the record, it appears that as much as 85 percent or more of the maintenance costs are borne by landowners deriving no benefit whatsoever from the ditch. This demonstrates the inequity which will prevail if the ditch is not abandoned. Under Minn.St. 106.471, subd. 5, assessments must be made in proportion to the benefits determined when the ditch was originally established in 1916 rather than in proportion to benefits presently derived.

This petition for abandonment was apparently filed to avoid further assessments for restoration and repair. Minn.St. 106.661 provides two grounds which may be asserted in a petition for abandonment:

'The petition shall designate the ditch proposed to be abandoned and set forth that the ditch is no longer of public benefit and utility (1) because of the general abandonment for agricultural uses of the lands served thereby or (2) Because the ditch has ceased to function and its restoration is not practical.' (Italics supplied.)

The second ground was asserted here.

⁽¹⁾ ⁽²⁾ ⁽³⁾ Notwithstanding the statutory mandate to deny the petition for abandonment if the ditch serves ‘any useful purpose,’ that phrase must be read with reference to the grounds which may be asserted for abandonment. Although this ditch may function to some extent, it is uncontroverted that it has ceased to function as it was designed to do. During the past 60 years, deterioration of the ditch and of conditions incident thereto, such as the culvert under the New Prairie Township road, has substantially changed the function and benefits of the ditch. If it is not practical to restore the ditch so that it functions as intended, it is unreasonable to base assessments for repair on benefits originally but no longer derived. It is not to be presumed that the legislature intends an unreasonable result.

*143 ⁽⁴⁾ Therefore, the county board must have discretion to authorize abandonment of a ditch where it has ceased to function as intended and restoration is not practical. It follows that restoration would be practical only if the benefits to be derived therefrom were so substantial as to exceed costs. Minn.St. 106.471, subd. 4(c). The county board made a legislative determination that restoration was not practical. On the record, we find no basis for disturbing that finding.

Reversed.

All Citations

308 Minn. 138, 242 N.W.2d 827

End of Document

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Thief River Falls Westside Drainage Study



TRF WESTSIDE DRAINAGE STUDY GOALS

- Analyze three alternatives that:
 - Address drainage issues within the CD 70 system
 - Provide 100 Year flood protection for urban areas and 10 Year protection for agricultural areas
 - Plan for future development
 - Coordinate with ongoing infrastructure and roadway improvements
 - MnDOT roundabouts and urban design....Digi Key and other developments.....Historical public and private drainage problems



EXISTING CD 70 DRAINAGE AREA



TRF WESTSIDE DRAINAGE STUDY – EXISTING CONDITIONS

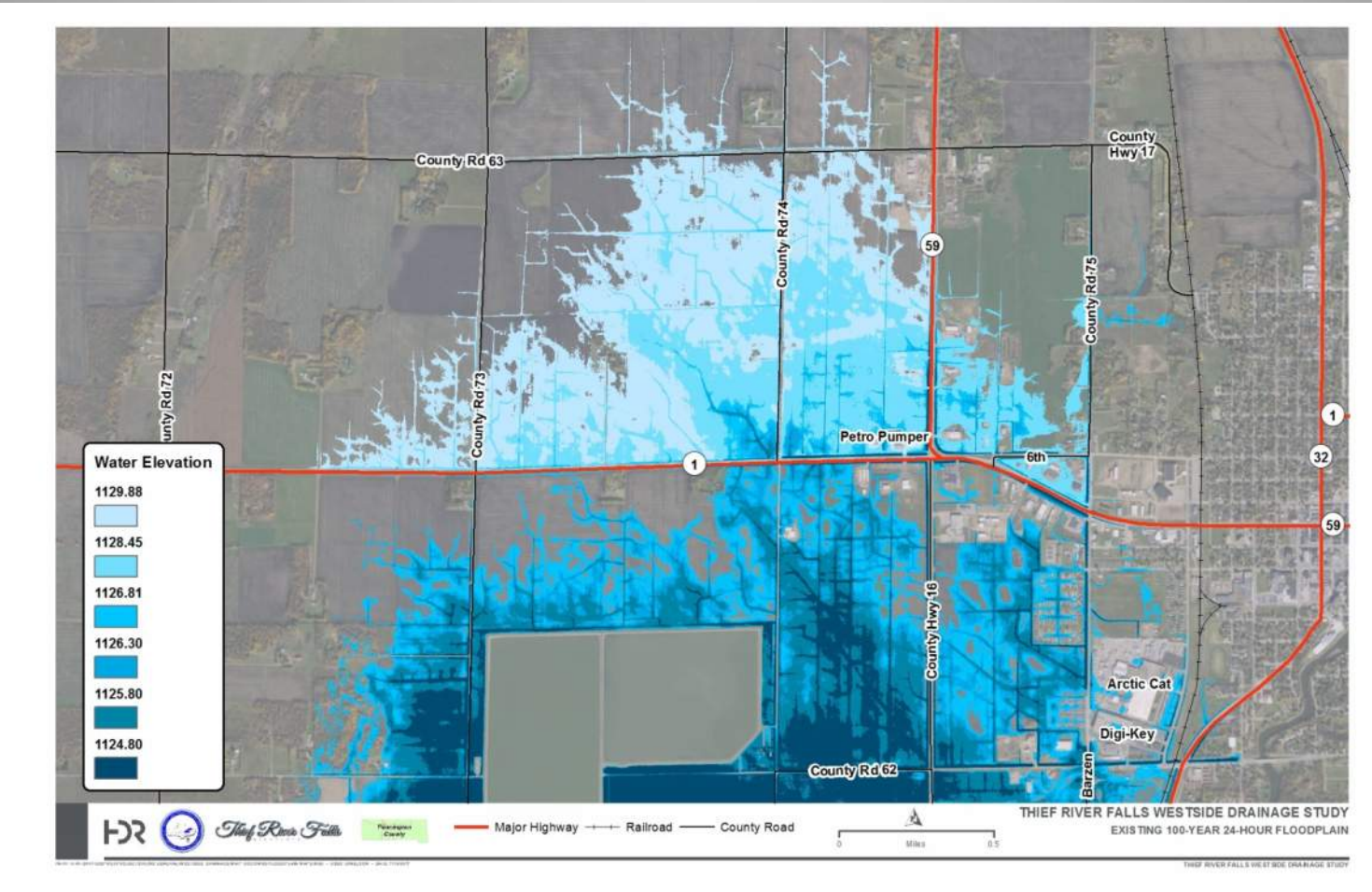
- Existing system provides about 10 year protection for urban areas and 2 year protection for agricultural areas
- A 1.5 - 2 inch rain caused nuisance flooding shown below in June 2017



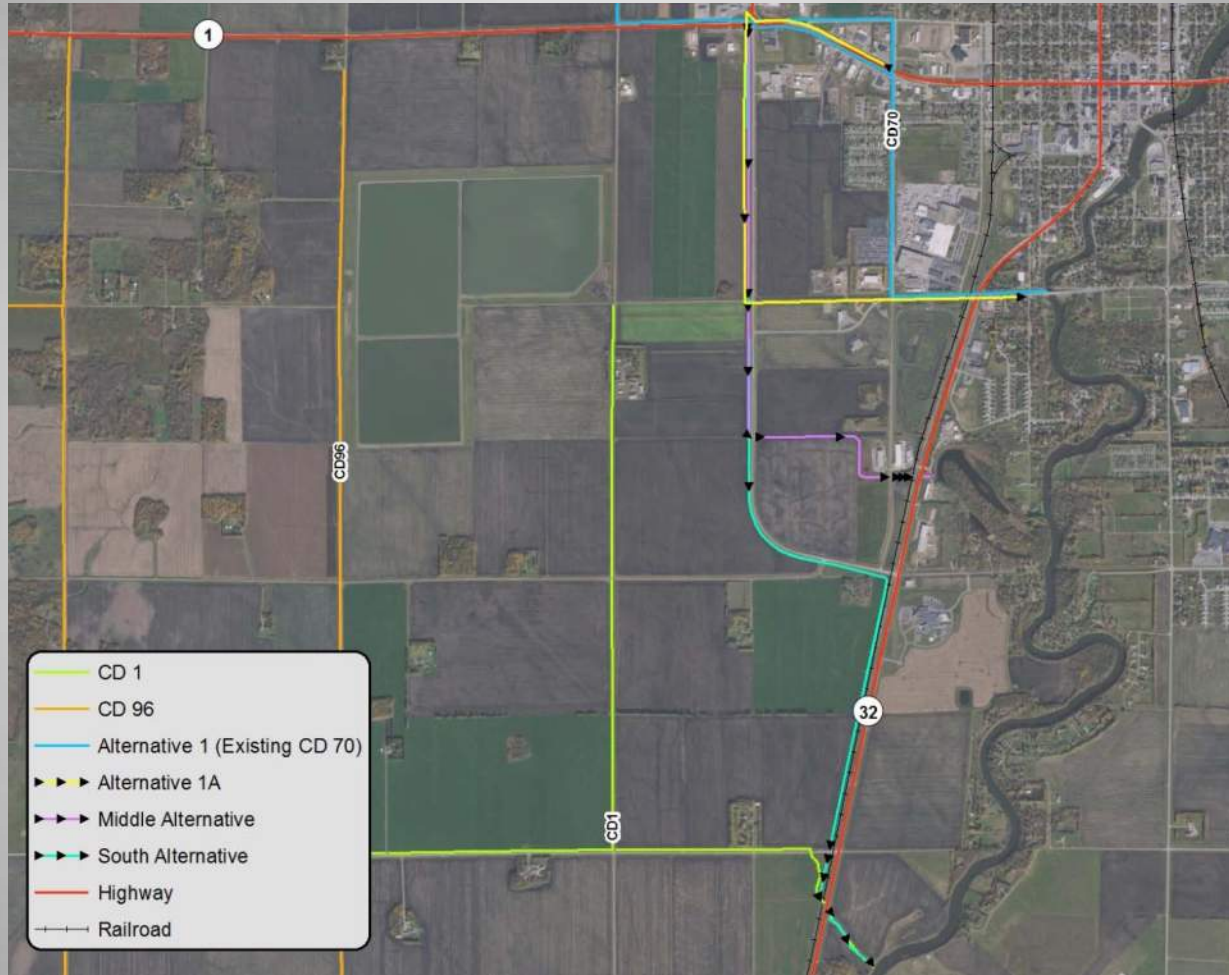
Event	Precipitation Depth [in]
2-Year 24-Hour	2.5
10-Year 24-Hour	3.7
100-Year 24-Hour	6.3



