

# RED LAKE WATERSHED DISTRICT

October 27, 2022

9:00 a.m.

## Agenda

9:00 a.m.	Call to Order	Action
	Review and approve agenda	Action
	Requests to appear	Information
	October 13, 2022 Minutes	Action
	Financial Report dated October 26, 2022	Action
	Black River Impoundment, RLWD Project No. 176 Knott CRP Contract Reimbursement	Information
	Ring Dikes	
	Sorum Ring Dike, RLWD Proj. No. 129AW-Final Pay Estimate	Action
	Nelson Ring Dike, RLWD Project No. 129AU-Final Pay Estimate	Action
	Knutson Dam, RLWD Project No. 50F	
	Change Order No. 2	Action
	Pay Estimate No. 1	Action
	Demarais Hanson Repair, RLWD Project No. 149-Pay Estimate No. 1	Action
	Thief River 1W1P, RLWD Project No 149A	Information
	Upper/Lower Red Lake 1W1P, RLWD Project No. 149C Memorandum of Agreement	Action
	Permits: No. 22226, 22230, 22234, 22239-22241	Action
	40 <sup>th</sup> Annual Red River Basin Land & Water Int. Summit Conference	Information
	Technology Update:	
	Desktop Scanner (2)	Info./Action
	Barracuda Backup Device	Information

Administrators Update	Information
Legal Counsel Update	Information
Managers' updates	Information
Adjourn	Action

UPCOMING MEETINGS

October 28, 2022	Thief River 1W1P Policy Committee Meeting, 9:00 a.m.
October 31, 2022	Clearwater River 1W1P Policy Committee Meeting, 9:00 a.m.
November 10, 2022	RLWD Board Meeting, 9:00 a.m.
November 11, 2022	Office Closed-Veterans Day
November 16, 2022	Red River Basin FDRWG Project Team Handbook, RLWD, 1:00
November 22, 2022	RLWD Board Meeting, 9:00 a.m. (change of date)
November 24-25, 2022	Office Closed-Thanksgiving Holiday
Nov. 29-Dec. 3, 2022	MAWD Annual Conference, Alexandria
January 17-19, 2023	40 <sup>th</sup> Annual Red River Basin Land & Water Int. Summit Conference

# DRAFT

RED LAKE WATERSHED DISTRICT  
Board of Manager's Minutes  
October 13, 2022

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: Managers: Gene Tiedemann, Terry Sorenson, Allan Page, Brian Dwight, Tom Anderson, Dale M. Nelson, and LeRoy Ose. Staff Present: Myron Jesme, Tammy Audette, and Legal Counsel, Delray Sparby.

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

The Board reviewed the September 22, 2022, minutes. Motion by Anderson, seconded by Page, to approve the September 22, 2022, Board meeting minutes. Motion carried.

The Board reviewed the Financial Report dated October 12, 2022. Motion by Dwight, seconded by Sorenson, to approve the Financial Report dated October 12, 2022, as presented. Motion carried. Staff member Ann Joppru noted that the current interest rate at American Federal Bank-Fosston increased to 1.5%.

Staff member Ann Joppru reviewed the General Fund Budget as of September 30, 2022.

Administrator Jesme stated that a Mud River Floodplain Access Project Team meeting was held at the District office on September 23<sup>rd</sup>. Local landowners were not able to attend due to harvest. An additional meeting with the landowners will be held in the near future to keep them informed of discussions held at the September 23<sup>rd</sup> meeting. Engineer Nate Dalager, HDR Engineering, updated the Board on the project concept. This area has a 220-mile drainage area, but very little evidence indicating what the system was like pre-settlement. Dalager discussed the goals of floodplain enhancement, to attempt to stop the sediment from settling in Agassiz National Wildlife Refuge, using upstream Best Management Practices (BMP). Manager Dwight discussed previous studies in the area completed by local SWCD offices. Jesme indicated that there is a Flood Damage Reduction (FDR) component of the project. A grant in the amount of \$30,000, was received from the FDR Work Group to assist with the project team process.

Due to the Spring flooding and shortage of local contractors, a one-year extension was requested for the Red Lake River 1W1P, RLWD Project No. 149 for the 2020 Grant.

Engineer Nate Dalager, HDR Engineering, Inc., and Staff member Corey Hanson discussed an erosion problem on Crescent Avenue in Crookston. Hanson indicated that large chunks of shoreline were falling into the Red Lake River, with engineers finding additional cracks going up the bank. Dalager completed an analysis of the unstable slope of the bank, noting that the area does not have soil strength. Dalager discussed a proposal to reduce the slope to 3:1, with the addition of riprap. Discussion was held on monitoring the area, and the potential of drilling

wells into the slope for monitoring purposes. Motion by Ose, seconded by Tiedemann, to proceed with surveying and design proposal for the Crescent Avenue Project, Red Lake River 1W1P, RLWD Project No. 149. Motion carried. Administrator Jesme indicated that District staff will assist in obtaining survey information.

At 9:30 a.m. President Nelson indicated that quote information was submitted to 19 contractors and only one quote was received for the State Ditch 83/Thief River Streambank Stabilization Project, Thief River 1W1P, RLWD Project No. 149A, located in Agdar Township, Marshall County, in the amount of \$123,100.00 from Quality Spray Foam LLC DBA Anderson Excavating. Motion by Tiedemann, seconded by Ose, to approve the low quote from Quality Spray Foam LLC DBA Anderson Excavating in the amount of \$123,100.00, for the State Ditch 83/Thief River Streambank Stabilization Project, Thief River 1W1P, RLWD Project No. 149A Motion carried.

The BWSR North Region Board approved the Clearwater River 1W1P, RLWD Project No. 149B at their recent meeting. The plan will now be presented to the full BWSR Board on October 26, 2022. Discussion was held on completing a Clearwater River Channel Stability Reconnaissance to gather data on various bank stabilization sites along the Clearwater River. The Board reviewed a proposal from Houston Engineering, Inc., to complete the Clearwater River Channel Stability Reconnaissance Report in the amount of \$4,890.00. Motion by Page, seconded by Sorenson, to authorize approval of the Services Agreement between the District and Houston Engineering, Inc., for a Clearwater River Channel Stability Reconnaissance, Clearwater River 1W1P, RLWD Project No. 149B. Motion carried.

Administrator Jesme indicated that he would submit a request to BWSR for an extension of the 2020 Grant for the Thief River 1W1P, RLWD Project No. 149A, due to the Spring flooding and shortage of local contractors.

Administrator Jesme reviewed information gathered by District staff for the 2022 FEMA Disaster Declaration. The Board reviewed information prepared by Houston Engineering, Inc., on damages to the Black River Impoundment and diversion ditches, RLWD Project No. 176 in the total amount of \$218,907.10.

The Board reviewed the final cost of the Larson Ring Dike, RLWD Project No. 129AV in the amount of \$48,072.32, which brings the amount of the landowner portion a credit in the amount of \$730.69. Motion by Tiedemann, seconded by Anderson, to approve finalizing out the Larson Ring Dike, RLWD Project No. 129AV, with reimbursement in the amount of \$730.69, to landowner Craig Larson. Motion carried.

The Board reviewed Pay Estimate No. 2 in the amount of \$32,691.21 to Paul Zavoral, Inc./Higher Ground for construction of the Sorum Ring Dike, RLWD Project No. 129AW. Motion by Ose, seconded by Dwight, to approve Payment Estimate No. 2 in the amount of \$32,691.21 to Paul Zavoral, Inc./Higher Ground for construction of the Sorum Ring Dike, RLWD Project No. 129AW. Motion carried.

Motion by Sorenson, seconded by Tiedemann, to approve the following individuals for construction of a ring dike around their property: Robert Fladeland, Rocksbury Township, Pennington County; RLWD Project No. 129X; Brian Bohl, Nesbit Township, Polk County; RLWD Project No. 129Y; and Terry Beich, located in Agder Township, Marshall County, RLWD Project No. 129Z. Motion carried.

Engineer Tony Nordby, Houston Engineering, Inc., stated that replacement of the structure on the Knutson Dam, RLWD Project No. 50F had been virtually completed, with the new structure in place and backfilled. During construction, the 48" aluminized outlet pipe was damaged by the contractor puncturing a hole in the pipe. After conversation with the contractor and supplier regarding the District's concerns for the repair of the culvert, the supplier, True North Steel, submitted a letter warranting the repair of the damages, which included a weld and zinc spray.

Quality Foam LLC dba/Anderson Excavating Inc. has started construction to the sloughing at the Demarais/Hanson Project, Red Lake River 1W1P, RLWD Project No. 149, which includes installation of geogrid mats, installed in 2.5 foot lifts to the top of the sloughed area.

The Board reviewed a letter from RLC, LLC regarding the receipt of declined payment for right of way on JD 72, RLWD Project No. 41BB. Administrator Jesme stated that the landowner does not want to recognize the District's rights for an easement, therefore they do not want to accept the payment. Legal Counsel Sparby indicated if that landowner refuses the payment, the District has no choice but to send the funds to the State of Minnesota as unclaimed funds. District staff will submit a letter to the landowner stating that the funds will be sent to the State of Minnesota.

The Board reviewed the Red River Retention Authority's Retention Policy Statement dated September 7, 2022, as it pertains to the 20% Flood Water Retention efforts.

Administrator Jesme discussed work completed on the Brandt, Euclid East, and Parnell Impoundments due to the 2022 Spring rain event. Completed work will be submitted to FEMA for funding.

Staff member Christina Slowinski appeared before the Board to discuss the River Watch Forum held at the District office on October 6, 2022. Slowinski stated that she has 22 new River Watch students this year, therefore she would like to purchase River Watch jackets for the new students at a range of \$45-\$49 per jacket. Motion by Tiedemann, seconded by Anderson, to approve the purchase of jackets from Page's Country Creations for the new River Watch Students. Motion carried, with Manager Page abstaining from discussion and vote.

The Board reviewed a funding request from the Red Lake SWCD for four Grade Stabilization Projects. The request includes a total cost share of \$3,125 from the District's 2022 Erosion Control Funds, RLWD Project No. 164. Motion by Tiedemann, seconded by Page, to approve cost share request in the amount of \$925.00 for the Ralph Perrault Project, located in Section 32 and 34, Gervais Township; \$600.00 for the Val Gagnon Project, located in Section 28, Gervais Township; \$1,200 for the Tony Gerardy Project, located in Section 33, Emardville Township;

\$400.00 for the Matt Knutson Project, located in Red Lake Falls and Gervais Townships, from the District's 2022 Erosion Control Funds, RLWD Project No. 164. Motion carried.

Administrator Jesme shared the cost share reimbursement request from the West Polk SWCD from the District's 2021 Erosion Control Funds, RLWD Project No. 164 in the amount of \$7,350 for the Boushee side water inlet project: and \$6,350 for the Hangsleben (GKT Farms) side water inlet project. Jesme indicated that these two projects were previously approved at the May 13, 2021 Board Meeting.

The Board reviewed three permit violations located in Louisville and Wyle Townships, Red Lake County. Staff member Tony Olson stated that three different landowners completed unauthorized and unsatisfactory construction within the township and county road right of ways. Olson reviewed a draft letter to be submitted to the landowners. Motion by Tiedemann, seconded by Page, to approve sending the letters to the three landowners with permit violations located in Louisville and Wylie Townships, Red Lake County. Motion carried.

The Board reviewed the permits for approval. Motion by Sorenson, seconded by Tiedemann, to approve the following permits with conditions stated on the permit: No. 22-183, Greg Stolker, Grand Forks Township, Polk County; No. 22-212, Pennington County Highway Department, Sanders Township; No. 22-216, Minnesota Department of Natural Resources, Agder Township, Marshall County; No. 22-217, Mike Rosendahl, Tabor Township, Polk County; No. 22-218, Dale Kolseth, Wyandotte Township, Pennington County; No. 22-219, Chad Lundeen, Equality Township, Red Lake County; No. 22-222, Mike Beedy, Sanders Township, Pennington County; No. 22-223, Jeffrey Olson, Norden Township, Pennington County; No. 22-224, North Township, Pennington County; No. 22-225, Jason Kotrba, Reiner Township, Pennington County; No. 22-227, Pennington County Highway Department, Reiner Township, Pennington County; No. 22-228, Jeanne Brekken, Russia Township, Polk County; No. 22-229, Preston Solberg, Grand Plain Township, Marshall County; No. 22-230, 22-231, 22-232, and 22-233 Emardville Township, Red Lake County; No. 22-235, Darwin Boutain, Reiner Township, Pennington County; No. 22-236, Ronnie Davidson, Rocksbury Township, Pennington County; and, No. 22-237 and 22-238, Pennington County Highway Department, Bray Township, Pennington County. Motion carried.

The Red River Basin Flood Damage Reduction Work Group recently updated its Project Work Team Handbook. A training session will be held at the District office on November 16, 2022, to review the updates.

The MAWD Annual Conference will be held December 1-3, 2022 at the Arrowwood Conference Center, Alexandria, MN.

Motion by Dwight, seconded by Ose, to move the November 24, 2022 Board meeting date to November 22, 2022, due to the Thanksgiving holiday. Motion carried.

#### Administrators Update:

- Jesme will participate in the October 18, 2022 RRWMB via Teams. Manager Ose will attend in person.

- A MnDNR Restoration Evaluation Specialist contacted the District regarding a site visit on October 25<sup>th</sup> on the Grand Marais Creek Project. An initial site visit was completed in 2015. District staff will participate in the visit.
- A Mud River Project Work Team meeting was held September 23, 2022 at the District office. District staff will have an informal meeting with the landowners that serve on the Project Work Team that were unable to attend due to harvest to keep them updated on the process.
- A Thief River 1W1P Planning Work Group meeting will be held on October 21<sup>st</sup> with a Policy Committee meeting at the District office on October 28<sup>th</sup>. Jesme will ask for a one- year extension on the 2020 Watershed Based Funding Grant.
- Jesme will participate in a Drainage Workgroup meeting after today's Board meeting.
- Jesme participated in a MAWD Legislative meeting held on September 29<sup>th</sup>, with an additional meeting to be forthcoming.
- Staff members Olson and Audette will attend a Lammers Township meeting on October 19<sup>th</sup> to discuss jurisdictional duties of the township as it pertains to their ditch system and the benefited area.
- An Upper/Lower Red Lake River 1W1P Policy Committee meeting was held on October 4<sup>th</sup>.
- Jesme will attend a Minnesota Association of Watershed Administrators meeting scheduled for November 4<sup>th</sup> in Fergus Falls, MN.

Manager Dwight stated that the Upper/Lower Red Lake 1W1P Policy Committee is looking at having staff from Houston Engineering, Inc. write the plan with assistance from staff members.

Legal Counsel Sparby stated that the Appellant Brief was filed in regard to the appeal to the Improvement to Polk County Ditch 39, RLWD Project No. 179.

Manager Anderson indicated that the Clearwater River 1W1P, RLWD Project No. 149B, was approved by the North Region BWSR Board and will be presented to the full BWSR Board on October 31<sup>st</sup>.

