



LOWER MINNESOTA RIVER WATERSHED DISTRICT

Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting
Wednesday, November 18, 2020

Agenda Item

Item 6. F - 2021 Legislative Action

Prepared By

Linda Loomis, Administrator

Summary

There have been a number of changes in the slate of legislators representing districts within the Minnesota River Basin, including in the LMRWD. Most notable is Senator Dan Hall, who has carried legislation for the LMRWD, did not win re-election.

Claire Robling, lobbyist for Scott County, called to speak to me about an issue Scott County Commissioner Michael Beard brought up. She asked about the designation of Managers and being able to fill out the LMRWD Board of Managers. I explained the issue to her and she said she will add it to the list of issues that Scott County will support. Ms. Robling informed me that she is planning to retire in the very near future.

I was doing some investigation and found that the LMRWD has brought up this issue before with BWSR. It appears that redistribution of Managers was considered because there was a desire among some counties and municipalities to petition for a boundary change. Jim Haertl of BWSR provided some scenarios to boundary changes and some examples he found of two watershed districts addressed distribution of Managers; Valley Branch in 1980 and Wild Rice Watershed District in 2006. An email from Jim Haertl is attached along with the Orders issued by the Minnesota Water Resources Board, in the case of Valley Branch Watershed District and BWSR in the case of the Wild Rice Watershed District

Attachments

December 28, 2010 email from Jim Haertl

Findings of Fact, Conclusions of Law, Order in the Matter of the Petition to Redistribute Managers of Valley Branch Watershed District

Order Redistribution of Watershed District Managers In the Matter of the Petition for Redistribution of Managers for the Wild Rice Watershed District

Recommended Action

No action recommended

From: Haertel, Jim (BWSR) [Jim.Haertel@state.mn.us]
Sent: Thursday, January 06, 2011 2:13 PM
To: Terry Schwalbe
Cc: Ray Bohn
Subject: FW: Scenarios for the Lower MN River Watershed District

Terry –

When I just sent out the email cancelling the hearing I realized I had not copied you on the forwarded email below. I'll give you a call to discuss.

Jim Haertel
Metro Region Supervisor
MN Board of Water and Soil Resources
520 Lafayette Road North
Saint Paul, MN 55155
Voice: 651-297-2906
FAX: 651-297-5615
Email: jim.haertel@state.mn.us

From: Haertel, Jim (BWSR)
Sent: Tuesday, December 28, 2010 4:32 PM
To: Thompson, Lynn; 'mike.svoboda@co.scott.mn.us'; 'Nelson, Paul'; 'Joel.Settles@co.hennepin.mn.us'; 'Paul Moline'
Cc: Jaschke, John (BWSR); Woods, Steve (BWSR); Wozney, Brad (BWSR)
Subject: Scenarios for the Lower MN River Watershed District

Below are the main scenarios as I currently assess the situation with the Lower Minnesota River Watershed District (LMRWD). Please feel free to contact me with any questions or to discuss.

A. Status Quo.

- This spring would likely see BWSR approval of the revised LMRWD watershed management plan and three manager appointments by Carver, Dakota and Scott Counties could occur.

B. Some or all of the counties file a boundary change petition under MS 103D.251.

- Without filing a companion petition to terminate the LMRWD, some of the LMRWD would have to remain in place, such as a dredging district.
- A problem would be finding managers from residents living within the truncated district, unless a statutory exemption was approved.

- Because a boundary change under 103D pertains solely to watershed districts, the issue of reapportioning areas not transferred to an adjacent watershed district would have to be addressed.

C. Some or all of the counties file a boundary change petition under MS 103D.251 AND a companion petition to terminate the LMRWD is filed under MS 103D.271.

- The termination petition would have to be signed by at least 25% of the resident owners in the LMRWD.
- A local project sponsor for the Corps dredging would have to be established.
- Because a boundary change under 103D pertains solely to watershed districts, the issue of reapportioning areas not transferred to an adjacent watershed district would have to be addressed.

