

A05-2339
STATE OF MINNESOTA
COURT OF APPEALS

A.R. Minch,)	
)	
Plaintiff/Appellant,)	
)	Dist. Ct. File. No.: C9-05-48
vs.)	
)	
Buffalo-Red River)	
Watershed District,)	
)	
Defendant/Respondent.)	

BRIEF OF RESPONDENT

**APPEAL FROM THE MEMORANDUM AND ORDER
DATED SEPTEMBER 23, 2005, AND THE
COST JUDGMENT OF SAID DISTRICT COURT
ENTERED ON OCTOBER 14, 2005**

**CLAY COUNTY DISTRICT COURT, SEVENTH JUDICIAL DISTRICT
HONORABLE GALEN J. VAA**

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STATEMENT OF THE ISSUES

- I. Did the Buffalo-Red River Watershed District properly act within the scope of its authority in issuing an order at its November 22, 2004 meeting requiring A.R. Minch to clean the silt from the Section 34 Ditch?**

The District Court found that the Watershed District acted within its authority in issuing the November 22, 2004 ditch cleanout. Apposite authorities include:

Minn. Stat. 103D.335

Minn. Stat. 103D.201, Subd. 2(10)

Fischer v. Town of Albin, 104 N.W.2d 32 (Minn. 1960)

Krahl v. Nine Mile Creek Watershed District, 283 N.W.2d 538 (Minn. 1979)

- II. Was there a violation of due process where Minch and his lawyer had been in negotiations with the Buffalo-Red River Watershed District for a year to clean silt from the Section 34 ditch, and where both Minch and his attorney presented lengthy testimony and arguments at the November 8 and November 22, 2004 Watershed District meetings?**

The District Court found no violation, since Minch had ample opportunity to address his arguments to the Watershed District. Apposite authorities include:

O'Sell v. Peterson, 595 N.W.2d 870 (Minn. Ct. App. 1999)

- III. Whether an Order to clean silt from a roadway ditch, returning the ditch to its original grade and elevation can constitute a taking Minch's property?**

The District Court found no taking. Apposite authorities include:

Czech v. City of Blaine, 253 N.W.2d 272 (Minn. 1977)

- IV. Did the September 23, 2005 Order of the District Court Requiring Cleanout of the Ditch to the Specifications of the County Engineer Constitute an Inappropriate Delegation of its Authority to the County Engineer?**

The District Court found no inappropriate delegation of authority.

STATEMENT OF THE CASE

This matter involves A.R. Minch's desire to change the historic drainage pattern in the Kragnes, Minnesota area. As a matter of principle, A.R. Minch ("Minch") refuses to allow his neighbors' drainage to traverse westward through the County right-of-way Section 34 Ditch ("Section 34 Ditch") at the north end of Minch's property, despite the fact that such drainage has existed for over 50 years and the property owners are taxed for their use of said drainage. Instead, Minch wanted the Buffalo Red River Watershed District ("Watershed District") to require the neighbors' water to go north. When the Watershed District did not agree to change the historic drainage pattern that has existed since the 1950s, Minch refused to clean an obstruction in the ditch, which effectively precluded the neighbors' water from getting access to the Section 34 Ditch. This way, Minch has effectively stopped the neighbors' drainage regardless of the plan of the Watershed District. Despite repeated requests by the Respondent Watershed District, to permit or perform the removal of silt from the Section 34 Ditch, Minch refused.

After much negotiation with Minch and discussion at previous meetings, on November 22, 2004, after hearing comments of Minch and arguments of his attorney, the Watershed District ordered Minch to clean the silt from the Section 34 Ditch by December 13, 2004. (Respondent's Appendix ("Resp. App.") at 7.) On December 8, 2004, with no cleaning done, the Watershed District confirmed their November 22, 2004 order with a letter requiring that Minch clean the silt from the ditch by December 13, 2004. The Watershed District issued a second letter on December 29, 2004, granting Minch an extension of time within which to complete the work.

On January 6, 2005, Minch filed a Declaratory Judgment Action, petitioning the District Court for an order both declaring invalid the December 8, 2004 Order¹ of the Watershed District and enjoining the Watershed District from issuing additional orders. At the same time, Minch filed a Notice of Appeal of the Watershed District's Order. The Watershed District moved for summary judgment on both actions. District Court Judge Galen Vaa granted the Watershed District's motions on September 23, 2005. (Appellant's Appendix ("App.") at 1.) By its Order and Memorandum, the District Court held that the Watershed District had legal authority to order Minch to clean the Section 34 Ditch. (App. at 13). The District Court explained that although Minch was not entitled to notice and an opportunity to be heard prior to issuance by the Watershed District of its Order, Minch received adequate actual notice and opportunity to be heard. (App. at 5-7.) The District Court also concluded that the Order did not result in a taking of Minch's property without just compensation. (Id. at 14.) The Order of the District Court of September 23, 2005 required Minch to clean the Section 34 ditch "according to the specifications issued by the Clay County Engineer." (App. at 1). An October 11, 2005 letter was issued by the County Engineer, (App. at 29) but Minch refused to comply with the District Court's Order. The District Court ultimately authorized the Watershed District to clean the obstruction from the Section 34 Ditch in its December 1, 2005 Order, but that Order is not the subject of the instant appeal. (App. at 17.)

