

**MINUTES OF THE ROSEAU RIVER WATERSHED DISTRICT BOARD OF  
MANAGERS MEETING HELD SEPTEMBER 5, 2018**

**ORDER:** Chairman Jason Braaten called the meeting to order at 8:00 a.m. and led the Pledge of Allegiance.

**MANAGERS PRESENT:** LeRoy Carriere, Carter Diesen, Cody Schmalz, Tony Wensloff, and Jason Braaten

**STAFF PRESENT:** Administrator Halstensgard, Specialist McCormack, and Assistant Bergstrom

**OTHERS PRESENT:** Chris Beito, Landowner; Roger Falk, Roseau County Commissioner; Joe Laurin, Landowner, Mark Wierschke, Landowner; Marlin Elton, Landowner, Mark Elton, Landowner; Mark Yeager, Landowner; T. Jacobson, Landowner

**CONSULTING STAFF:** Michelle Moren, Attorney; Nate Dalager, HDR; Randy Prachar, MNDNR

**DELEGATIONS PRESENT:** none

**AGENDA:** A **motion** was made by Manager Carriere and seconded by Manager Wensloff to approve the agenda. The motion carried unanimously.

**CONSENT AGENDA:**

A **motion** to approve the Consent Agenda was made by Manager Wensloff and seconded by Manager Diesen. The board then considered the manager and employee vouchers. Another **motion** to approve the Consent Agenda was made by Manager Wensloff and seconded by Manager Schmalz. The motion carried unanimously. Adoption of the Consent Agenda included approving the August 1, 2018 minutes, the Treasurer's Report as handed out, manager and employee expense vouchers, and permits #18-13 and #18-15 (T. Brateng), #18-16 (M. Lindland), #18-19 and #18-20 (D. Erickson).

**OLD BUSINESS:**

Administrator Halstensgard reported that no bids for the east sidewalk had been received.

**CR139 Culvert Issue:**

Manager Braaten suggested the board discuss the ongoing CR 139 culvert issue. Attorney Moren reminded the board that they had not determined compliance or non-compliance regarding permit #17-39 (RCHD). Attorney Moren stated the board needs to make a decision and determine what action, if any, is required. Specialist McCormack and Administrator Halstensgard provided a recap of the ACOE recommendation and RCHD response. Landowner Joe Laurin expressed his opinion in support of the culvert and would like to see the culvert remain for a trial period of five years. Administrator Halstensgard reiterated that the hydrologic study and subsequent memoranda submitted to the ACOE by the county was reviewed by the ACOE and in their opinion the culvert should not have been placed. Engineer Dalager commented that some ditch cleaning in the SD69 system needs to take place. Manager Wensloff commented that the ACOE has given their opinion and that the watershed needs to remain compliant with the ACOE recommendation because of the Duxby Levy system. Manager Diesen commented that permit #17-39 was issued to RCHD because of concerns with the road overtopping.

Manager Wensloff made a **motion** stating that the RCHD was non-compliant due to the ACOE's response stating that the culvert will cause adverse downstream impacts, therefore violating condition #4 on the RRWD permit application. Manager Diesen seconded the motion which passed unanimously. Manager Wensloff made a **motion** requiring the RCHD to put a screw gate on the culvert. The screw gate may be removed in the event of CR139 overtopping according to an operating plan. The motion was seconded by Manager Carriere and passed unanimously. Joe Laurin requested a motion for the removal of a cap on a riser pipe located at the corner of CR139 and 340th Street. He continued that in his opinion decisions need to be made regarding the RRWD's ditch system (WD3).

**Buffer Rule Hearing:**

At 8:30 am., Manager Wensloff made a **motion** to open the Buffer Rule Hearing. Manager Carriere seconded the motion which passed unanimously. Administrator Halstensgard stated that at the last board meeting, the board was presented with a draft Buffer Rule and that a notice was published in the county newspapers. No written or verbal comments were received. A landowner asked what the new regulations are with the Buffer Rule. Administrator Halstensgard explained that the RRWD elected jurisdiction over its drainage systems and will be responsible for enforcing the Buffer Law. The RRWD Buffer Rule is specific to the watershed and explains the standard to which the RRWD will apply the Buffer Law. District Specialist McCormack further explained the basic requirements of a buffer for the landowners in attendance. Manager Carriere made a motion to close the Buffer Hearing. The **motion** was seconded by Manager Schmalz and passed unanimously. Manager Wensloff made a **motion** to adopt the Buffer Rule which was seconded by Manager Diesen. The motion passed unanimously.

Discussion on CR139 culvert continued with discussion of the type of gate to be placed, ditch cleaning, and the removal of a cap on the Laurin corner. Commissioner Falk commented that the county has been talking about cleaning the ACOE recommended section of SD69.

**Duxby:**

Administrator Halstensgard informed the board about the ACOE's upcoming Duxby Levy inspection. Representatives from the ACOE reported that the RRWD is responsible for maintaining the elevation of the Duxby Levy.

**Budget Hearing:**

At 9:00 am, Manager Wensloff made a **motion** to open the budget hearing. The motion was seconded by Manager Schmalz and passed unanimously. The RRWD did not receive any public comment regarding the budget. Manager Wensloff made a **motion** to close the public hearing, it was seconded by Manager Diesen, and carried unanimously.

Administrator Halstensgard presented the attached resolution for the district to levy an ad valorem tax in the amount of .048 percent of the estimated market value.

