

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

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**In the Matter** of the Establishment Petition for the Cedar River Watershed District in Dodge, Freeborn, Mower and Steele Counties pursuant to Minnesota Statutes Sections 103D.205 to 103D.225.

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**ORDER TO ESTABLISH  
CEDAR RIVER  
WATERSHED DISTRICT**

**Whereas**, Mower County in the proposed Cedar River Watershed District in Dodge, Freeborn, Mower and Steele Counties filed a Petition dated November 7, 2006, with the Board of Water and Soil Resources (Board) on November 30, 2006, to establish a watershed district pursuant to Minn. Stat. § 103D.205, 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. **Establishment Petition.** The establishment Petition dated November 7, 2006, was filed with the Board on November 30, 2006 by Mower County. Mower County contains more than 50 percent of the area in the proposed watershed district. Minn. Stat. § 103D.205, Subd. 3, item 3 allows an establishment petition to be signed by counties having 50 percent or more of the area within the proposed watershed district. The proposed watershed district lies within Dodge, Freeborn, Mower and Steele Counties. Filed with the Petition were the required proofs of service on the Dodge, Freeborn, Mower and Steele County Auditors, the Commissioner of the Department of Natural Resources, and the Director of the Division of Waters of the Department of Natural Resources.
2. **Property Description.** The territory to be included in the proposed watershed district is depicted in Exhibit A of the Petition and is an area in the Cedar River Watershed that is in Dodge, Freeborn, Mower and Steele Counties, approximately 435 square miles in several communities, which includes land in the Cities of Austin, Blooming Prairie, Brownsdale, Dexter, Elkton, Hayfield, Lyle, Rose Creek, Sargeant, Waltham, and the Towns of Adams,

Ashland, Austin, Blooming Prairie, Clayton, Dexter, Grand Meadow, Hayfield, Hayward, Lansing, London, Lyle, Marshall, Moscow, Nevada, Newry, Oakland, Redrock, Ripley, Sargeant, Shellrock, Udolpho, Vernon, Waltham, Westfield and Windom.

3. **District Name.** The Petition states the name of the proposed district shall be the Cedar River Watershed District.
4. **Number of Managers.** The Petition specifies the proposed number of managers as seven (7).
5. **Necessity for Watershed District.** The Petition states the establishment of a watershed district is necessary due to an increase in damaging floods over the last 30 years and to improve water quality on the impaired Cedar River. Significant damaging floods have occurred in 2004, 2000, 1993 and twice in 1978. The 2004 flood resulted in the loss of two lives and over \$17 million in property losses. The Cedar River exceeds state health standards for fecal coliform and total suspended solids.
6. **Contemplated Improvements.** The Petition states: “Through the contemplated improvements listed ... that include protection of public infrastructure, improvement of water quality and the reduction of peak flows, the formation of a watershed district would be conducive to public health and welfare and would accomplish the purposes of Minnesota Statutes Chapter 103D”. The Petition lists contemplated improvements, as follows:
  - a. Significant flood and peak flow reduction of 20 percent in the Cedar River and Dobbins Creek areas.
  - b. Prevention of structural damages in the watershed area during a 100-year 24 hour rainfall event.
  - c. Reduction of sediment loading in the watershed streams as a result of reduced flows and corresponding reduction in erosion of farmland and riverbanks. This will be accomplished by wetland restorations, installation of buffers and erosion control practices.
  - d. Reduction of nutrient loads to all streams in the watershed.

- e. Protection and improvement of Township, County, City and State infrastructure resulting from reduced levels of flooding.
  - f. Protection of the Minnesota Department of Transportation Highway System including 218 and Interstate 90.
7. **Hearing Order.** At its regular meeting on December 20, 2006, the Board determined the Petition met the requirements of Minn. Stat. § 103D.221, Subd. 1, and consequently ordered a public hearing to be held on the Petition.
8. **Hearing Notice.** Legal notice of the public hearing on the proposed watershed district establishment, pursuant to Minn. Stat. § 103D.221, Subd. 2, was published in the Blooming Prairie Times on December 26, 2006, the Austin Daily Herald on December 27, 2006, the Albert Lea Tribune on December 27, 2006 and the Hayfield Herald on December 27, 2006. Further, a copy of the hearing notice and map were mailed to approximately 50 addressees including the affected county Boards of Commissioners, County Auditors, County Water Planners, all of the cities in the proposed watershed district, all of the towns in the proposed watershed district, the affected soil and water conservation districts, neighboring watershed districts and the DNR.
9. **Director's Report.** The Director of the Division of Waters of the Department of Natural Resources (DNR) filed a written report pursuant to Minn. Stat. §103D.215 dated January 3, 2007 recommending establishment of a larger watershed district than proposed in the Petition that would include the Turtle Creek Watershed District and the Cedar River subwatersheds that flow into the Cedar River in Iowa.
10. **Public Hearing.** A public hearing was held on the establishment of the Cedar River Watershed District on January 10, 2007, at the Ellis Middle School Auditorium located at 1700 Fourth Avenue Southeast in Austin, Minnesota. The proceedings were tape recorded. The hearing panel consisted of Board members Dana Allen, Robert Burandt, Brian Kletscher, Gene Tiedemann and Randy Kramer 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 three weeks until 4:30 PM on January 31, 2007, for receipt of written comments.

