

# Lac qui Parle-Yellow Bank Watershed District

## Meeting Minutes #631

### September 6, 2022

#### **Call to Order**

The meeting was held in the Lac qui Parle County Annex, 422 5<sup>th</sup> Avenue, Madison, MN, with a virtual ZOOM login option. The meeting was officially called to order by Chairman Darrel Ellefson at 4:30 p.m. **Managers Present:** Chairman Darrel Ellefson, Vice Chairman John Cornell, Secretary David Craigmile, Treasurer Andrew Weber and Publicity Michael Frank. **Managers absent:** none. **Staff present:** Administrator Trudy Hastad, Park Manager Ron Fjerkenstad, Ditch Inspector Jared Roiland, Environmental Feedlot Specialist Abby VanKempen, Coordinator Mitch Enderson, & Ditch Specialist Cindy Brehmer. **Staff Absent:** Solid Waste Specialist Jennifer Schuelke. **Others present:** Yellow Medicine County Commissioner Glen Kack, Corey Hoffman, Alex Hoffman, Steven Driessen, and via zoom: Attorney John Kolb, Attorney Ron Seehorn, & LQP County Commissioner Stacy Tufto.

#### **Approval of the Agenda**

Chairman Ellefson asked for additions to the agenda. There being none, Manager John Cornell motioned to approve the agenda, seconded by Manager David Craigmile. Upon roll call vote, motion passed 5-0.

Administrator Hastad introduced new employee Cindy Brehmer to the Board.

Attorney Kolb joined the meeting via zoom to discuss the County Ditch #42 Improvement project. Kolb reported being disappointed in Dirt Proz after the phone conference held with Jason Bye from Dirt Proz, Dirt Proz attorney, & the bond attorney. We were hoping Dirt Proz would have some type of plan for a timeline to return to the project, dewatering, & for the fixes. The Bond attorney was also dissatisfied after the meeting and we gave Dirt Proz until today's meeting (September 6) to get us their plans for completing the project. As of today, September 6, 2022 we have not heard anything back from Dirt Proz. Attorney Kolb presented the attached (exhibit A) findings & order to declare Dirt Proz in default of their contract. Upon notice, they have seven days to get back to work. Administrator Hastad was instructed to send a copy of the payment bond & certificate of insurance to everyone that has claims against Dirt Proz. Kolb reported that Dirt Proz insurance policy was cancelled due to lack of payment in May, 2022, but said claims arising out of concurrence have to be honored by the insurance company.

Attorney Kolb read the findings & order declaring Dirt Proz in default (attached). Manager Michael Frank motioned to adopt the findings & order, seconded by Manager David Craigmile. Upon roll call vote, Manager Craigmile Yea, Manager Frank Yea, Manager Weber Yea, Manager Cornell Yea, & Manager Ellefson Yea. Motion passed.

#### **Staff Reports:**

**PARK:** Park Manager Ron Fjerkenstad gave the park report.

- Proposing a fee increase next year. He is checking rates at area parks and will discuss with Board next month.
- Started taking hand written reservation requests for the 2023 camping season.
- This coming Sunday they will be having a bean bag tournament and pot luck in the storm shelter.
- Ron reported completing his 22<sup>nd</sup> summer/year as park manager. Ron discussed looking at the possibility of retiring next year, but before he did he would make sure it was a smooth transition into the future with a new park manager. No action was taken. The Board thanked Ron for his dedicated years of service.

**Environmental/Feedlot Specialist:** Abby VanKempen gave her monthly report.

- We need to do 13 feedlot inspections and I have completed 12 as of today. I will probably do 14 inspections for this year. The only overall problem is getting landowners to complete their manure records, but am hopeful that will improve after this year's inspections.

- I have completed three SSTS inspections with Chippewa and Big Stone County. I have 15 more to go for my certification.
- We have been busy this month with some unpermitted mining & excavation.
- Marg & I talked to the County Board about updating the County ordinance and adding a solar energy section.
- We will be holding the fall HHW collection on Wednesday, September 14, 2022 in Dawson, MN from 3-6:00 p.m.
- The electronic waste collection is the second Saturday of the month with the last one scheduled for October for this season.
- We have been working on getting stuff ready for an Environmental booth for the LQP County fair and we plan on holding a drawing to give away a compost bin.