Manager Dwight stated that he would like to participate in the Lammers Township meeting to be held on October 19<sup>th</sup> in Solway.

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

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LeRoy Ose, Secretary

**RED LAKE WATERSHED DISTRICT**  
**Financial Report for October 27, 2022**

<b>Ck#</b>	<b>Check Issued to:</b>	<b>Description</b>	<b>Amount</b>
online	Public Employers Retirement Assn.	PERA (10-26-22 payroll)	\$ 2,903.94
online	Further	Employee HSA (10-26-22 payroll)	\$ 175.00
online	EFTPS	Withholding FICA, Fed & Medicare (10-12-22 payroll)	\$ 4,376.25
online	MN Department of Revenue	Withholding taxes (10-12-22 payroll)	\$ 779.51
	40080 Greg Dyrdaahl	Voided check (Greg lost check)	\$ (9.36)
	40404 MN BWSR	Registration fee 2022 BWSR Academy	\$ 715.00
	40405 Greg Dyrdaahl	Reissue check for mileage	\$ 9.36
	40406 Higher Ground	Pay Estimate #2 - Sorum Ring Dike Proj. #129AW	\$ 32,691.21
	40407 Aramark	Office rug rental	\$ 58.17
	40408 Corporate Technologies	Managed IT services and MS office 365	\$ 1,472.50
	40409 Emmons & Oliver Resources Inc.	RLWD Watershed domain	\$ 181.80
	40410 Frontier Precision Inc.	Software & Firmware maintenance- Trimble eng. Equip	\$ 1,336.50
	40411 HDR	Engineering Fees Proj. #46Q	\$ 384.24
	40412 Ihle Sparby & Haase	Legal Fees Proj. #01, 26A, 178 & 179	\$ 7,374.25
	40413 John Sandness	Clean offices	\$ 140.00
	40414 Larry Berg	Gopher disposal Proj. #41A, #109 & #20	\$ 435.00
	40415 Marshall County Highway Dept	Reimbursement for Const. costs Proj. #149A	\$ 59,643.88
	40416 NCPERS Group Life Insurance	Staff life insurance premium	\$ 128.00
	40417 Pitney Bowes Global Financial	Postage Meter Rent	\$ 124.53
	40418 Quality Spray Foam	Construction Proj. #149 - Ditch 10 repair	\$ 2,020.00
	40419 Red Lake County SWCD	Expenses for RL1W1P Proj. #149	\$ 11,778.97
	40420 Sun Life Insurance	Staff life insurance premium	\$ 147.84
	40421 Thief River Glass	Replace windshield for vehicle #933	\$ 500.00
	40422 West Polk SWCD	Expenses for RL1W1P Proj. #149 & #164	\$ 24,428.58
online	PureWater Technology	H2O for office	\$ 38.00
online	Further	Medical FSA - Audette	\$ 40.00
online	Dept. of Commerce- Unclaimed Prop.	41BB Damages on behalf of RLC, LLC	\$ 5,669.69
online	Further	Monthly admin fee	\$ 8.25
online	Northern State Bank	QB checks	\$ 303.29
online	Quick Books	Monthly fee	\$ 329.00
online	MN Energy	Heating expense	\$ 20.00
direct	Tom Anderson	Mileage	\$ 140.00
	Staff & Board Payroll	9/26/2022	\$ 15,154.95
	<b>Total Checks</b>		<b>\$ 173,498.35</b>

**Banking Northern State Bank**

Balance as of October 13, 2022	\$ 144,137.80
Total Checks Written	\$ (173,498.35)
Receipt #224187 Transfer funds from AFB to NSB	\$ 250,000.00
Receipt #224188 State of MN - 2nd payment for 2020 RL1W1P Proj. 149	\$ 428,460.00
Balance as of October 27, 2022	<u>\$ 649,099.45</u>

Current interest rate is .20%

**American Federal Bank-Fosston**

Balance as of October 13, 2022	\$ 4,883,318.56
Receipt #224187 Transfer funds from AFB to NSB	\$ (250,000.00)
Balance as of October 27, 2022	<u>\$ 4,633,318.56</u>

Current interest rate is 1.50%



<b>Edward Jones</b> Balance	12 month CD 3.45% Expiry 9-15-23	<u>\$ 241,000.00</u>
<b>Edward Jones</b> Balance	12 month CD 3.7% Expiry 9-22-23	<u>\$ 240,000.00</u>
<b>Edward Jones</b> Balance	12 month CD 3.7% Expiry 9-22-23	<u>\$ 17,000.00</u>
	<b>Total Cash</b>	<b>\$ 5,763,418.01</b>

**RED LAKE WATERSHED DISTRICT**  
**Application for Payment**  
**Estimate of Work Completed**

**ESTIMATE NUMBER:** 3-Final  
**PROJECT NAME:** Sorum Ring Dike  
**OWNER:** Red Lake Watershed District  
**CONTRACT AMOUNT:** \$129,214.40  
**CONTRACTOR:** Paul Zavoral, Inc. dba Higher Ground

**DATE:** October 26, 2022  
**PROJECT NUMBER:** 129AW  
**CONTRACT DATE:** July 15, 2022  
**WORK COMPLETED:** October 12, 2022

ITEM NO.	SPEC. NO.	DESCRIPTION	UNIT	CONTRACT QUANTITY	UNIT PRICE	QUANTITY COMPLETED			TOTAL AMOUNT
						PREVIOUS	CURRENT	TOTAL	
1	2021.501	Mobilization	LS	1	\$1,800.00	1	0	1	\$1,800.00
2	2101.501	Clearing and Grubbing	LS	1	\$2,800.00	1	0	1	\$2,800.00
3	2106.507	Common Excavation (P) Stripping	CY	1,302	\$2.995	1,302	0	1302	\$3,900.00
4	2106.507	Common Borrow (CV ) (P) Embankment	CY	5,672	\$18.50	5,672	0	5672	\$104,932.00
5	2118.507	Aggregate Surfacing Class 5	CY	20	\$38.00	12	0	12	\$456.00
6	2123.51	Dozer - Interior Grading	hour	16	\$110.00	4	0	4	\$440.00
7	2501.502	18" CS Apron	EACH	3	\$220.80	3	0	3	\$717.60
8	2501.502	18" Gate Waterman Model C10	EACH	2	\$1,212.00	2	0	2	\$1,818.00
9	2501.503	18 CS Pipe Culvert	LF	80.00	\$43.50	80	0	80	\$3,480.00
10	2511.507	Random Riprap Class II	CY	15.00	\$56.00	6	0	6	\$336.00
11	2574.508	Fertilizer, Type 1	POUND	320	\$1.20	320	0	320	\$384.00
12	2575.505	Seeding	ACRE	1.60	\$960.00	2	0	1.6	\$1,536.00
13	2575.508	Seed Mixture 25-131	POUND	352	\$9.00	352	0	352	\$3,168.00
14	2575.509	Mulch Material Type 1	TON	3.2	\$240.00	3	0	3.2	\$768.00
								Subtotal	<u>\$126,535.60</u>
<b>Additional Material</b>							0.00	0	\$0.00
								Total	<u>\$126,535.60</u>

**SUMMARY:**

Total of Work to Date	\$126,535.60
Less 0% Retainage	\$0.00
Amount Paid on Previous Payments	\$120,208.82
Amount Due this Estimate	\$6,326.78
Percentage of work completed	98%
Original Contract Amount Due	\$129,214.40
Amount Deleted from Original Contract	\$0.00
Additional Material	\$0.00
Total Estimated Contract Costs	\$129,214.40

**RECAP OF PAYMENTS:**

DATE	PAYMENT AMOUNT
09/21/22	\$ 87,517.61
10/12/22	\$ 32,691.21
10/26/2022	\$ 6,326.78
<b>Total</b>	<b>\$126,535.60</b>

Approved by Contractor: Paul Zavoral, Paul Zavoral, Inc., dba Higher Ground

\_\_\_\_\_ Date \_\_\_\_\_

Approved by Administrator: Myron Jesme, Red Lake Watershed District

\_\_\_\_\_ Date \_\_\_\_\_

**RED LAKE WATERSHED DISTRICT**  
**Application for Payment**  
**Estimate of Work Completed**

**ESTIMATE NUMBER 3**

**PROJECT NAME:** Nelson Ring Dike  
**OWNER:** Red Lake Watershed District  
**CONTRACT AMOUNT:** \$37,079.25  
**CONTRACTOR:** Trent Stanley

**DATE:** October 26, 2022  
**PROJECT NUMBER:** 129AU  
**CONTRACT DATE:** August 3, 2021  
**WORK COMPLETED:** October 26, 2022

ITEM NO.	SPEC. NO.	DESCRIPTION	UNIT	CONTRACT QUANTITY	UNIT PRICE	QUANTITY COMPLETED			TOTAL AMOUNT
						PREVIOUS	CURRENT	TOTAL	
1	2021.501	MOBILIZATION	LUMP SUM	1	\$0.00	1	0	1	\$0.00
2	2105.507	DOZER-INTERIOR DRAINAGE	HOUR	6	\$150.00	4	2	6	\$900.00
3	2101.501	CLEARING AND GRUBBING	LS	1	\$3,000.00	1	0	1	\$3,000.00
4	2105.507	COMMON EXCAVATION (P)	CU YD	10825	\$1.60	10825.00	0	10825	\$17,320.00
5	2105.507	COMMON BORROW (CV) (P)- EMBANKMENT	CY	5892	\$1.00	5892	0	5892	\$5,892.00
6	2118.507	AGGREGATE SURFACING CLASS 5	CY	20	\$14.00	10	0	10	\$140.00
7	2501.502	18" CS PIPE APRON	EACH	1	\$166.00	2	0	2	\$332.00
8	2501.503	18" CS PIPE CULVERT	LF	90	\$19.31	80	0	80	\$1,544.80
9	2501.502	18" GATE- WATERMAN MODEL C10	EACH	3	\$1,072.00	2	0	2	\$2,144.00
10	2511.501	RANDOM RIPRAP- CLASS II (P)	CU YD	15	\$20.00	5	5	10	\$200.00
11	2575.505	SEEDING	ACRE	3.9	\$100.00	1.95	1.95	3.90	\$390.00
12	2575.508	SEED MIXTURE, 25-131	POUND	858	\$3.50	429	429	858	\$3,003.00
13	2574.508	FERTILIZER, TYPE 1	POUND	780	\$0.33	390	390	780	\$257.40
14	2575.509	MULCH MATERIAL TYPE 1	TON	7.8	\$50.00	3.9	3.9	7.80	\$390.00
15	2573.503	SEDIMENT CONTROL LOG TYPE STRAW	LF	75	\$3.00	50	0	50	\$150.00
								Subtotal	<u>\$35,513.20</u>

**Additional Material**

0                      0                      0                      0                      0                      \$0.00

Total                      \$35,513.20

**SUMMARY:**

Total of Work to Date	\$35,513.20
Less 0% Retainage	\$0.00
Amount Paid on Previous Payments	\$29,783.70
Amount Due this Estimate	\$5,729.50
Percentage of work completed	96%
Original Contract Amount Due	\$37,079.25
Amount Deleted from Original Contract	\$0.00
Additional Material	\$0.00
Total Estimated Contract Costs	\$37,079.25

**RECAP OF PAYMENTS:**

DATE	PAYMENT AMOUNT
11/22/21	\$ 21,292.16
09/07/22	\$ 8,491.54
10/26/2022	\$ 5,729.50
<b>Total</b>	<b>\$35,513.20</b>

Approved by Contractor: Trent Stanley

\_\_\_\_\_ Date

Approved by Administrator: Myron Jesme, Red Lake Watershed District

\_\_\_\_\_ Date



# CHANGE ORDER NO. 2

125 3rd Street E  
 Thief River Falls, MN 56701  
 P: 218.681.2951 F: 218.681.2987

Project Name: Knutson Dam Structure Replacement

Contract dated: May 16, 2022

Owner: Red Lake Watershed District

To: Taggart Contracting, Inc.  
 P.O. Box 726  
 Thief River Falls, MN 56701

HEI Project No. 3655-0102

This change is requested by Owner and made under the terms of or is supplemental to your present contract.

Description of Change:

During construction, an 18" x 80' failing CSP was observed for replacement within the road ditch of 260th St. SE that allows flow through a field crossing directly into the projects constructed plunge pool.

Item 2501.601, "18" CS Pipe Culvert", this item accounts for replacing an existing 18" CSP with a 18" x 90' CSP. This shall include all work and equipment required for excavation to remove the existing culvert, furnish and install the new culvert, band the joints of the culvert, backfill, and turf restoration of the disturb area. All work shall be performed in accordance with MnDOT 2501, MnDOT 2451, MnDOT 2575 and shall include all excavating, installing, banding, backfilling, compacting, and turf establishment as determined in the field by the Engineer.

Item 2501.601, "18" CS Pipe Culvert", shall be paid for by the Lineal Foot basis. All costs associated with completing the work including, but not limited to, excavating, removing, installing, banding, backfilling, compacting of backfill material, and turf establishment shall be included in the unit price for Item 2501.601, "18" CS Pipe Culvert", and no additional compensation will be considered thereof.

Adjust and/or change the following quantities to match the installed quantities:

Item No.	Description	Unit	Orig. or Prev. Changed Qty.	Qty. Change this CO + or -	Unit Price	Amount of Increase / (Decrease)
2501.601	18" CS Pipe Culvert	Lin. Ft.		90	\$ 78.00	\$ 7,020.00
<b>Net Increase / (Decrease) this Change Order:</b>						<b>\$7,020.00</b>

Quantities shown are not necessarily pay quantities and are subject to change.

Original Contract Amount: \$150,638.00

Prior Change Orders:

This Change Order: \$7,020.00

**Total Contract Amount after this Change Order: \$157,658.00**

Approved: \_\_\_\_\_

Date: \_\_\_\_\_

(Owner)

Approved: Jonny A. Nordby

Date: 10/19/2022

(Engineer)

Approved: [Signature]

Date: 10-21-2022

(Contractor)

# PARTIAL PAYMENT ESTIMATE

Client Project No.

HEI Project No.

3655-0102

**PAYMENT NUMBER: 1**

Project: Knutson Dam Structure Replacement  
 Location: Section 35, Red Lake Falls Twp., Red Lake County

**PERIOD OF ESTIMATE:**  
 FROM **10/3/2022** TO **10/21/2022**

### CONTRACT CHANGE ORDER SUMMARY

### ESTIMATE

Change Order		AMOUNT	
NO.	DATE	ADDITIONS	DEDUCTIONS
1	10/03/22	\$0.00	
2	10/19/22	\$7,020.00	
<b>TOTALS</b>		\$ 7,020.00	\$ -
<b>NET CHANGE</b>		\$ 7,020.00	

1. Original Contract	\$	150,638.00
2. Change Orders	\$	7,020.00
3. Revised Contract (1+2)	\$	157,658.00
4. Work Completed*	\$	141,228.00
5. Stored Materials*	\$	-
6. Adjustments*	\$	-
7. Subtotal (4+5+6)	\$	141,228.00
8. Retainage 5.00%	\$	7,061.40
9. Previous Payments	\$	-
10. Amount Due (7-8-9)	\$	<b>134,166.60</b>

\*Detailed Breakdown Attached if Non-Zero Value

### CONTRACT TIME

Completion Date Contract

Original (days)	N/A	On Schedule? <input checked="" type="checkbox"/> Yes	Starting Date: <u>10/3/2022</u>
Revised	N/A		Final Completion: <u>11/2/2022</u>
Remaining	N/A		

### CONTRACTOR'S CERTIFICATION:

The undersigned Contractor certifies, to the best of his/her knowledge, the following:  
 (1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;  
 (2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances); and  
 (3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Contractor: Taggart Contracting, Inc.  
 By: [Signature]  
 Date: 10-21-2022

### ENGINEER'S RECOMMENDATION:

I have reviewed the progress of the work, and to the best of my knowledge, information and belief, in accordance with the terms of the Contract, the Contractor is entitled to a partial payment in the amount requested.