Minch appeals from the District Court's granting of summary judgment in favor of the Watershed District and affirming the Order of the Watershed District requiring Appellant Minch to clean a ditch located in the North ½ of Section 34, Kragnes Township, Clay County, Minnesota. Minch also purports to challenge the taxation of

¹ The Order was actually made November 22, 2004.

costs awarded by the District Court on October 14, 2005 (App. at 38), but Minch failed to make any argument in his briefing on that point, so it is assumed to be waived.

STATEMENT OF FACTS

Appellant Minch owns property in Section 34 of Kragnes Township, Clay County, Minnesota. Landowners in the area have suffered excess water on their fields, particularly in the spring, which poses an annual threat to their agricultural production. To protect their fields and crops, landowners have endeavored to improve the flow of water from their land to the Buffalo-Red River drainage system through a series of drainage ditches and culverts. To coordinate these efforts, the Minnesota legislature enacted laws to govern watershed and drainage management, delegating authority to local entities to proscribe overall regional plans to coordinate drainage efforts, to construct improvements, and to ensure the fair and efficient drainage of water for every landowner. (See generally, Minnesota Statutes 103D and 103E.) In the Kragnes area, the authority and responsibility for both drainage and watershed management has been granted to Respondent Buffalo-Red River Watershed District.

At issue in this case is an obstruction in the Section 34 Ditch, which runs on the north side of Minch's property in Section 34, adjacent to County State Aid Highway No. 5. (App. at 30 is a plat map showing the County Highway 5 along the north side of Section 34 in the center of the map.) Since the 1950s, when County Highway 5 was constructed and the ditch established, runoff flowed from neighboring lands located east of Minch's property through two culverts in the northeast corner of Section 34, and westward through the Section 34 ditch. (Resp. App at 26 para. 6.) From there, the water flowed west toward the town of Kragnes and through drainage works redirecting it north

to the Buffalo River. Since the 1950s, landowners benefiting from the drainage provided by the Section 34 Ditch were assessed for the benefits of this outlet.

A. The Improvement Project

Minch recently petitioned the Watershed District for an improvement project for Ditch 51 (known as Project No. 55, Clay County Ditch No. 51-Improvement (“Project No. 55”)), which would increase drainage in and around the city of Kragnes, located to the west of his property. (App. at 50.) The improvement project sought to improve the flow of water from Minch’s property in Section 34 and Kragnes, through the installation of two new concrete box culverts just north of Kragnes, which allowed water to flow into Ditch 51 and ultimately to the Buffalo River. The Watershed District approved the petition and completed the project. As required by Minnesota drainage law, property owners benefited by the improvement were assessed according to the anticipated drainage benefit received by each. The Viewer’s Report indicated that landowners to the east of section 34 should benefit from improved drainage as a result of Project No. 55, as increases in the northward flow of water from Kragnes would enable greater flows from the east through the Section 34 ditch. However, these landowners did not receive the benefits of Project No. 55 because there was an obstruction in the east end of the Section 34 Ditch, which Minch refused to clean or allow to be cleaned.² (See November 22, 2004 meeting minutes, Resp. App. at 5-9.)

B. The Obstruction in the Section 34 Ditch

In 2003, the Clay County Highway Department, which maintains County State Aid Highway No. 5 (the northern border of Section 34), conducted a survey of and

² The obstruction was removed on December 13, 2005, when the Watershed District cleaned the Section 34 ditch pursuant to Judge Vaa’s order of December 1, 2005. (App. 17.)

advised cleanout of the Section 34 Ditch. (App. at 29.) A copy of the survey report was provided to Minch at that time by the Clay County Engineer at that time. (Id.) The Section 34 Ditch was partially obstructed with silt and sediment, and its capacity for carrying water away from Minch's property in Section 34, as well as neighboring land that uses the Section 34 ditch for drainage, has been severely limited. A few factors were mentioned as possibly contributing to the creation of the obstruction: (1) according to Minch, a local utility company undertook telephone cable work in the Section 34 ditch, but did not properly restore the ditch to its original condition, contributing to the obstruction (Resp. App. at 13); (2) Minch's previous ditch-cleaning practice as of 2001, and again as requested in a 2004 permit, was to leave the eastern-section of the ditch obstructed, which effectively prohibited the flow of neighbor's water through the Section 34 Ditch (Resp. App. at 13); (3) Minch claimed silt drifted into the ditch once a pre-existing but plugged culvert was opened by Minch's neighbor to the east, (Brendemuehl) in 2001, and (4) general siltation and erosion from farming practices. The cause of the obstruction is irrelevant, and was not determined by the District Court. It is undisputed that the Section 34 Ditch was obstructed, blocking the flow of water from eastern properties.