**COORDINATOR REPORT:** Mitch Anderson gave his monthly report:

- The Steering & Advisory Committee met on the 24<sup>th</sup> to review final comments and revisions on the draft of the plan. Any remaining comments stemming from the meeting were to be submitted by last Friday, September 2<sup>nd</sup>. The steering committee will be having a virtual meeting to discuss any remaining comments that came in.
- The policy committee met the afternoon of the 24<sup>th</sup> but did not have enough members present for a quorum. Since there was not a quorum, a meeting was scheduled for September 21<sup>st</sup>. The committee will discuss approval of a Joint Powers Collaboration governance structure, up to date budget, and they will make decisions on previous meeting minutes and moving the full plan to public review. I have a copy along for Board review.
- Trudy & I met with the engineer, contractor, and landowner for the Kamrath dam repair for a preconstruction meeting. The contractor is still waiting on the pipe.
- We were approved for a new SSTS loan for \$750,000. The grant agreement was signed and finalized by MPCA. The loan will need a loan resolution and a general obligation note, opinion, and resolution to finish execution. The loan repayment for landowners will be over 7 years at a 3% interest rate. Mitch presented a resolution that needed approval from the Board to enter into the loan agreement (attached Exhibit B). The Board approved the resolution and authorized Administrator Hastad to sign the loan agreement.
- Jared & I finished spraying Br 1 & 2 CD #4 for trees.
- I submitted an application highlighting the Del Clark projects for the MAWD project of the year.
- Mitch asked if he could hold the photo contest again this year. Discussion followed

Manager David Craigmile motioned to do the photo contest with 1-3<sup>rd</sup> prizes, seconded by Manager Andrew Weber. Upon vote, motioned passed 5-0.

**WCA REPORT:** Mitch Anderson gave the WCA monthly report:

- Jared and I will need to resurvey a branch of CD #5 as the points previously collected were inaccurate.
- Met with David Craigmile and a land operator to flag setbacks for a tiling project with multiple wetlands present.
- The Moen bank site submitted a final delineation for review. Lynda, Rhyann and I met on site on the 31<sup>st</sup> to review the delineation. We asked the consultant to revise his delineation for this area and re-stake 2 of his 3 transect lines so we can find and review them. If approved, the sponsor will be able to request their final credit release.
- Our wetland bank site in Yellow Bank that is still in the monitoring phase has been for sale on auction the past couple weeks. I'm not sure if remaining credits will be transferred to a new owner or how the maintenance/management requirements will be met. Either way, the vegetation standards will have to be met for the remaining credits to be released.

**DRAINAGE REPORT:** Jared Roiland gave his monthly report as follows:

- Trudy & I had a team call with Attorney Kolb, Dirt Proz (Contractor), Contractor attorney, bonding company attorney, & insurance attorney to discuss the CD #42 improvement project status. The Contractor was asked to give a timeline of returning back to the project amongst other things.
- Trudy & I attended the MADi conference in Alexandria on August 18<sup>th</sup>. Much of the discussion was around larger repair and improvement projects. Attorney Kolb gave a presentation on different types of bonds that go along with these projects.