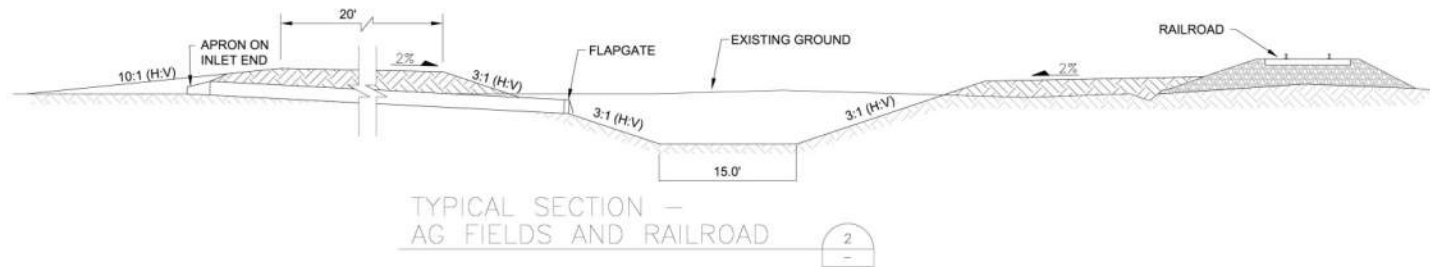
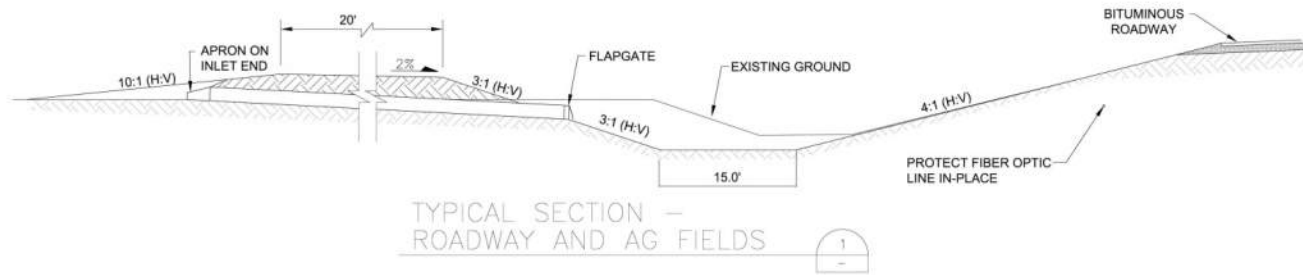
EXISTING 100-YEAR 24-HOUR FLOODPLAIN