The Watershed Manager's Meeting minutes from November 8, November 22, and December 13, 2004 give a detailed account of the history of the controversy over cleaning the silt from the Section 34 Ditch. (See relevant portions at Resp. App. at 3-15.)³ Minch had a plan that he believed would improve drainage for himself and Kragnes, which would send drainage from Minch's easterly neighbors straight north

³ Minch included only 2 of the 5 pages of the November 22, 2004 meeting minutes in his Appendix (App. 36-37.) The full discussion leading to the Order to clean the Section 34 Ditch can be reviewed at Resp App. 5-9.

rather than traversing westward through the Section 34 Ditch. (Resp. App. at 8.) The Watershed District opted to continue the historic drainage pattern from the 1950s rather than following the plan Minch wanted.

In 2004, Minch petitioned the Watershed District for an individual work permit allowing him to clean the westernmost 80% of the Section 34 ditch, which would have left 1000 feet of obstruction in the east end of the ditch to preclude the adjacent lands from using the Section 34 ditch for drainage. (Resp. App. at 39.) The Watershed District approved the permit, subject to the approval of the Clay County Highway Department, which is standard practice for all ditch work within County right-of-ways. (Id. at 42.) The Clay County Engineer refused to allow the cleaning in the Section 34 right of way unless the entire mile of ditch was cleaned, including the easternmost-1000 foot obstruction. (Id. at 3.) It is noteworthy that it was the County, not the Watershed District, that initially required the obstruction to be cleaned if Minch wanted to clean any portion of the Section 34 Ditch to assist with his own drainage.

The Watershed District, the County, Wayne Brendemuehl (a Minch's neighbor to the east) and Minch negotiated to get the Section 34 Ditch cleaned for a year before the Watershed District ordered Minch to clean the Section 34 Ditch. Minch stood firmly on principle and refused to clean his ditch, stating: "it was not to his advantage to clean the entire ditch, unless Brendemuehls make further drainage concessions" (Resp. App. at 3); "Minch refuses to consider cleaning the ditch without more concessions from the Brendemuhls" (Resp. App. at 4); "Minch stated that he was willing to clean his ditch, but wants the Brendemuhls to do more work...so that more of [their] drainage goes north" (Resp. App. at 8); "Minch added that he will not make any attempt to clean his ditch...

until [the Brendemuhl's] culvert is closed, or something is done to compensate him for [Brendemuhls'] drainage coming west" (Resp. App. at 11). In response, Watershed District Administrator Bruce Albright explained "no one landowner has the right to refuse his neighbor's drainage." (Id.) Minch and his attorney testified, commented and argued for sometimes up to an hour at the Watershed District meetings on November 8, November 22 and December 13, 2004. (Resp. App. at 3-15.)

The primary justification offered by Minch for his failure to cooperate with the Watershed District in the cleanout of Section 34 is his "concern that he will lose bargaining power and jurisdiction over his ditch if he complies with the request to clean the ditch, or if Brendemuehls clean it for him. He felt his refusal to clean his ditch has forced Brendemuehls to clean their ditch [going north]." (Resp. App. at 8.) Minch was proud that he "forced the Brendemuehls to install" additional drainage to the north since Minch obstructed their drainage to the west. (Resp. App. at 11.) "Minch said that he wanted to clean his ditch, but would not do it for someone else's benefit and his detriment." (Resp. App. at 12.) As a matter of principle, Minch preferred to suffer his own drainage problems rather than allow drainage to Brendemuehls. Minch hoped his refusal to clean the Section 34 ditch would gain him leverage to strong-arm the Watershed District into dealing with Minch's other drainage problems around Kragnes.⁴

At the November 8, 2004, Watershed District meeting, the Managers discussed at length, the possible ditch cleaning and the Board's agreement with the County Engineer's position that Minch should clean the Section 34 Ditch. (Resp. App. at 3-4). In that meeting, Minch explained that he wanted to work out a compromise with the County that

⁴ Minch also sued the Watershed District in 2005 over drainage issues in Section 28, which is pending before Judge Kirk in Clay County and is not before this Court.

would involve more concessions by the Brendemuhls. (Resp. App. at 4.) Both Minch and his attorney presented testimony and arguments at this meeting. (Id.) Watershed District Manager Bruce Albright advised Minch and the Board that he would consult with legal counsel to determine their options. (Id.)