- Trudy & I were asked to sit in on the DNR meetings held August 31/Sept 1 with the County Commissioners and DNR leadership on ways to better communicate on drainage projects and land acquisitions. We came away from these meetings hopeful that this will be a start to a more collaborative effort on these projects.
- Ag Tech Drainage completed the construction of Br 3 CD #4 improvement project on August 5, 2022. They then started making the private connections into the new main line. They will televise the project in one month and after review and any needed repairs, we will have the final closeout hearing.
- David Craigmile & I met to look at R-6 and Lazarus to look at weed issues that had been reported. I then talked to Darby Hemish and the Township was going to contract with a helicopter application to treat numerous places in the township with preliminary quote around \$12.50/acre plus chemical with spraying for the Township end of September/October.
- David Craigmile and I went to pick up the Roxor at the dealership in Sioux Falls as they replaced the clutch assembly and flywheel, but the repairs took longer than expected so we weren't able to bring it home. The dealership honored its original quote plus delivered it back to us in Madison.
- On August 30<sup>th</sup>, Mitch and I were able to get back to spraying the County ditches for trees. The plan is to get the CD #4 systems sprayed yet early fall.
- The initial installation of the CD #4 crossings on Croatt's, Call's, & Dahl's are complete. They just have the dirt work, & seeding to complete.
- While out spraying, we noticed a parcel along the ditch that was not in compliance with the buffer law so reported to the SWCD.

Manager Michael Frank motioned to recess the regular Watershed meeting to continue after the budget hearing, seconded by Manager David Craigmile. Upon vote, motion passed 5-0.

At 5:30 p.m. Manager Ellefson opened the public hearing for the 2023 budget & levy.

Present at the hearing were: Manager Darrel Ellefson, David Craigmile, John Cornell, Michael Frank, & Andrew Weber. Others present were: Administrator Trudy Hastad, Yellow Medicine Commissioner Glen Kack, Cindy Brehmer, Steven Driessen. Present via zoom were: Lac qui Parle Commissioner Stacey Tufto.

Hastad reported the notice was published for two weeks in the Western Guard, Dawson Sentinel, Canby News, & Hendricks Pioneer. Hastad reviewed the proposed 2023 budget and levy request of \$290,000, of this \$250,000 will be levied pursuant to Minnesota Statutes 103D.905 Subd (3), and \$40,000 pursuant to Minnesota Statute 103D.905 Subd 9 (1). The budget items were reviewed.

Chairman Ellefson asked for public comments. There were none. Chairman Ellefson asked the Board if they had any further questions. There being none, Chairman Ellefson called for a motion.

Manager Andrew Weber motioned to set the 2022 levy amount at \$290,000 with \$250,000 to be levied pursuant to Minnesota Statutes 103D.905 Subd (3); and \$40,000 pursuant to Minnesota Statute 103D.905 Subd 9 (1) and approve the 2023 budget attached, seconded by Manager John Cornell. Upon roll call vote, the motion passed 5-0.

Administrator Hastad reviewed the Watershed Ditch amounts and discussed WS Ditch #11 had a negative balance and needed to have an assessment placed on it. Discussion followed.

Manager John Cornell motioned to assess \$9,000 spread over three years for Watershed Lincoln Ditch #11, seconded by Manager Andrew Weber. Upon vote motion passed 5-0.

Manager David Craigmile motioned to close the budget hearing at 4:47 p.m., seconded by Manager John Cornell. Upon vote, motion passed 5-0.

Manager Ellefson reconvened the Watershed meeting at 5:50 p.m.

Manager Cornell had another commitment and left at 6:00 p.m.

**OTHERS:** Steven Driessen met with the Board to ask why Corey Hoffman could plant corn & soybeans in the pasture/hayland and have his contract extended and he couldn't. Corey responded the field was so rough with pocket gopher mounds and weeds and there wasn't much hayland left. Steve said he asked at the bidding if he reseeded if he could extend contract and he was told no. The Watershed Board should treat everyone the same. Manager Frank said if

he would have discussed with the managers at a Board meeting, something maybe could have been arranged. Driessen said everyone needed to be treated the same and walked out of the meeting.