**HOUSTON**  
 engineering, inc.  
 Engineer: [Signature]  
 By: Tony Nordby  
 Date: 10/21/2022

### OWNER'S APPROVAL:

Owner: Red Lake Watershed District  
 By: \_\_\_\_\_  
 Date: \_\_\_\_\_

### REMIT PAYMENT TO:

Taggart Contracting, Inc.  
 P.O. Box 726  
 Thief River Falls, MN 56701

Client Project No.  
HEI Project No. 3655-0102  
Project: *Knutson Dam Structure Replacement*  
Location: *Section 35, Red Lake Falls Twp., Red Lake County*  
Contractor: *Taggart Contracting, Inc.*

**PAY ESTIMATE**

PAY ESTIMATE #:	1
SUBMITTED:	10/28/2022
BEGIN DATE:	10/3/2022
END DATE:	10/21/2022

ITEM NO.	DESCRIPTION	UNIT	CONTRACT			CURRENT PAY ESTIMATE		PREVIOUS PAY ESTIMATES		PAY ESTIMATES TO DATE				
			QUANTITY	PRICE	AMOUNT	QUANTITY	AMOUNT	QUANTITY	AMOUNT	QUANTITY	AMOUNT			
<b>Original Contract Items</b>														
2021.501	MOBILIZATION	LUMP SUM	1.	\$ 2,000.00	\$ 2,000.00	1.	\$ 2,000.00		\$ -	1.	\$ 2,000.00			
2101.511	CLEARING & GRUBBING	LUMP SUM	1.	\$ 2,000.00	\$ 2,000.00	1.	\$ 2,000.00		\$ -	1.	\$ 2,000.00			
2104.502	REMOVE DROP STRUCTURE	EACH	1.	\$ 2,000.00	\$ 2,000.00	1.	\$ 2,000.00		\$ -	1.	\$ 2,000.00			
2105.507	COMMON EXCAVATION (EV) (P)	CU. YD.	1,613.	\$ 5.00	\$ 8,065.00	1,613.	\$ 8,065.00		\$ -	1,613.	\$ 8,065.00			
2105.507	COMMON BORROW (CV) (P)	CU. YD.	870.	\$ 10.00	\$ 8,700.00	870.	\$ 8,700.00		\$ -	870.	\$ 8,700.00			
2118.507	AGGREGATE SURFACING, CLASS 5 (CV)	CU. YD.	49.	\$ 20.00	\$ 980.00	49.	\$ 980.00		\$ -	49.	\$ 980.00			
2451.507	FINE FILTER AGGREGATE (CV) (P)	CU. YD.	100.	\$ 30.00	\$ 3,000.00	100.	\$ 3,000.00		\$ -	100.	\$ 3,000.00			
2451.601	STRUCTURE EXCAVATION	LUMP SUM	1.	\$ 43,165.00	\$ 43,165.00	1.	\$ 43,165.00		\$ -	1.	\$ 43,165.00			
2451.607	AGGREGATE DRAIN (CV) (P)	CU. YD.	9.	\$ 100.00	\$ 900.00	9.	\$ 900.00		\$ -	9.	\$ 900.00			
2503.503	48" CAS PIPE SEWER	LIN. FT.	148.	\$ 216.00	\$ 31,968.00	148.	\$ 31,968.00		\$ -	148.	\$ 31,968.00			
2506.601	72" CAS RISER STRUCTURE, DESIGN SPECIAL	LUMP SUM	1.	\$ 20,000.00	\$ 20,000.00	1.	\$ 20,000.00		\$ -	1.	\$ 20,000.00			
2506.602	TRASH RACK	EACH	1.	\$ 8,800.00	\$ 8,800.00		\$ -		\$ -		\$ -			
2511.507	RANDOM RIPRAP, CLASS II	CU. YD.	7.	\$ 90.00	\$ 630.00	7.	\$ 630.00		\$ -	7.	\$ 630.00			
2511.507	RANDOM RIPRAP, CLASS IV	CU. YD.	157.	\$ 90.00	\$ 14,130.00	120.	\$ 10,800.00		\$ -	120.	\$ 10,800.00			
2573.503	SILT FENCE, TYPE MS	LIN. FT.	100.	\$ 3.00	\$ 300.00		\$ -		\$ -		\$ -			
2575.504	RAPID STABILIZATION, METHOD 4	LUMP SUM	1.	\$ 4,000.00	\$ 4,000.00		\$ -		\$ -		\$ -			
<b>Extra / Change Order Items</b>														
2501.601	18" CS PIPE CULVERT	LIN. FT.	90.	\$ 78.00	\$ 7,020.00	90.	\$ 7,020.00		\$ -	90.	\$ 7,020.00			
<b>Totals</b>														
Original Contract Amount					\$	150,638.00								
Extra / Change Order Amount					\$	7,020.00								
Work Completed							\$	141,228.00		\$	-		\$	141,228.00

# PARTIAL PAYMENT ESTIMATE

Client Project No.

HEI Project No.

3655-0100

**PAYMENT NUMBER: 1**

Project: Demarais-Hanson Repair  
 Location: Louisville Township, Red Lake County

**PERIOD OF ESTIMATE:**  
 FROM **10/3/2022** TO **10/24/2022**

CONTRACT CHANGE ORDER SUMMARY				ESTIMATE	
Change Order		AMOUNT			
NO.	DATE	ADDITIONS	DEDUCTIONS		
				1. Original Contract	\$ 92,619.00
				2. Change Orders	\$ -
				3. Revised Contract (1+2)	\$ 92,619.00
				4. Work Completed*	\$ 83,896.50
				5. Stored Materials*	\$ -
				6. Adjustments*	\$ -
				7. Subtotal (4+5+6)	\$ 83,896.50
				8. Retainage 5.00%	\$ 4,194.83
				9. Previous Payments	\$ -
				10. Amount Due (7-8-9)	\$ 79,701.68
<b>TOTALS</b>		\$ -	\$ -		
<b>NET CHANGE</b>		\$ -			

\*Detailed Breakdown Attached if Non-Zero Value

### CONTRACT TIME

Completion Date Contract

Original (days)  
 Revised  
 Remaining

N/A  
 N/A  
 N/A

On Schedule? Yes

Starting Date: 10/3/2022

Final Completion: 10/28/2022

### CONTRACTOR'S CERTIFICATION:

The undersigned Contractor certifies, to the best of his/her knowledge, the following:  
 (1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;  
 (2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances); and  
 (3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Contractor: Quality Spray Foam LLC DBA Anderson Excavating  
 By: *Carl A. Beck*  
 Date: 10/24/2022

### ENGINEER'S RECOMMENDATION:

I have reviewed the progress of the work, and to the best of my knowledge, information and belief, in accordance with the terms of the Contract, the Contractor is entitled to a partial payment in the amount requested.

**HOUSTON**  
 engineering, inc.  
 Engineer: *Tony A. Nordby*  
 By: Tony Nordby  
 Date: 10/25/2022

### OWNER'S APPROVAL:

Owner: Red Lake Watershed District  
 By: \_\_\_\_\_  
 Date: \_\_\_\_\_

### REMIT PAYMENT TO:

Quality Spray Foam LLC DBA Anderson Excavating  
 11374 215th St. NW  
 Thief River Falls, MN 56701



Client Project No.  
 HEI Project No. 3655-0100  
 Project: Demarais-Hanson Repair  
 Location: Louisville Township, Red Lake County  
 Contractor: Quality Spray Foam LLC DBA Anderson Excavating

**PAY ESTIMATE**

PAY ESTIMATE #:	1
SUBMITTED:	10/27/2022
BEGIN DATE:	10/3/2022
END DATE:	10/24/2022

ITEM NO.	DESCRIPTION	UNIT	CONTRACT			CURRENT PAY ESTIMATE		PREVIOUS PAY ESTIMATES		PAY ESTIMATES TO DATE			
			QUANTITY	PRICE	AMOUNT	QUANTITY	AMOUNT	QUANTITY	AMOUNT	QUANTITY	AMOUNT		
<b>Original Contract Items</b>													
2021.501	MOBILIZATION	EACH	1.	\$ 12,000.00	\$ 12,000.00	1.	\$ 12,000.00		\$ -	1.	\$ 12,000.00		
2106.507	EXCAVATION - COMMON (P)	CU YD	4,365.	\$ 10.00	\$ 43,650.00	4,365.	\$ 43,650.00		\$ -	4,365.	\$ 43,650.00		
2108.504	GEOGID TYPE 1	SQ YD	6,781.	\$ 1.50	\$ 10,171.50	6,781.	\$ 10,171.50		\$ -	6,781.	\$ 10,171.50		
2502.503	4" PERF PE PIPE DRAIN	LIN FT	798.	\$ 5.00	\$ 3,990.00	798.	\$ 3,990.00		\$ -	798.	\$ 3,990.00		
2573.503	SILT FENCE, TYPE HI	LIN FT	325.	\$ 16.50	\$ 5,362.50	325.	\$ 5,362.50		\$ -	325.	\$ 5,362.50		
2575.501	TURF ESTABLISHMENT	LUMP SUM	1.	\$ 12,000.00	\$ 12,000.00	0.5	\$ 6,000.00		\$ -	0.5	\$ 6,000.00		
2575.504	ROLLED EROSION PREVENTION CATEGORY 25	SQ YD	3,630.	\$ 1.50	\$ 5,445.00	1,815.	\$ 2,722.50		\$ -	1,815.	\$ 2,722.50		
<b>Totals</b>													
Original Contract Amount					\$	92,619.00							
Extra / Change Order Amount					\$	-							
						<b>Work Completed</b>	\$	83,896.50		\$	-	\$	83,896.50



**UPPER/LOWER RED LAKE WATERSHED – ONE WATERSHED ONE PLAN  
MEMORANDUM OF AGREEMENT**

This agreement (Agreement) is made and entered into by and between:

Beltrami County Board of Commissioners, Beltrami Soil and Water Conservation Districts Board of Supervisors, the Red Lake Nation Tribal Council, and the Red Lake Watershed District Board of Managers, are collectively referred to as the “Parties.”

**WHEREAS**, the County of this Agreement are political subdivision of the State of Minnesota, with authority to carry out environmental programs and land use controls, pursuant to Minnesota Statutes Chapter 375 and as otherwise provided by law; and

**WHEREAS**, the Soil and Water Conservation District (SWCD) of this Agreement is a political subdivision of the State of Minnesota, with statutory authority to carry out erosion control and other soil and water conservation programs, pursuant to Minnesota Statutes Chapter 103C and as otherwise provided by law; and

**WHEREAS**, the Red Lake Nation is a federally-recognized Indian tribe with both inherent authority and delegated federal authority to carry out environmental programs and land use controls, and with statutory authority, pursuant to Minnesota Statutes Section 471.59, to enter into joint powers agreements with other state governmental units; and

**WHEREAS**, the Watershed District of this Agreement is a political subdivision of the State of Minnesota, with statutory authority to carry out the conservation of the natural resources of the state by land use controls, flood control, and other conservation projects for the protection of the public health and welfare and the provident use of the natural resources, pursuant to Minnesota Statutes Chapters 103B, 103D, 103E and as otherwise provided by law; and

**WHEREAS**, the parties to this Agreement have a common interest and statutory authority to prepare, adopt and assure implementation of a comprehensive watershed management plan in the Upper/Lower Red Lake Watershed (*Attachment A - Map*) to conserve soil and water resources through the implementation of practices, programs, and regulatory controls that effectively control or prevent erosion, sedimentation, siltation, and related pollution in order to preserve natural resources, ensure continued soil productivity, protect water quality, reduce damages caused by floods, preserve wildlife, protect the tax base, and protect public lands and waters; and

**WHEREAS**, with matters that relate to the coordination of water management authorities pursuant to Minnesota Statutes Chapters 103B, 103C, and 103D with public drainage systems pursuant to Minnesota Statutes Chapter 103E, this Agreement does not change the rights or obligations of the public drainage system authorities.

**WHEREAS**, pursuant to Minnesota Statutes Section 103B.101 Subd. 14, the Board of Water and Soil Resources (BWSR) “may adopt resolutions, policies, or orders that allow a comprehensive plan, local water management plan, or watershed management plan, developed or amended, approved and adopted, according to chapter 103B, 103C, or 103D to serve as substitutes for one another or be replaced with a comprehensive watershed management plan,” also known as the “One Watershed, One Plan”; and

**WHEREAS**, the Parties have formed this Agreement for the specific goal of developing a plan pursuant to Minnesota Statutes § 103B.801, Comprehensive Watershed Management Planning, also known as *One Watershed, One Plan*.

**WHEREAS**, *(may include additional clauses as necessary)*

**NOW, THEREFORE**, the Parties hereto agree as follows:

1. **Purpose:** The Parties to this Agreement recognize the importance of partnerships to plan and implement protection and restoration efforts for the Upper/Lower Red Lake Watershed (*Attachment A - Map*). The purpose of this Agreement is to collectively develop and adopt, as local government units, a coordinated watershed management plan for implementation per the provisions of the Plan. Parties signing this agreement will be collectively referred to as: Upper/Lower Red Lake Planning Partnership.
2. **Joint Powers:** This Agreement does not establish a joint powers entity but set outs the terms and provisions by which the parties "may jointly or cooperatively exercise any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised." Minnesota Statutes Section 471.59. As is permitted under the joint exercise of powers statute, Minnesota Statutes Section 471.59, the parties agree that under this Agreement, and as agreed upon and directed by the Policy Committee, one or more of the parties may exercise any power common to them on behalf of the other participating units, such as they have done under the Memorandum of Agreement where the Beltrami Soil and Water Conservation District is the fiscal agent and provides the day-to-day administrative duties of the Upper/Lower Red Lake Planning Partnership.
3. **Term:** This Agreement is effective upon signature of all Parties in consideration of the Board of Water and Soil Resources (BWSR) Operating Procedures for One Watershed, One Plan; and will remain in effect until the adoption of the plan by all parties or the end date of the Minnesota Board of Water and Soil Resources One Watershed One Plan, whichever is later, unless canceled according to the provisions of this Agreement or earlier terminated by law.
4. **Adding Additional Parties:** A qualifying party within the Upper/Lower Red Lake Watershed that is responsible or water planning and resource management according to Minnesota State Statutes desiring to become a member of this Agreement shall indicate its intent by the adoption of a board resolution by the time of the first Policy Committee meeting that includes a request to the Policy Committee to join the Upper/Lower Red Lake Planning Partnership, a representative appointed to the Policy Committee, and a statement that the party agrees to abide by the terms and conditions of the Agreement; including but not limited to the bylaws, policies and procedures adopted by the Policy Committee.
5. **Withdrawal of Parties:** A party desiring to leave the membership of this Agreement shall indicate its intent in writing to the Policy Committee in the form of an official board resolution. Notice must be made at least 30 days in advance of leaving the Agreement.