At the November 22, 2004 Watershed District meeting, the Watershed District's options were discussed at length. (Id. at 5-9.) Minch's counsel (Appellant's son, Roger Minch) provided photographs and arguments to the Watershed District. (Id. at 6.) Attorney Roger Minch again accused the Brendemuhl family of illegally opening a culvert and accused the Watershed District of favoring the Brendemuhls and "picking on" his father/client. (Id. at 7.) The Watershed District voted unanimously to order Minch to clean his ditch by December 13, 2004. (Id.)

As of the December 8, 2004, Watershed District meeting, Minch had still done nothing to clean the silt out of the Section 34 Ditch as ordered during the November 22, 2004 meeting. Accordingly, at the December 8, 2004 meeting, the Watershed District authorized their Administrator to send Minch a letter, reiterating their Order that the Section 34 Ditch be cleaned by December 13, 2004. (App. at 26; Resp. App. at 7.) When it became clear that weather conditions and contractor availability would not permit cleanout by the December 13, 2004 deadline, the Watershed District extended the time within which the cleanout had to be performed to June 1, 2005. (App. at 28.) Minch refused to comply with the November 22, 2004 Order or letters of the Watershed District, and commenced this action to challenge the Order.

In his brief, Minch paints a colorful portrait of longstanding animosity, intrigue, and "Hatfield vs. McCoy" antics between him and other landowners around Kragnes.

Minch describes the Watershed District as a rogue local authority, stacked with political insiders furthering their own agendas. Yet, Minch's briefing lacks any admissible facts in the record to support his wild conspiracy theories.

The Watershed District bears the unenviable burden of coordinating the drainage efforts of local landowners, each of whom has his own opinion of the best method of providing drainage. The Watershed District simply is not interested in choosing sides, creating winners and losers, but only in ensuring, to the maximum extent possible, that all assessed landowners in the district benefit from Watershed District projects. (Resp. App. at 14.) To accomplish its task, the Watershed District must have authority to enforce its rules and state law.

The Watershed District has requested only that Minch cleanout the silted obstruction from the Section 34 ditch so as not to frustrate the overall drainage plan for the Ditch 51 area. In ordering Minch to clean the Section 34 ditch, the Watershed District has asked of Minch only that which it frequently asks of other landowners numerous times per year. Bruce Albright testified that "The Buffalo Red River Watershed District typically makes 30-40 requests per year of landowners to clean their ditches and drainageways." (Resp. App. at 26, para. 3.) Albright acknowledged that the letters like those sent to Minch are "somewhat rare because in 99% of similar cases, the landowner receiving a Watershed District request or order simply complies." (Id. para. 6.)

Clearly, Minch believes it would benefit him to have a new and different drainage pattern, which would entail sending his neighbors' water straight north, rather than continuing the historic drainage pattern with a portion of the neighbors' water traversing

through the Section 34 Ditch and into Ditch No. 51. Yet, the Watershed District, considering all options, decided to continue the historic drainage pattern and provide the eastern landowners with the drainage they have been long-assessed for.

LAW AND ARGUMENT

On review of a summary judgment, this Court need determine only whether there are any genuine issues of material fact and whether the trial court erred in its application of the law. Betlach v. Wayzata Condominium, 281 N.W.2d 328, 330 (Minn. 1979); Minn. R. Civ. P. 56.03. District court findings, including both findings stated in the Order and findings of fact upon which the Order is based, must be sustained unless they are clearly erroneous. Minn. R. Civ. P. 52.01; see also Dillavou v. Peters, 349 N.W.2d 610, 612 (Minn. Ct. App. 1984). This Court views the evidence in the light most favorable to the factual findings. Roettger v. Comm'r of Pub. Safety, 633 N.W.2d 70, 73 (Minn. Ct. App. 2001). This Court should overturn a trial court's conclusions of law only upon a determination that the trial court erroneously construed and applied the law to the facts of the case. Fehler v. Comm'r of Pub. Safety, 591 N.W.2d 752, 754 (Minn. Ct. App. 1999).

Summary judgment may be granted if, after viewing the evidence in the light most favorable to the nonmoving party, the moving party has clearly sustained her burden of proving that no genuine issues of material fact exist and that judgment is warranted as a matter of law. Vacura v. Haar's Equip., 364 N.W.2d 387, 391 (Minn. 1985). Once the moving party has made out a prima facie case that entitles it to summary judgment, the burden shifts to the nonmoving party to produce specific facts that raise a genuine issue for trial. Minn. R. Civ. P. 56.05; Thiele v. Stich, 425 N.W.2d 580, 583 (Minn. 1988). A

nonmoving party cannot rely on mere averments in the pleadings, or unsupported allegations, but must come forward with specific facts to satisfy its burden of production. Musicland Group, Inc. v. Ceridian Corp., 508 N.W.2d 524, 530-31 (Minn. Ct. App. 1993). Summary judgment is mandatory against a party who bears the burden of proof but who fails to establish an essential element of his claim, because such a failure renders all other facts immaterial. Lloyd v. In Home Health, Inc., 523 N.W.2d 2, 3 (Minn. Ct. App. 1994).