Corey Hoffman met with the Board and asked for the Zoom log-in for his attorney. Manager Craigmile reported the Board was notified by SWCD that corn and soybeans were planted in the pasture/hayland in Norman Township that Corey rents from the Watershed District. The current contract was reviewed and also meeting minutes #619 when Hoffman asked to reseed the alfalfa and extend his contract to 2025. Hoffman said he planted Rye last year and it didn't take and was so weedy and full of pocket gopher mounds and only got about 15 acres of alfalfa planted, so decided to plant 14 acres of corn and 24 acres of soybeans that he no-tilled so the ground wasn't worked in order to get rid of weeds and pocket gopher mounds. Corey said the plan this fall is to no till alfalfa/grass. Discussion followed. The Board asked Corey to put in writing what his plan was to get the land back into alfalfa and the Board will then review. The Board was upset this was put into row crops without being notified, and Corey felt he was doing best for the ground and intended to seed this fall. No further action was taken.

**TREASURER'S REPORT:** The Treasurer's report was read by Manager Andrew Weber.

Manager Andrew Weber motioned to transfer \$20,000 from the park deposit account to the park expense account, seconded by Manager Michael Frank. Upon vote, motion passed 4-0.

David Craigmile motioned to approve the Treasurers report, seconded by Michael Frank. Upon roll call vote, the motion passed 4-0.

The following warrants were presented for approval:

		Number	Vendor	Details	8/06/2022 to 09/06/2022
<b><u>General Klein Account:</u></b>					
6209	Jon Haff/Kidrowski Enterprise		SSTS Loan		\$14,300.00
6210	Jon Haff/Kidrowski Electric		SSTS Loan		\$1,000.00
6211	Houston Engineering, Inc		IWIP consulting work		\$6,015.25
			<b>TOTAL</b>		<b>\$21,315.25</b>
<b><u>Park Expense Account:</u></b>					
1531	Lincoln Pipestone Rural Water		July water @ park		\$47.73
Transfer	August park payroll		August payroll		\$6,059.67
1532	Aquacide Company		1 10lb. bag aquaclear pellets		\$124.50
1533	Kockelman Construction		blading @ park		\$175.50
1534	Vlaminck Electric Inc	locate power lines	by site #33, replace picnic shelter power		\$737.89
1535	LQP County Environmental Office		park cell phone bill		\$41.29
1536	Crosby Road Construction		54 yards for playground		\$648.00
1537	Olson Sanitation		August trash		\$804.96
1538	Doug's Service & Marine		3 lawn mower blades		\$82.82
1539	Lincoln Pipestone Rural Water		August water usage		\$749.25
1540	Ag Plus Cooperative		gas		\$84.80
1541	Sturdevant's Auto Value		supplies		\$37.07
1542	Frontier Communications		park phone, fax, internet		\$305.77
1543	Lyon-Lincoln Electric Cooperative		August park electricity		\$3,075.57
1544	Running's Supply		seven		\$14.94
1545	Canby True Value	American flag, raid, paper towels, toilet paper, sprinkler			\$281.51
			<b>TOTAL</b>		<b>\$13,271.27</b>
<b><u>UPB GENERAL ACCT:</u></b>					
22118-22121	semi-monthly payroll		August 1-15 payroll		\$6,823.44
22122	Darrel Ellefson		per diem, mileage		\$448.35
22123	David Craigmile		per diem, mileage		\$245.85
22124	Andrew Weber		per diem, mileage		\$189.88
22125	John Cornell		per diem, mileage		\$158.56
22126	Michael Frank		per diem, mileage		\$232.79
4322	LQP-YB Liability		semi-monthly PERA		\$1,337.23
4323	LQP-YB Liability		Federal withholding		\$2,244.04
4324	Ag Tech Drainage, LLC		Br 3, CD #4 Improvement		\$355,387.76
4325	Vern Eide Motoplex		Roxor repair		\$974.06
4326	Mark A. Schubert		CD #54 damage payment		\$232.20