PROPOSED ALTERNATIVES



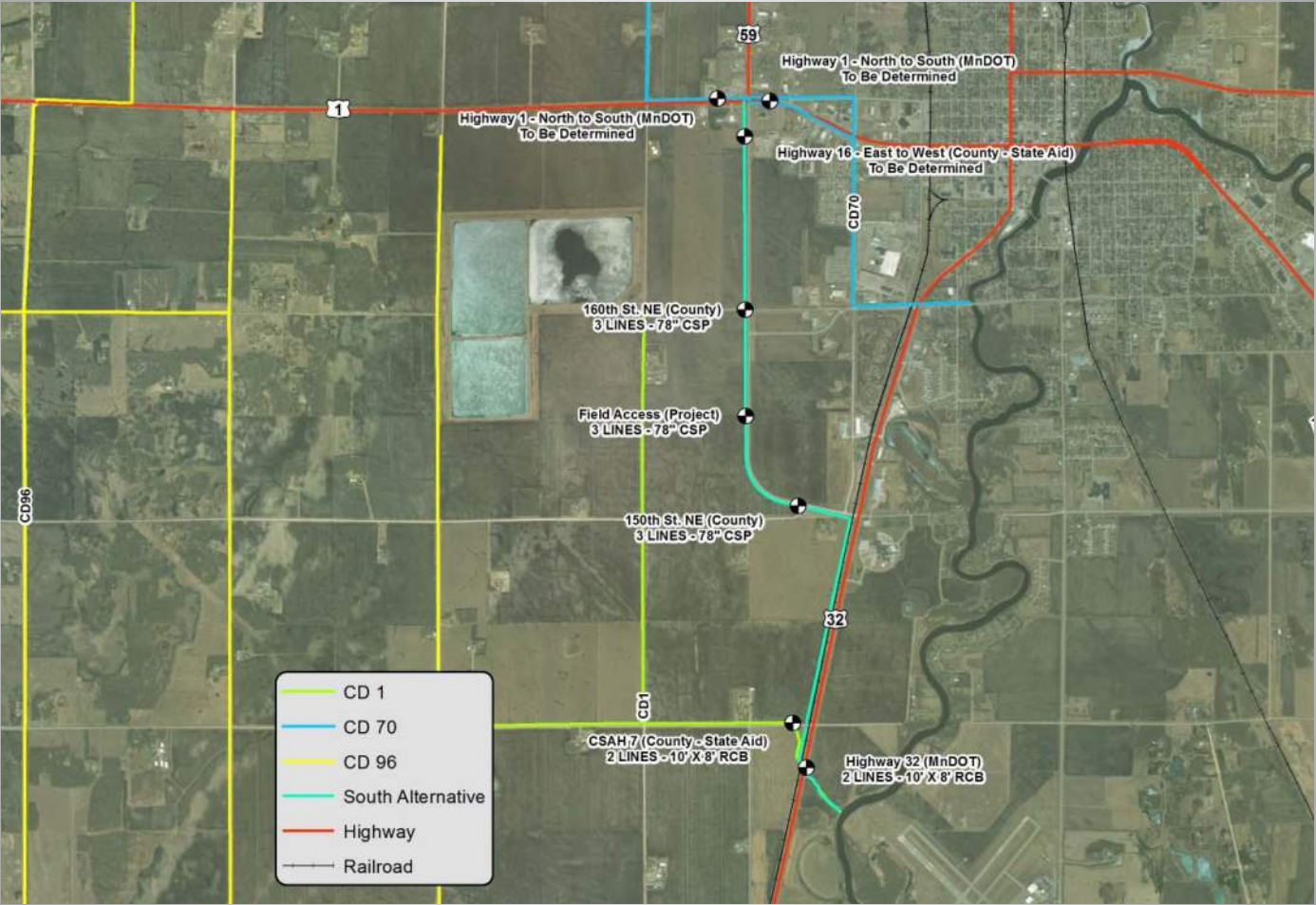
TYPICAL CROSS-SECTION

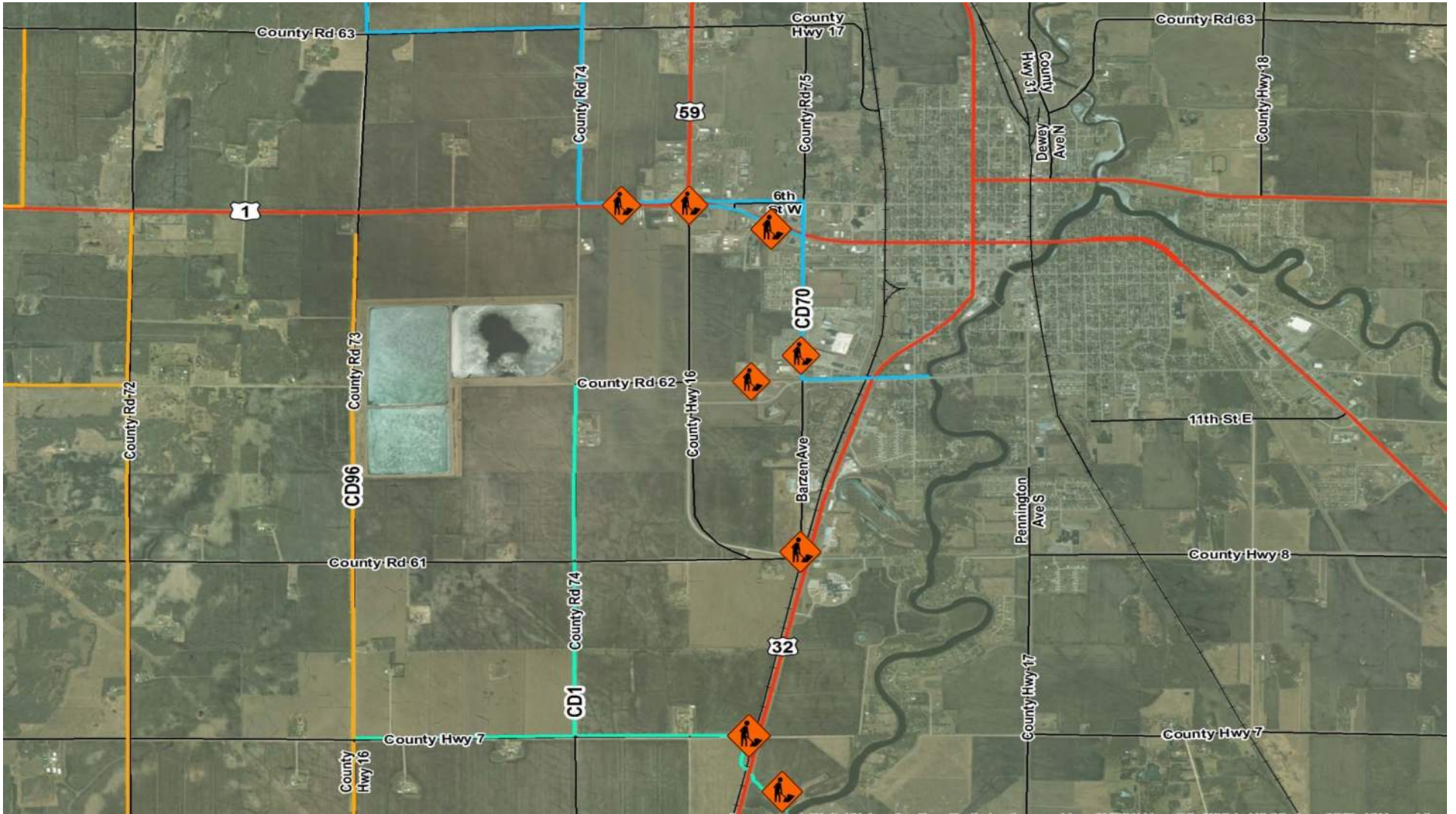


ADDITIONAL R-O-W AREAS

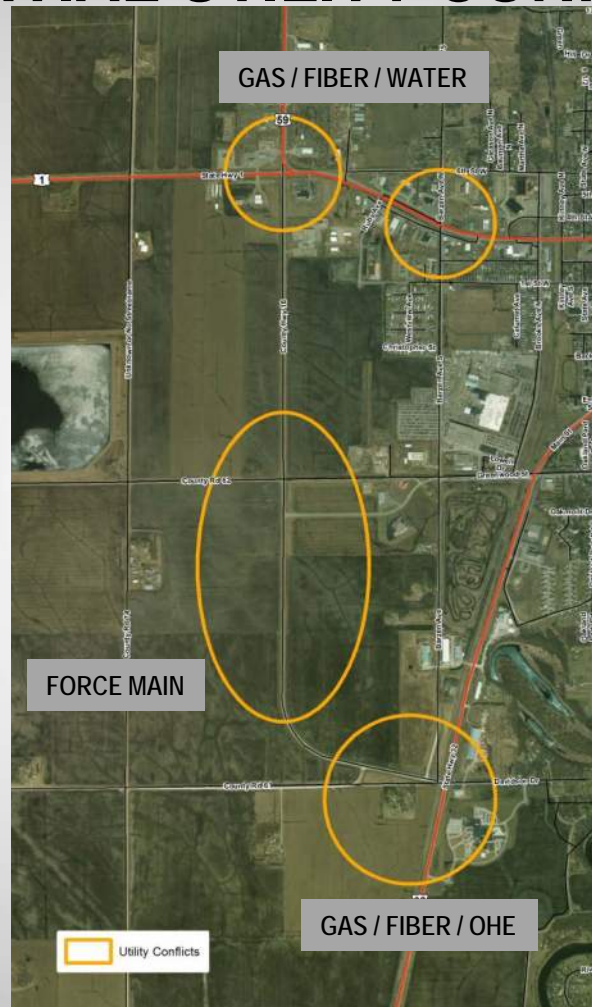


ESTIMATED SOUTH ALTERNATIVE STRUCTURE SIZES





POTENTIAL UTILITY CONFLICTS



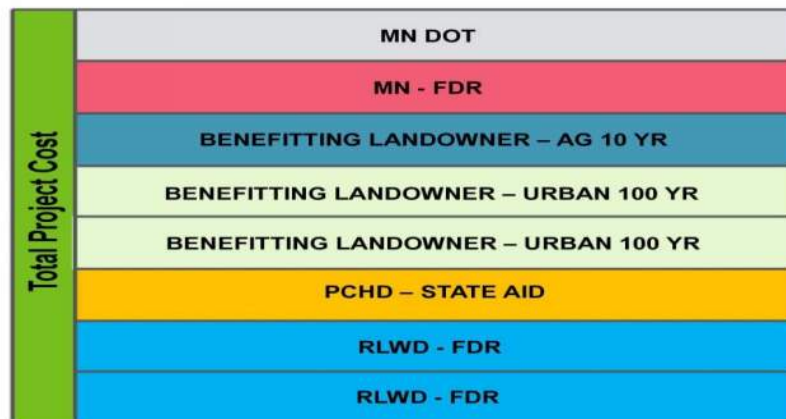
POTENTIAL PARTNERS

- State of MN – FDR
- MnDOT & State Aid
- Red Lake Watershed District
- Pennington County
- City of Thief River Falls
- Benefitted Property Owners
- Establish Water Management District

MINNESOTA STATUTES & DRAINAGE LAWS

- County Turn CD 70 and CD 1 over to RLWD?
- Ditch Improvement?
- Outlet Improvement?
- Petition – RLWD/County/City or Private?
- Outlet Extension?
- Establish Lateral?

TRF Westside – Potential Funding Breakdown
(Each Share = 12.5%)



PERMITTING

Potential Permits:

- MN DNR Public Waters Permit
- U.S. Army Corps of Engineers 404 Wetlands Permit?
- Pennington County SWCD WCA Permit?
- MPCA Stormwater Permit

Task	Summer 2017	Fall 2017	Winter 2018	Spring 2018	Summer 2018	Fall 2018	Winter 2019	Spring 2019	Summer 2019	Fall 2019
Establish Project Partnerships	X									
Develop Funding Package	X	X	X	X	X					
Initiate Project – Petition?	X									
Project Mgmt / Coord / Meetings	X	X	X	X	X	X	X	X	X	X
Survey		X								
Screening of Alternatives	X	X								
Preliminary Engineering of Selected Alternatives		X	X							
Viewing		X	X	X						
Soil Borings and Wetland Delineation				X						
Preliminary Hearing				X						
Final Engineering / Design / Plans & Specs				X	X	X				
Land Acquisition					X					
Permitting						X	X			
Final Hearing & Viewers Report						X	X			
Construction								X	X	X

PROJECT DEVELOPMENT AND NEXT STEPS

- Establish consensus between potential partners
- Develop path forward and take administrative action to initiate project
- Further screening of alternatives and determination of technical feasibility
- Pursue funding package