D. All of the cities and towns in the LMRWD file BOTH a boundary change petition under MS 103B.215 and a termination petition under MS 103B.221.

- A local project sponsor for the Corps dredging would have to be established.
- BWSR Order could assign areas to adjacent watershed districts and watershed management organizations.

Jim Haertel
Metro Region Supervisor
MN Board of Water and Soil Resources
520 Lafayette Road North
Saint Paul, MN 55155
Voice: 651-297-2906
FAX: 651-297-5615
Email: jim.haertel@state.mn.us

Minnesota Water Resources Board
555 Wabasha Street
Room 206
St. Paul, Minnesota
55102

In the Matter of the Petition
to Redistribute the Managers of
Valley Branch Watershed District
between Ramsey County and
Washington County.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
ORDER

A petition, submitted by the Board of Commissioners, Ramsey County, having been filed with the Minnesota Water Resources Board (Board) on March 27, 1980, sought the redistribution of the five managers of the Valley Branch Watershed District between Ramsey County and Washington County so that Ramsey County has representation on the Valley Branch Watershed District Board of Managers. A proper Notice of hearing on the petition was given by the Board; and, the Board held a hearing on the above matter beginning at 1:30 p.m. on June 3, 1980 in the Community Section of the Washington County Human Services Building, 7066 Stillwater Boulevard North, Oakdale, Minnesota, Washington County. The hearing was conducted by Howard L. Kaibel, Jr., a state hearing examiner.

Messrs. Duane Ekman, Benjamin Harriman and Glenn Kinneberg, Board members, appeared; appearing with the Board were Mr. Douglas Blanke, Special Assistant Attorney General, and Mr. Erling M. Weiberg, Executive Secretary. Mr. Stephen F. Befort, Principal Assistant County Attorney, appeared on behalf of the Ramsey County Board of Commissioners; Mr. Robert Kelly, Washington County Attorney, appeared on behalf of the Washington County Board of Commissioners; Susan K. Rossbach appeared on behalf of the City of N. St. Paul and Mr. Raymond Marshall, Attorney, appeared on behalf of the Board of Managers of the Valley Branch Watershed District. Other persons appeared and were heard fully.

The hearing examiner having submitted his report and recommendation; the Board having heard the testimony and evidence offered and received and having duly considered the same, and having considered all the files and records of the Board pertaining thereto now makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

- I. A duly executed petition seeking redistribution of the power to appoint managers between Ramsey County and Washington County was filed with the Board on March 27, 1980.
- II. The Board authorized its Chairman on April 21, 1980, to arrange a time and place for its hearing on the petition and cause Notice of a hearing to be given. The Chairman in consultation with the Board's staff, selected June 3, 1980, as the date for the Board's hearing to begin at 1:30 p.m. in a meeting room in the Community Section of the Washington County Human Services Building, 7066 Stillwater Boulevard North, Oakdale, Minnesota, 55119. The above action of the Chairman was approved by the Board at its meeting on June 3, 1980.
- III. Due and proper notice, as required by law, was given.
- IV. The Board hearing was held on June 3, 1980 at the designated place. It was conducted by Howard Kaibel, Jr., a hearing examiner of the state. Board members Ekman, Harriman and Kinneberg were present.
- V. The Valley Branch Watershed District was established by Order of the Board on November 14, 1968 - see Paragraph XII of the Board's Order.
- VI. The Board of Managers to govern the Valley Branch Watershed District consists of five residents of the watershed district; the power to appoint the five managers to the Board of Managers of Valley Branch Watershed District was given to the Board of Commissioners of Washington County - see Paragraph XV of the Board's Order.
- VII. The petition of the Board of Commissioners of Ramsey County seeking redistribution of the managers of the Valley Branch Watershed District was filed with the Board 11 years, 4 months and 13 days after the Valley Branch Watershed District was established by the Board.