4327	Darlene Anhalt	CD #54 damage payment	\$3,123.00
4328	Kallhoff Farms, Inc.	CD #54 damage payment	\$622.80
4329	Daryl Schmidt	CD #54 damage payment	\$5,330.00
4330	Darin Brandenburger	CD #54 damage payment	\$68.40
4331	Francis Brandenburger	CD #54 damage payment	\$2,584.00
22127-22130	semi-monthly payroll	August 16-31 payroll	\$6,823.42
22131-22135	monthly payroll	August park payroll	\$6,059.67
4322	LQP-YB Liability	monthly & semi-monthly PERA	\$2,010.44
4333	LQP-YB Liability	Federal withholding	\$3,757.48
4334	NelsonOyenTorvik	legal services for pasture rents	\$2,115.00
4335	KLQP-FM	help wanted ads, job fair on air	\$126.50
4336	Rinke Noonan Attorney's @ Law	monthly retainer, CD #54, CD #42, Br3CD4	\$2,776.00
4337	LQP Coop Oil Company	gas for truck	\$75.08
4338	Buffalo Ridge Newspaper	job wanted ads	\$164.50
4339	Western Guard	job/help wanted ads	\$160.00
4340	Houston Engineering	Br 3 CD #4 improvement	\$44,759.86
4341	Trudy A Hastad	MADI registration for Jared & I, postage	\$110.80
4342	Dawson Sentinel	help wanted ads, 2 week budget ad, CD99ad	\$286.50
4343	LQP County Auditor/Treasurer	August postage	\$53.49
4344	City of Madison	electric, sewer, garbage, water for shop	\$109.37
4345	Canby News	2 week budget hearing notice	\$48.00
4346	Buffalo Ridge Newspapers	2 week budget hearing notice	\$73.10
4347	LQP County Auditor/Treasurer	Health insurance	\$5,888.46
4348	LQP-YB Liability Acct	State withholding	\$911.00
4349	LQP County Auditor/Treasurer	Health insurance new employees	\$2,887.73
4350	Minnesota Revenue	August sales & use tax	\$681.00
4351	LQPSWCD	two autumn blaze maple tree's for park	\$64.13
4352	LQP Coop Oil Company	gas for truck	\$271.17
4353	LQP County Auditor/Treasurer	Sept health for new employees	<u>\$2,887.73</u>
<b>TOTAL</b>			<b>\$463,102.79</b>

#### **DITCH ACCT**

**TOTAL \$-0-**

Andrew Weber motioned to approve the warrants as presented, seconded by David Craigmile. Upon roll call vote, motion passed 4-0.

**Secretary's Report:** Trudy Hastad reviewed Secretary report #630 as mailed.

Manager Michael Frank motioned to approve meeting minutes #630 as mailed, seconded by Manager Andrew Weber. Upon roll call vote, motion passed 4-0.

#### **Administrator Report/Old & New Business:** Trudy Hastad gave the Administrator report.

- The office remodel is coming along nicely. Jake, Marg, & I have been reviewing desk options and are getting quotes from Valley Office Products and Office One Source. We should have final quotes by end of week and can then get desks ordered. Shared picture of possible office setup.
- Attended BWSR summer tour Administrator meeting. Reported Emily Javens was no longer with MAWD, and Jan Voit was appointed as the interim. Shared the Strategic plan update that was discussed.
- Jared & I attended the Minnesota Drainage Inspectors Annual conference in Alexandria.
- Reviewed e-mail from Mary Sik regarding snails and water quality at Del Clark Lake. Discussion followed. Hastad will contact DNR for recommendations.
- Received a recall on the 2021 F-150 Ford for underbody insulators installed in error.
- New employees started September 1, 2022 and things were going well.
- Updated on spraying of County Ditches and Roxor repair.
- The 1 Watershed 1 Plan is in draft stage for comments, so reminded Board to review and get any comments sent in.
- Staff will work at the HHW collection to be held on September 14, 2022 in Dawson, but will have office covered during work hours.
- Reviewed CD #42 improvement project status with Board.