The following list of exhibits comprise the hearing record. Jim Haertel, Board staff, entered Exhibits 1 through 12 into the hearing record by reading a brief description of each exhibit.

Exhibit 1. Letter dated November 29, 2006, from Craig Oscarson, Mower County Coordinator, with attached (a) Petition for the Establishment of the Cedar River Watershed District dated November 7, 2006, signed by Dave Hillier, Chairman, Mower County Board of Commissioners, and (b) Map of Proposed Cedar River Watershed District, dated July 25, 2006.

Exhibit 2. Proofs of Service of the Petition on the Auditors of: (a) Dodge, (b) Freeborn, (c) Mower and (d) Steele Counties, and (e) the Department of Natural Resources Commissioner and Director of the Division of Waters.

Exhibit 3. Order of the Board of Water and Soil Resources dated December 20, 2006, setting the date, time and location of the public hearing on the Petition.

Exhibit 4. Letter dated December 21, 2006, from Jim Haertel, Board of Water and Soil Resources, to several addressees providing notification of the public hearing with attached (a) Legal Notice, (b) map, (c) list of addressees and (d) Affidavit of Mailing.

Exhibit 5. Affidavit of Publication of Legal Notice in the Blooming Prairie Times on December 26, 2006.

Exhibit 6. Affidavit of Publication of Legal Notice in the Austin Daily Herald on December 27, 2006.

Exhibit 7. Affidavit of Publication of Legal Notice in the Albert Lea Tribune on December 27, 2006.

Exhibit 8. Affidavit of Publication of Legal Notice in the Hayfield Herald on December 27, 2006.

Exhibit 9. Letter dated December 29, 2006 from Daryl Franklin, Mower County Environmental Services Director, with attached (a) Water Quality Study on the Cedar River, dated summer of 2001, by Carol Mostrom.

Exhibit 10. Letter dated January 3, 2007 from Kent Lokkesmoe, DNR-Division of Waters Director, recommending establishment of a larger watershed district than proposed in the Petition that would include the Turtle Creek Watershed District and the Cedar River subwatersheds that flow into the Cedar River in Iowa, with attached (a) map.

Exhibit 11. Letter dated January 3, 2007 from Tom Butler, Turtle Creek Watershed District Chairman, supporting the Petition.

Exhibit 12. Letter dated January 10, 2007 from Dave Peterson, Board of Water and Soil Resources, recommending establishment of a larger district than proposed in the Petition that would include the Cedar River subwatersheds that flow into the Cedar River in Iowa.

Exhibit 13. Hardcopy of the power point presentation given for the petitioners by David Hillier, Mower County Commissioner.

Exhibit 14. Water Quality Study on the Cedar River, dated spring/summer of 2000 and 2001, by Carol Mostrom.

Exhibit 15. Request from Dan Belshan, Freeborn County Commissioner, requesting a public hearing be held in Freeborn County.

Exhibit 16. Watershed support from the City of Austin with information on floods.

Exhibit 17. Resolution No. 13128 dated January 2, 2007 from the Austin City Council in support of the Petition.

Exhibit 18. Letter dated January 10, 2007 from Jim Gebhardt, Mower Soil and Water Conservation District Chairman, stating the Board of Supervisors passed a resolution in support of the Petition.

Exhibit 19. Position statement dated January 10, 2007 from Dave Cole, Izaak Walton League Austin Chapter 10 President, in support of the Petition.

Exhibit 20. Position statement from Arlen Schamber, Hormel Foods Corporation, in support of the Petition.

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After all people present at the public hearing were given an opportunity to speak, the hearing record was left open for three weeks until 4:30 PM on January 31, 2007, for receipt of written comments. The following exhibits were received while the record was open.

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Exhibit 21. Letter received on January 18, 2007 from Peggy Ratigan in opposition to the Petition.

Exhibit 22. Letter dated January 14, 2007 from Carol Leuer in support of the Petition.

Exhibit 23. Letter dated January 23, 2007 from Steven Crull, Drainage Design and Survey, in opposition to the Petition.

Exhibit 24. Letter received on January 26, 2007 from Lynn Schmeling in opposition to the Petition.

Exhibit 25. Letter dated January 25, 2007 from Roger and Georgia Schramm in opposition to the Petition.

Exhibit 26. Letter dated January 25, 2007 from Jams Hurm, City of Austin Administrator, in support of the Petition.

Exhibit 27. Letter dated January 29, 2007 from Jon Erichson, City of Austin Engineer, in support of the Petition.

Exhibit 28. Letter dated January 29, 2007 from Harold Buck, Hayfield Town Board Supervisor, in opposition to the Petition.

Exhibit 29. Letter received on January 31, 2007 from Paul Fiebiger in opposition to the Petition.

Exhibit 30. Letter dated January 28, 2007 from Phyllis Helgeson in opposition to the Petition.