HDR



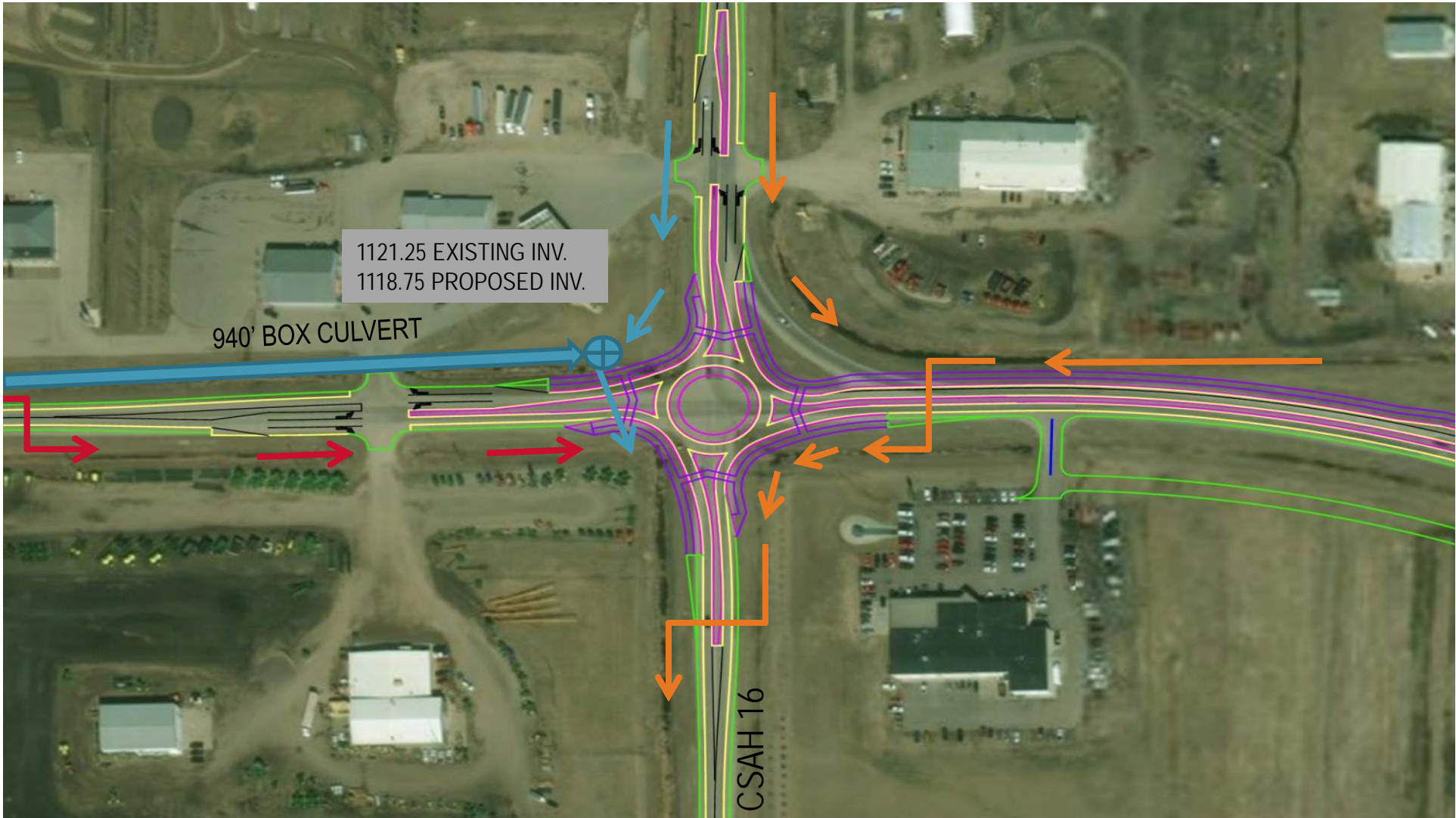
CORD 74

1121.0 EXISTING
1120.5 PROPOSED

1121.25 EXISTING
1118.75 PROPOSED

940' BOX CULVERT

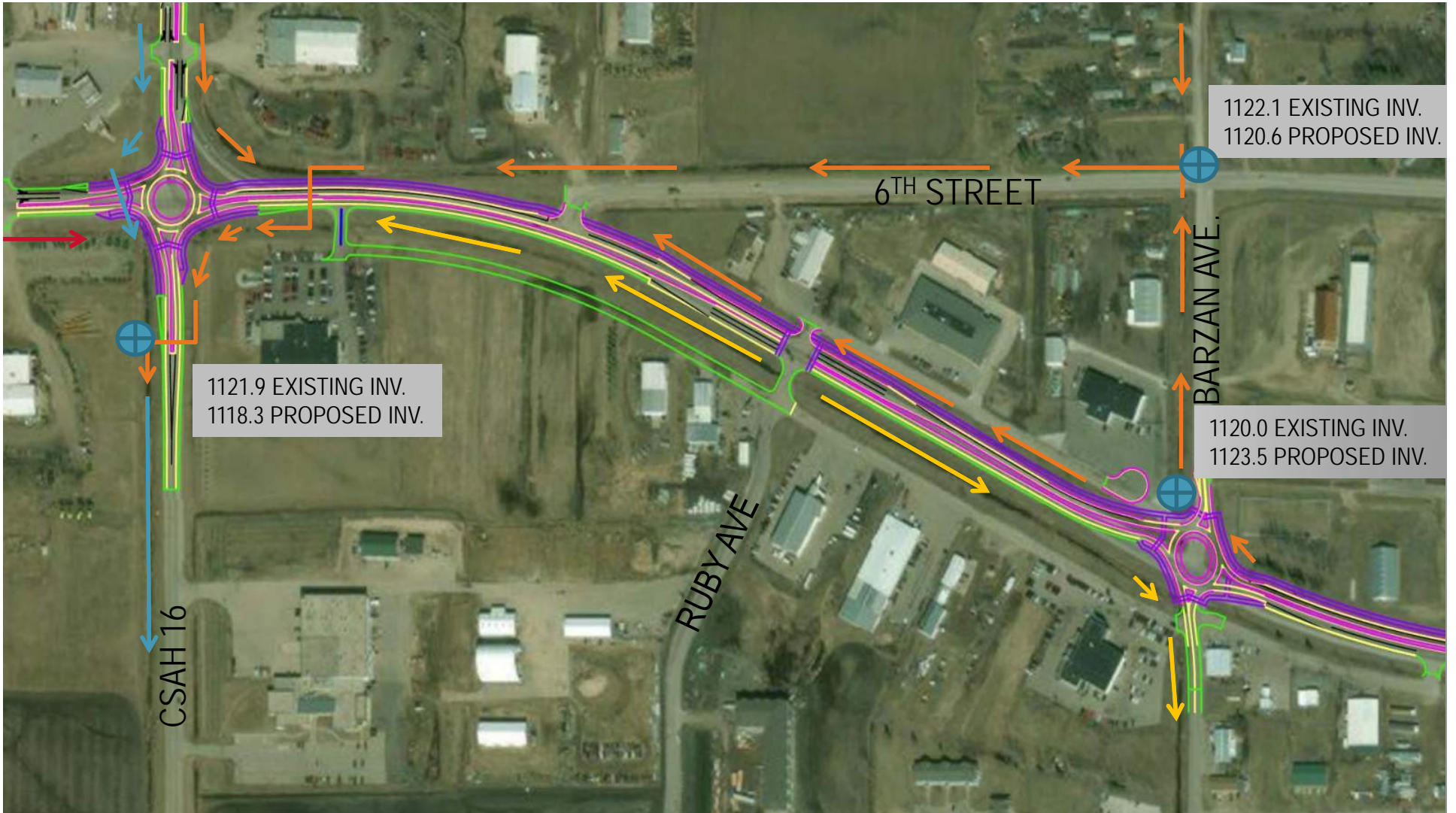
CSAH 16



1121.25 EXISTING INV.
1118.75 PROPOSED INV.

940' BOX CULVERT

CSAH 16





CO HWY 7

1103.7 EXISTING

FILL DITCH

HWY 32



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



PIONEER VILLAGE

PLACE DITCH IN STORM SEWER AND COVER

GREENWOOD STREET

HWY 32

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

PLACE DITCH IN STORM SEWER AND COVER

DIG-KEY / ARCTIC CAT

PLACE DITCH IN STORM SEWER AND COVER

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



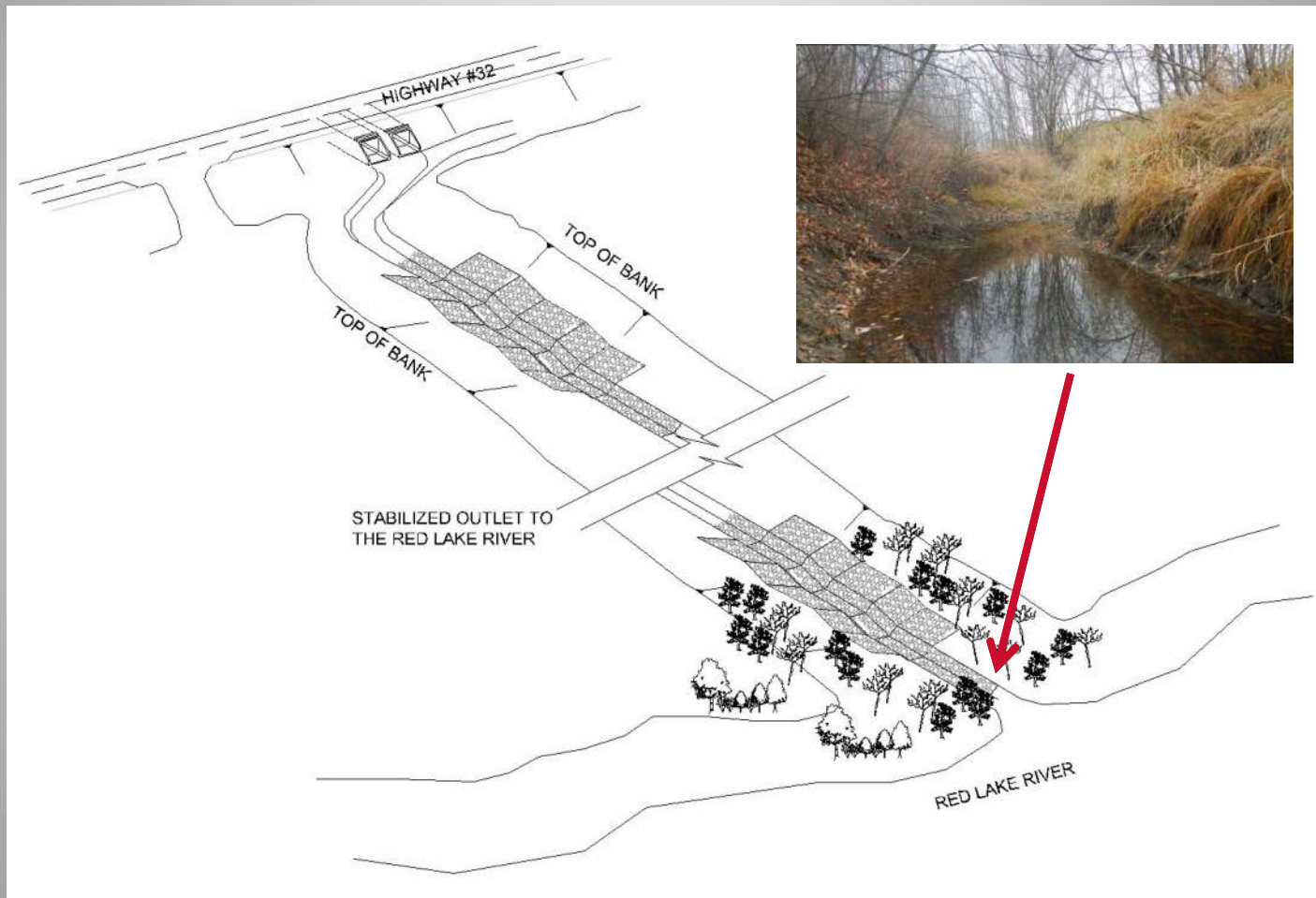
HWY 32

CSAH 16

POSSIBLE
FUTURE
ROUNDABOUT

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

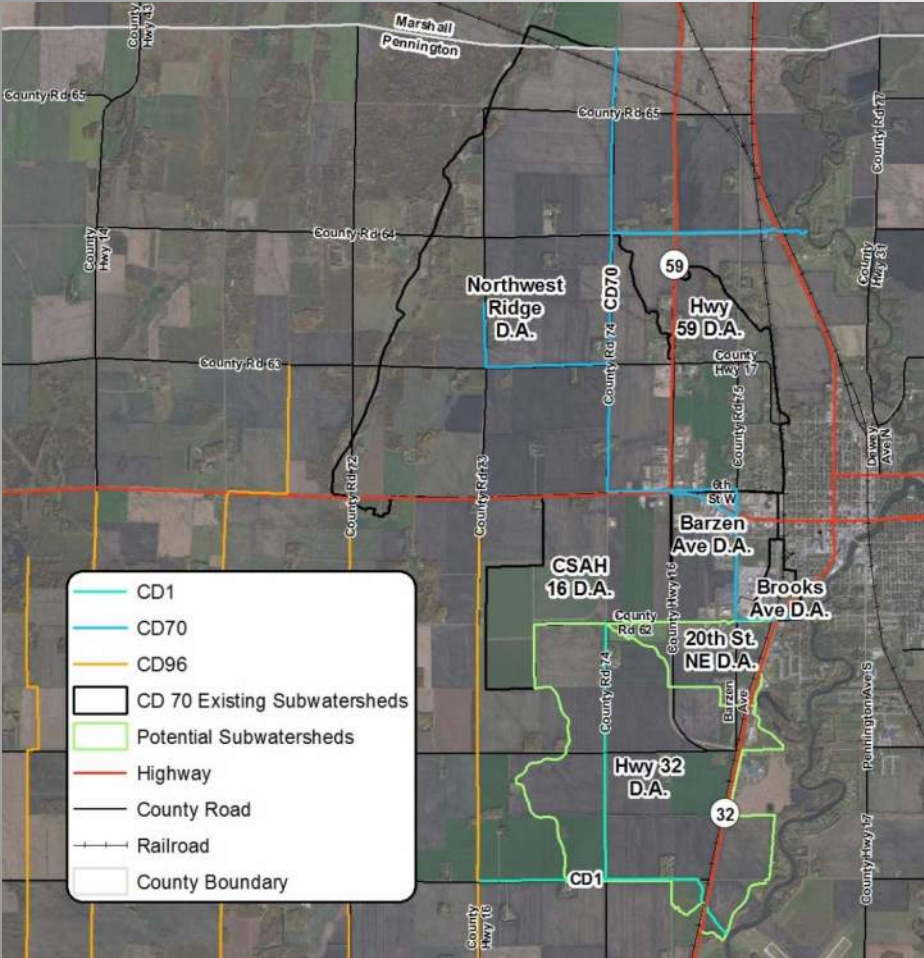
SOUTH ALTERNATIVE OUTLET STRUCTURE



POTENTIAL FUTURE DEVELOPMENT

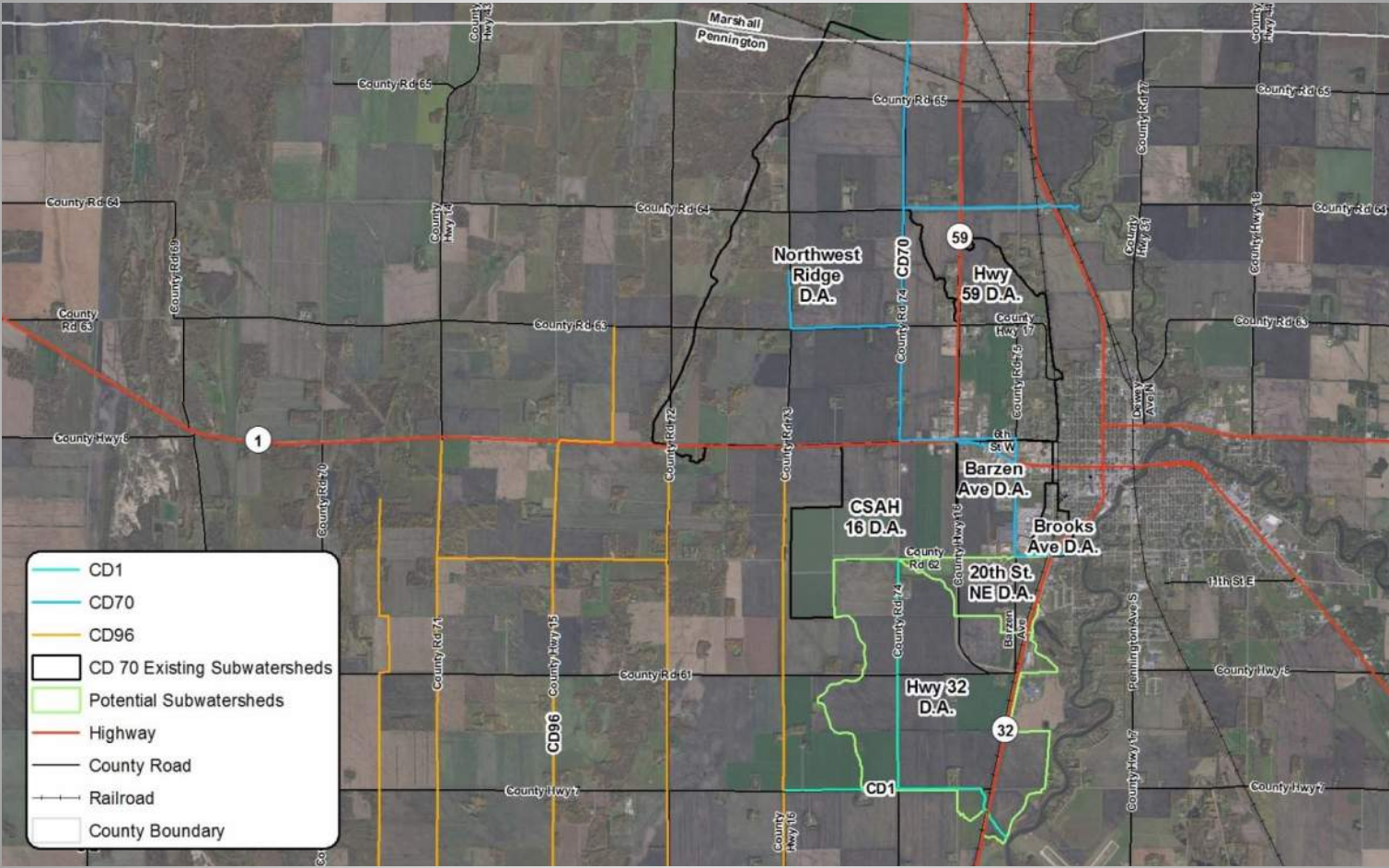


PLANNING FOR THE FUTURE

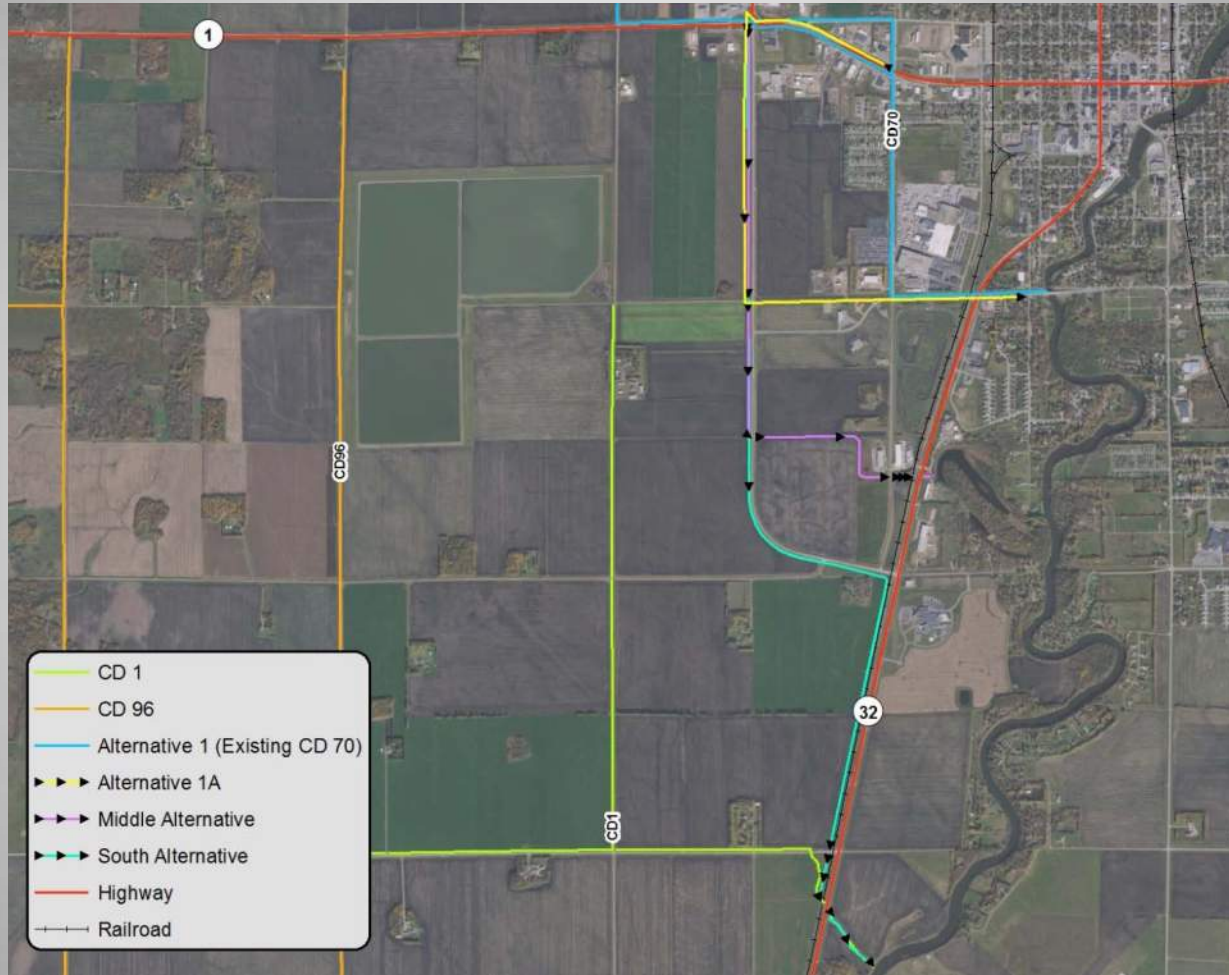


Subwatershed	Existing Runoff Curve Number	Future Runoff Curve Number
Northwest Ridge	77	77
CSAH 16	83	84
Hwy 59	80	80
Barzen Ave	84	87