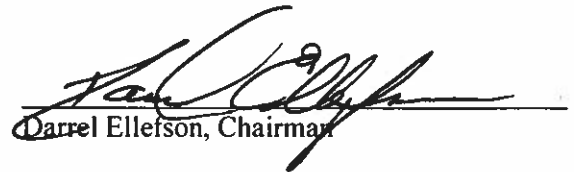
PERMITS- The following permit applications were applied for:

13726	Dennis Boraas	Lac qui Parle, 28 7 29	seepage, main tile with intakes	09/06/22 DE
13727 Renew	Don Farmer	Mehurin, 21	seepage lines	09/06/22 DE
13728 Renew	Don Farmer	Mehurin, 21	seepage lines	09/06/22 DE
13729	Gordon Ferguson	Florida, 36	seepage, main tile, intakes, clean ditch	09/06/22 MF
13730	Brian Fernholz	Lake Shore, 20	seepage, main tile	09/06/22 DE
13731	Chuck Fernholz	Cerro Gordo, 30	seepage, main tile	09/06/22 DE
13732	Doug Haas	Freeland, 32	seepage, main tile	09/06/22 DE
13733	Eldon Haas	Manfred, 9	seepage, main tile, intakes, berms	09/06/22 DE
13734	Paul Hacker	Camp Release, 24/25	main tile	09/06/22 DC
13735 Renew	Kleva Limited Partnership	Lac qui Parle, 18, 19, 20	seepage, main tile	09/06/22 DC
13736 Renew	Kleva Limited Partnership	Baxter, 5 & 6	seepage, main tile	09/06/22 DC
13737	Gary Lee	Cerro Gordo, 36	seepage, main tile, intakes	09/06/22 DE
13738	Tony Ludvigson	Garfield, 11	seepage lines	09/06/22 DE
13739	Dean Matthies	Perry, 28	seepage, main tile	09/06/22 DE
13740	Gary Nelson	Hamlin, 36	seepage, main tile	09/06/22 DE
13741 Renew	Keith Olson	Arena, 31	seepage, main tile, intakes	09/06/22 DE
13742 Renew	Joyce Ramlo	Fortier, 4	repair tile line	09/06/22 MF
13743	Brian Rangaard	Norman, 12	seepage, main tile, pump	09/06/22 MF
13744 Renew	Lee Schmidt	Manfred, 5	seepage lines, intakes	09/06/22 DE
13745	Milton Schutte & Sons	Riverside, 36	seepage, main tile, intakes	09/06/22 DC
13746	Charles Shellenbarger	Camp Release, 25	seepage, main tile	09/06/22 DC
13747	Dean Solem	Cerro Gordo, 25 & 30	seepage, main tile	09/06/22 DE
13748	Donn Streich	Mehurin, 20	seepage, main tile, intakes	09/06/22 DE
13749	Donn Streich	Mehurin, 26 & 23	seepage, main tile, intakes	09/06/22 DE
13750	Gerald Streich	Mehurin, 2	seepage lines, pump	09/06/22 DE
13751	James Theisen	Florida, 5	seepage, main tile	09/06/22 MF


Permits Denied: Gordon Ferguson for DNR permission, Chuck Schellenberger for neighbor signature then ok'd, Kyle Mangle for WCA.

Manager Andrew Weber motioned to approve the permits except those denied, seconded by Manager Michael Frank. Upon roll call vote, motion passed 4-0.

Meeting adjourned at 7:13 p.m.

  
Darrel Ellefson, Chairman

Attest:

  
David Craigmile, Secretary

Minutes prepared by Hast

The next regularly scheduled meeting of the Lac qui Parle-Yellow Bank Watershed District is Tuesday, October 4, 2022 at 4:30 p.m. in the LQP County Annex.

STATE OF MINNESOTA  
LAC QUI PARLE-YELLOW BANK WATERSHED DISTRICT BOARD OF MANAGERS  
SEATED AS DRAINAGE AUTHORITY UNDER STATUTES CHAPTER 103E  
FOR THE IMPROVEMENT OF LAC QUI PARLE COUNTY DITCH 42

The matter of the petition of Kruse and others  
for the improvement of Lac qui Parle County  
Ditch 42