Manager Carriere made a **motion** to adopt the Administrative Budget for 2019. The motion was seconded by Manager Diesen and passed unanimously.

## **ADMINISTRATIVE BUDGET**

	<b>2019</b>
Salaries & Benefits	\$ 145,000.00
Manager's per diem and expenses	\$ 10,000.00
Dues & registrations	\$ 3,000.00
Engineering	\$ 4,000.00
Legal & other professional services	\$ 15,000.00
Real estate taxes	\$ 13,000.00
Rent & utilities	\$ 7,000.00
Insurance	\$ 11,000.00
Telephone & internet	\$ 2,000.00
Office supplies & misc	\$ 9,000.00
Cap. Outlay & building maintenance	\$ 9,000.00
Stream gaging	\$ 12,000.00
RRWD projects / maintenance	\$ 10,000.00
	<b>\$ 250,000.00</b>

The board was presented with the attached ditch levy resolution.

The board was presented with attached Red River Water Management Board resolution.

### **PROJECT UPDATES:**

The board briefly discussed options and concerns regarding the Duxby Levy.

Roseau Lake:

- Engineer Dalager updated the board regarding the alternatives. Reinforcing that the project is primarily an NRE enhancement. Benefits would be mainly be realized downstream during frequent events without impacting adjacent landowners.
- The Alternatives Committee recommended to the Project Team that alternatives 1 and 2A be carried forward. The Project Team determined that alternatives 1 and 2A should be brought before the board.
- Wildlife Supervisor Prachar commented that during a conference call with DNR divisions there was some confusion on using structures for both inlet and outlet. It is their opinion that alternative 2A allows for better control for bounce in Roseau Lake.
- There was discussion regarding easement costs, the pros and cons of each alternative, land use, project costs, impacts, and examination of acre inundation with each alternative.
- After lengthy discussion, Manager Carriere made a **motion** to carry alternative 2A forward. Manager Diesen seconded the motion. The motion passed with Managers Carriere, Diesen, and Wensloff in favor of; Manager Schmalz opposing.

#### Whitney Lake:

- Administrator Halstensgard updated the board regarding the NRCS. The RRWD continues to wait for payment on a reimbursement request and comments regarding CP#4. Keith Weston submitted a letter on behalf of the watershed stating the importance of the process moving forward.
- Soil boring will be taking place in the near future. HDR will accept the bid for the low bid on the project. The RRWD will send letters to the pertinent landowners.
- There is an upcoming auction of land within the Whitney Lake Project footprint.

#### Beltrami Island State Forest:

- The Project Team recommended that Houston Engineering do survey work on the ditches coming out of the area with permission from Roseau County.
- The Project Team discussed expanding the area to Hay Creek which would require an amendment to the current grant agreement.
- After board discussion, Manager Wensloff made a **motion** to survey ditches coming out of Beltrami. The motion did not include the expansion of the Hay Creek area. Manager Schmalz seconded the motion which passed unanimously.

#### NEW BUSINESS:

##### Duxby quotes:

- Three companies submitted quotes for the Duxby outlet ditch repair.
- Manager Wensloff made a **motion** to go with the low quote by Halvorson Sand and Gravel. Manager Schmalz seconded the motion which passed unanimously.

#### PERMITS:

- Mr. Magnusson submitted a permit to install traps on two side water inlets that were installed on WD3 Lat2 as part of a Clean Water Project in 2013-2014. The culverts are 18” and 24” located on the Sibernagel property. The permit application was signed by Mr. Sibernagel. Manager Carriere made a **motion** to approve permit #18-12 ( I. Magnusson). Manager Schmalz seconded the motion which passed unanimously.
- Mr. Brateng submitted a permit to install an 18” sidewater inlet with a trap to prevent backflows into his farmyard. Manager Wensloff made a **motion** to approve permit #18-14 (T. Brateng) the motion was seconded by Manager Carriere and passed unanimously.
- Mr. Magnusson submitted a permit to install a culvert with trap outletting into SD51 in the western portion of the lake bottom , on the south bank of where the cutoff channel and the ‘oxbow’ reconnect. Manager Braaten abstained from discussion and turned the chair over to Vice-Chair Wensloff. Vice-Chair Wensloff called for a motion. Manager Diesen made a **motion** to table permit #18-17. The motion was seconded by Manager Schmalz and passed unanimously. The chair was turned back to Chairman Braaten.
- Administrator Halstensgard submitted an application to install a culvert along her driveway ditch to access a portion of her property confined between her neighbor’s driveway and her own. Manager Wensloff made a **motion** to approve permit #18-18 (T.Halstensgard). The motion was seconded by Manager Carriere and passed unanimously.

**REPORTS:**

Administrator:

- A Certificate of Deposit will reach its maturity date on October 1, 2018. Following board direction, the maturity dates for certificates will be staggered so they will not have similar maturity dates. A **motion** was made by Manager Carriere and seconded by Manager Schmalz to stager the investment as previously outlined for the October 1, 2018 certificate. The motion passed unanimously.

Red board:

- Sand Hill Watershed submitted a letter withdrawing from the RRWMB.

Specialist:

- The watershed received a quote for brushing along the Dip-Dip Road to address landowner concerns. Manager Wensloff made a **motion** to hire NW Concrete to brush the one-mile portion. Manager Schmalz seconded the motion which passed unanimously.
- RRWD will have to make restitution for .32 acres of crop damage during the SD51 sediment reduction project. It was the direction of the board to ask the landowner for the average yield and pay accordingly.
- A landowner ditched along a township road without a permit. The board directed Specialist McCormack to talk with the landowner.
- Another landowner constructed an unpermitted berm on his field edge. The board directed Specialist McCormack to talk with the landowner.
- The board discussed weed issues in the Hay Creek Corridor.