Brooks Ave	87	87
20 th St. NE	80	88
Hwy 32	77	80

CD 70 & CD 1 IMPACTED DRAINAGE AREAS



PROPOSED ALTERNATIVES



SOUTH ALTERNATIVE RENDERING



PROS AND CONS

Pros

- Improves drainage along system
- Reduces volume of water along Barzen Ave. (1A)
- Utilizes Existing Structures (- Year Event)

Pros

- Improves drainage along system
- Reduces flood potential in city & rural areas
- Provides drainage for future development
 - Provides 100-Year protection

Pros

- Improves drainage along system
- Reduces flood potential in city & rural areas
- Provides drainage for significant future development
 - Provides 100-Year protection
 - Most comprehensive solution
 - Outlet is outside city limits
- Utilizes existing drainage channel under RR and #32
 - More benefited area

Existing & 1A Alternatives

Cons

- Water remains in the city
- Does not address future development
 - No adequate outlet
- No 100-Year protection with existing ROW
 - Storm sewer = Highest Costs

Middle Alternative

Cons

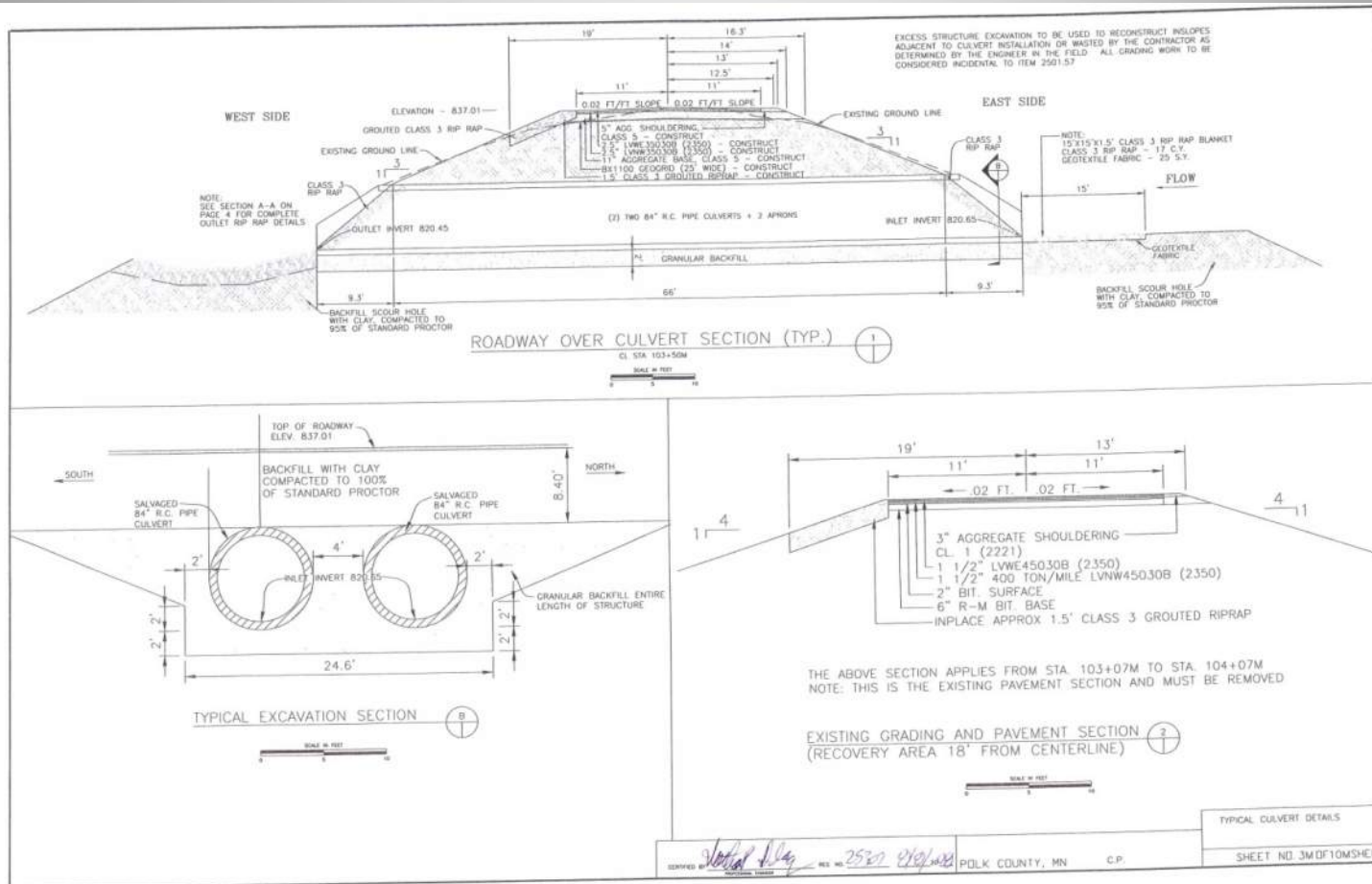
- High structure costs
- Outlet within city limits
- New outlet passes under the railroad and State Highway 32