## 6. General Provisions:

- a. **Compliance with Laws/Standards:** The Parties agree to abide by all federal, state, and local laws; statutes, ordinances, rules and regulations now in effect or hereafter adopted pertaining to this Agreement or to the facilities, programs, and staff for which the Agreement is responsible.
- b. **Indemnification:** Each party to this Agreement shall be liable for the acts of its officers, employees or agents and the results thereof to the extent authorized or limited by law and shall not be responsible for the acts of any other party, its officers, employees or agents. The provisions of the Municipal Tort Claims Act, Minnesota Statute Chapter 466, and other applicable laws govern the liability of the Parties. To the full extent permitted by law, actions by the Parties, their respective officers, employees, and agents pursuant to this Agreement are intended to be and shall be construed as a “cooperative activity.” It is the intent of the Parties that they shall be deemed a “single governmental unit” for the purpose of liability, as set forth in Minnesota Statutes § 471.59, subd. 1a(a). For purposes of Minnesota Statutes § 471.59, subd. 1a(a) it is the intent of each party that this Agreement does not create any liability or exposure of one party for the acts or omissions of any other party.
- c. **Records Retention and Data Practices:** The Parties agree that records created pursuant to the terms of this Agreement will be retained in a manner that meets their respective entity’s records retention schedules that have been reviewed and approved by the State in accordance with Minnesota Statutes § 138.17. The Parties further agree that records prepared or maintained in furtherance of the agreement shall be subject to the Minnesota Government Data Practices Act (Minnesota Statutes Chapter 13) and the Official Records Act (Minnesota Statutes Section 15.17). At the time this agreement expires, all records will be turned over to the Beltrami Soil and Water Conservation District for continued retention. Each Party may also request and receive, copies of all the records.
- d. **Timeliness:** The Parties agree to perform obligations under this Agreement in a timely manner and keep each other informed about any delays that may occur.
- e. **Extension:** The Parties may extend the termination date of this Agreement upon agreement by all Parties.
- f. **Amendment of Memorandum of Agreement:** This MOA may be amended by approval of the Policy Committee with final approval by each of the above-listed County Boards of Commissioners, SWCD Boards of Supervisors, the Watershed District Board of Managers, and Tribal Council.
- g. *(May include additional general provisions as necessary, e.g. amendments, full agreement, appeal process etc.)*

7. **Administration:**

- a. **Establishment of Committees for Development of the Plan.** The Parties agree to designate one representative, who must be an elected or appointed member of the governing board, to a Policy Committee for the development of the watershed-based plan and may appoint one or more technical representatives to an Advisory Committee for the development of the plan in consideration of the BWSR Operating Procedures for One Watershed, One Plan.
  - i. The Policy Committee will meet as needed to decide on the content of the plan, serve as a liaison to their respective boards, and act on behalf of their Board. Each representative shall have one vote.
  - ii. Each governing board may choose one alternate to serve on the Policy Committee as needed in the absence of the designated member.
  - iii. The Policy Committee will establish bylaws within 90 days of the execution of this document to describe the functions and operations of the committee(s), as well as any other committees created in furtherance of this Agreement.
  - iv. The Advisory Committee will meet monthly or as needed to assist and provide technical support and make recommendations to the Policy Committee on the development and content of the plan.
  - v. The parties agree that the Steering Team shall continue and shall consist of the One Watershed One Plan Coordinator, local water planners, and the WD Administrator for the purposes of logistical and day-to-day decision-making in the implementation process. The Steering Team will meet quarterly or as needed.
- b. **Submittal of the Plan.** The Policy Committee will recommend the plan to the Parties of this agreement. The Policy Committee will be responsible for initiating a formal review process for the watershed-based plan conforming to Minnesota Statutes Chapters 103B and 103D, including public hearings. The Policy Committee will recommend the approved Plan to the Parties of the Agreement. Upon completion of local review and comment, and approval of the plan for submittal by each party, the Policy Committee will submit the watershed-based plan jointly to BWSR for review and approval.
- c. **Adoption of the Plan.** The Parties agree to adopt and begin implementation of the plan within 120 days of receiving notice of state approval, and provide notice of plan adoption pursuant to Minnesota Statutes Chapters 103B and 103D.

8. **Fiscal Agent:** Beltrami Soil and Water Conservation District will act as the fiscal agent for the purposes of this Agreement and agrees to:

- a. Accept all responsibilities associated with the implementation of the BWSR grant agreement for developing a watershed-based plan.
  - b. Perform financial transactions as part of the grant agreement and contract implementation.
  - c. Pursuant to Minnesota Statutes Section 471.59, Subd. 3, provide for strict accountability of all funds and report of all receipts and disbursements and annually provide a full and complete **financial** report.
  - d. Provide the Policy Committee with the records necessary to describe the financial condition of the BWSR grant agreement.
  - e. Retain fiscal records consistent with the agent's records retention schedule until termination of the agreement.
9. **Grant Administration:** *Beltrami Soil and Water Conservation District* will act as the grant administrator for the purposes of this Agreement and agrees to provide the following services:
- a. Accept all day-to-day responsibilities associated with the implementation of the BWSR grant agreement for developing a watershed-based plan, including being the primary BWSR contact for the *One Watershed, One Plan* Grant Agreement, and being responsible for BWSR reporting requirements associated with the grant agreement.
  - b. Provide the Policy Committee with the records necessary to describe the planning condition of the BWSR grant agreement.
10. The Beltrami Soil and Water Conservation District agrees to provide or delegate the following services:
- a. Coordinate or delegate the coordination and facilitation of Policy Committee meetings, including establishing date, location, time, and any necessary accommodations.
  - b. Coordinate or delegate the coordination and facilitation of Advisory Committee meetings including establishing date, location, time, and any necessary accommodations.
  - c. Development of bid specifications and management of contracts for any consulting firms selected by the Policy Committee.
  - d. Coordinate or delegate the creation and maintenance of the Upper/Lower Red Lake One Watershed One Plan webpage.
  - e. Assist the Policy Committee and the Steering Team with the administrative details to oversee the development of the watershed-based plan and initial implementation workplan. Assistance with data compilation, meeting facilitation, and plan writing.
  - f. Perform other duties to keep the Policy Committee, the Advisory Committee, and the Steering Team informed about the development of the watershed-based plan.

11. **Authorized Representatives:** The following persons will be the primary contacts for all matters concerning this Agreement:

<u>Beltrami County</u> Brent Rud Environmental Services Director 701 Minnesota Ave NW Bemidji MN 56601	<u>Beltrami Soil and Water Conservation District</u> Brent Rud District Manager 701 Minnesota Ave NW Bemidji MN 56601
<u>Red Lake Nation</u> Shane Bowe 15761 High School Drive PO Box 279 Red Lake, MN 56671	<u>Red Lake Watershed District</u> Myron Jesme 1000 Pennington Ave S Thief River Falls, MN 56701

**IN TESTIMONY WHEREOF** the Parties have duly executed this Agreement by their duly authorized officers.

**PARTNER: Red Lake Watershed District**

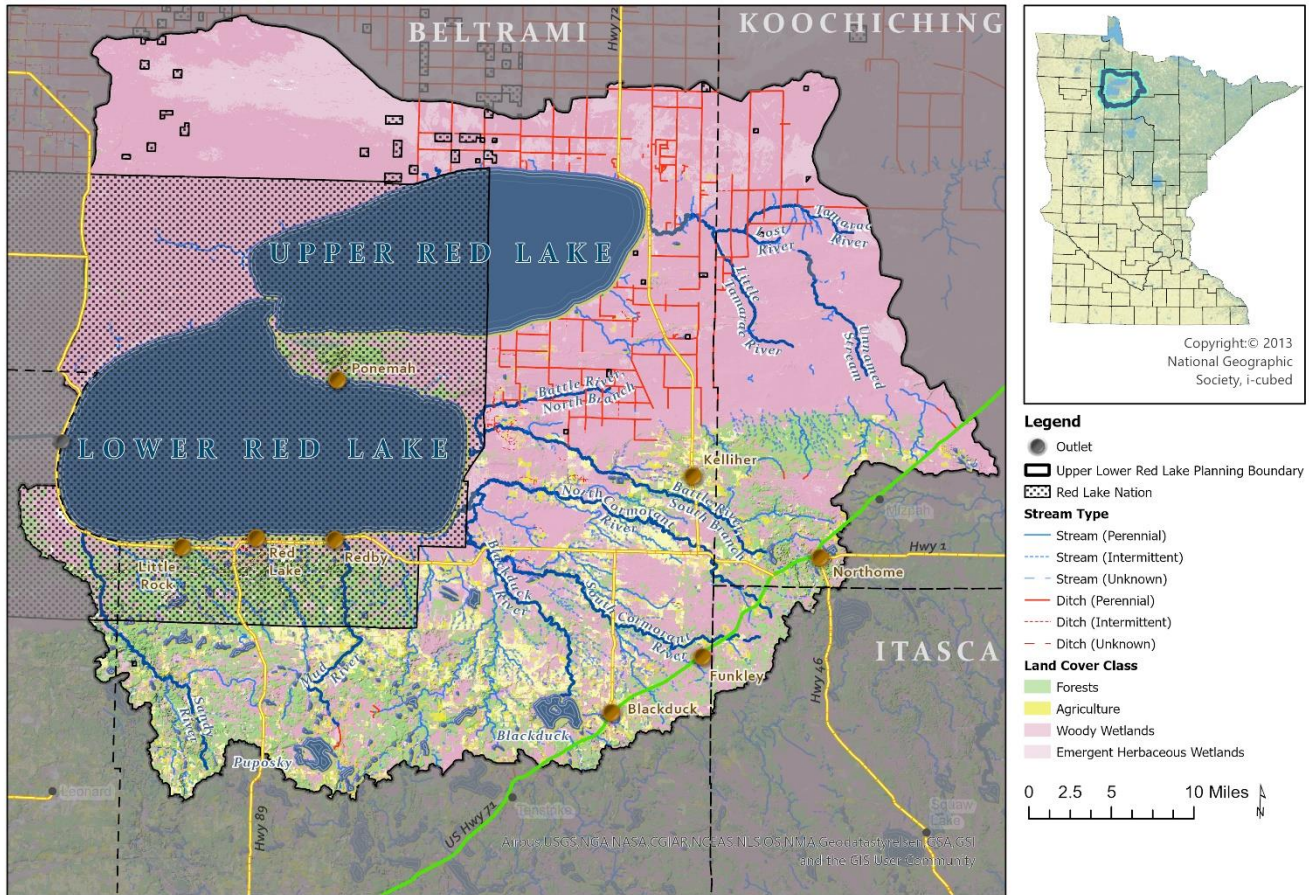
APPROVED:

BY: \_\_\_\_\_  
Board Chair Date

BY: \_\_\_\_\_  
Administrator Date

Attachment A

# Upper/Lower Red Lake Watershed Planning Area







Permit # 22-226

Status Report: **Approved**

**Applicant Information**

Name	Organization	Address	Email	Phone Number(s)
Stenberg Bros. Inc.		16636 Sorteberg Drive Thief River Falls, MN 56701		tel:218-280-2787 mobile: fax:

**General Information**

(1) The proposed project is a:

**Tiling**

(2) Legal Description

(3) County: **Polk Township: Chester Range: 40 Section: 4 1/4:**

(4) Describe in detail the work to be performed. **Pattern Tile/Gravity**

(5) Why is this work necessary? Explain water related issue/problem being solved. **Improve Drainage**

**Status**

Status	Notes	Date
Approved	P.A. #22-226 – Stenberg Bros. Inc. Polk County – Chester Township – Section 4 The Red Lake Watershed District (RLWD) approves the Pattern tile project with 'gravity' outlet. If any work is within a public road and/or public ditch Right-of-Way, applicant shall contact the appropriate road/ditch authority for their approval and must meet their specs/conditions. Directly downstream of the tile and/or pump station(s) outlets, applicant shall ensure that adequate grade and drainage is provided. If any of the work will be done near the adjacent wetlands or public watercourse, applicant shall contact the appropriate jurisdictional authority prior to the installation of the tile lines and meet their spec's/conditions. Applicant shall ensure that the tile outlets are visibly marked. Applicant shall install appropriate erosion control measures for energy dissipation at the tile outlets. That would include but not limited to: Filter Fabric and Rock. Fractured Rock is Preferred. ■ Note: Please be aware of and review the 'bullet points' on the bottom half of the application. Applicant is responsible for utility locates by calling Gopher 1. (1-800-252-1166) T.O.	Oct. 18, 2022
Received	None	Sept. 14, 2022

**Conditions**

NOTE: This permit does not relieve the applicant of any requirements for other permits which may be necessary from Township, County, State, or Federal Government Agencies.



Permit # 22-030

Status Report: **Approved**

**Applicant Information**

Name	Organization	Address	Email	Phone Number(s)
Steve Svendsen		37631 State Hwy 92 SE Trail, MN 56684		tel: mobile: 218-268-4525 fax:

**General Information**

(1) The proposed project is a:

**Tiling**

(2) Legal Description

(3) County: **Red Lake** Township: **Equality** Range: **40** Section: **25 1/4: E1/2**

(4) Describe in detail the work to be performed. **Install pattern tile with gravity outlet.**

(5) Why is this work necessary? Explain water related issue/problem being solved. **Improved drainage.**

**Status**

Status	Notes	Date
Approved	The Red Lake Watershed District (RLWD) approves the pattern tile project with a 'gravity' outlet. If any work is within a public road and/or public ditch Right-of-Way, applicant shall contact the appropriate road/ditch authority for their approval and must meet their specs/conditions. Permit Holder shall contact the road authorities when cutting through roads. Directly downstream of the tile and/or pump station(s) outlets, applicant shall ensure that adequate grade and drainage is provided. Prior to any work, we also recommend that you contact your local Soil and Water Conservation District (SWCD) office to inquire about possible wetland concerns. Applicant shall install appropriate erosion control measures for energy dissipation at the tile outlet. ■ Note: Please be aware of and review the 'bullet points' on the bottom half of the application. Applicant is responsible for utility locates by calling Gopher 1. (1-800-252-1166) T.O.	Oct. 14, 2022
Tabled	P.A. #22-030 – Steve Svendsen Red Lake County – S. Equality Township – Section 25 I recommend this permit be tabled due to land not included in the benefitted area of RLWD Ditch 1 Lat C Project 115. T.O.	Aug. 23, 2022
Received	None	April 12, 2022

**Conditions**

NOTE: This permit does not relieve the applicant of any requirements for other permits which may be necessary from Township, County, State, or Federal Government Agencies.