**FINDINGS AND ORDER DECLARING  
CONTRACTOR DEFAULT**

The Board of Managers of the Lac qui Parle-Yellow Bank Watershed District (LQPYBWD), sitting as Drainage Authority for Petition for Improvement of Lac qui Parle (LQP) County Ditch 42 (CD 42) met at 4:30 p.m. on Tuesday, September 6, 2022, to consider the status of construction, correction of defective construction and non-responsive contractor. Having considered the evidence herein and reports and advice of the Board's engineer and legal counsel, Manager Frank moved, seconded by Manager Craigmile, for adoption of the following:

**Findings:**

1. On August 4, 2020, the Drainage Authority adopted a Final Order establishing the improvement of CD 42.
2. On November 4, 2020, the Board awarded the construction contract for the improvement of CD 42 to Dirt Proz, LLC (Dirt Proz), the lowest responsible bidder on the project.
3. On November 24, 2020, Dirt Proz returned its notice of award and construction contract, together with required insurance and performance and payment bonds.
4. The District, by its engineer, promptly provided Dirt Proz a Notice to Proceed with a substantial completion date of November 15, 2021.
5. During the course of construction, the engineer noted, on several occasions, Dirt Proz's departure from construction specification – specifically related to installation grade, bedding of tile, compaction of bedding, backfilling of excavated trenching and tile seating and joining.
6. After several verbal instructions and corrections, to which Dirt Proz responded by brief periods of compliance, the engineer provided Dirt Proz and written notice of its concerns. By letter dated March 31, 2021, the engineer stated, "We are writing this letter to reiterate several concerns the Lac qui Parle-Yellow Bank River WD (LqPYBWD) and Houston Engineering, Inc.(HEI) have expressed to staff of Dirt Proz, LLC (including you and your site foreman, Jared) regarding adherence to the project specifications on the Lac qui

Parle CD 42 Improvement Project.” The letter went on to detail issues related to grade, backfill and bedding compaction.

7. On the basis of observed defects in construction, the District withheld a portion of progress payment and required Dirt Proz to televise installed portions of the project before proceeding.
8. Dirt Proz engage Johnson Jet Line to perform televised inspection of the installed drainage tile in late April, 2021. After engaging the Johnson Jet Line, Dirt Proz demobilized and left the construction site.
9. In August, 2021, the District paid Johnson Jet Line’s bill for the televised inspection and obtained the video of the inspection. After reviewing the inspection video, the District’s engineer, by letter dated September 28, 2021, sent Dirt Proz a detail of its review and indicated, by station, each item of defect discovered during the review and the required corrective action. The engineer further requested an updated schedule from Dirt Proz as to when it intended to return to the project to make corrections and complete the work. Dirt Proz did not respond to the letter.
10. Dirt Proz did not return to the project nor make any effort to address issues with payment of subcontractors or materialmen prior to substantial completion date indicated in the contract.
11. By letter dated December 15, 2021, the District, through its engineer, informed the underwriter of Dirt Proz’s performance bond, Granite Re, and Dirt Proz of its intent to declare Dirt Proz in default of the construction contract. The letter contained and attached a detailed timeline, summary of defects and punch list related to Dirt Proz performance of the contract. The letter conformed to the requirements of the performance bond and the construction contract.
12. In response to the letter, Granite Re requested a meeting with the District, its engineer and its legal counsel. Consistent with the requirements of performance bond, Granite Re requested and the District allowed additional time for Dirt Proz to return to the project, correct the defects and complete the work.
13. After several promised remobilization timelines, Dirt Proz has failed to return to the project or provide the District with any tangible evidence of its intent to return to the project.
14. The delay and defect in the performance of the contract are no longer excusable and the Board of Managers has lost all confidence that Dirt Proz is willing or able to return to the project.



15. The Board finds that Dirt Proz has defaulted in its performance of the construction contract.

**Order:**

- A. The Lac Qui Parle Yellow Bank Watershed District Board of Managers, Drainage Authority for the improvement of Lac Qui Parle County Ditch 42, directs its engineer and legal counsel to inform Dirt Proz of its formal declaration of default in a manner consistent with General Condition 15.02 of the construction contract and paragraphs 3-8 of the performance bond (EJCDC Form C-610 (2018)).
- B. The Board shall cancel Dirt Proz remaining services under the contract and shall work with Granite Re to either have the contract completed or tender the penal sum of the bond.
- C. The Board does not waive any remedies available to it either under the construction contract, the performance bond or common law.