South Alternative

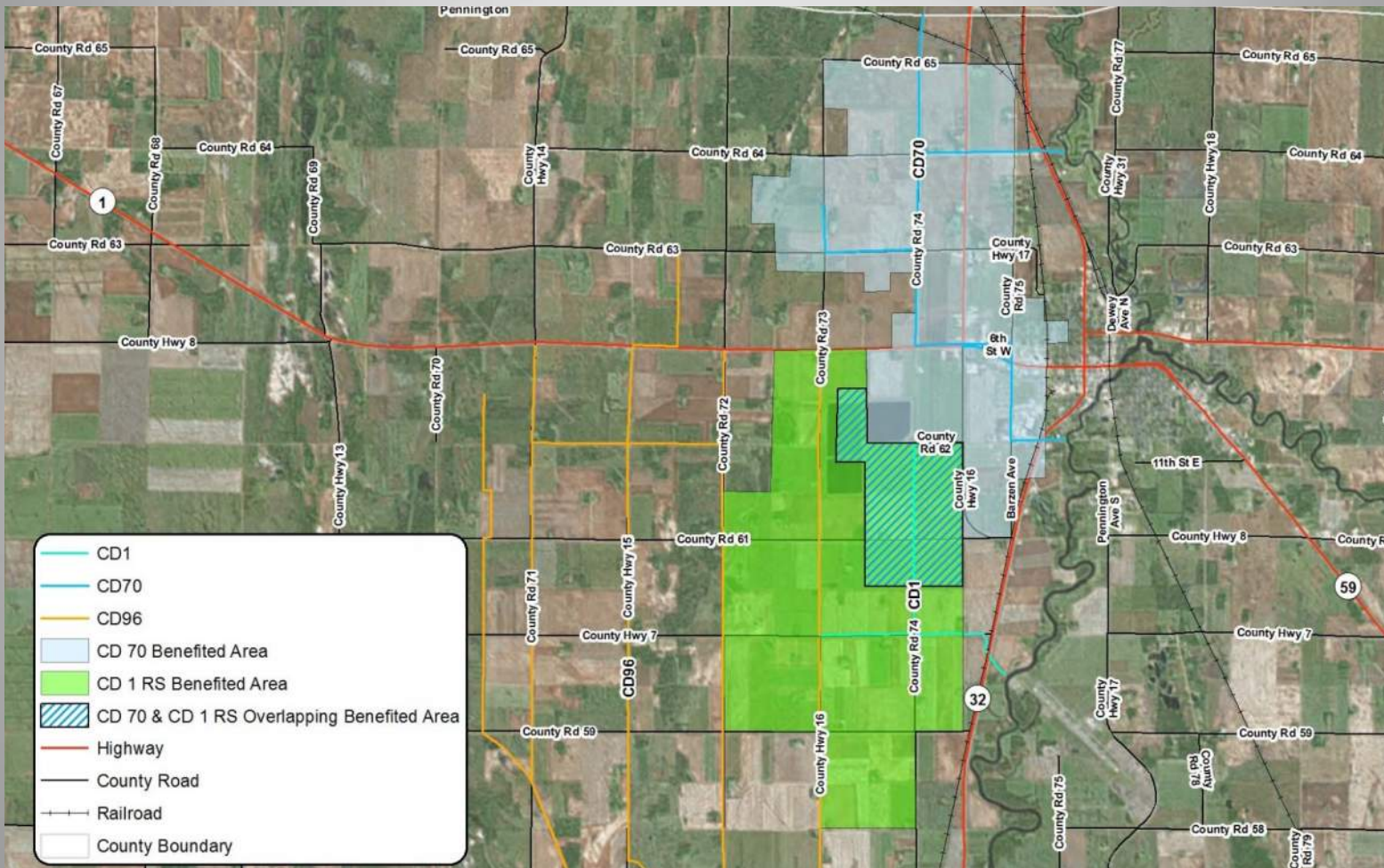
Cons

- Cost

NEW BOX CULVERTS OR BORED CULVERTS



CD 70 & CD 1 BENEFITED AREAS



Engineer Tony Nordby, Houston Engineering, Inc., stated that discussion has been held with MnDNR Staff regarding what environmental impacts construction of the project could cause, which would determine if there is a need for an Environmental Impact Statement (EIS). MnDNR staff determined that the project does not meet the threshold for an EAW. MnDNR recommended that since the District is the Local Governmental Unit (LGU), there should be an official determination whether or not to complete an EAW for the project. Nordby stated that he does not feel the project is a high impact area, therefore, since the District is the LGU, the District can waive the need for an EAW. Motion by Dwight, seconded by Ose, that the District, as the LGU for the project, waive the need to complete an EAW for construction of the proposed Black River Impoundment, RLWD Project No. 176. Motion carried.

The Board reviewed a Clean Water Fund Assistance Contract with the West Polk SWCD for stabilization of the outlet of Polk County Ditch 63, RLWD Project No. 134. Administrator Jesme stated that the total amount of the contract is \$128,750, with the District responsible for a 25% match, in the amount of \$25,570, and the Clean Water Fund Assistance providing \$103,000. Motion by Sorenson, seconded by Tiedemann, to approve the Clean Water Fund Assistance Contract with the West Polk SWCD, in the amount of \$128,750, with a 25% in-kind match in the amount of \$25,570 from the District's Erosion Control Funds, RLWD Project No. 164. Motion carried.

The Board reviewed a Memorandum of Agreement between the District, Pennington SWCD and the West Polk SWCD for the Red Lake River One Watershed One Plan Ditch Inventory. Administrator Jesme stated that the Pennington SWCD received a Clean Water Fund Drainage Ditch Inventory and Inspection grant in 2014. Pennington SWCD had remaining funds from the grant and were able to transfer the balance to the West Polk SWCD. Inventory of over 372 miles of legal ditch systems needs to be completed by December 31, 2018. The West Polk SWCD contacted the District, to inquire if the District would have staff available to assist with the completion of the grant. Jesme indicated he felt that the District staff would be able to assist the West Polk SWCD with the inventory of legal ditch systems and since this area is located in the Red Lake River 1W1P, the information could be used to solidify funding from the Clean Water Legacy for implementation of projects. Motion by Tiedemann, seconded by Ose, to approve the Memorandum of Agreement between the District, Pennington SWCD and West Polk SWCD for the Red Lake River One Watershed One Plan Ditch Inventory. Motion carried.

Administrator Jesme stated that the Planning Group, Advisory Committee and Policy Committee for the Thief River 1W1P, RLWD Project No. 149A met on September 13, 2017 in Grygla, to discuss the approval of the Stakeholders Participation Plan, Plan Outline, regional boundaries and preparation for the Kick-Off meetings. A Policy Committee will be held on October 11, 2017 at the District office.

Administrator Jesme stated that he attended a meeting with staff from Polk County and the Viewers for the redetermination of benefits for Judicial Ditch 72, RLWD Project No. 41. Jesme indicated that at the meeting it came to light that there are many miles of Polk County ditches that cross over with the Judicial Ditch 72 system. Discussion was held on the potential consolidation of the ditches into one benefitted area. A Judicial Ditch 72 Joint Ditch meeting will be held in the near future to continue discussion on the matter.

Sam Umlauf, Houston Engineering, Inc. discussed recent construction activities on the Grand Marais Creek Channel Restoration Project, RLWD Project No. 60F. Umlauf stated that the repair work on County Road No. 64 is complete and the road closed signs have been removed. The Board reviewed Pay Estimate No. 5 in the amount of \$42,694.89. Motion by Tiedemann, seconded by Ose, to approve Pay Estimate No. 5 in the amount of \$42,694.89 to Davidson Construction, Inc. for construction of the Grand Marais Creek Channel Restoration Project, RLWD Project No. 60F. Motion carried. Administrator Jesme stated that due to the late start in completing construction on this project, the District may have to consider applying for an extension for the FDR Grant from the Minnesota Department of Natural Resources.

The Board reviewed a letter from the City of Gonvick regarding a landowner that plugged a natural waterway. Two years ago the City of Gonvick requested that the landowner remove that he must remove the plug in the waterway as he was impeding the natural flow of water, therefore flooding out the local recreational vehicle park. The landowner did not remove the plug, so the City is requesting assistance from the District. Motion by Ose, seconded by Mandt, to authorize Administrator Jesme to submit a letter to the landowner stating that the plug is in violation of the Districts Rules and Regulations and shall be removed.

Staff member Gary Lane discussed Judicial Ditch 1, RLWD Project No. 100. Lane stated that the District acquired ditches from Clearwater County in 1991, and that this ditch system was abandoned around 1977, and no longer exists. Lane asked the Board what should be done with records from an abandoned/non-existent ditch. Administrator Jesme stated that he had spoken to Legal Counsel Sparby, who indicated that staff should contact the MN Historical Society to inquire if there would be any historic value to the information. Motion by Tiedemann, seconded by Coe, to authorize staff to contact the MN Historical Society and to proceed with the removal of the abandoned/non-existent ditch files. Motion carried.

Staff member Gary Lane stated that the District has a benefitted area for Clearwater County Ditch 1, RLWD Project No. 103, but he is unable to locate the physical ditch system and Clearwater County Engineering staff was unable to find information leading to the location of the legal drainage system. Administrator Jesme stated that Legal Counsel Sparby recommended proceeding with the hearing process to abandon the system, therefore notifying all landowners in the benefitted area. Motion by Mandt, seconded by Ose, to authorize staff to proceed with the necessary steps to abandon Clearwater County Ditch 1, RLWD Project No. 103. Motion carried.

At 10:00 a.m., President Nelson stated that the bid opening for the construction of the Burnham Creek Project, Phase 1-4, RLWD Project No. 43B, C, and D would be conducted. President Nelson noted the time and that all bid proposals have been accepted by the 10:00 a.m. bid closing. Bids were opened and bid amounts were publicly announced and are on file at the office District office. Motion by Tiedemann, seconded by Mandt, and passed by unanimous vote to accept the apparent low bid from Wright Construction of TRF, Inc. in the amount of \$374,900.50, for construction of the Burnham Creek Project, Phase 1-4, RLWD Project No. 43B, C and D, contingent upon the audit and review of the bids and approval by Legal Counsel Sparby, District staff, and Project Engineer Jim Hest, Red River Valley Conservation Service.