Permit # 22-234

Status Report: **Approved**

**Applicant Information**

Name	Organization	Address	Email	Phone Number(s)
John G. Sorenson		15180 130th Street NE Thief River Falls, MN 56701		tel:218-684-1023 mobile: fax:

**General Information**

(1) The proposed project is a:

**Culvert Installation / Removal / Modification**

(2) Legal Description

(3) County: **Pennington** Township: **Rocksbury** Range: **43** Section: **14 1/4: SW1/4**

(4) Describe in detail the work to be performed. **Replace culvert to make crossing wide enough for semis.**

(5) Why is this work necessary? Explain water related issue/problem being solved. **Culvert is too narrow.**

**Status**

Status	Notes	Date
Approved	P.A. #22-234 – John G Sorenson. Pennington County – Rocksbury Township – Section 14 Red Lake Watershed District (RLWD) approval upon approval from Rocksbury Twp to add a 15" culvert for a wider driveway for access to property. Current pipe is completely plugged. Install new pipe (as close as possible) to the same flowline/invert elev. If any work is within a public road and/or public ditch Right-of-Way, applicant shall contact the appropriate road/ditch authority for their approval and must meet their specs/conditions. Permit Holder shall contact the road authorities when cutting through roads. This application does not exempt the permit applicant from local, state, or federal authority that might require their approval. Applicant is responsible for utility locates by calling Gopher 1. (1-800-252-1166) T.O.	Oct. 14, 2022
Received	None	Oct. 4, 2022

**Conditions**

NOTE: This permit does not relieve the applicant of any requirements for other permits which may be necessary from Township, County, State, or Federal Government Agencies.



Permit # 22-239

Status Report: **Approved**

**Applicant Information**

Name	Organization	Address	Email	Phone Number(s)
Pennington County Hwy Dept	Pennington County Highway Department	250 125th Avenue NE Thief River Falls, MN 56701		tel: mobile: 218-689-0330 fax:

**General Information**

(1) The proposed project is a:

**No work type selected.**

(2) Legal Description

(3) County: **None** Township: **None** Range: **None** Section: **None** 1/4:

(4) Describe in detail the work to be performed.

(5) Why is this work necessary? Explain water related issue/problem being solved.

**Status**

Status	Notes	Date
Approved	P.A. #22-239 – Pennington County Pennington County – River Falls Township – Section 2/11 Red Lake Watershed District (RLWD) approval upon to install a flap gate on a center line pipe that are crossing 110th St SE in sections 2/11 of River Falls Twp. The purpose of the gates is to keep water in CD 16 and prevent it from back feeding out of the ditch. If any work is within a public road and/or public ditch Right-of-Way, applicant shall contact the appropriate road/ditch authority for their approval and must meet their specs/conditions. Permit Holder shall contact the road authorities when cutting through roads. This application does not exempt the permit applicant from local, state, or federal authority that might require their approval. Applicant is responsible for utility locates by calling Gopher 1. (1-800-252-1166) T.O.	Oct. 14, 2022
Received	None	Oct. 6, 2022

**Conditions**

NOTE: This permit does not relieve the applicant of any requirements for other permits which may be necessary from Township, County, State, or Federal Government Agencies.



Permit # **22-240**

Status Report: **Approved**

### Applicant Information

Name	Organization	Address	Email	Phone Number(s)
Jody Wilson		17128 130th Avenue NE Thief River Falls, MN 56701		tel: mobile: 218-684-4195 fax:

### General Information

(1) The proposed project is a:

**Culvert Installation / Removal / Modification**

(2) Legal Description

(3) County: **Pennington** Township: **North** Range: **43** Section: **18 1/4**:

(4) Describe in detail the work to be performed. **Install 18" culvert and new driveway entrance.**

(5) Why is this work necessary? Explain water related issue/problem being solved. **No current entrance. Building a new home.**

### Status

Status	Notes	Date
Approved	P.A. #22-240 – Jody Wilson Pennington County – North Township – Section 16 Red Lake Watershed District (RLWD) approval to install an 18" culvert for a new crossing to access property. This application does not exempt the permit applicant from local, state, or federal authority that might require their approval. Applicant is responsible for utility locates by calling Gopher 1. (1-800-252-1166) T.O.	Oct. 14, 2022
Received	None	Oct. 6, 2022

### Conditions

NOTE: This permit does not relieve the applicant of any requirements for other permits which may be necessary from Township, County, State, or Federal Government Agencies.



Permit # **22-241**

Status Report: **Approved**

### Applicant Information

Name	Organization	Address	Email	Phone Number(s)
King Township	King Township	39797 300th Avenue SE McIntosh, MN 56556		tel:701-388-2269 mobile: fax:

### General Information

(1) The proposed project is a:

**Culvert Installation / Removal / Modification**

(2) Legal Description

(3) County: **Polk Township: King Range: 41 Section: 4 1/4: NE1/4**

(4) Describe in detail the work to be performed. **Replace old 18" culvert and add gravel to the top of the road.**

(5) Why is this work necessary? Explain water related issue/problem being solved. **Culvert is in poor condition, water went over the toad this spring.**

### Status

Status	Notes	Date
Approved	P.A. #22-241 – King Township/Clayton Bartz Polk County – King Township – Section 4 Red Lake Watershed District (RLWD) approval to remove a failed 18" culvert and install a new 18" culvert. If any work is within a public road and/or public ditch Right-of-Way, applicant shall contact the appropriate road/ditch authority for their approval and must meet their specs/conditions. Permit Holder shall contact the road authorities when cutting through roads. This application does not exempt the permit applicant from local, state, or federal authority that might require their approval. Applicant is responsible for utility locates by calling Gopher 1. (1-800-252-1166) T.O.	Oct. 14, 2022
Received	None	Oct. 12, 2022

### Conditions

NOTE: This permit does not relieve the applicant of any requirements for other permits which may be necessary from Township, County, State, or Federal Government Agencies.

## PURPOSE

The Red River Basin Commission is celebrating our 40th Annual Red River Basin Land & Water International Summit Conference! We will highlight the projects and programs being implemented as we work together to achieve basin-wide commitment to comprehensive integrated watershed stewardship and management.

We are excited to celebrate all of the progress being made in the Red River Basin and reaffirm that we are working to overcome our challenges - we are all in this together. For 40 years we have continued to learn from each other - and we have made many friends, what a great time to celebrate this milestone!

Join us at this forum for natural resources education, training and information dissemination designed for elected officials, watershed managers, educators, producers, environmentalists, businesses, decision makers and residents.

## CONFERENCE AT A GLANCE

The Annual Summit Conference has been bringing together individuals from across the Basin for over 40 years. The conference will be held in Winnipeg January 17-19, 2023. We will look at how residents, organizations and governments work together to achieve basin-wide commitment to comprehensive integrated watershed stewardship and management in the Red River Basin.

This conference fosters international cooperation while providing many networking opportunities. You will hear presentations about current efforts in many of the Natural Resources Framework Plan's goal areas to include Water Quality, Flood Damage Reduction, Soil Health and Water Supply.

Come and learn and visit with old friends and make some new ones - see you in Winnipeg!

## REGISTRATION

Name

Position/Title

Organization/Business

Address

City

State

Zip/Postal Code

Phone

Cell

Email

**Registration: \$260 (USD) \$338 (CAD)**  
Due to catering deadlines, registration is non-refundable after January 1.

For additional registration and payment options, visit the RRBC website.  
[www.redriverbasincommission.org](http://www.redriverbasincommission.org)

### Mail or Email to:

Red River Basin Commission

1120 28th Ave. N, Suite C

Fargo, ND 58102

Ph: 701-356-3183

[stacey@redriverbasincommission.org](mailto:stacey@redriverbasincommission.org)

[www.redriverbasincommission.org](http://www.redriverbasincommission.org)

Red River Basin Commission

203-1111 Munroe Avenue

Winnipeg, MB R2K 3Z5

Ph: 204-982-7250

[rebecca@redriverbasincommission.org](mailto:rebecca@redriverbasincommission.org)

## CONFERENCE GOALS

Under the RRBC vision “where residents, organizations and governments work together to achieve basin-wide commitment to comprehensive integrated watershed stewardship and management,” the goals for the 40th Annual Conference are to:

- **Identify basin-wide priorities** to increase needed stakeholder awareness and participation and continue to foster international cooperation in water and soil use policies with respect to the Red River Basin Natural Resources Framework Plan;
- **Review and celebrate accomplishments** with a vision of the future, recognize those helping shape today’s vision, honor best projects and programs involving stakeholders in the decision process and enhancing the quality of life for basin residents.
- **Provide educational content and networking opportunities** for watershed managers, administrators and board members; conservation districts; county commissioners; councilors, mayors and council members; commodity groups, businesses; and provincial, state and federal agencies and grassroots citizens;
- **Allow perspectives to be heard** by decision makers in a **mutually respectful forum**.

Check the website for the most current agenda and important conference updates.  
[www.redriverbasincommission.org](http://www.redriverbasincommission.org)

For More Information:

Stacey Lundberg, Conference Coordinator  
Phone: 701-356-3183  
[stacey@redriverbasincommission.org](mailto:stacey@redriverbasincommission.org)

## REGISTRATION INFORMATION

**Full Registration:**  
**\$260 (USD), \$338 (CAD)**

Full registration includes materials, attendance to all plenary and special sessions, entry to exhibits, breakfasts, reception, lunches, banquet and refreshment breaks.

**Due to catering deadlines, registration is non-refundable after January 1.**

**Hotel Information:**

**Room Rate: \$104**

The Fort Garry  
222 Broadway, Winnipeg, Manitoba  
Phone: 204-942-8251 (888) 855-4599

***Looking Back, Working Forward Another 40 Years***

Thank you to all of our sponsors and exhibitors for making this conference possible the past 40 years!

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# 40th Annual Red River Basin Land & Water International Summit Conference



**January 17-19, 2023**

**The Fort Garry  
Winnipeg, Manitoba**

*Sponsored by:*  
**Red River Basin  
Commission**



## Tammy Audette

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**From:** David Dennis <david.dennis@marconet.com>  
**Sent:** Tuesday, October 4, 2022 3:35 PM  
**To:** Tammy Audette; Myron Jesme  
**Subject:** Scanner specs and price  
**Attachments:** Canon imageformula-dr-m260-brochure.pdf

I spoke with my canon representative, and he recommended the CANON IMAGEFORMULA DR-M260 OFFICE scanner. See attached specifications sheet.  
Scanner price is \$1,014.47.

If you wanted to add the Canon eCarePAK Extended Service Plan Advanced Exchange Program - Extended service agreement - replacement - 1 year - shipment - response time: NBD - for imageFORMULA DR-M260  
Cost for that is \$96.00

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## **Red Lake Watershed District - Administrators Report**

**October 27, 2022**

**Red River Watershed Management Board** – LeRoy and I attended the Red Board meeting via Teams which will be held in Ada October 18, 2022. LeRoy can update the Board as he sees fit.

**Grand Marias Outlet Restoration Project** – Tony Nordby and I met with DNR Restoration Evaluation Specialists Keegan Lund (with the Restoration Evaluation Program for Clean Water Legacy projects) and Jason Vinje, Watershed Specialist for the MnDNR to complete site re-visit on the Grand Marais Creek project Tuesday October 25th. The site visit focused on how the project components that included wetland restoration both upland and stream, flood damage reduction, RIM easements (access points), as well as considerable habitat features look after upwards of 8 years since construction. The site meeting went well, and we expect to get a report from Tony Nordby, from an engineering perspective, as well as a report from the DNR concerning the environmental side of the project.

**Mud River Project Team** – Due to a scheduling conflict, we have been unable to hold the landowner meeting as we had hoped but will continue to find a time that works for all involved.

**Drainage Workgroup Meeting** – I participated in the Virtual Drainage Workgroup meeting held at 11:00 am October 13<sup>th</sup>. Considerable discussion was had on Drainage Portal as well as the Limbo Creek Supreme Court ruling. I have included in your packet the agenda for that meeting as well as the Supreme Court ruling for Limbo Creek.

**MAWD Legislative Meeting** – I have included in your packet attended the virtual MAWD Legislative meeting held at 1:00 pm September 29<sup>th</sup>. I will be attending another meeting which has yet to be determined.

**Lammers Township Meeting** – Tony Olson and Tammy attended the Lammers Township meeting held 5:30 pm October 19<sup>th</sup> at the Lammers Township Hall in Solway. This meeting was held to allow other landowners and township supervisors a better understanding of the jurisdictional duties of the township in terms of replacing a culvert on the system as well as the benefited area discussions. After the presentation by Tony, the Town Board approved moving forward with the culvert replacement.

**BWSR Academy** – Over the past three days, Corey, Erick and Ann participated in various sessions of the BWSR Academy.

**Minnesota Association of Watershed Administrators** – I will be attending a MAWA meeting scheduled for Friday November 4<sup>th</sup> in Fergus Falls.

## Drainage Work Group Meeting

**When:** Thursday, October 13, 2022 11:00 a.m. - 2:00 p.m. **VIRTUAL ONLY**

**Where:** **Virtual Option at:**

### Microsoft Teams meeting

**Join on your computer or mobile app**

[Click here to join the meeting](#)

**Join with a video conferencing device**

[mn@m.webex.com](mailto:mn@m.webex.com)

Video Conference ID: 111 908 673 9

[Alternate VTC instructions](#)

**Or call in (audio only)**

[+1 651-395-7448,,200446287#](tel:+16513957448200446287) United States, St. Paul

Phone Conference ID: 200 446 287#

[Find a local number](#) | [Reset PIN](#)

### Agenda:

11:00 Welcome and Introductions

11:05 Overview and any updates of agenda for the meeting – Tom G.

11:10 **Share information about recent and upcoming drainage related events** – All

- AMC Fall Policy Conference Sept 15, 2022
- MAWD Annual conference Dec 1-3, Alexandria, MN.
- MN Water Resources Conference October 18-19  
[Minnesota Water Resources Conference | U of M - CCAPS \(umn.edu\)](#)

11:20 **Other Group updates/information–**

11:30 **Outlet Adequacy - Tom**

Brief discussion of what we have looked at. This piece is very technical I would like to have a discussion about asking the DMT to take a look at options for how this can be looked at and provide some technical recommendations to the DWG to assess. Potentially a set of DMT recommendations could go to, or work with, a technical group of the DWG?

- Input from the Group
- Thoughts from DMT?

12:00 **Break**

12:10 **Petitioned Repairs Vs. non-Petitioned Repairs?**

We'll look at some steps in the "Understanding MN Public Drainage Law" as well as potentially the drainage manual to better understand some of the process differences. I encourage drainage authorities on the call to be prepared to chime in with the process they use.

- Drainage Authority folks come ready to discuss your process.

12:50 **Break**

1:00 **Limbo Creek Discussion**

[OPA201592-092822.pdf \(mncourts.gov\)](#)

The released opinion can be found in the link above.

What questions do DWG members have about the opinion that we can look into for future discussions.