The facts of this case are largely not in dispute. The District Court properly granted summary judgment and dismissed Minch's action. Based upon the lower court's findings, there was no dispute of material fact precluding decision on the Watershed District's motion. Applying the law to the undisputed facts, the Watershed District was entitled to judgment as a matter of law.

I. The Watershed District Properly Exercised Its Authority in Ordering Minch to Cleanout the Section 34 Ditch.

a. Watershed Law Authorizes the Watershed District to Regulate Siltation in Watercourses.

The classification of the Section 34 ditch is critical in this case, as Minch argues for the application of Drainage Law under Minnesota Statutes Chapter 103E, while the Watershed District maintains that it derived its authority to order the cleaning of silt from the Section 34 Ditch pursuant to Watershed Law pursuant to Minnesota Statutes Chapter 103D. The District Court agreed with the Watershed District.

Minnesota Statutes Chapter 103E deals solely with "drainage projects" and "drainage systems," which are drainage systems established by the local drainage authority and generally paid for by all landowners who benefit. A completely private

ditch would be a drainage ditch through a field, completely on private land, without any easement or right of access by another. This case involves a private ditch subject to county and drainage easements. Although the Section 34 ditch is located on private land owned by Minch, it has been and continues to be encumbered by a public County right-of-way easement as well as a historic drainage easement.⁵

The District Court found that the Section 34 ditch is not a “drainage system” as defined by Chapter 103E of the Minnesota Statutes governing drainage law. (App. at 4.) As a result, the District Court held that Chapter 103E did not apply. Instead, the District Court found that the Watershed District had authority to issue its order pursuant to its grant of power under chapter 103D of the Minnesota Statutes pertaining to watershed law. (App. p. 8.) This conclusion is supported by Minnesota law and should be affirmed.

The Minnesota Watershed Act was enacted in 1955 to permit the development of an integrated program for the use of water. Adelman v. Omischuk, 271 Minn. 216, 219, 135 N.W.2d 670, 673 (Minn. 1965). The legislature has “broadly declared the purpose of the [Watershed Act] to be ‘the protection of the public health and welfare and the provident use of the natural resources’ of the state.” Id. (citing Minn. Stat. § 112.34, subd. 1, repealed and renumbered at Minn. Stat. § 103D.201, subd. 1). The Act represents a legislative solution to deal with the complex problems of water conservation and use. Id. at 232, 135 N.W.2d at 681. The Watershed Act “provides for the establishment of multiple-purpose watershed districts in order to develop and manage

⁵ Minch repeatedly references that the Watershed District and/or the Court order allowed the Watershed District to “widen” the ditch. While Minch says it numerous times, no evidence supports such a claim. The Watershed District Ordered Minch to clean the silt from the existing ditch. Judge Vaa Ordered Minch to do the same. Ultimately, Judge Vaa ordered the Watershed District to clean the existing ditch – no further. (App. at 17).

uniform and integrated programs of water use in separate areas.” *Id.* Watershed districts are independent political subdivisions of the state, and can sue and be sued, incur debts, liabilities and obligations, exercise the power of eminent domain, and provide for assessments. Minn. Stat. §§ 103D.225, subd. 6; 103D.335. Watershed districts are authorized to perform effectively two categories of functions: (1) to undertake projects that advance or improve flood control, drainage, water quality, and other water conservation objectives; and (2) to regulate the use of water as well as the land as it affects the state’s water resources. Minnehaha Creek Watershed District v. Gayle’s Marina Corp., 461 N.W.2d 224, 225 (Minn. 1990); Minn. Stat. §§ 103D.201; 103D.335. Minnesota Statutes designates a watershed district’s “specific purpose” as including: **“to control or alleviate soil erosion and siltation of watercourses.”** Minn. Stat. 103D.201, Sub. 2(10) (“Specific purposes”) (Resp. App. at 53.) As properly noted by the District Court, the term “watercourse” is not limited to “drainage systems” or “projects,” both of which are specifically defined for purposes of Chapters 103D and 103E. (App. at 8.) The District Court further noted that the legislature frequently limited the types of watercourses within the scope of other sections of Chapter 103D, but did not so limit the application of subd. 2(10) of section 103D.201. *Id.* (citing Minn. Stat. §§ 103D.201, subd. 9; 103D.335, subd. 8; 103D.632, subd. 2). Instead, the District Court properly determined that the term “watercourses” is a general term used to refer to all watercourses, including the Section 34 ditch, and as a result, the Watershed District has statutory authority to control siltation therein. *Id.* Additionally, Chapter 103D authorizes the Watershed District to clean a public ditch or watercourse, natural or artificial, within the Watershed District. Minn. Stat. 103D.335, Subd. 8. (Resp. App. at 55.)