11. **Board Hearing Panel.** On February 28, 2007, the hearing panel of the Board convened. Hearing panel members in attendance were Dana Allen, Robert Burandt, Brian Kletscher, Gene Tiedemann and Randy Kramer, Chair. Based on the entire record in the matter and after due consideration, the panel with a voice vote decided to recommend to the full Board the watershed district be established according to the Petition because the establishment would benefit the public welfare and public interest, and would advance the purpose of Minnesota Statutes Chapter 103D. The watershed district boundary should be established according to the Petition and the name should be the "Cedar River Watershed District" as proposed in the Petition. Also, the panel decided with a voice vote to recommend the watershed district board of managers consist of seven managers with the distribution being four managers from Mower County, one manager from Dodge County, one manager from Freeborn County and one manager from Steele County. The panel further decided with a voice vote to recommend the terms of office for the first board of managers appointed by the respective county Boards of Commissioners be set as follows:

Dodge County Manager

One manager position – three year term

Freeborn County Manager

One manager position – three year term

## Mower County Managers

- One manager position – one year term
- One manager position – one year term
- One manager position – two year term
- One manager position – three year term

## Steele County Manager

- One manager position – two year term

Lastly, the panel decided with a voice vote to recommend seven manager nominees from the Petition as the first board of managers of the watershed district. Criminal background checks were to be completed.

After the February 28, 2007 meeting, the manager nominee selected from Dodge County became unavailable to serve as a manager. On April 5 and 6, a majority of the panel members gave their approval of an alternate manager nominee from Dodge County. Background checks of the seven manager nominees being recommended were completed and indicated no criminal history according the Bureau of Criminal Apprehension Criminal Justice Information System. The panel recommends the first board of managers consist of the following individuals:

Alfred Kording – Dodge County

Steven Kraushaar – Freeborn County

James Gebhardt – Mower County

Albert Layman – Mower County

Harlen Peck – Mower County

Daniel Regner – Mower County

Michael Jones – Steele County

## CONCLUSIONS

1. The Petition for establishment of the Cedar River Watershed District is valid in accordance with Minn. Stat. § 103D.205.
2. Proper notice of hearing was given and the public hearing was held in accordance with applicable laws.
3. The establishment of the Cedar River Watershed District would benefit the public welfare and public interest, and would advance the purpose of Minnesota Statutes Chapter 103D.
4. The boundary of the Cedar River Watershed District should be as set forth in the Petition.
5. All relevant substantive and procedural requirements of law and rule have been fulfilled.
6. The Board has proper jurisdiction in the matter of ordering a watershed district establishment.



## ORDER

The Board hereby orders the following:

1. The proposed watershed district is hereby established and is named the “Cedar River Watershed District” by which name it shall hereafter be known, and it shall have all the power, authority, and duties provided by law.
2. The principal place of business of the Cedar River Watershed District is the Mower Soil and Water Conservation District Office, 1408 – 21<sup>st</sup> Avenue NW, Suite 2, Austin, MN 55912.
3. The territory to be included in the Cedar River Watershed District encompasses a total area of approximately 435 square miles in Dodge, Freeborn, Mower and Steele Counties in several communities, which includes land in the Cities of Austin, Blooming Prairie, Brownsdale, Dexter, Elkton, Hayfield, Lyle, Rose Creek, Sargeant, Waltham, and the Towns of Adams, Ashland, Austin, Blooming Prairie, Clayton, Dexter, Grand Meadow, Hayfield, Hayward, Lansing, London, Lyle, Marshall, Moscow, Nevada, Newry, Oakland, Redrock, Ripley, Sargeant, Shellrock, Udolpho, Vernon, Waltham, Westfield and Windom.
4. The boundary of the Cedar River Watershed District shall be as set forth in “Exhibit A” of the Petition, a map which shows the watershed district boundary attached herewith to this Order and fully incorporated herein, together with the data set “Exhibit A” was produced from.
5. The Board of Managers for the Cedar River Watershed District shall consist of seven (7) managers with one manager from Dodge County, one manager from Freeborn County, four managers from Mower County, and one manager from Steele County.

6. The first board of managers of voting residents within the Cedar River Watershed District shall be as follows:

Alfred Kording – Dodge County

Steven Kraushaar – Freeborn County

James Gebhardt – Mower County

Albert Layman – Mower County

Harlen Peck – Mower County

Daniel Regner – Mower County

Michael Jones – Steele County

7. The term for the first Board of Managers appointed by the Board of Water and Soil Resources is one year and until the successors can be appointed and qualified, and the terms of office for the first board of managers appointed by the respective county Boards of Commissioners are as follows:

Dodge County Manager

One manager position – three year term

Freeborn County Manager

One manager position – three year term

Mower County Managers

One manager position – one year term

One manager position – one year term

One manager position – two year term

One manager position – three year term


Steele County Manager

One manager position – two year term

Thereafter, upon completion of the terms for the first board of managers appointed by the county Boards of Commissioners, manager terms are three years and until the successors can be appointed and qualified.

Dated at Saint Paul, Minnesota this 25th day of April, 2007.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

By:   
Randy Kramer, Chair