1:50 **Next DWG meeting, 11:00 a.m. - 2:00 p.m., Thursday, November 10, 2022?????**

**Virtual Options @ MN Farmers Union**

2:00 **Adjourn**

STATE OF MINNESOTA  
IN SUPREME COURT

A20-1592

Court of Appeals

Anderson, J.

In the Matter of: Petition of MCEA for  
Commencement of an Environmental  
Assessment Worksheet.

Filed: September 28, 2022  
Office of Appellate Courts

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Gerald W. Von Korff, Rinke Noonan, Ltd., St. Cloud, Minnesota; and

David J. Torgelson, Renville County Attorney, Olivia, Minnesota, for appellant Renville  
County Board of Commissioners.

Dean M. Zimmerli, Gislason & Hunter, LLP, New Ulm, Minnesota, for appellants Fagen  
Farms, LLP, Peterson Family Farms Ltd. of Sacred Heart, Edward E. Werre Trust B, Paul  
Lanning, Liz Lanning, Aaron Pape, Delores J. Larsen, Werre Family Partnership No. 1,  
Alice A. Zimmer, Revocable Trust, and Leslie R. Zimmer, Revocable Trust.

Jay E. Eidsness, Stephanie L. Fitzgerald, Kevin S. Reuther, Minnesota Center for  
Environmental Advocacy, Saint Paul, Minnesota, for respondents Minnesota Center for  
Environmental Advocacy and Protecting Public Waters.

Keith Ellison, Attorney General, Colin P. O'Donovan, Assistant Attorney General, Saint  
Paul, Minnesota, for amicus curiae Minnesota Department of Natural Resources.

Scott T. Anderson, Rupp, Anderson, Squires, Waldspurger & Mace, P.A., Minneapolis,  
Minnesota, for amicus curiae Association of Minnesota Counties.

Bruce M. Kleven, Kleven Law Office, P.A., Minneapolis, Minnesota, for amici curiae  
Minnesota Corn Growers Association, Minnesota Farm Bureau Federation, Minnesota  
Farmers Union, and Minnesota Soybean Growers Association.

Matthew C. Murphy, Christopher T. Ruska, Nilan Johnson Lewis, P.A., Minneapolis,  
Minnesota, for amicus curiae The Minnesota Environmental Partnership.

Michael D. Madigan, Christopher W. Bowman, Amy M. Bryne, Madigan, Dahl & Harlan, P.A., Minneapolis, Minnesota, for amici curiae The Sierra Club, Land Stewardship Project, Minnesota Trout Unlimited, Minnesota Chapter of The Wildlife Society, and Fish & Wildlife Legislative Alliance.

Karuna Ojanen, Ojanen Law Office, Rochester, Minnesota, for amici curiae Clean Up the River Environment, Coalition for a Clean Minnesota River, Friends of the Minnesota Valley, Izaak Walton League, Lake Pepin Legacy Alliance, and Minnesota Conservation Federation.

Mackenzie Moy, Dennis Anderson, Dan Millea, Laura Bartlow, Zelle LLP, Minneapolis, Minnesota, for amici curiae Henderson Area Chamber and Sever Peterson.

Mahesha P. Subbaraman, Subbaraman PLLC, Minneapolis, Minnesota, for amici curiae Minnesota Lakes and Rivers Advocates, Friends of the Mississippi River, Minnesota Well Owners Organization, Dr. Daniel Engstrom, and Dr. Howard Markus.

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## S Y L L A B U S

Assuming without deciding that the public waters inventory, maintained under Minn. Stat. § 103G.201 (2020), is a final and exhaustive compilation of public waters, the inventory is not conclusive as to the classification of the upper reach of Limbo Creek. The court of appeals, therefore, did not err in applying the statutory definition of “public waters” in Minn. Stat. § 103G.005, subd. 15 (2020), to determine whether the upper reach of Limbo Creek is a public water.

Affirmed.

## O P I N I O N

ANDERSON, Justice.

This appeal poses the question of whether the classification of waters as “public water” is based on the statutory definition of “public waters” in Minn. Stat. § 103G.005,

subd. 15 (2020), or the “public waters inventory” that the Department of Natural Resources maintains under Minn. Stat. § 103G.201 (2020). This question comes to us regarding the upper reach of Limbo Creek in Renville County and whether it is a public water for purposes of environmental review under the Minnesota Environmental Policy Act, Minn. Stat. §§ 116D.01–.11 (2020). A group of landowners petitioned the Renville County Board of Commissioners for improvements to Renville County Ditch 77, which would affect the upper reach of Limbo Creek. Environmental organizations requested that the County complete an environmental assessment worksheet, asserting that the upper reach of Limbo Creek is a public water for which environmental review is required. The County denied the request for environmental review, finding that the upper reach of Limbo Creek is not a public water because it does not appear on the public waters inventory list for Renville County. The court of appeals reversed and remanded, concluding that the statutory definition of “public waters” controls, not the inventory. The court of appeals also concluded that the record lacks substantial evidence to support any determination that the upper reach of Limbo Creek is not a public water under the statutory definition.

Because of the unique facts of this dispute surrounding the inventory’s designation for the upper reach of Limbo Creek, we do not reach the broad issue presented here. Instead, we hold that, even assuming without deciding that the public waters inventory is generally conclusive as to the classification of public waters, the inventory is not conclusive as to whether the upper reach of Limbo Creek is a public water. Therefore, the statutory definition of “public waters” controls, and we affirm the decision of the court of appeals to remand for preparation of a mandatory environmental assessment worksheet.

## FACTS

This appeal involves the designation and protection of Minnesota’s public waters and is informed by the history of public waters regulations in Minnesota. Accordingly, we discuss the history of public waters regulation in Minnesota and the creation of the public waters inventory in the State, as well as the public waters inventory process in Renville County, before detailing the facts surrounding the County’s denial of environmental review for the proposed County Ditch 77 improvement project.

### *Public waters regulation in Minnesota*

Minnesota has held the State’s waters “in trust for the people” since admission to the United States in 1858. *State v. Longyear Holding Co.*, 29 N.W.2d 657, 669–70 (Minn. 1947). The State has been defining and protecting public waters since 1867. *In re Application of Christenson*, 417 N.W.2d 607, 609 (Minn. 1987). When a water is found to be a public water, it is subject to increased environmental protection, conservation, and regulation by the State. *Id.* And the State has exercised consistent regulatory authority over public waters since at least 1937, when Minnesota established “a permit system for the use and appropriation of the State’s waters” and assigned responsibility for supervising the system to what is now the Minnesota Department of Natural Resources (DNR). *Id.*

In 1976, the Minnesota Legislature passed a law requiring the DNR to conduct an inventory of all waters subject to state regulation. *Id.* at 608; Act of Mar. 25, 1976, ch. 83, § 8, 1976 Minn. Laws 209, 212–14 (repealed 1990). Before the 1976 inventory, “there had been no systematic inventory of the state’s waterbodies,” and the DNR or the courts made classifications on a case-by-case basis. *Christenson*, 417 N.W.2d at 608. “This ad hoc



approach to regulation resulted in uncertainty, unknowing violations, and costly and time-consuming litigation.” *Id.*

The Legislature passed another inventory law in 1979. Act of May 25, 1979, ch. 199, 1979 Minn. Laws 334, 336–37 (repealed 1990). The purpose of the inventory laws was to “identify, count, list and map the state’s waterbodies according to specific statutory standards.” *Christenson*, 417 N.W.2d at 608. The law provided an objective definition of public waters, which included “[a]ll natural and altered natural watercourses with a total drainage area greater than two square miles.” Minn. Stat. § 105.37, subd. 14(i) (1980). The law also set up procedures for public notice of proposed classifications, county and public participation, and appeals in contested cases.<sup>1</sup> Minn. Stat. § 105.391, subd. 1 (1980) (repealed 1990).

The inventory process culminated in the creation of a public waters inventory that consisted of final lists and maps of public waters for each county. The 1979 inventory law required the DNR to “publish a list of the waters determined to be public waters” for each

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<sup>1</sup> The 1979 inventory law laid out the process as follows: the DNR sent “a list and map of the waters which [it] ha[d] preliminarily designated as public waters” to each county for a 90-day review and comment period, during which the county held at least one public informational meeting. Minn. Stat. § 105.391, subd. 1 (1980) (repealed 1990). The county then sent a response to the DNR, “listing any waters” whose designation the county contested. *Id.* Within 30 days of receiving the county’s response, the DNR notified the county as to which recommendations it rejected or accepted and “revis[ed] the list and map to reflect the recommendations” agreed upon. *Id.* Next, the DNR filed “the revised list and map” with the county recorder and published the list and map in the official county newspaper to invite challenges via petition for hearing. *Id.* A hearings unit composed of three appointed members conducted the hearings and issued findings of fact, conclusions, and an order. *Id.* Orders could be appealed to the district court as the decision of an agency in a contested case. *Id.* After completion of a contested case, the DNR “publish[ed] a list of the waters determined to be public waters.” *Id.*

Minnesota county after completion of the process. *Id.* The DNR also published a final map of the waters determined to be public waters for each county. The DNR stated in the publication of the final lists that the lists were to be used “in conjunction with” the public waters maps, and internal DNR procedures regarding the inventory mandated that “the map must be proofed against the list for errors and inconsistencies.” Thus, the inventory consisted of both a list and a map of public waters for each county that were meant to mirror each other.

The inventory process led to the classification of “approximately 29,000 lakes, rivers and wetlands comprising nearly five million acres” after almost a decade of DNR designations, contested public hearings, and appeals. *Christenson*, 417 N.W.2d at 608. By the late 1980s, the DNR had completed notice and hearing procedures in all Minnesota counties, but courts continued to resolve appeals after that date. *Id.*

In 1990, the Legislature repealed, recodified, and updated the statutes codifying the State’s water law, including public water law and the inventory. Act of Apr. 6, 1990, ch. 391, 1990 Minn. Laws 354, 638–89. Notably, the Legislature made no changes to the definition of public waters, merely recodifying it in Minn. Stat. § 103G.005, subd. 15 (1990). Act of Apr. 6, 1990, ch. 391, art. 7, § 2, 1990 Minn. Laws at 640. But the Legislature repealed the inventory statute and passed a new inventory statute, codified at Minn. Stat. § 103G.201 (1990). Act of Apr. 6, 1990, ch. 391, art. 7, § 13, 1990 Minn. Laws at 644. The statute required the DNR to “prepare a public waters inventory map” for each county, showing the waters designated as public waters in the 1979 inventory process. Minn. Stat. § 103G.201 (1990).

In 2005, the Legislature amended section 103G.201 to give the DNR authority to “revise the public waters inventory map and list of each county” to correct errors in the original inventory. Act of June 3, 2005, ch. 138, § 1, 2005 Minn. Laws 1167, 1168 (codified as amended at Minn. Stat. § 103G.201(e)(2)(i) (2020)). The current statute directs the DNR Commissioner to “maintain a public waters inventory map of each county” that shows the waters designated as public waters during the 1979 inventory process. Minn. Stat. § 103G.201(a) (2020). The current statute refers only to the inventory *map*, not the inventory *list*. Minn. Stat. § 103G.201 (2020).

#### *Renville County inventory process*

In Renville County, the process of creating the public waters inventory map and list followed the 1979 statutory scheme. The process initially lasted from 1979 to 1985. Recent developments, however, have led to an attempt by the DNR to correct alleged errors in the original process in Renville County using its error-correcting authority under Minn. Stat. § 103G.201(e)(2)(i) (2020).

The original inventory process began with the DNR completing the first preliminary draft of the inventory for Renville County in August 1979, which consisted of a map and a list, as required by statute. *See* Minn. Stat. § 105.391, subd. 1 (1980) (repealed 1990). The August 1979 preliminary draft included the entire reach of Limbo Creek—labeled as “Limbo Creek (CD #145)”<sup>2</sup>—on both the inventory list and map. Limbo Creek is a

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<sup>2</sup> “CD 145” references Renville County Ditch 145, which was still subject to a permit approval process in 1979 and was not yet an established public ditch. CD 145 would have converted most of Limbo Creek (including the upper reach) into a public ditch, but CD 145

watercourse with a 9,335-acre watershed in Renville County.<sup>3</sup> Only the upper reach of Limbo Creek is at issue here.

The DNR completed another preliminary draft of the inventory in February 1980. This preliminary draft appears only as a list in the record, with no accompanying map. The February 1980 preliminary draft listed “Limbo Creek” without reference to CD 145 and included *only the lower reach of Limbo Creek*. The DNR removed all references to public ditches in the updated list and altered or removed all but one of the watercourses that referenced public ditches in the August 1979 preliminary inventory list.<sup>4</sup> This action resulted in only the lower reach of Limbo Creek being included on the inventory list from

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never became a public ditch because the project ended in 1982 after the failure to obtain a permit.

<sup>3</sup> Limbo Creek, which begins in Ericson Township and outlets into the Minnesota River at Hawk Creek Township, consists of an upper reach and a lower reach. The upper reach of Limbo Creek starts in section 31 of Ericson Township 116 and ends in section 22 of Hawk Creek Township 115. The lower reach of Limbo Creek starts in section 22 and ends in section 34 of Hawk Creek Township 115.

<sup>4</sup> There is some evidence that removal of public ditches that also fit the definition of public waters from the inventory list was part of the DNR’s internal procedure during the original inventory process, done in response to overlapping permitting requirements for public waters that also meet the definition of public ditches. *See In re Improper Inclusion of Certain Water Courses within Pub. Waters Inventory Maps for 71 Cntys.*, No. A17-0904, 2018 WL 1902441, at \*1–2 (Minn. App. Apr. 23, 2018). Internal DNR memorandum instructed staff members to map all public waters, compare those waters with identified public ditches, and remove the public waters that were also public ditches from the inventory *list*, but ultimately include the public waters that were also public ditches on the final inventory *map*. This practice, however, was not mandated by statute; the law simply instructed the DNR to classify waters fitting the statutory definition and designate them on both a *list and map*. Minn. Stat. § 105.391, subd. 1 (1980) (repealed 1990).

February 1980 onward; the upper reach of Limbo Creek was no longer included on versions of the inventory list after that date.

The County submitted comments to the DNR on the preliminary inventory draft in April 1980, rejecting all watercourses designated by the DNR as public waters except the Minnesota River.<sup>5</sup> In June 1980, the DNR published in the state register notice of a hearing on the Renville County public waters designations. The hearing notice contained a list of the contested public waters. That list did not include the upper reach of Limbo Creek. The Renville County Public Hearings Unit held a hearing in July 1980 on the contested public waters and later issued its decision, classifying as public waters only a few of the contested waters.

The DNR appealed the decision of the Hearings Unit to the Renville County District Court. In May 1985, the DNR and the County reached a settlement. The district court entered an order (the 1985 district court order) adopting the settlement, which designated as public many watercourses from the June 1980 hearing notice, including the lower reach of Limbo Creek. The 1985 district court order stated that all other watercourses *listed in the June 1980 hearing notice* are not public waters. Although the order affirmatively decided whether certain waters were or were not public waters, the decision was specifically limited to the waters listed on the June 1980 hearing notice, not all waters in

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<sup>5</sup> The timing of the County's response to the DNR preliminary inventory draft suggests that the County responded to the February 1980 preliminary inventory list made by the DNR, not the August 1979 preliminary inventory map and list. See Minn. Stat. § 105.391, subd. 1 (requiring counties to review the DNR preliminary inventory designations within 90 days).

the County. As noted previously, the June 1980 hearing list did *not* include the upper reach of Limbo Creek.