On the basis of the Watershed District's Chapter 103D authority to both (1) control siltation of watercourses, and to clean a ditch, it is clear that the Watershed District had the implied power to order the Section 34 ditch cleaned. Statutory authority may be either express or implied. In re Application of Minnegasco, 565 N.W.2d 706, 711 (Minn. 1997). An implied statutory authority may be inferred when the necessity and logic of the situation require it. The Minnesota Supreme Court has recognized that a watershed district "has the powers necessary to deal with problems of water use." Adelman, 271 Minn. at 220, 135 N.W.2d at 673. Minnesota law authorizes a watershed district is "to perform all acts expressly authorized, and all other acts necessary and proper for the watershed district to carry out and exercise the powers expressly vested in it." Minn. Stat. § 103D.335, subd. 1(5) (emphasis added). Furthermore, Section 501 of the Watershed Act makes clear that Chapter 103D is to be construed so as to make effective the provisions of section 103D.201, subd. 1, which sets forth the general purposes of watershed districts including the conservation of the natural resources of the state by land use planning and flood control. Minn. Stat. § 103D.501.

To accomplish the purposes of Chapter 103D and to implement the powers of the managers, a Watershed District also must adopt rules. Minn. Stat. § 103D.341, subd. 1. Here, the Watershed District has adopted rules "to effectuate the purposes of [the Watershed Act], and the authority of the Managers therein prescribed." (App. at 39.) Moreover, the rules "are deemed necessary to implement and make more specific the law administered by them." (Id.) In other words, the Watershed District has authority to implement to the fullest extent state watershed law. To enforce the authority that the legislature has delegated to it, the Watershed District's Rules further provide: "Any

provision of these Rules *or any order* or stipulation agreement made, or any permit issued, by the Board of Managers of this Watershed District, may be enforced by...action to compel performance, restoration, abatement, or other appropriate action.” (Id. at 40 (emphasis added.) The District Court specifically found, in a detailed decision, that the Watershed District’s Order was a necessary and proper means of effectuating its powers. (App. at 9-11.) The District Court found a judgment in rem in favor of all assessed landowners, entitling them to have all the conditions on which the entire drainage system is based. (Id. at 9 (*citing Fischer v. Town of Albin*, 104 N.W.2d 32, 34 (Minn. 1960.)) The Section 34 Ditch has drained the property east of Section 34 for over 50 years, with those landowners assessed into the system improved by the Ditch 51 drainage project for that time. Accordingly, they have a right to expect that the Section 34 Ditch be maintained.

Minch argues that the Watershed District lacked authority to order him to clean the Section 34 ditch. If Minch’s argument succeeds, it strips Minnesota watersheds of the ability to effectuate the purposes of the Watershed Act. That is, the Watershed District would be incapable of adequately controlling siltation in watercourses such as the Section 34 Ditch, leaving neighbors suing landowners as a sole remedy. If the Watershed District were unable to request that landowners clean their ditches 30-40 times per year (Resp. App. 26, para 3), the effectiveness of a common plan within the watershed districts would be seriously diminished. Certainly, the legislature did not intend to burden the Watershed District with the complex task of managing drainage and flooding within a watershed, but refuse it any mechanism to enforce its rules and decisions. Such authority is either inherent in the authorizing legislation, or stems from the police power of the

State and its political subdivisions. To hold that a watershed district is not able to order the cleaning of sediment out of a County right-of-way ditch where it is obstructing drainage would undercut the fundamental premise of Minnesota watershed law that surface water is more effectively managed by a single, consolidated entity than multiple landowners implementing their own, uncoordinated drainage plans.

Instructive is the case of Krahl v. Nine Mile Creek Watershed District, where a landowner sought to invalidate a watershed district's floodplain encroachment regulations, and claimed damages for an alleged condemnation of his property. 283 N.W.2d 538, 539 (Minn. 1979). The Minnesota Supreme Court rebuffed the appellant's assertion that the watershed district lacked authority to regulate floodplain encroachment and prohibit a landowner from applying fill to the floodplain on privately property. Id. at 542. The Court stated that control and alleviation of damage from flooding are among the primary purposes of the watershed district, and "the watershed district managers had at their disposal the requisite power to adopt the encroachment regulation and thus accomplish their primary purpose." Id. at 542-43. In a footnote, the Court further recognized that although a later enactment gave express authority to the watershed district to control the use and development of the flood plain, it did not follow that the watershed district lacked that authority prior to the enactment. Id. at 543, n 6. To the contrary, the Court found that the later enactment was "simply a delineation of the managers' broad grant of powers and not, as [the appellant] urges, the grant of a new power not existing prior to [enactment of the express power]." Id. In other words, the Court found that despite specific enumeration of the powers, the watershed district had the inherent authority to impose regulation consistent with and pursuant to its purposes.