**Whitney Lake:**

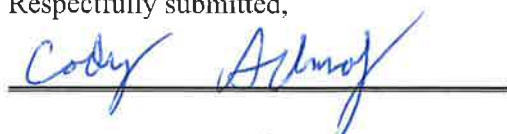
There was board discussion on an upcoming auction of land in the Whitney Lake Project area. The board heard comment from Engineer Dalager on which tracts of land may be most beneficial for the project. Manager Wensloff made a **motion** to close the meeting at 11:37 am as per the attached resolution. The motion was seconded by Manager Carriere and passed unanimously.

The meeting was reopened at 12:10 pm following a **motion** made by Manager Wensloff. Manager Carriere seconded the motion which passed unanimously.

Administrator Halstensgard read the attached resolution to the board.

A **motion** to adjourn was made at 12:15 pm by Manager Diesen and seconded by Manager Schmalz Motion carried unanimously.

Respectfully submitted,



Cody Schmalz, Secretary



Tracy Halstensgard, Administrator

RRWD Checkbook Balance as of August 31, 2018	\$320,191.92
RRIW Checkbook Balance as of August 31, 2018	\$4,786.74
<b>Receipts:</b>	
BSB from CD# 50002373	\$137,652.38
Volstead Land Settlement --	\$17.00
Public Waters Work Permit (Comstock) Reimbursement	\$150.00
Interest --	\$47.51
<b>Total:</b>	<b>\$137,866.89</b>
<b>Bills:</b>	
Tracy Halstensgard -- Salary and Insurance	\$4,748.98
Tracy Halstensgard -- Mileage	\$74.12
Torin McCormack -- Salary and Insurance	\$5,069.98
Torin McCormack -- Mileage / Personal Equipment	\$360.90
Tracy Bergstrom -- Wages and Insurance	\$2,777.06
Jason Braaten -- Per Diem and Expenses	\$325.01
LeRoy Carriere -- Per Diem and Expenses	\$205.78
Carter Diesen -- Per Diem and Expenses	\$173.41
Cody Schmalz -- Per Diem and Expenses	\$242.08
Tony Wensloff -- Per Diem and Expenses	\$149.42
Internal Revenue Service -- Withholding	\$4,129.94
Minnesota Department of Revenue -- Withholding	\$749.00
PERA -- Employer / Employee Contribution	\$1,961.76
Ace Hardware -- Shop Vac	\$118.17
Alive Outdoors -- hardware	\$3.27
At Your Service Lawn Care -- Mowing: Inv 117	\$80.16
Cardmember Services -- Office Equipment, GPS Software Update	\$1,908.05
City Of Roseau -- Utilities (Both offices)	\$385.96
City Of Roseau -- Variance for signage	\$50.00
Marco -- Copier Maintenance: Audit of overage (930.78) Contract (250.38)	\$1,181.16
Minnesota Energy -- Natural Gas (both)	\$33.48
Northern Resources Cooperative -- gas	\$115.09
Patrick Moren Law Office -- Legal Fees	\$2,164.75
Personnel Concepts -- Labor Law Poster	\$23.90
Postmaster -- Stamps	\$100.00
Roseau County -- Hazardous Waste Disposal	\$7.00
Roseau Times-Region -- Buffer Rule / Budget Hearing	\$234.45
Sjoberg Cable -- Int/phone --	\$174.91
Super One Foods --	\$43.62
Bemidji Pioneer -- Legal Ad Budget Hearing / Buffer	\$347.50
Brinkman Construction, INC. -- Final Change Order PMT	\$919.60
David Dahlgren -- SWI	\$8,176.00
Kittson County Enterprise -- Legal Ad Budget Hearing / Buffer	\$110.88
Kelly Christianson -- SWI	\$6,339.00

Halverson Sand and Gravel -- Norland Exterior Ditch Cleaning / utility ditch	\$2,187.00
HDR -- Whitney Lake -- 07.01.18 to 08.04.18 -- Task Order #1	\$29,485.31
HDR -- RRWMA -- 07.01.18 to 08.04.18-- Construction Admin	\$2,060.56
HDR -- General Services --07.01.18 o 08.04.18 -- Duxby Designs	\$6,313.31
HDR -- Roseau Lake -- 07.01.18 to 08.04.18 -- Task Order #1 Final Engineer	\$34,641.43
HDR -- Roseau Lake -- 05.27.18 to 06.30.18 -- Cultural Resources Survey	\$32,678.32
HDR -- Roseau Lake -- 07.01.18 to 08.04.18 -- Cultural Resources Survey	\$5,465.36
HDR -- WRAPS -- 04.01.18 to 06.30.18	\$5,248.70
HEI -- Roseau Lake Water Quality --	\$688.00
Kofstad Signs -- Building and door signage	\$775.00
Kvien Ag, Inc. -- Additional Norland Mowing	\$562.50
LMICT -- Insurance	\$4,632.00
R & Q Contracting -- SD51 (\$28340) Ross Culvert (\$3779.05) Duxby (\$1315)	\$33,434.05
Warren Sheaf -- Buffer Rule / Budget Hearing	\$180.00
Total:	\$201,835.93

ROSEAU RIVER WATERSHED DISTRICT  
ROSEAU, MINNESOTA 56751

Resolution passed at the September 5, 2018 meeting of the Roseau River Watershed District Board of Managers:

Upon motion by Manager Wensloff, seconded by Manager Diersen, the following resolution was passed with 5 in favor and 0 opposed.