In August 1985, following the conclusion of the inventory process in Renville County, the DNR published the final inventory list and map. Both the inventory list and map designated the lower reach of Limbo Creek as a public water. The upper reach of Limbo Creek did not appear on the inventory list. But the upper reach of Limbo Creek did appear on the inventory *map* as a heavy-dashed line, which is a combination of the symbols for public waters and public ditches. Although the upper reach of Limbo Creek had been removed from the inventory *list* in February 1980, the record shows that the upper reach of Limbo Creek was included as a public water on both versions of the inventory *map*—the August 1979 preliminary draft and the August 1985 final version.

In 2017, the DNR issued an order addressing a subset of watercourses that had been mapped as heavy-dashed lines on the inventory maps. *See In re Improper Inclusion of Certain Water Courses within Pub. Waters Inventory Maps for 71 Cntys.*, 2018 WL 1902441, at \*1. The order found that these watercourses had been mapped as heavy-dashed lines because the DNR believed at the time that those watercourses were part of public ditch systems that also met the statutory definition of public waters. *Id.* The order removed those watercourses from the inventory map because their lack of inclusion on the inventory list caused concern that landowners may not have received notice of the designation. *Id.* at 1–2. Although the upper reach of Limbo Creek was mapped as a heavy-dashed line on the inventory map and was not on the inventory list, the DNR did not include it in its 2017 order removing these watercourses from the inventory map.

In March 2019, respondents Minnesota Center for Environmental Advocacy and Protecting Public Waters (MCEA) filed a petition asking the DNR to use its error-correcting authority to classify the upper reach of Limbo Creek as a public water on the inventory list and map. In its petition, MCEA asserted that the upper reach of Limbo Creek had been removed from the inventory map by the 2017 DNR order.<sup>6</sup> On August 10, 2020, the DNR issued a public notice of intent to “make corrections to the Public Waters Inventory by returning” the upper reach of Limbo Creek and several other watercourses in Renville County to the inventory, opening the proposal for a public comment period.<sup>7</sup> The DNR has taken no further public action on MCEA’s petition, besides extending the public comment period to end on November 30, 2020. *Id.*

#### *The County Ditch 77 project*

The history of public waters regulation and the inventory in Renville County became relevant when appellants Alice A. Zimmer, Revocable Trust, et al. (Proposers)

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<sup>6</sup> The 2017 DNR order did not list the upper reach of Limbo Creek as one of the watercourses to be removed from the inventory. MCEA asserted that the upper reach of Limbo Creek had been removed from the inventory, however, because on the buffer protection map—which maps public waters on the inventory subject to buffer protection zones, *see* Minn. Stat. § 103F.48 (2020)—the DNR at the time labeled the upper reach of Limbo Creek as a “Public Water watercourse remov[ed] per Commissioner’s [2017] Order.” *See generally* DNR Buffer Map, MN DEP’T OF NAT. RES., <http://arcgis.dnr.state.mn.us/gis/buffersviewer/> (last visited July 27, 2022) [opinion attachment].

<sup>7</sup> The August 2020 notice is the subject of ongoing litigation in a separate action in Renville County District Court. *Renville Cnty. v. Minn. Dep’t of Nat. Res. Comm’r*, 65-CV-20-164 (Renville Cnty. Dist. Ct. filed Nov. 3, 2020). The DNR also incorrectly stated in this notice that the upper reach of Limbo Creek had been removed from the inventory map in 2017 and proposed that it “be returned” to the inventory list and map.

filed a petition with appellant Renville County Board of Commissioners<sup>8</sup> (the County) to improve the drainage system in Hawk Creek Township, County Ditch 77. The petition sought to extend the ditch further downstream by cleaning and doing channel modification on a section of the upper reach of Limbo Creek, into which the ditch currently drains. The project would remove sediment to restore the effectiveness of the drainage system that has served farms in Renville County for over a century and extend the ditch into the upper reach of Limbo Creek.

In June 2017, the DNR submitted a preliminary advisory report on the project, which stated that the upper reach of Limbo Creek is not a public water. Over the next couple of years, the County engineer refined the project and coordinated with various agencies to acquire the necessary permits to move the project forward. But after the DNR received the petition from MCEA to “return” the upper reach of Limbo Creek to the inventory list and map, the DNR requested that the County postpone any decision on the ditch project to provide the opportunity for the DNR to determine the Limbo Creek inventory proposal. The DNR then opened the Limbo Creek inventory proposal for notice and comment on August 10, 2020, stating in its notice that the upper reach of Limbo Creek meets the statutory definition of a public water.

Eleven days after the DNR opened the notice and comment period, the County engineer filed the final engineering report for the project, stating that the upper reach of Limbo Creek is not a public water. The DNR submitted its final advisory report for the

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<sup>8</sup> The Renville County Board of Commissioners serves as the drainage authority for Renville County under the drainage code, Minn. Stat. §§ 103E.005–.812 (2020).



project the next month. *See* Minn. Stat. § 103E.301 (2020). The DNR report explained that the upper reach of Limbo Creek was in the process of being added to the inventory and explained the confusion in its original classification because of a concurrent public ditch petition that never came to fruition. According to the DNR report, because the upper reach of Limbo Creek meets the statutory definition of a public water, the upper reach of Limbo Creek is a public water. *See* Minn. Stat. § 103G.005, subd. 15.

On October 15, 2020, MCEA petitioned the County for a mandatory, or in the alternative, a discretionary environmental assessment worksheet (EAW) on the ditch project. An EAW is a document that sets out “the basic facts necessary to determine whether an environmental impact statement is required for a proposed action.” Minn. Stat. § 116D.04, subd. 1a(c) (2020). Claiming that the upper reach of Limbo Creek is a public water, MCEA asserted that the project requires an EAW because the project “will change or diminish the course, current, or cross-section of . . . [a] public water.” Minn. R. 4410.4300, subp. 27(A) (2021).

On October 27, 2020, the County held a final hearing on the ditch project and considered the EAW petition, which resulted in a continuance. On November 2, 2020, the DNR sent the County another letter, reiterating its position that the upper reach of Limbo Creek is a public water.

On November 3, 2020, the County denied the EAW petition after finding that the upper reach of Limbo Creek is not a public water. The County determined that the upper reach of Limbo Creek is not a public water because it is not on the inventory list, and that the dashed lines on the inventory map show a public ditch in the upper reach of Limbo

Creek. Thus, the County concluded that the project did not meet the threshold for a mandatory EAW, and it denied a discretionary EAW. In the same proceeding, the County approved the ditch project.<sup>9</sup>

MCEA filed a certiorari appeal in the court of appeals, challenging the County's decision denying MCEA's petition for a mandatory and discretionary EAW. The court of appeals reversed and remanded for the County to prepare a mandatory EAW. *In re Petition of MCEA for Commencement of an Env't Assessment Worksheet*, 967 N.W.2d 425, 427 (Minn. App. 2021). The court of appeals concluded that the absence of the upper reach of Limbo Creek from the inventory list does not conclusively establish that the watercourse is not a public water under Minn. Stat. § 103G.005, subd. 15(a). *In re Petition of MCEA*, 967 N.W.2d at 430–31. Further, the court of appeals also concluded that “the record lacks substantial evidence to support any determination that the upper reach of Limbo Creek is not a public water” under the statutory definition. *Id.* at 434. Because the court of appeals concluded that the County must complete a mandatory EAW, it did not address the County's denial of the discretionary EAW. *Id.* at 427 n.1.

The County and Proposers filed petitions for review, asserting that the court of appeals erred when it failed to hold that the inventory was a final, binding, and exhaustive list of public waters in the State that met the definition under section 103G.005, subdivision 15. They asserted that the absence of a water on the inventory was

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<sup>9</sup> The County's decision to approve the ditch project is the subject of current litigation in a separate action in Renville County District Court. *Protecting Pub. Waters v. Renville Cnty. Bd. of Comm'rs*, No. 65-CV-21-41 (Renville Cnty. Dist. Ct. filed Feb. 23, 2021).

determinative of the public waters classification of that water. Neither petition for review challenged the decision of the court of appeals that the County lacked substantial evidence to find that the upper reach of Limbo Creek was not a public water under the statutory definition.

## ANALYSIS

The narrow question presented in this case is whether the County must complete a mandatory EAW for the County Ditch 77 project affecting Limbo Creek. Administrative rules promulgated under the Minnesota Environmental Policy Act (MEPA) require the completion of a mandatory EAW when a project “will change or diminish the course, current, or cross-section of one acre or more of any *public water* . . . .” Minn. R. 4410.4300, subp. 27(A) (emphasis added). According to the parties, the need for a mandatory EAW turns on whether the upper reach of Limbo Creek is a public water; the parties only dispute the meaning of “public water,” and not any other part of the mandatory EAW rule. It is this narrow dispute that gives rise to the broader question presented by this dispute as to what classification of waters as “public water” controls. MCEA asks us to hold that the statutory definition of “public waters” in Minnesota Statutes section 103G.005, subdivision 15, governs. In contrast, the County and Proposers argue that the inventory governs what is a public water. They thus maintain that the upper reach of Limbo Creek is not a public water because it is not included in the Renville County inventory list.

We review certiorari appeals of agency decisions without deference to the review conducted by the district court or appellate court, but with “substantial deference to the agency’s decision.” *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of*

*Comm'rs*, 713 N.W.2d 817, 832 (Minn. 2006). “Agency decisions are reversed when they reflect an error of law, the findings are arbitrary and capricious, or the findings are unsupported by substantial evidence.” *Id.* Although we accord deference to agency decisions, the interpretation of statutes and administrative regulations is a legal question, which we review *de novo*. *In re Reissuance of an NPDES/SDS Permit to U.S. Steel Corp.*, 954 N.W.2d 572, 576 (Minn. 2021). We do not defer to an agency’s interpretation of a statute when the statute is unambiguous. *Id.*

Although we provided a broad overview of public waters regulation in the prior section, we now turn to the specific statutory and rules provisions at issue. Rule 4410.4300 (2021) outlines the mandatory EAW categories under MEPA. The rule provides that “[a]n EAW must be prepared for projects that meet or exceed the threshold” under subpart 27 “[f]or projects that will change . . . the course . . . of one acre or more of any public water.” Minn. R. 4410.4300, subps. 1, 27(A). The dispute here focuses on whether the upper reach of Limbo Creek is a “public water.” MEPA rules provide that “‘[p]ublic waters’ has the meaning given in Minnesota Statutes, section 103G.005.” Minn. R. 4410.0200, subp. 69 (2021). Additionally, the Legislature designated section 103G.005 as the generally applicable statutory definition of “public waters.” Minn. Stat. § 645.44, subd. 8a (2020) (providing that, “unless another intention clearly appears,” the term “‘[p]ublic waters’ means public waters as defined in section 103G.005, subdivision 15”).

Section 103G.005, in turn, defines “public waters” in subdivision 15(a)(1)–(11). As relevant here, a water can fit the definition based on physical characteristics—such as “natural and altered watercourses with a total drainage area greater than two square miles,”

Minn. Stat. § 103G.005, subd. 15(a)(9)—or based on a previous classification—such as “waters of the state that have been finally determined to be public waters . . . by a court of competent jurisdiction,” *id.*, subd. 15(a)(2). Notably, none of the provisions defining “public waters” reference the inventory, the 1979 inventory law, or the current inventory statute, section 103G.201. *See* Minn. Stat. § 103G.005, subd. 15(a).<sup>10</sup>

It is against this legal backdrop that MCEA makes its argument that because the definition of “public waters” in section 103G.005, subdivision 15, does not reference the inventory, the definition of “public waters” is completely independent of the inventory. It contends that when statutes or rules refer to “public waters,” either generally or under the statutory definition, the inventory does not apply. *See, e.g.*, Minn. Stat. § 103E.005, subd. 26 (2020) (stating that “[p]ublic waters,” for the purposes of the Drainage Code, “has the meaning given in section 103G.005, subdivision 15”).

The County and Proposers, by contrast, argue that the statutory definition of public waters is never decisive because it is dependent on the inventory list, which conclusively classified all public waters in Minnesota. They assert that non-inclusion on the inventory list—as is the case for the upper reach of Limbo Creek—definitively shows that a water is

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<sup>10</sup> In contrast, some provisions in section 103G.005, subdivision 15(a), cross-reference other statutes—for example, subdivision 15(a)(5) defines “public waters” to include “water basins designated as scientific and natural areas under section 84.033.” Additionally, subdivision 15f of section 103G.005 cross-references the inventory statute, section 103G.201, in defining shoreland protection zones as zones “300 feet from the ordinary high-water level of a watercourse identified by the public waters inventory under section 103G.201.” Minn. Stat. § 103G.005, subd. 15f(2)(ii). Further, the Legislature has explicitly defined “public waters” in other contexts as those waters on the inventory. *See, e.g.*, Minn. Stat. § 103F.48(i) (2020) (defining “public waters” for the purpose of the buffer zone law as those “that are on the public waters inventory as provided in section 103G.201”).

not a public water. They further note that section 103G.201(a) requires the DNR Commissioner to maintain “a public waters inventory map” showing the waters of the State designated as public under the 1979 inventory law. The County and Proposers contend that this incorporation of the 1979 inventory procedures into section 103G.201 supports their claim that the inventory governs public waters classifications. Because the 1979 inventory law created a mandatory process for the designation of public waters on the inventory using the statutory definition of public waters (now found in section 103G.005, subdivision 15), the County and Proposers claim that the inventory definitively identified all public waters in the State that meet the statutory definition.

The County and Proposers are correct, in as much as they assert that the upper reach of Limbo Creek does not appear on the Renville County inventory *list* and observe that section 103G.201 explicitly references the 1979 law requiring publication of public waters lists.<sup>11</sup> Although included on an August 1979 preliminary draft of the Renville County inventory list, the upper reach of Limbo Creek was likely removed from the preliminary inventory list *before* the DNR shared it with the County.<sup>12</sup> No public hearing was held on

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<sup>11</sup> Because it was excluded from the list, the upper reach of Limbo Creek may not have undergone the full “public waters inventory and classification procedures” set forth in the 1979 inventory law and required by section 103G.201(a). *See In re Improper Inclusion*, 2018 WL 1902441, at \*1–2 (noting that the omission of certain public waters from the inventory lists may have prevented interested landowners from receiving notice of a “public water” designation on their land).