Red Lake Watershed District

President

Dale M. Nelson

Vice President

Gene Tiedemann

Treasurer

Terry Sorenson

1000 Pennington Avenue South

Thief River Falls, MN 56701

218-681-5800

218-681-5839 FAX

e-mail: rlwaters@wiktel.com

www.redlakewatershed.org

Secretary

LeRoy Ose

Managers

Les Torgerson

Allan Page

Brian Dwight

February 8, 2018

Tribal Council

Red Lake Band of Chippewa Indians

P.O. Box 550

Red Lake, MN 56671

Re: Tribal Resolution No. 138-16 - Good Lake Impoundment – “Special Land Permit”

Dear Council,

This letter is in reference to the above mentioned Tribal Council Resolution (copy attached) and the fact that it is due to expire on July 12, 2018. The Good Lake project, which was completed in 1995, is a multi-purpose cooperative effort between the Red Lake Band of Chippewa Indians and the Red Lake Watershed District.

Since the time of construction, the Tribal Council has granted the Watershed District access to the project in the form of “Special Land Permit” resolutions.

The Red Lake Watershed District Board of Managers is pleased with the cooperation and wishes to continue this working relationship. The Watershed Board would like to invite representatives from the Tribal Council to a future Watershed meeting to consider extending the current “Special Land Permit.”

Please contact me at 218-681-5800 to discuss and to schedule a meeting date.

Sincerely,

Myron Jesme
Administrator

RED LAKE BAND
of CHIPPEWA INDIANS
RED LAKE NATION HEADQUARTERS



OFFICERS:
DARRELL G. SEKI, SR., Chairman
DON R. COOK, SR., Secretary
ANNETTE JOHNSON, Treasurer

DISTRICT REPRESENTATIVES:
GARY NELSON
RANDALL KINGBIRD
JULIUS "TOADY" THUNDER
ALLEN PEMBERTON
ROMAN "DUCKER" STATELA
ROBERT "BOB" SMITH
RICHARD BARRETT, SR.
ROBERT "CHARLIE" REYNOLDS

ADVISORY COUNCIL:
7 HEREDITARY CHIEFS

PO Box 550, Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

RESOLUTION NO. 138-16

Upon a motion by Secretary Cook and second by Pemberton, the following was enacted:

WHEREAS, the Red Lake Tribal Council is the duly elected governing body of the Red Lake Band of Chippewa Indians, a federally recognized Tribe; and

WHEREAS, the Red Lake Tribal Council issued a 20 year "Special Land Permit" (via Resolution No. 19-90) to the Red Lake Watershed District in 1990 "for the purpose of inspection, supervision and certification of the construction and maintenance of the Good Lake Flood Project"; and

WHEREAS, the Red Lake Band and Red Lake Watershed District cooperatively managed the Good Lake Impoundment to enhance wildlife habitats, promote use of the site by Tribal members, and reduce potential for downstream flooding until the original "Special Land Permit" expired in January 2010, which the Tribal Council subsequently issued another 5-year "Special Land Permit" to the Red Lake Watershed District by Resolution No. 61-11 for the purpose of permitting the Red Lake Watershed District, in cooperation with the Red Lake Band to continue to inspect, supervise and conduct necessary maintenance of the Good Lake Flood Control Project site. The renewal permit expired on April 13, 2016; and

WHEREAS, the Red Lake Band wishes to issue a new, (2-year Special Land Permit to continue cooperative management of the Good Lake Impoundment, where the Red Lake Band and the Red Lake Watershed District will cooperatively inspect, supervise and conduct necessary maintenance at the Good Lake Flood Control Project site; now

THEREFORE BE IT RESOLVED, the Red Lake Tribal Council hereby approves a Special Land Permit (Attached) which shall remain in effect for a period 2 years from the date of this Resolution.

FOR : 10

AGAINST: 0

We do hereby certify that the following resolution was duly presented and enacted upon at the Regular Meeting of the Tribal Council held on Tuesday, 12, 2016 with a quorum present, at the Red Lake Nation Headquarters, Red Lake.


DARRELL G. SEKI, SR., CHAIRMAN


DONALD R. COOK SR., SECRETARY

RED LAKE BAND of CHIPPEWA INDIANS

RED LAKE NATION HEADQUARTERS



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ROBERT "CHARLIE" REYNOLDS

ADVISORY COUNCIL:

7 HEREDITARY CHIEFS

PO Box 550, Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

RED LAKE SPECIAL LAND PERMIT

In 1990, the Red Lake Tribal Council granted a "Special Land Permit" (via Tribal Council Resolution No. 19-90) to the Red Lake Watershed District which allowed them to "engineer, inspect, supervise, and certify the construction and maintenance of the Good Lake Flood Control Project". This permit also granted employees of the Red Lake Watershed District access to the land described in this permit for a period of twenty years, beginning on 12 January, 1990. The description of the land affected by the permit is as follows:

Section Seven (7), Eighteen (18), Nineteen (19), a strip of land and approximately one hundred feet (100') wide between Sections Twenty-nine (29), Thirty (30), Thirty-one (31), and Thirty-two (32), all in Township One Hundred Fifty-four (154) North, Range Thirty-eight (38) West; a strip of land approximately One Hundred Feet (100') feet wide between Sections Five (5), Six (6), Seven (7), Eight (8), Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20), Twenty-nine (29), Thirty (30), Thirty-one (31) and Thirty-two (32), all in Township One Hundred Fifty-three (153) North, Range Thirty-eight (38) West and in Sections Six (6), Five (5), Eight (8), Eighteen (18) and Nineteen (19) of Township One Hundred Fifty-two (152) North, Range Thirty-eight (38) West.

This permit expired in January, 2010.

Per Tribal Council Resolution No. 61-11, the Red Lake Band of Chippewa Indians subsequently granted a second "Special Land Permit" to the Red Lake Watershed District. Conditions of the permit applied to the same parcels of land described above.

Per Tribal Council Resolution No. 138-16, the Red Lake Band of Chippewa Indians granted a third "Special Land Permit" to the Red Lake Watershed District. Conditions of the third permit apply to the same parcels of land described above.

1. The term of the permit shall be for two years, starting on the date that the Tribal Council approves a Resolution in support of this permit.
2. The parcels of land affected by this permit are described above, and are the same as those described in the original permit supported by Tribal Council Resolution No. 19-90

TRIBAL COUNCIL Organized April 18, 1918 (Revised Constitution & By-Laws, January 6, 1959)

CHIEF COUNCIL OF 1889: May-dway-gwa-no-nind, Nah-gaun-o-gwon-abe, Mays-co-co-aw-ay, Ahnah-me-ay-ge-shig, Naw-ay-tah-wowb, Nah-wah-quay-ge-shig

RED LAKE BAND of CHIPPEWA INDIANS

RED LAKE NATION HEADQUARTERS



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ROBERT "CHARLIE" REYNOLDS

ADVISORY COUNCIL:
7 HEREDITARY CHIEFS

PO Box 550, Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

3. The purpose of this permit is to facilitate cooperative management of the Good Lake Impoundment, where the Red Lake Watershed District and the Red Lake Band will cooperatively inspect, supervise and conduct necessary maintenance at the Good Lake Flood Control project site. Activities will be coordinated with the Red Lake Department of Natural Resources.

✓ 4. As part of this land use permit, the Red Lake Watershed District is granted a right of access to the land described in this permit for a period of two years, starting on the date this permit commences.

Dated: July 12, 2016

DARRELL G SEKI, SR., CHAIRMAN

DONALD R COOK, SR., SECRETARY

January 26, 2018

Cody Hempel, Chair
County Board of Commissioners
Pennington County Courthouse
101 Main Avenue North
Thief River Falls, MN 56701-0616

Sent Via Email:

RE: Determination of Adequacy, Pennington County Buffer Ordinance

Dear Chairman Hempel,

Thank you for sending a signed copy of the county's buffer ordinance documenting adoption by the Pennington County Board of Commissioners on December 12, 2017 to the Board of Water and Soil Resources (BWSR) for a final determination on adequacy.

We appreciate the county's efforts in making changes to the ordinance in response to our initial comment letter (dated 11/7/2017). At this time, we have no additional suggestions or guidance regarding the adopted ordinance.

BWSR has completed its final review in conformance with state law and concluded that Pennington County has adopted an ordinance, titled Pennington County Buffer Ordinance that contains adequate provisions for compliance and enforcement of Minn. Stat. §103F.48 (the Buffer Law). Therefore, BWSR is pleased to inform you that Pennington County is determined to be "With Jurisdiction" in accordance with Minn. Stat. §103F.48 Subd. 1 (j).

Finally, any change to this adopted ordinance must be submitted to BWSR at least 60 days prior to the effective date of the change in accordance with Procedure 9: BWSR's Review of County and Watershed District Buffer Rules, Ordinances and Official Controls. This will ensure that BWSR has adequate time for review and determination of adequacy on any proposed changes.

On behalf of BWSR, I wish to extend our appreciation for the commitment of the County Board of Commissioners and all others associated with the development of this ordinance.

Thank you for your cooperation on this matter. Should you have any questions, please contact Appeals and Regulatory Compliance Coordinator Travis Germundson at (651) 297-4958, or at travis.germundson@state.mn.us.

Sincerely,



David Weirens
Assistant Director Programs and Policy

cc: Kenneth Olson, Pennington County Auditor
Bryan Malone, Pennington SWCD
Myron Jesme, Red Lake WD
Joel Praska, Middle-Snake-Tamarac Rivers WD
DNR: Jennifer Shillcox, Dan Petrik, Stephanie Klamm
BWSR: Travis Germundson, Tom Gile, David Leuthe, Matthew Fischer, Darren Mayers



City of Thief River Falls

Office of Mayor Brian Holmer

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February 2, 2018

Mr. Myron Jesme, Administrator
Red Lake Watershed District
1000 Pennington Avenue South
Thief River Falls, MN 56701

Dear Mr. Jesme:

This letter is to ask for the Red Lake Watershed District's assistance in developing a pilot project to explore a more flexible permitting requirement for the Thief River Falls municipal wastewater treatment system. The premise of the pilot project would be to give our city "credit" were we to finance a "project" or contribute a portion of costs for a "project" completed by the District. The concept is analogous in many ways to how wetland banking credits are purchased and used now. Because we are aware of the Red Lake Watershed District's commitment to clean water and respect the District for its many successful projects we are asking the District to consider becoming a partner in this effort.

As you know, the MPCA is implementing new phosphorus limits for municipal wastewater treatment operators. The imposition of new phosphorus limits will require significant costs without producing any meaningful environmental benefit. (See attached letter dated January 29, 2018 from the cities of Breckenridge, Moorhead, Roseau, Thief River Falls, and Warroad.)

The city would like to approach the MPCA about a more collaborative permitting process. We would like to work with the MPCA and the Red Lake Watershed District to find a project that will provide "more bang for the buck". Rather than buy low-value/high-cost upgrades to our wastewater treatment system we would like to buy a high-value/low cost alternative in exchange for a phosphorus credit towards any new phosphorus limit in our wastewater treatment permit.