BE IT RESOLVED BY THE BOARD OF MANAGERS OF THE ROSEAU RIVER WATERSHED DISTRICT:

That the Roseau River Watershed District does hereby levy the below stated amounts to each ditch system as listed for the year 201~~7~~<sup>8</sup> and shall be collectible with the taxes recovered in the year 2018<sup>9</sup>.

**10% levy be made on Ditch System WD-3**

**20% levy be made on Ditch System 8.**

**25% levy be made on Ditch System 16.**

**\$ 2,500.00 levy be made on West Interceptor**

A one percent assessment on redetermined benefits be made on State Ditch 51.

Approximate figures are:	Roseau County	\$88,177.69
	Kittson County	\$ 1,155.02
	Marshall County	\$ 641.92
	Beltrami County	\$ 899.65
	Lake of the Woods County	\$ 648.60

Dated this 5<sup>th</sup> day of September, 2018.

ROSEAU RIVER WATERSHED DISTRICT

By Jason Braaten, it's Chairman  
Jason Braaten



ROSEAU RIVER WATERSHED DISTRICT  
ROSEAU, MINNESOTA 56751

Resolution passed at the September 5, 2018 meeting of the Roseau River Watershed District Board of Managers, upon motion by Manager Diesen, seconded by Manager Carriere, the following resolution passed with 5 in favor and 0 opposed.

“BE IT RESOLVED BY THE BOARD OF MANAGERS OF THE ROSEAU RIVER WATERSHED DISTRICT:

WHEREAS, the Roseau River Watershed District is a member of the Red River Watershed Management Board and pursuant to a resolution duly adopted, the Board of Managers executed a Joint Powers Agreement, and

WHEREAS, the resolution adopted by the Red River Watershed Management Board under the date of July 17, 2018, said Management Board, pursuant to the provision of Chapter 162, Section 1, 1976 Session Laws, and in accordance with the provisions of the Joint Powers Agreement, did direct this Watershed District to levy an ad valorem tax in the amount of .0004836 percent of the estimated market value. This levy to be made on all taxable property within their district in accordance with the provisions of Minnesota 1976 Sessions Law, Chapter 162, Section 1; as amended by laws of 1982, Chapter 474, Section 1; Laws 1983, Chapter 338; and laws of 1989 First Special Session, Chapter 1, Article 5, Section 45 and

WHEREAS: the Board of Managers of the Roseau River Watershed District are desirous of cooperation and fulfilling this obligation,

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF MANAGERS OF THE ROSEAU RIVER WATERSHED DISTRICT:

That the Roseau River Watershed District does hereby levy and ad valorem tax in the amount of .0004836 percent of the estimated market value of all taxable property within this district and within the counties set forth in Chapter 162, 1976 Session Laws.

That said levy shall be for the year 2018 and shall be collectible with the taxes recovered in the year 2019.

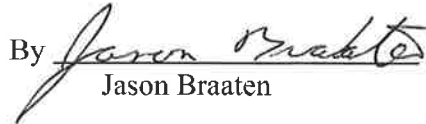
That the County Auditor of the County of Roseau, Kittson, Marshall, Beltrami, and Lake of the Woods shall make said levy in accordance with the provisions of the Minnesota Watershed Act, Chapter 112, chapter 162 (1976) the Joint Powers Agreement and Legislative direction.

That all proceeds of said levy shall be forwarded by the County Auditor of the County of Roseau, Kittson, Marshall, Beltrami, and Lake of the Woods to the Treasurer of the Roseau River Watershed District.

That the Treasurer of the Roseau River Watershed District shall retain one half of the proceeds of said levy, and the proceeds from the remaining on half shall be transmitted to Robert L Sip, Executive Director, Red River Watershed Management Board, 11 5<sup>th</sup> Avenue East, Suite B, Ada, MN 56510 and shall be credited to the general fund of the Red River Watershed Management Board.”

Dated this 5<sup>th</sup> day of September 2018.

ROSEAU RIVER WATERSHED DISTRICT

By  it's Chairman  
Jason Braaten

## RESOLUTION

WHEREAS, the Roseau River Watershed District (RRWD) is in the development stages of a plan to address flooding in the Whitney Lake Sub-Watershed in Northwest Minnesota (Whitney Lake Project).

WHEREAS, a project team (stakeholders), comprised of landowners, federal, tribal, state and local government representatives, RRWD staff and managers have identified four strategic solutions; drainage, protection, retention, and diversion.

WHEREAS, the proposed project will be benefited by the purchase of agricultural real property which is located within the project area.

WHEREAS, the project area is addressed in the RRWD's over-all plan.

WHEREAS, RRWD has appointed a project engineer to prepare a Preliminary Engineer's Report to assist in determining the feasibility of the project.

WHEREAS, the project has a beneficial Red River Watershed Management Board (RRWMB) STAR Value which includes Red River benefits.

WHEREAS, the project is following the Regional Conservation Partnership Program (RCPP) planning process and said project meets the RRWMB's goals and objectives.

WHEREAS, there is consensus based landowner support for the conceptual alternatives.

WHEREAS, there is site specific area real property available by auction with the estimated cost of said real estate to be between ~~\$300,000~~ and ~~\$400,000~~; the purchase of which would benefit the project.      \$ 500,000      \$ 600,000

WHEREAS, there is funding available for the purchase of the subject real property.