- VIII. Since establishment of the Valley Branch Watershed District all managerial appointments have been made by the Board of Commissioners of Washington County and all appointees have been residents of Washington County.
- IX. The petitioner seeks a "voice", a vote on the Board of Managers of the Valley Branch Watershed District, that is, one manager of the Valley Branch Watershed District hereinafter be appointed by the Board of Commissioners of Ramsey County.
- X. The approximate size of the watershed district is 64 square miles; about 63 square miles are located in Washington County and about one square mile is in Ramsey County.
- XI. The record of the terms of the managers of the Valley Branch Watershed District in the Board's office show that the terms of two managers (*Maynard L. Eder and *A. W. Horning) of the Valley Branch Watershed District Board of Managers did expire on November 13, 1980.
- XII. The record of the Board's office on the day of the date of this Order, as to the appointment of managers for two three-year terms, which expired on November 13, 1980, shows that the appointments have not been made by the Board of Commissioners of Washington County.
- XIII. The hearing examiner filed his report and recommendation with the Board on October 13, 1980.

CONCLUSIONS OF LAW

- XIV. That the Minnesota Water Resources Board has jurisdiction in the matter of redistributing the power of county boards to appoint managers between two counties or among more than three counties, according to Minn. Stat. 1978, Section 112.42, Subd. 3.
- XV. That the redistribution of the power to appoint managers of the Valley Branch Watershed District between Ramsey and Washington Counties would be in accordance with the policy and purposes of Chapter 112 because this action would benefit the administration of the Watershed Act by protecting the public welfare and benefitting the inhabitants of the watershed district.

XVI. That the public welfare and the public interest will be served by the redistribution of managers and the purpose of Chapter 112 would be subserved by the redistribution of the managers as follows: One manager residing in the watershed district in Ramsey County and appointed by the Board of Commissioners of Ramsey County and four managers residing in the watershed district in Washington County and appointed by the Board of Commissioners of Washington County.

IT IS THEREFORE ORDERED

XVII. That the Board of Commissioners of Ramsey County shall have the power to appoint one manager to the Board of Managers of Valley Branch Watershed District.

XVIII. That the Board of Commissioners of Washington County shall have the power to appoint four managers to the Board of Managers of the Valley Branch Watershed District.

IX. That effective the date of this Order the Board of Commissioners of Washington County shall make one appointment of a manager to the Board of Managers of the Valley Branch Watershed District for a term expiring November 13, 1983, and thereafter succeeding appointments for this managerial position shall be for a three-year term.

XX. That effective the date of this Order the Board of Commissioners of Ramsey County shall make one appointment of a manager to the Board of Managers of the Valley Branch Watershed District for a term expiring November 13, 1983, and thereafter succeeding appointments for this managerial position shall be for a three-year term.

XXI. That the remaining three managerial positions of the Valley Branch Watershed District, occupied by citizens and with terms expiring as shown:

TABLE I

	<u>Name</u>	<u>Term Expires</u>
1.	*Mr. Allen W. Dornfeld	- 11-13-81
2.	*Mr. Robert N. Rosas	- 11-13-82
3.	*Mr. George Hedges	- 11-13-81,

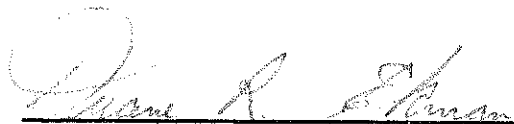
and appointments made by the Board of Commissioners of Washington County, shall continue to be appointed by the Board of Commissioners of Washington County, and succeeding appointments to these managerial positions shall be each for a three-year term.

*In this Order the appearance of the names of the incumbent managers is in no way to be construed as the appointment by the Minnesota Water Resources Board of any manager to the Valley Branch Watershed District Board of Managers, or to indicate any preference in the matter of appointments. The names identify in a precise manner, the particular term under consideration insofar as distribution among the counties and for other purposes. Terms begin on November 14th.

XXII. That effective the date of this Order, Paragraph XV, pages 16 and 17, of the Board's Order establishing the Valley Branch Watershed District, dated November 14, 1968, is declared null and void.