The District Court upheld the Watershed District's Order for Minch to clean the Section 34 Ditch at his expense, relying in part on State v. McGuire, wherein a landowner requested that Renville County clean grass and rubbish from a ditch, and deepen the ditch one foot. 122 N.W. 1120 (Minn. 1909). The landowner challenged the County's assessment of the cost of the work against him. In their analysis, the Minnesota Supreme Court noted:

If the statute under consideration authorized ordinary repairs only, such as removing obstructions and accumulations of foreign substances in the ditch, we would follow the rule of the Iowa court...the cost and expenses of ordinary repairs, the removal of rubbish and obstructions, if properly made from year to year, would be inconsiderable and no serious burden to property owners, and a requirement of notice and other proceedings essential to an original undertaking would be impractical, render the work of the board unnecessarily cumbersome, and serve no substantive purpose.

Minch v. Buffalo Red River Watershed District, slip op. at 4 (July 13, 2005) (Resp. App. at 32) (quoting State v. McGuire, at 92.) The exact same rationale applied by the Minnesota Supreme Court in State v. McGuire can be applied the instant case. Minch should bear the responsibility and costs of ordinary repairs and maintenance of the Section 34 Ditch. Clearly Minch is aware of this, as he previously cleaned the ditch in 2001 and applied for a permit from the Watershed District in 2004 to clean all but 1000 feet of the Section 34 Ditch.

The District Court recognized that Minch's argument requires the Court to question the discretion of the governmental unit that made the cleanout order. Minch v. Buffalo Red River Watershed District, slip op. at 4 (June 6, 2005) (Resp. App. at 19). The District Court stated, "When considering decisions of a governmental unit involving judgment and discretion, the court will not substitute its judgment for that of the

governmental unit.” Id. (citing City of New Brighton v. Metropolitan Council, 237 N.W.2d 620, 625 (Minn. 1975)).

Like the watershed district in Krahl, it was necessary and proper here for the Watershed District to order Minch to clean the Section 34 Ditch. The Watershed District is charged with the task of managing the watershed, which includes regulating the use and drainage of water within the district. Individual landowners cannot be permitted to frustrate the efforts of the Watershed District to coordinate the flow of surface water to the greater benefit of all landowners in the district. This is particularly true where an individual property owner refuses to maintain an existing obstructed watercourse. The Watershed District has not demanded Minch construct a new ditch, or even use his property in a way that is inconsistent with his own use of the rest of his property. Instead, the Watershed District has deemed it necessary and proper to order the ditch obstruction cleaned to permit drainage that both occurred historically and is contemplated by the recent project for which Minch himself petitioned. The Watershed District’s Order operated as an enforcement tool of last resort, and was within the scope of its authority to control siltation in watercourses.

b. Watershed and Drainage Law Authorize the Watershed District to Repair and Maintain Drainage Systems.

According to Minch, “the most important statutory and constitutional provisions are M.S.A. 103E.075...” (Minch Br. at 3.) Minch cites to Minnesota Chapter 103E ten times in his brief, using it as the sole basis on which he seeks relief. The problem: the District Court found that this is not a Section 103E case. Minnesota Statutes Chapter 103E, entitled “Drainage Law,” is the chapter that provides the process and procedure to create and pay for drainage systems assessed to land owners who benefit from the new

drainage system.⁶ The Watershed District proceeded with the request for Minch to clean his ditch pursuant to Chapter 103D (Watershed Law) and the Buffalo Red River Watershed District Rules. Minch simply ignores that important fact and basically ignores Judge Vaa's opinion in the District Court.

Yet even assuming *arguendo* that Chapter 103E did apply, that Chapter fully authorizes a watershed district to order a ditch cleaned. Minnesota's laws pertaining to drainage are a complex matrix adopted with the intent of reclaiming agricultural land by disposing of excess water that renders the land untellable and fairly allocating the costs among benefited landowners. In re Improvement of Murray County Ditch No. 34, 615 N.W.2d 40, 45 (Minn. 2000) (citation omitted). To facilitate this purpose, Minnesota drainage laws must be liberally construed. Id.

A "drainage system" is defined as "a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets, established and constructed by a *drainage authority*. Minn. Stat. § 103E.005, subd. 12 (emphasis added). It is clear that parts of a drainage system can utilize private property, as evidenced by Section 103E.075, which contemplates and provides the Watershed District with the ability to order an obstruction removed from a drainage system, regardless of whether it occurs on private property.