WHEREAS, this matter was fully discussed by the Managers of the Roseau River Watershed District.

NOW THEREFORE, be it resolved by the Managers of the Roseau River Watershed District as follows:

1. That the RRWD finds that it is beneficial to purchase the subject real property for the advancement of the Whitney Lake Project for the reasons set forth above.
2. Be it further resolved, that the RRWD may submit a sealed bid pursuant to the terms of the auction for the subject real property in an amount to be determined by the Board of Managers.

The Motion for a Resolution was made by Manager Wensloff, seconded by Manager Carriere, and upon a vote being taken the following voted in favor: unanimously

The following Manager(s) abstained:

The following Manager(s) were absent:

ADOPTED BY THE ROSEAU RIVER WATERSHED DISTRICT BOARD OF MANAGERS ON SEPTEMBER 5<sup>th</sup>, 2018.

Jason Braaten  
Jason Braaten, Chairman

Cody Schmalz  
Cody Schmalz, Secretary

## **RESOLUTION CLOSING BOARD MEETING**

WHEREAS, the Minnesota Open Meeting Law, Minn. Stat. § 13D.05, subd. 3(c) (3) states that:

“A public body may close a meeting:

To develop or consider offers or counteroffers for the purchase or sale of real or personal property.

Before holding a closed meeting under this paragraph, the public body must identify on the record the particular real or personal property that is the subject of the closed meeting. The proceedings of a meeting closed under this paragraph must be tape recorded at the expense of the public body. The recording must be preserved for eight years after the date of the meeting and made available to the public after all real or personal property discussed at the meeting has been purchased or sold or the governing body has abandoned the purchase or sale. The real or personal property that is the subject of the closed meeting must be specifically identified on the tape. A list of members and all other persons present at the closed meeting must be made available to the public after the closed meeting. If an action is brought claiming that public business other than discussions allowed under this paragraph was transacted at a closed meeting held under this paragraph during the time when the tape is not available to the public, Section 13D.03, subdivision 3, applies.

An agreement reached that is based on an offer considered at a closed meeting is contingent on approval of the public body at an open meeting. The actual purchase or sale must be approved at an open meeting after the notice period required by statute or the governing body’s internal procedures, and the purchase price or sale price is public data.”

WHEREAS, the Roseau River Watershed District will be developing or considering offers or counteroffers for the purchase of the following described real property:

PIN	TaxName	Acres	Township	lglSection	Legal
70049300	SOLBERG RICHARD A	20	DIETER	24	N1/2 NW NW; SECTION 24 TOWNSHIP 163 RANGE 41
70046000	SOLBERG RICHARD A	114.35	DIETER	23	N1/2 N1/2 NE; N1/2 NW LESS W 283.7 FT OF S 208.7 FT AND LESS N 450 FT OF W 450 FT OF NE NW; SECTION 23 TOWNSHIP 163 RANGE 41
200016600	SOLBERG RICHARD A	40	MOOSE	09	SW SW; SECTION 9 TOWNSHIP 162 RANGE 42
200027100	SOLBERG RICHARD A	120	MOOSE	15	W1/2 SW, SW NW; SECTION 15 TOWNSHIP 162 RANGE 42
200028000	SOLBERG RICHARD A	640	MOOSE	16	ALL OF SEC 16 TOWNSHIP 162 RANGE 42
200035800	SOLBERG RICHARD A	160	MOOSE	20	NE; SECTION 20 TOWNSHIP 162 RANGE 42
200036700	SOLBERG RICHARD A	40	MOOSE	21	SW SW; SECTION 21 TOWNSHIP 162 RANGE 42
200037600	SOLBERG RICHARD A	360	MOOSE	21	NW, NW SW, E1/2 SW, W1/2 SE; SECTION 21 TOWNSHIP 162 RANGE 42
200050200	SOLBERG RICHARD A	40	MOOSE	28	NW NE W OF SD #20, NE NW LESS THAT PART LYING E OF SD #20; SECTION 28 TOWNSHIP 162 RANGE 42

On September 5, 2018, commencing at 8:00 a.m., at the Roseau River Watershed District Board office located at 714 6th Street Southwest, Roseau, Minnesota; and

BE IT RESOLVED by the Roseau River Watershed District Board as follows:

1. The Roseau River Watershed District Board hereby closes this meeting pursuant to Minn. Stat. § 13D.05, subd. 3(c)(3) to develop or consider offers or counteroffers for purchase of the above described real property;
2. That any agreement reached based upon an offer considered at this meeting shall be contingent upon approval of the Roseau River Watershed District Board at an open meeting and the actual purchase or sale must be approved at an open meeting after the notice period required by statute or the Roseau River Watershed District Board's internal procedures and the purchase price or sale price as public data.

Dated this 5<sup>th</sup> day of September, 2018.

  
 \_\_\_\_\_  
 Chairman

  
 \_\_\_\_\_  
 Secretary

ROSEAU RIVER WATERSHED DISTRICT  
ROSEAU, MINNESOTA 56751

Resolution passed at the September 5, 2018 meeting of the Roseau River Watershed District Board of Managers:

Upon motion by Manager Diesen seconded by Manager Wensloff the following resolution passed with 5 in favor and 0 opposed.