<sup>12</sup> That the upper reach of Limbo Creek was removed before sharing the inventory list with the County refutes the County and Proposers’ assertion that the upper reach of Limbo Creek was intentionally removed because it was determined not to be a public water. This assertion is also refuted by the inclusion of the upper reach of Limbo Creek on the final

the classification of the upper reach of Limbo Creek because it was not listed on the hearing notice, and the Renville County District Court did not consider the upper reach of Limbo Creek when issuing the 1985 order adopting the settlement between the DNR and the County as to which waters would be included on the final inventory list.<sup>13</sup>

But even if we assume without deciding that the Legislature intended the inventory to govern as to which waters in the State are public waters, the inventory does not conclusively establish the classification of the upper reach of Limbo Creek. Although the upper reach of Limbo Creek does not appear on the Renville County inventory *list* (which the County and Proposers claim is dispositive), the upper reach of Limbo Creek does appear on the Renville County inventory *map*. And section 103G.201(a)—the statutory basis for the County and Proposers’ position—directs the DNR to “maintain a public waters inventory *map* of each county that shows the waters of this State that are designated as

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inventory map as a public water. Had it been removed because the DNR determined that it was not a public water, there would be no reason for the DNR to then include it as a public water on the final inventory map.

<sup>13</sup> The County and Proposers rely heavily on the 1985 district court order, arguing that it is a final and binding judgment as to which waters in Renville County are public waters and which are not public waters. The 1985 district court order affirmatively found that certain waters identified on the June 1980 hearing notice are public waters, listed them by name, and specified that all other waters *listed in the June 1980 hearing notice* are not public waters. Thus, the order concerned only the waters listed on the June 1980 hearing notice, not *all waters* in the County. For that reason, we cannot treat the 1985 district court order as a final and binding judgment as to the public water status of *all waters* in Renville County. Specifically, the 1985 district court order is not a final and binding judgment as to the classification of the upper reach of Limbo Creek because the upper reach of Limbo Creek was not listed in the June 1980 hearing notice.

public waters” under the inventory. (Emphasis added.) Section 103G.201(a) does not explicitly reference the inventory *list*.

On the inventory map for Renville County, the upper reach of Limbo Creek appears as a public water by its designation with a heavy-dashed line. The map legend notes that a heavy-dashed line is a dual designation, meaning that the upper reach of Limbo Creek is a protected public watercourse (heavy line) in addition to being managed by a drainage authority as a public ditch (dashed line).<sup>14</sup> The County determined that the heavy-dashed line meant that the upper reach of Limbo Creek was *only* a public ditch. This determination is incorrect; if the upper reach of Limbo Creek was *only* a public ditch, the map would have used a dashed line, not a heavy-dashed line.<sup>15</sup>

Thus, the inventory map designates the upper reach of Limbo Creek as a public ditch *and* a public water. The DNR determined that the upper reach of Limbo Creek is an altered

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<sup>14</sup> Renville County Public Waters Inventory Map, MN DEP’T OF NAT. RES., [https://files.dnr.state.mn.us/waters/watermgmt\\_section/pwi/RENV1OF1.pdf](https://files.dnr.state.mn.us/waters/watermgmt_section/pwi/RENV1OF1.pdf) (last visited July 27, 2022) [opinion attachment]. Limbo Creek is represented in the separate section of the map appearing at the bottom left of the page. The upper reach of Limbo Creek is visible in section 22 of Hawk Creek Township 115, just north of the Minnesota River and south of Highway 212, where the line changes from a solid, heavy line, to a heavy-dashed line. The upper reach of Limbo Creek then extends northeast and crosses Highway 212 just west of Sacred Heart. It is here that the upper reach of Limbo Creek is also shown on the main map, where it extends northeast into section 31 of Ericson Township 116.

<sup>15</sup> The designation of the upper reach of Limbo Creek as a public ditch is not accurate because the Army Corps of Engineers blocked the effort to establish a public ditch in the upper reach of Limbo Creek, resulting in the dismissal of the public ditch petition in the 1980s. But even if the County insists that we rely on section 103G.201 to determine the classification of waters, that statute directs us to the inventory *map*. The map shows—by the dashed line—a public ditch in this reach of Limbo Creek. It also shows that this reach of Limbo Creek is a public water, because the dashed line is heavy and dark.



or natural watercourse 40 years ago. Since correcting its preliminary report, the DNR has repeatedly informed the County that it considers the upper reach of Limbo Creek to be “an altered natural watercourse” that meets the statutory definition of a public water.

This dissonance between the upper reach of Limbo Creek’s exclusion as a public water on the inventory list, but inclusion as a public water on the inventory map, precludes us from answering the broader question presented in the County’s and Proposers’ petitions for review as to whether the absence of a water from the inventory list conclusively establishes that the water is not a public water. We need not decide that issue here because the absence of the upper reach of Limbo Creek from the inventory list, given the presence of the creek’s upper reach on the inventory map, is not determinative. The complicated history of the upper reach of Limbo Creek and the lack of clarity in the official classifications make it impossible to rely on the inventory *alone* for the proper classification of the upper reach of Limbo Creek. We conclude, therefore, that the court of appeals did not err by relying on the statutory definition of “public waters” in section 103G.005, subdivision 15(a)—and not on the absence of the water from the inventory list—to determine whether the upper reach of Limbo Creek is a public water.

In affirming the court of appeals’ reliance on the statutory definition of “public waters” in this case, we make special note that the MEPA regulations specify that the phrase “ ‘[p]ublic waters’ has the meaning given in Minnesota Statutes, section 103G.005.” Minn. R. 4410.0200, subp. 69. We also note that section 645.44 provides that section 103G.005 applies when any statute uses the phrase “public waters” “unless another intention clearly appears.” Minn. Stat. § 645.44, subs. 1, 8a. And as the court of appeals

stressed, nothing in section 103G.005 “makes qualifying as a ‘public water’ dependent on a water’s inclusion on the DNR’s [inventory] list or map.” *In re Petition of MCEA*, 967 N.W.2d at 431.

Nonetheless, we do not reach the broader question of whether the absence of other waters from the inventory under section 103G.201 dictates generally that those waters are not “public waters” for purposes of environmental review under MEPA. We also do not address whether, in general, the statutory definition or the inventory applies when determining the public waters classification of a water, given the significant consequences that the parties and amici have raised. It is the duty of the Legislature to clarify the relationship between the inventory and the statutory definition of public waters.

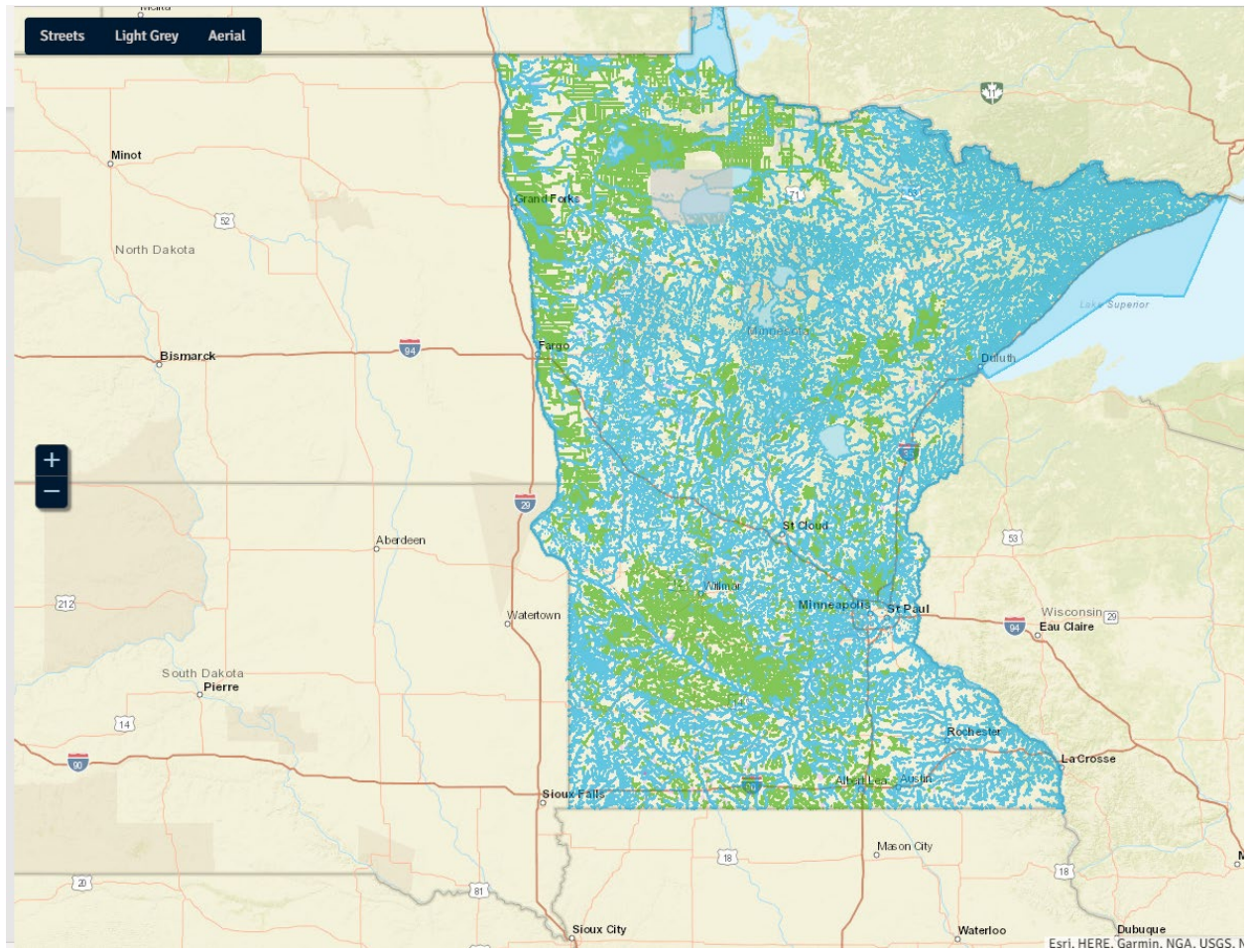
Finally, the County and Proposers argue that, even under the definition of “public waters” in section 103G.005, the upper reach of Limbo Creek is not a public water. The court of appeals concluded that the County’s “determination that the upper reach of Limbo Creek is not a public water is not supported by substantial evidence.” *Id.* at 433. The court of appeals also concluded that the record supported the “repeated declaration[s]” by the DNR “that the upper reach is in fact a public water” under the statutory definition. *Id.* Neither the County nor the Proposers challenged these conclusions in their petitions for review. They challenged only the decision of the court of appeals that the inventory is not determinative of public water status in later regulatory decisions that rely on a public waters classification. Because we generally do not address issues that are not raised in the petition for review, we hold that the County and Proposers forfeited the argument that the court of appeals erred in holding that the County lacked substantial evidence to find that the upper

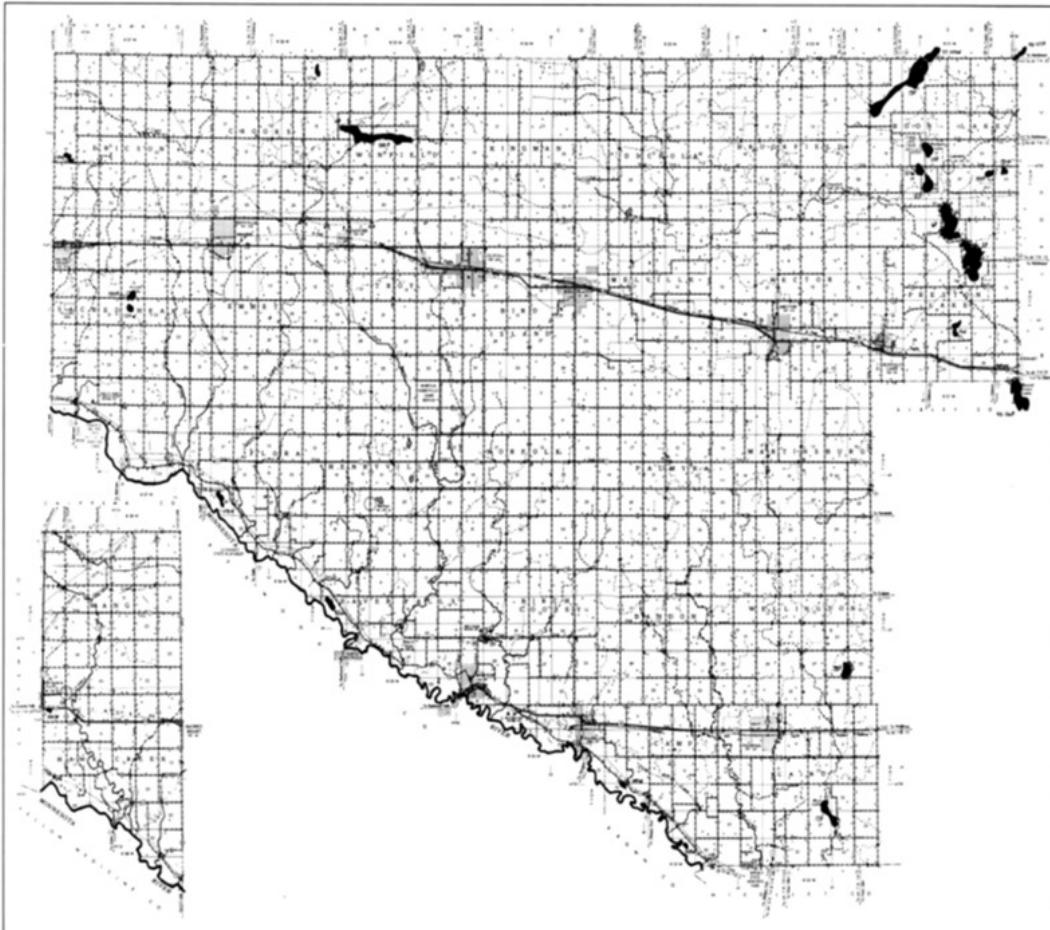
reach of Limbo Creek is not a public water under the statutory definition. *See In re GlaxoSmithKline PLC*, 699 N.W.2d 749, 757 (Minn. 2005).

### **CONCLUSION**

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.





**PROTECTED  
WATERS  
AND  
WETLANDS**

**RENVILLE  
COUNTY  
MINNESOTA**

SHEET 1 of 1



**LEGEND**

**Protected Waters:**  
 - Rivers are identified with a number and the letter "R"  
 - Watercourses are identified with a three, dark line  
 - Public ditches are identified with a dashed line

**Protected Wetlands:**  
 - Identified with a number and the letter "W"

This map is intended for use with a separate design system. The boundaries of the protected water bodies shown on this map are printed as accurately as possible, consistent with the map scale, but are not guaranteed. A protected water body boundary coincides with the ordinary high water mark of the water body as defined in Minnesota Statutes, Section 105.07 and as determined through DNR field-measured water marks.

Protected waters and wetlands are subject to Minnesota Statutes, Section 105.42, which requires that a permit be obtained before making any alteration in the course, current or cross section of these waters. Contact the DNR office in your area for further information.

**Trespass**  
 The designation and mapping of protected waters or wetlands does not create a right of access to these waters or wetlands in order to enjoy access to the water. Please respect the property of others.

**Water Bank**  
 Wetland owners may be eligible for compensation for preservation of protected wetlands. Contact the DNR office in your area for further information.

SCALE: 1/4" = 1 MILE