Dated at Saint Paul, Minnesota, this 19th day of December 1980.

MINNESOTA WATER RESOURCES BOARD



Duane R. Ekman
Chairman

Minnesota Board of Water and Soil Resources
520 Lafayette Road North
St. Paul, Minnesota 55155

In the Matter of the Petition for Redistribution
of Managers for the Wild Rice Watershed
District pursuant to Minnesota Statutes
Section 103D.301, Subd. 3

**ORDER
REDISTRIBUTION OF
WATERSHED DISTRICT
MANAGERS**

Whereas, the Board of Commissioners of Mahnomen County filed a Petition dated January 17, 2006 for Redistribution of Managers for the Wild Rice Watershed District (District) with the Minnesota Board of Water and Soil Resources (Board) pursuant to Minnesota Statutes Section 103D.301, Subd. 3, and;

Whereas, the Board has completed its review of the Petition;

Now Therefore, the Board hereby makes the following Findings of Fact, Conclusions and Order.

FINDINGS OF FACT

1. **Petition for Redistribution of Managers.** The Mahnomen County Board of Commissioners filed a Petition with the Board on January 26, 2006. The Petition requests the seven managers of the District be redistributed such that Mahnomen County would appoint two managers.
2. **Reasons for Redistribution.** The Petition states the following:
 - A. Ten years or more has lapsed since the establishment of the District.
 - B. A petition to redistribute managers has not been filed with the Board within the previous ten years.
 - C. When more than one county is affected by a watershed district, Minnesota Statutes Section 103D.301 requires the distribution of managers be made according to residence among the affected counties.
 - D. Mahnomen County presently has only one manager on the District board.
 - E. Mahnomen County has approximately 26 percent of the population of the District.
 - F. Mahnomen County also has approximately 26.5 percent of the total land within the District.

- G. Mahnomen County has to levy for approximately 25.5 percent of all revenue that goes into funding the District.
- H. Mahnomen County's percentage of valuation on levy certifications to the District were approximately 25.6 percent.

3. **Present Distribution of Managers.** Presently, Mahnomen County appoints one manager for Clearwater and Mahnomen Counties, Norman County appoints three managers for Polk and Norman Counties, Clay County appoints two managers and Becker County appoints one manager.

4. **Publish Notice of Public Hearing.** Legal notice of public hearing was published in the Norman County Index on March 14, 2006, the Twin Valley Times on March 14, 2006, the Becker County Recorder on March 15, 2006, the Mahnomen Pioneer on March 16, 2006, the Clay County Union on March 15, 2006, the Farmers Independent on March 15, 2006, the Valley Journal on March 13, 2006, and the Fertile Journal on March 15, 2006. Legal notice was also mailed to several addressees including the auditors of each county in the District, the county boards of each county in the District, each SWCD in the District, all cities in the District, and the DNR.

5. **Public Hearing.** A public hearing was held on March 30, 2006, at the Twin Valley Community Center located at 107 Second Street in Twin Valley. The proceedings were tape recorded. The hearing panel consisted of Board members Kay Cook, Paul Krabbenhoft and Jerome Deal as Chair. After all people present at the public hearing were given an opportunity to speak and enter exhibits, the hearing record was left open for two weeks until 4:30 PM on April 20, 2006 for receipt of written comments. Based on comments received, on April 17, 2006 the closing date for the hearing record was extended until 4:30 PM on May 18, 2006.

The following list of exhibits comprise the hearing record.

Exhibit 1. Letter dated January 24, 2006, from Frank Thompson, Mahnomen County Auditor, forwarding Exhibit 2.

Exhibit 2. Resolution from the Mahnomen County Board of Commissioners adopted on January 17, 2006, requesting the redistribution of managers of the Wild Rice Watershed District Board of Managers to increase the representation from Mahnomen County from one manager to two managers.

Exhibit 3. Letter dated February 17, 2006, from Vijay Sethi, Clay County Administrator, forwarding Exhibit 4.