“BE IT RESOLVED BY THE BOARD OF MANAGERS OF THE ROSEAU RIVER WATERSHED DISTRICT:

Pursuant to M.S.A. § 103D.905 Subd. 3, the Roseau River Watershed District does hereby levy an ad valorem tax of ~~.0048~~ percent of the total market value of real estate and personal property (not to exceed \$250,000) of all taxable property within the district in the counties of Roseau, Kittson, Marshall, Beltrami, and Lake of the Woods, as set forth in the above mentioned Chapter. Such funds are to be used for general administration expenses and for the construction and maintenance of projects of common benefit to the District.”

Dated this 5th day of September, 2018.

ROSEAU RIVER WATERSHED DISTRICT

By Jason Braaten, it's Chairman  
Jason Braaten



## Buffer Rule

Adopted September 5, 2018

### 1.0 Policy

It is the policy of the Board of Managers to:

(a) Provide for riparian vegetated buffers and water quality practices to achieve the following purposes:

- (1) Protect state water resources from erosion and runoff pollution;
- (2) Stabilize soils, shores and banks; and
- (3) Protect or provide riparian corridors.

(b) Coordinate closely with the District's landowners, soil and water conservation districts and counties, and utilize local knowledge and data, to achieve the stated purposes in a collaborative, effective and cost-efficient manner.

(c) Integrate District authorities under Minnesota Statutes §§103D.341 and 103F.48 to provide for clear procedures to achieve the purposes of the rule.

### 2.0 Definitions

BWSR: Minnesota Board of Water and Soil Resources.

Buffer: An area consisting of perennial vegetation, excluding invasive plants and noxious weeds.

Buffer law: Minnesota Statutes §103F.48, as amended.

Commissioner: Commissioner of the Minnesota Department of Natural Resources.

Cultivation farming: Practices that disturb vegetation roots and soil structure, or involve vegetation cutting or harvesting that impairs the viability of perennial vegetation.

Drainage authority: The public body having jurisdiction over a drainage system under Minnesota Statutes chapter 103E.



NRCS: U.S. Department of Agriculture, Natural Resource Conservation Service.

Operator: A party other than a landowner that directly or indirectly controls the condition of riparian land subject to a buffer under the rule.

Person: Individual or entity.

Public water: As defined at Minnesota Statutes §103G.005, subdivision 15, and included within the public waters inventory as provided in Minnesota Statutes §103G.201.

Riparian protection: A water quality outcome for the adjacent waterbody equivalent to that which would be provided by the otherwise mandated buffer, from a facility or practice owned or operated by a municipal separate storm sewer system (MS4) permittee or subject to a maintenance commitment in favor of that permittee at least as stringent as that required by the MS4 general permit in effect.

RRWD: Roseau River Watershed District

Shoreland standards: Local shoreland standards as approved by the Commissioner or, absent such standards, the shoreland model standards and criteria adopted pursuant to Minnesota Statutes §103F.211.

Structure: An above-ground building or other improvement that has substantial features other than a surface.

SWCD: Soil and Water Conservation District.

### **3.0 Data sharing/management**

- 3.1 The District may enter into arrangements with an SWCD, a county, the BWSR and other parties with respect to the creation and maintenance of, and access to, data concerning buffers and alternative practices under this rule.
- 3.2 The District will manage all such data in accordance with the Minnesota Data Practices Act and any other applicable laws.

### **4.0 Vegetated Buffer Requirement**

- 4.1 Except as subsection 4.3 or 4.4 may apply, a landowner must maintain a buffer on land that is adjacent to a waterbody identified and mapped on the buffer protection map established and maintained by the Commissioner pursuant to the buffer law, or adjacent to a watercourse reach listed on Addendum A to this rule.
  - 4.1.1 For a public water, the buffer must extend landward to the further of:
    - (a) a 50-foot average width and 30-foot minimum width; or
    - (b) the landward edge of the shore impact zone pursuant to the state shoreland standards and criteria adopted by the Commissioner under Minnesota Statutes §103F.211.
  - 4.1.2 For a public drainage system, the buffer must be of a 16.5-foot minimum width.

- 4.1.3 The buffer is measured from the top or crown of bank. Where there is no defined bank, measurement must be from the edge of the normal water level. The District will determine normal water level in accordance with BWSR guidance. For a public drainage system, the District will determine top or crown of bank in the same manner as for measuring the perennially vegetated strip under Minnesota Statutes §103E.021.
- 4.1.4 A buffer may not be used for cultivation farming, but may be grazed, mowed, hayed or otherwise harvested, provided permanent growth of perennial vegetation is maintained.
- 4.2 The requirement of subsection 4.1  
  
Applies to all public drainage ditches within its boundary for which it is the drainage authority.
- 4.3 The requirement of subsection 4.1 does not apply to land that is:
  - 4.3.1 Enrolled in the federal Conservation Reserve Program;
  - 4.3.2 Used as a public or private water access or recreational use area including stairways, landings, picnic areas, access paths, beach and watercraft access areas, provided the area in such use is limited to what is permitted under shoreland standards or, if no specific standard is prescribed, what is reasonably necessary;
  - 4.3.3 Used as the site of a water-oriented structure in conformance with shoreland standards or, if no specific standard is prescribed, what is reasonably necessary;
  - 4.3.4 Covered by a road, trail, building or other structure;
  - 4.3.5 Regulated by a national pollutant discharge elimination system/state disposal system (NPDES/SDS) municipal separate storm sewer system, construction or industrial permit under Minnesota Rules, chapter 7090, and the adjacent waterbody is provided riparian protection for the subject property;
  - 4.3.6 Part of a water-inundation cropping system; or
  - 4.3.7 In a temporary non-vegetated condition due to drainage tile installation and maintenance, alfalfa or other perennial crop or plant seeding, or a construction or conservation project authorized by a federal, state or local government unit.
- 4.4 Land subject to subsection 4.1 that is used for cultivation farming may meet the requirement of that subsection by means of an alternative riparian water quality practice; or combination of structural, vegetative and management practices, based on the NRCS Field Office Technical Guide, common alternative practices adopted and published by the board, other practices approved by the board, or practices based on local conditions approved by the local soil and water conservation district that are consistent with the Field Office Technical Guide, as provided in section 4.1.
  - 4.4.1 An alternative practice may be approved by means of a validation of compliance issued by the SWCD. The approval must find that the proposed practice provides water quality protection comparable to the buffer protection of subsection 4.1.