Municipal wastewater treatment operators have done more than any other stakeholder group to improve water quality over the last half century. We are willing to do more but our ratepayers' money should be expended on projects that have the greatest impact on improving water quality. We are asking the Red Lake Watershed District to help us so that we can direct limited dollars to high value-low cost effective water quality improvement. If the legislature allows us the opportunity, then we are willing to take a portion of the cost of a low-value/high-cost project and redirect it to a high-value/low-cost alternative.

Please be aware that we have had no conversations with the MPCA about our proposal. Prior to exploring this further we would like to know if the District would even consider such a partnership. Thank you for all the work you do on behalf of the people of the Red Lake River Watershed District.

Sincerely,

Brian Holmer
Mayor





January 29, 2018

Rebecca Flood, Assistant Commissioner
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

BY E-MAIL AND U.S. MAIL
rebecca.flood@state.mn.us

Re: MPCA's Revised Approach for Implementing Total Phosphorus Effluent Limits in the Red River Basin, Minnesota

Dear Assistant Commissioner Flood:

We are writing on behalf of the cities of Breckenridge, Moorhead, Roseau, Thief River Falls and Warroad to express our collective concern regarding the Minnesota Pollution Control Agency's (MPCA or Agency) updated phosphorus permitting strategy for the Red River Basin as outlined in *A Revised Approach for Implementing Total Phosphorus (TP) Effluent Limits in the Red River Basin, Minnesota* (March 3, 2014). All of our cities own and operate wastewater treatment facilities that discharge into the Red River Basin and hold National Pollution Discharge Elimination System (NPDES) permits that are impacted by the Agency's revised permitting strategy.

The revised Red River Basin permitting strategy represents a minor modification to MPCA's previous strategy, which seeks to impose total phosphorus effluent limit requirements into the NPDES permits held by our respective communities to address harmful algal growth (eutrophication) occurring in Lake Winnipeg. Our communities share MPCA's concerns regarding the health of Lake Winnipeg. However, we are concerned that MPCA's proposed approach lacks a sound environmental and legal justification and will potentially require significant long-term investment from our communities and/or limit our future growth without producing any meaningful benefits to Lake Winnipeg.

The goal of this letter is to summarize our collective concerns and to request a meeting to discuss how we can work collaboratively with the MPCA, as well as our sister cities in North Dakota and Canada to address nutrient impacts in Lake Winnipeg and throughout the Red River Basin in a manner that is technically sound, lawful and cost effective.

Background

MPCA published its original phosphorus permitting strategy for the Red River Basin via memorandum on December 4, 2012.¹ In that memorandum, the Agency cited the 1909 Boundary

¹ Memorandum, *The 1909 Boundary Waters Treaty and MPCA staff Recommendations For Total Phosphorus Effluent Limits For NPDES/SDS Dischargers in the Red River Basin* To: Lisa Thorvig et al., From: Steve Weiss and Denise Oakes (December 4, 2012).

Waters Treaty² between the United States and Canada, and a 1968 report from the International Joint Commission (“IJC”) on pollution in the Red River³ as the legal and technical basis for imposing phosphorus effluent limitations on our communities.

As you are aware, via letter dated November 18, 2013 from the Minnesota Environmental Science and Economic Review Board (MESERB), our cities collectively expressed significant concerns that the original permitting strategy was not supported by the Agency’s statutory and regulatory authority and that it failed to provide any technical/environmental analysis showing that the proposed phosphorus reductions were necessary to protect Lake Winnipeg.⁴

Further, on February 21, 2013, the City of Breckenridge filed a contested case petition challenging MPCA’s attempt to implement the phosphorus permitting strategy into its NPDES permit, raising concerns similar to those identified by MESERB. MPCA denied the City’s contested case petition via letter dated May 5, 2017 and provided the City a copy of MPCA’s 2014 memorandum outlining its revised Red River Basin permitting strategy. Our cities did not become aware of the revised strategy until that time and were not included in MPCA’s efforts to revise it.

The revised strategy fails to address previously raised environmental and legal concerns

Because the 2014 memorandum fails to provide a sound environmental or legal basis for imposing the proposed phosphorus limits on our cities, it is apparent that the fundamental technical/environmental and legal concerns we raised in 2013 have not been addressed by the Agency’s revised Red River Basin permitting strategy.

First, the 2014 memorandum does not contain any new substantive environmental/technical support for the permitting strategy and states that “the environmental rationale for implementing the approach is provided in the [2012] memorandum.”⁵ As indicted previously, the 2012 memorandum fails to provide any environmental/technical analysis showing that the phosphorus loads from our cities adversely impact water quality in Lake Winnipeg. Based on previous correspondence with MPCA, it is our understanding that the phosphorus contribution to Lake Winnipeg from our cities is negligible and MPCA has provided no new environmental rationale demonstrating that the reductions proposed would have any meaningful benefit to the lake (i.e., reduction in algal growth).

Further, the 2014 memorandum suggests that imposing phosphorus limits on our cities is appropriate because “point sources represent the largest *controllable* sources of phosphorus loading within the watershed” and because MPCA believes that some of our cities could comply with the limits proposed without significant capital investments.⁶ The suggestion that MPCA has the authority to impose permitted restrictions on our facilities simply because our discharges are controllable or that those restrictions may be achievable lacks support under state and federal law and is particularly concerning being that MPCA has provided no data or analysis indicating the reductions would have a meaningful environmental benefit.

² Treaty Between the United States and Great Britain Relating to Boundary Waters, and Questions Arising Between the United States and Canada (1909).

³ *Report of the International Joint Commission, Canada and United States on the Pollution of the Red River* (1968).

⁴ *Letter from MESERB to MPCA re permittees in the Red River of the North Basin* (Nov. 18, 2013) attached.

⁵ 2014 Memorandum at 2.

⁶ *Id.*

MPCA's revised memorandum also failed to clearly identify any statutory or regulatory authority to support the Red River Basin permitting approach. MPCA's 2014 memorandum clearly acknowledges the "final water quality target [for Lake Winnipeg] has not yet been identified and therefore the reductions necessary to fully restore Lake Winnipeg have not yet been determined."⁷ To our knowledge, MPCA has no statutory or regulatory authority that empowers it to enforce a permitting strategy designed to protect Lake Winnipeg based on the Boundary Waters Treaty when neither the U.S. EPA nor the IJC has determined and/or approved the specific nutrient reduction targets necessary to protect Lake Winnipeg.⁸

Accordingly, we are concerned that MPCA's revised approach seeks to impose legally binding phosphorus limits into our permits that will potentially require significant investment from our communities and/or limit future growth without the necessary legal authority and without demonstrating a clear environmental rationale or benefit. As stewards of our communities' resources and the environment, we simply cannot stand for such an approach.

Request to cease current strategy and develop alternative collaborative approach

We respectfully request that MPCA immediately cease implementation of this revised strategy unless and until the governments of the United States and Canada concur upon nutrient targets for Lake Winnipeg and the allocation of nutrient loads to point sources.

However, in the interim, we are willing to meet and work with MPCA and our sister communities in North Dakota and Canada to discuss the development and implementation of an alternative framework to achieve phosphorus reduction in the Red River and address the harmful algal growth occurring in Lake Winnipeg.

We request a meeting with MPCA to further share our concerns, better understand MPCA's position and discuss potential alternatives to the Red River Basin permitting strategy. To respond to this letter and coordinate the requested meeting, please contact attorney Daniel Marx at dmmarx@flaherty-hood.com or 651-259-1907.

Sincerely,

Jeff Pelowski, Mayor of Roseau
Brian Holmer, Mayor of Thief River Falls
Renaë Marthaler, Breckenridge City Administrator
Christina M. Volkers, Moorhead City Manager
Bob Marvin, Mayor of Warroad

⁷ *Id.*

⁸ MPCA was explicitly established to protect the environment and waters of the state of Minnesota. Minn. Stat. § 116.01 (stating MPCA was established to address "problems relating to water, air and land pollution in the areas of the *state* . . . and to achieve a reasonable degree of purity of water, air and land resources of the *state* consistent with the maximum enjoyment and use thereof in furtherance of the welfare of the people of the *state*") (emphasis added).

Rebecca Flood, Assistant Commissioner

January 29, 2018

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CC: Shannon Lotthammer, Director, Environmental Analysis and Outcomes Division, MPCA
Chair Dan Fabian, Environment and Natural Resources Policy and Finance Committee
Chair Bill Ingebrigtsen, Environment and Natural Resource Finance Committee
Representative Jeff Backer
Senator Kent Eken
Senator Mark Johnson
Representative Debra Kiel
Representative Paul Marquart
Representative Ben Lien
Senator Torrey Westrom
Curt Johannsen, Chair of the Red River Basin Commission

Red Lake Watershed District - Administrators Report

February 8, 2018

Red River Watershed Management Board – Leroy and I will be attending the RRWMB meeting which will be held 9:30 am, February 20, 2018 at the Wild Rice Watershed District office in Ada.

Thief River 1W1P- I took part in a telephone conference at 9:00 am, January 29th to discuss the information gathered at the public informational meetings. We are continuing to get information together for the Policy Committee meeting which will be held at the District office, 9:30 am February 14, 2018.

Red Lake River 1W1P – In my absence, Corey attended a Planning Committee meeting held at 1:00 pm, Monday, February 5th at 2:00 at the Pennington SWCD Conference room. This meeting was held to gather additional information on projects and budget for funding that will be forthcoming. This information will then be presented to the Policy Committee at their meeting held at 9:30 am, February 21st at the Red Lake Watershed District Board Room.

Red River Basin River Watch Forum – Ashley and Christina attended the Annual River Water Forum which was held all day yesterday in Grand Forks. It was anticipated that there would be over 300 students and instructors attending the Forum this year.

Red River Watershed Management Board Administrators meeting – There was a Region 1 Watershed District Administrators meeting held Wednesday 10:00 am at the Sand Hill Watershed District, in Fertile. The meeting agenda items included RRWMB reorganization update, 2018 Legislative agenda, MAWD resolutions, FDR funding and general discussion & district updates.

Rinke Noonan Drainage & Water Conference – Loren, Brady and Christina will be leaving late afternoon, Wednesday, February 14th, to attend the Drainage Conference held in St. Cloud Thursday, February 15th. I understand Allan will be attending this conference as well.

Employee Six Month Evaluation – I recently completed a six-month employee evaluation, for Brady Stanley on 2-2-2018. I feel the evaluation went well and I also feel that Brady will continue to strive in his position as Ditch Inspector as he gains knowledge of how the District functions. I would recommend to the Board that Brady receive the \$1 per hour pay raise, retroactive to 1-31-18, that was mentioned during his interview, and upon a favorable six-month employee evaluation.