Exhibit 4. Excerpts from the minutes of the Clay County Board of Commissioners meeting held on February 14, 2006, showing a unanimous vote to approve a motion stating their strong support for retaining two manager appointments on the Wild Rice Watershed District Board of Managers.

Exhibit 5. Legal Notice of Public Hearing dated March 7, 2006, signed by Jim Haertel of the Board of Water and Soil Resources.

Exhibit 6. Letter dated March 9, 2006, from Jim Haertel, Board of Water and Soil Resources, to several addressees providing notification of the public hearing, together with the List of Addressees, the Legal Notice, and an Affidavit of Mailing dated March 13, 2006.

Exhibit 7. Affidavit of Publication dated March 14, 2006, of Legal Notice in the Norman County Index on March 14, 2006.

Exhibit 8. Affidavit of Publication dated March 14, 2006, of Legal Notice in the Twin Valley Times on March 14, 2006.

Exhibit 9. Affidavit of Publication dated March 15, 2006, of Legal Notice in the Becker County Recorder on March 15, 2006.

Exhibit 10. Affidavit of Publication dated March 16, 2006, of Legal Notice in the Mahnommen Pioneer on March 16, 2006.

Exhibit 11. Affidavit of Publication dated March 20, 2006, of Legal Notice in the Fertile Journal on March 15, 2006.

Exhibit 12. Letter dated March 22, 2006, from the Chairman of the Mahnommen Soil and Water Conservation District, in support of the Petition.

Exhibit 13. Letter dated February 24, 2006 from Brian Berg, Becker County Administrator stating no objection to granting the Petition.

Exhibit 14. Resolution of Statements from the “Concerned Citizens of the Wild Rice Watershed District”.

Exhibit 15. Statement from the Mahnommen County Board of Commissioners in support of the Petition.

Exhibit 16. Table showing population, taxable market value and land area by county within the Wild Rice Watershed District.

Exhibit 17. Letter dated February 23, 2006 from Thomas Anderson, Clearwater County Board of Commissioners Chairman, in support of the Petition.

Exhibit 18. Letter dated March 21, 2006 from Dean Newland, Clearwater County Commissioner, District 2, in support of the Petition.

Exhibit 19. Affidavit of Publication dated April 3, 2006, of Legal Notice in the Clay County Union on March 15, 2006.

Exhibit 20. Affidavit of Publication dated April 3, 2006, of Legal Notice in the Farmers Independent on March 15, 2006.

Exhibit 21. Affidavit of Publication dated April 13, 2006, of Legal Notice in the Valley Journal on March 13, 2006.

Exhibit 22. Testimony of Mark Harless at the hearing in support of Clay County retaining two managers.

The following exhibits were entered into the record after the hearing and before 4:30PM on May 18, 2006 when the record closed.

Exhibit 23. Letter dated March 31, 2006 from Mark Harless in support of Clay County retaining two managers.

Exhibit 24. Letter dated April 12, 2006 from Curt Jacobson in support of the Petition with a recommendation that Norman County retain three managers and a new manager district be formed of Clay and Becker Counties with Clay County appointing two managers.

Exhibit 25. Letter dated April 17, 2006 from Jim Haertel, Board of Water and Soil Resources, to several addressees providing notification of an extension of the close of the hearing record and the purpose for the extension, together with the List of Addressees and an Affidavit of Mailing dated April 18, 2006.

Exhibit 26. Letter faxed on April 17, 2006 from Perry Ellingson in support of the Petition with a recommendation that Norman County retain three managers and a new manager district be formed of Clay and Becker Counties with Clay County appointing two managers.

Exhibit 27. Email dated April 18, 2006 from Curt Jacobson encouraging the Board to make a prompt decision on the Petition.

Exhibit 28. Email dated April 18, 2006 from Perry Ellingson regarding problems with the current leadership of the watershed district.

Exhibit 29. Norman County Board of Commissioners Resolution dated April 12, 2006 supporting the Petition with one manager position from Clay County being redistributed to Mahnomen County.