- 4.4.2 A landowner may not rely on an alternative practice for compliance with subsection 4.1 unless the landowner holds an SWCD-issued validation of compliance for the alternative practice and the landowner has implemented the practice and is maintaining it as the validation stipulates.
- 4.5 A landowner or authorized agent or operator of a landowner may, or for the purpose of paragraph 4.4.2 must, submit an application for a validation of compliance to the SWCD pursuant to administrative procedures prescribed by the SWCD. The application may request: (a) a finding that a buffer satisfies subsection 4.1; (b) a determination as to the applicability of an exemption listed in subsection 4.3; or (c) approval of an alternative practice pursuant to subsection 4.4. An SWCD validation of compliance will be conclusive for the purpose of subsection 7.2. In making a finding of compliance with this rule for the purpose of subsection 7.1, the District will give substantial weight to an SWCD validation of compliance. Any District compliance determination contrary to the SWCD validation will rest on specific findings justifying the contrary determination.

## 5.0 Action for Noncompliance

- 5.1 When the District observes potential noncompliance or receives a third-party complaint from a private individual or entity, or from another public agency, it will consult with the SWCD to determine the appropriate course of action to confirm compliance status. This may include communication with the landowner or his/her agents or operators, communication with the shoreland management authority, inspection or other appropriate steps necessary to verify the compliance status of the parcel. On the basis of this coordination, the SWCD may issue a notification of noncompliance to the District. If the SWCD does not transmit such a notification, the District will not pursue a compliance or enforcement action under Minnesota Statutes §103F.48 and paragraph 7.2 but may pursue such an action under the authority of Minnesota Statutes §103D.341 and paragraph 7.1.
- 5.2 On receipt of an SWCD notification of noncompliance, or if acting solely under authority of Minnesota Statutes §103D.341, the District will issue a corrective action list and practical schedule for compliance to the landowner. The District may inspect the property and will consult with the SWCD, review available information and exercise its technical judgment to determine appropriate and sufficient corrective action and a practical schedule for such action. The District will maintain a record establishing the basis for the corrective action that it requires.
- 5.2.1 The District will issue the corrective action list and schedule to the landowner of record and to any operator that, in its judgment, is a responsible party. The landowner and any other named responsible party each may be the independent subject of enforcement liabilities under subsections 7.1 and 7.2. The District may deliver or transmit the list and schedule by any means reasonably determined to reach the responsible party or parties and will document receipt. However, a failure to document receipt will not preclude the District from demonstrating receipt or knowledge in an enforcement proceeding under section 7.0.
- 5.2.2 The corrective action list and schedule will identify the parcel of record to which it pertains and the portion of that parcel that is alleged to be noncompliant. It will describe corrective actions to be taken, a schedule of intermediate or final dates for correction, a compliance standard against which it will judge the corrective action, and a statement that failure to respond to this list and schedule will result in an enforcement action. The District will provide a copy of the list and schedule to the BWSR.

- 5.2.3 At any time, a landowner may supply information to identify an additional responsible party, and any named responsible party may supply information as evidence that it is not responsible. In addition, at any time a responsible party may supply information in support of a request to modify a corrective action or the schedule for its performance. On the basis of any such submittal or at its own discretion, the District may modify the corrective action list or schedule and deliver or transmit the modified list and schedule in accordance with paragraph 6.3.1 or may advise the responsible party or parties in writing that it is not pursuing further compliance action.
- 5.2.4 The corrective action list and schedule for compliance may be modified in accordance with subsection 6.2, to extend the compliance timeline for a modification that imposes a substantial new action or significantly accelerates the completion date for an action.
- 5.2.5 At any time after the District has issued the list and schedule, a landowner, or authorized agent or operator of a landowner, may request that the SWCD issue a validation of compliance with respect to property for which the list and schedule has been issued. On District receipt of the validation: (a) the list and schedule will be deemed withdrawn for the purpose of subsection 7.2, and the subject property will not be subject to enforcement under that subsection; and (b) the subject property will not be subject to enforcement under subsection 7.1 unless the District makes a contrary compliance determination under subsection 4.5.
- 5.2.6 A corrective action list and schedule is not considered a final decision subject to appeal. A responsible party objecting to a finding of noncompliance may apply for a validation of compliance under subsection 4.5. An objection to a finding of noncompliance, or to any specified corrective action or its schedule, is reserved to the responsible party and may be addressed in an enforcement proceeding under section 7.0.