After discussion, the Board President called the question. The question was on the adoption of the foregoing findings and order and there were \_\_ yeas and \_\_ nays as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Absent</u>	<u>Abstain</u>
Cornell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Craigmile	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ellefson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Frank	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Weber	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Upon vote, the President declared the Resolution adopted.

  
Darrel Ellefson, Board President

Dated: September 6, 2022

ATTEST:

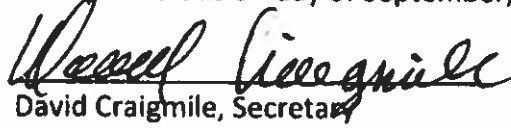
  
David Craigmile, Secretary

\* \* \* \* \*

I, David Craigmile, Secretary of the Lac Qui Parle Yellow Bank Watershed District, do hereby certify that I have compared the above Findings and Order with the original

thereof as the same appears of record and on file with the District and find the same to be a true and correct transcript thereof.

IN TESTIMONY WHEREOF, I hereunto set my hand this 6<sup>th</sup> day of September, 2022.

  
David Craigmile, Secretary

## RESOLUTION OF THE LAC QUI-PARLE YELLOW BANK WATERSHED DISTRICT

**BE IT RESOLVED** by the Lac qui Parle-Yellow Bank Watershed District, that it hereby designates Mitchell Enderson, coordinator, as Project Representative for the implementation of the Lac qui Parle-Yellow Bank SSTS Loans Phase III Clean Water Partnership Project.

The Project Representative shall have the authority to represent Lac qui Parle-Yellow Bank Watershed District in all Project matters that do not specifically require action by Lac qui Parle-Yellow Bank Watershed District.

**BE IT FURTHER RESOLVED** by the Lac qui Parle-Yellow Bank Watershed District that, as Project Sponsor and a Loan Sponsor, the Lac qui Parle-Yellow Bank Watershed District enters into the attached Minnesota Clean Water Partnership Project Implementation Loan Agreement along with the Minnesota Pollution Control Agency to conduct the implementation of the Lac qui Parle-Yellow Bank SSTS Loans Phase III Clean Water Partnership Project.

**BE IT FURTHER RESOLVED** by the Lac qui Parle-Yellow Bank Watershed District that the coordinator, Mitchell Enderson, be authorized to execute the attached Minnesota Clean Water Partnership Project Implementation Loan Agreement for the above referenced Project on behalf of the Lac qui Parle-Yellow Bank Watershed District as Project Sponsor and Loan Sponsor.

**BE IT FURTHER RESOLVED** by the Lac qui Parle-Yellow Bank Watershed District that Mitchell Enderson, coordinator, be authorized to execute loan disbursement requests for the above referenced project to the Minnesota Pollution Control Agency on behalf of the Lac qui Parle-Yellow Bank Watershed District.

**WHEREUPON** the above resolution was adopted at a regularly scheduled board meeting this 6<sup>th</sup> day of September, 2022.

STATE OF MINNESOTA  
County of Lac qui Parle

I, Trudy Hastad, do hereby certify that I am the custodian of the minutes of all proceedings had and held by the board of managers of said Lac qui Parle – Yellow Bank Watershed District, that I have compared the above resolution with the original passed and adopted by the board of managers of said Lac qui Parle – Yellow Bank Watershed District at a regularly scheduled meeting thereof held on the 6th day of September, 2022, at 4:30 PM, that the above constitutes a true and correct copy thereof, that the same has not been amended or rescinded and is in full force and effect.

IN WITNESS WHEREOF, I have hereunto placed my hand and signature this 6<sup>th</sup> day of September, 2022, and have hereunto affixed the seal of the Lac qui Parle – Yellow Bank Watershed District.

  
 Authorized Signature and Title