Exhibit 30. Letter dated April 17, 2006 from Zenas Baer on behalf of A. C. Heiraas in support of Clay County retaining two managers and in opposition to the Petition.

Exhibit 31. Letter dated April 18, 2006 from Randy Berggren, Mayor, City of Hendrum, in support of Norman County retaining three managers.

Exhibit 32. Becker Soil and Water Conservation District Resolution dated April 19, 2006 in support of Becker County retaining one manager.

Exhibit 33. Letter dated April 20, 2006 from Chuck Hopwood regarding problems with the current leadership of the watershed district.

Exhibit 34. Letter dated April 18, 2006 from Don Vellenga regarding problems with the current leadership of the watershed district.

Exhibit 35. Letter dated May 16, 2006 from Mike McCarthy, Chair, Clay County Board of Commissioners, with attached Resolution from the Becker County Board of Commissioners dated April 25, 2006 and attached letter from Zenas Baer dated May 4, 2006, all in opposition to the Petition because removal of one manager from Clay and Becker Counties would "...have a tendency to dilute membership of the Watershed District for those people who live on the flat portion of the watershed" and factors other than market value, population and land area as listed in the Petition should be considered, such as downstream river flows, hydraulic capacity, extent of flood damage and number, location and cost of flood control projects.

Exhibit 36. Mahnomen County Board of Commissioners comment dated May 16, 2006 signed by five commissioners in support of Becker County maintaining their right to appoint a manager.

Exhibit 37. Letter dated May 18, 2006 from Frank Thompson, Mahnomen County Auditor, forwarding exhibit 36.

6. **Northern Water Planning Committee.** The committee met on Wednesday, June 14, 2006 and, based on the oral and written testimony on the Petition, and based on the entire record, the committee decided to recommend approval of the Petition to the full Board with the one redistributed manager position coming from a new manager district of Clay and Becker Counties. The new manager district would consist of two managers appointed by the Clay County Board of Commissioners. The Clay County manager position that is currently

vacant will be redistributed to Mahnomen and Clearwater Counties. The current Becker County manager will finish their term. The Committee determined the changes were supported by the taxable market value of each county's area within the District, the percent of area of each county within the District, and the percent of population of each county's area within the District, as further depicted in the following table.

COUNTY '02 TMV (\$ millions) AREA (% of WD) '90 POP'L (% of WD)

Norman	446	43%	44%
Polk	11	2%	0.6%
Norman & Polk subtotal	457	45%	45%
Mahnomen	207	27%	29%
Clearwater	34	10%	7%
Mahnomen & Clearwater subtotal	241	37%	36%
Clay	150	13%	11%
Becker	104	7%	7%
Clay & Becker subtotal	254	20%	18%

CONCLUSIONS

1. All relevant, substantive and procedural requirements of law and rule have been fulfilled.
2. The Board has proper jurisdiction in the matter of redistribution of a manager position for the Wild Rice Watershed District pursuant to Minnesota Statutes Section 103D.301, Subd. 3.
3. The 2002 taxable market value of the Mahnomen and Clearwater manager district is approximately \$241 million and for the Clay and Becker manager district it is approximately \$254 million.
4. The percent of area within the District for the Mahnomen and Clearwater manager district is approximately 37% and for the Clay and Becker manager district it is approximately 20%.
5. The 1990 population percentage within the District for the Mahnomen and Clearwater manager district is approximately 36% and for the Clay and Becker manager district it is approximately 18%.

ORDER

The Board hereby approves the Petition for Redistribution of Managers for the Wild Rice Watershed District. The Mahnomen County Board of Commissioners will appoint two managers from Mahnomen and Clearwater County. A new manager district will consist of two managers appointed by the Clay County Board of Commissioners from Clay and Becker Counties. The Clay County manager position that is currently vacant will be redistributed to Mahnomen and Clearwater Counties as of the date of this order. The current Becker County manager and the current Clay County manager will finish their terms.

Dated at Saint Paul, Minnesota this 28th day of June 2006.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

BY: Jerome Deal, Chair