## 6.0 Enforcement

- 6.1 Under authority of Minnesota Statutes §§103D.545 and 103D.551, the District may seek remedies for noncompliance with section 4.0 against any responsible party including but not limited to: (a) administrative compliance order; (b) administrative order requiring reimbursement of District compliance costs under Minnesota Statutes §103D.345 and/or an escrow for same; (c) district court remedy including injunction, restoration or abatement order, authorization for District entry and/or order for cost recovery; and (d) referral to county attorney for criminal misdemeanor prosecution.
- 6.2 The District may issue an administrative order imposing a monetary penalty against a landowner for noncompliance with the corrective action list and schedule, as provided under paragraphs 6.2.1 and 6.2.2. The penalty will continue to accrue until the noncompliance is corrected as provided in the corrective action list and schedule. In addition, a noncompliance that is not corrected within the timelines provided in the corrective action notice may be considered a repeat violation and an additional notice may be issued as provided in subsection 6.2.2.
- 6.2.1 The penalty for a landowner on a single parcel that previously has not received an administrative penalty order issued by the District shall be:
- i. \$0 for 11 months after issuance of the Corrective Action Notice or during the schedule issued for taking correction actions, whichever is greater;
  - ii. Up to \$200 per parcel per month for the first six (6) months (180 days) following the time period in i; and
  - iii. Up to \$500 per parcel per month after six (6) months (180 days) following the time period in ii.

6.2.2 The penalty for a landowner on a single parcel that previously has received an administrative penalty order issued by the District shall be:

- i. Up to \$200 per parcel per day for 180 days after issuance of the subsequent Corrective Action Notice; and
- ii. Up to \$500 per parcel per day for after 180 days following the time period in i.

6.2.3 Ongoing penalty assessment. Any penalty assessed under this section shall continue until the corrective action notice has been satisfied.

6.2.4 **Penalty Determination.** For administrative penalties imposed by the RRWD, the RRWD shall determine the severity of the noncompliance, intentional nature of noncompliance, and frequency of noncompliance in determining the amount of violation. The amount of an APO will be based on considerations including the extent, gravity and willfulness of the noncompliance; its economic benefit to the responsible party; the extent of the responsible party’s diligence in addressing the violation; any noncompliance history; the public costs incurred to address the noncompliance; and other factors as applicable. Upon appropriate findings, the RRWD shall use the following table to determine a penalty amount:

<b>Nature of Violation</b>	<b>Penalty</b>
• Initial noncompliance (initial term)	\$100
• Initial noncompliance (subsequent term)	\$300
• Subsequent initial noncompliance (new parcel, initial term)	\$150
• Subsequent initial noncompliance (new parcel, subsequent term)	\$400
• Repeat noncompliance (same parcel, initial term)	\$150
• Repeat noncompliance (same parcel, subsequent term)	\$400

6.3 The administrative order will state:

- i. The facts constituting a violation of the buffer requirements;
- ii. The statute and/or rule that has been violated;
- iii. Prior efforts to work with the landowner to resolve the violation;
- iv. For an administrative penalty order, the amount of the penalty to be imposed, the date the penalty will begin to accrue, and the date when payment of the penalty is due; and
- v. The right of the responsible party to appeal the order.

6.4 A copy of the APO must be sent to the SWCD and BWSR.

6.5 An administrative order under subsection 7.1 or 7.2 will be issued after a compliance hearing before the District Board of Managers. The landowner and any other responsible parties will receive written notice at least two weeks in advance of the hearing with a statement of the facts alleged to constitute noncompliance and a copy or link to the written record on which District staff intends to rely, which may be supplemented at the hearing. A responsible party may be represented by counsel, may present and question witnesses, and may present evidence and testimony to the Board of Managers. The District will make a verbatim record of the hearing.

- 6.6 After a hearing noticed and held for consideration of an administrative penalty or other administrative order, the Board of Managers may issue findings and an order imposing any authorized remedy or remedies.
- 6.6.1 The Board of Managers findings and order will be delivered or transmitted to the landowner and other responsible parties. An administrative penalty order may be appealed to the BWSR in accordance with Minnesota Statutes §103F.48, subdivision 9, and will become final as provided therein. The District may enforce the order in accordance with Minnesota Statutes §116.072, subdivision 9. Other remedies imposed by administrative order may be appealed in accordance with Minnesota Statutes §103D.537.
- 6.6.2 The Board of Managers may forgive an administrative penalty, or any part thereof, based on diligent correction of noncompliance following issuance of the findings and order and such other factors as the Board finds relevant.
- 6.7 Absent a timely appeal pursuant to paragraph 7.5.2, an administrative penalty is due and payable to the District as specified in the administrative penalty order.
- 6.8 A landowner agent or operator may not remove or willfully degrade, wholly or partially, a riparian buffer or alternative practice, unless the agent or operator has obtained a signed statement from the landowner stating that written permission for the work has been granted by the District or that the buffer or alternative practice is not required as indicated in a validation of compliance issued by the SWCD. A prohibited action under this paragraph is a separate violation of this rule that is subject to remedies under both subsections 6.1 and 6.2.
- 6.9 Nothing within this rule diminishes or otherwise alters the District's authority under Minnesota Statutes, chapter 103E with respect to any public drainage system for which it is the drainage authority, or any buffer strip that is an element of that system.

## **7.0 Effect of Rule**

- 7.1 If any section, provision or portion of this rule is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the rule is not affected thereby.
- 7.2 Any provision of this rule, and any amendment to it, that concerns District authority under Minnesota Statutes §103F.48 is not effective until an adequacy determination has been issued by the BWSR. Authority exercised under Minnesota Statutes chapter 103D does not require a BWSR adequacy determination.