Moreover, landowners east of Section 34 have been assessed the benefits of that drainage. When a drainage system is established, the drainage authority acquires jurisdiction over its constituent property, and owners of the land who have been assessed

⁶ Although the District Court determined that the Section 34 Ditch was not part of a "drainage system," the Section 34 Ditch was constructed by the then-drainage authority and there is a public right-of-way. Because a "drainage system" is a term defined by statute, whether a ditch constitutes part of a "drainage system" arguably is a conclusion of law, reviewable by this Court.

benefits for its construction have a vested property right in the maintenance of the ditch in the same condition as it originally was established. Fischer v. Town of Albin, 258 Minn. 154, 156, 104 N.W.2d 32, 34 (Minn. 1960); Oelke v. Faribault County, 244 Minn. 543, 552, 70 N.W.2d 853, 860 (Minn. 1955). Thus, the landowners have a right to have the ditch maintained, and it is the [drainage authority] that must undertake the maintenance. McLeod County Bd. of Comm'rs v. Minn. Dep't of Natural Res., 549 N.W.2d 630, 633 (Minn. Ct. App. 1996).

After the establishment of the Section 34 ditch in the 1950s, authority over drainage in Clay County was transferred to the Watershed District pursuant to Minnesota Statute section 103D.625. At this time, the Watershed District assumed responsibility for existing drainage systems, including the Section 34 ditch. If this is found to be a Chapter 103E issue, as drainage authority, the Watershed District would have inherited responsibility for maintaining and providing repairs necessary to make all existing drainage systems efficient. Minn. Stat. § 103E.705, subd. 1. That is, a drainage authority must maintain all or part of a drainage system as nearly as practicable to the same condition as originally constructed and subsequently improved. Id. In fact, the Drainage Act (Minn. Stat. 103E) requires a watershed board to remove obstructions in drainage systems. State by Humphrey v. Byers, 545 N.W.2d 669, 673 (Minn. Ct. App. 1996); Minn. Stat. § 103E.075. If a drainage authority determines that a drainage system has been obstructed, by a private or public entity, the drainage authority **must** order the obstructing entity to remove the obstruction. Id. (emphasis added). Moreover, the drainage authority is empowered to remove the obstruction and charge the expense to the obstructing entity. Id.; Minn. Stat. § 103E.075, subd. 3. In fact, where a drainage

authority fails to order removed or remove obstructions, even on private property, it may be liable in negligence to damaged property owners. In Happy Land Tree Farms, Inc. v. Finlayson Twp., the plaintiff tree farm owner filed a negligence suit against the township, which was responsible for drainage in the area, for failing to remove beaver dams that caused flooding. Id., No. C6-02-1047, 2002 WL 31894451 at *1 (Minn. Ct. App. Dec. 31, 2002) (Resp. App. at 43.) Specifically, water drained from the tree farm southward through a culvert under a township road, and into wetlands located on private property. Id. Beaver dams on those wetlands prevented drainage and caused flooding on the tree farmer's property. Id. The tree farmer sued the township, claiming that it failed to meet its statutory obligation to properly maintain and repair the drainage system under Minnesota Statute section 103E.075, subdivision 1 which requires a drainage authority to maintain ditches and provide repairs as necessary to make the drainage system efficient. Id. at *2. The Court of Appeals affirmed the district court's denial of summary judgment in favor of the township, agreeing that the township failed to explain why it did not promptly act to remove the obstacle to drainage. Id. at *3.

A drainage authority is specifically authorized by statute to “**make orders to...maintain drainage systems.**” Minn. Stat. § 103E.011, subd. 1(1) (emphasis added). Furthermore, *watershed* law authorizes a watershed district to repair, improve, or modify all or part of drainage systems within a watershed district. Minn. Stat. § 103D.201, subd. 2(9). Accordingly, arguing in the alternative, even if this Court were convinced that 103E applies, such an application does not change the validity of the Order to clean the Section 34 Ditch obstruction.

The District Court specifically found that the Section 34 ditch was obstructed by Minch's inaction. (App. at 12.) The Watershed District, as drainage authority, had the statutory power to order the ditch cleaned. Although Minch alleges procedural defect, the District Court found none. Therefore, even if Section 103E applied, the District Court's decision should be affirmed.

II. There Has Been No Violation of Any Right of Minch to Due Process.

a. The Lower Court Properly Held Minch's Right of Due Process Was Not Implicated.

Minch disagrees with the District Court's finding that a watershed district is not an administrative agency governed by the Minnesota Administrative Procedure Act ("APA"). The APA defines an "agency" as "any state officer, board, commission, bureau, division, department, or tribunal, other than a judicial branch court and the tax court, having a statewide jurisdiction and authorized by law to make rules or to adjudicate contested cases." Minn. Stat. § 14.02. The Buffalo-Red River Watershed District does not have statewide jurisdiction and cannot reasonably fall within this definition. See In re Lac Qui Parle-Yellow Bank Watershed District, No. C7-94-1592 1995 WL 6419, at 2 (Minn. Ct. App. Jan. 10, 1995) (Resp. App. at 56.) As a result, the District Court properly held that the Watershed District was not bound by the requirements of the APA regarding notice and opportunity for hearing.

The District Court found Minch's state and/or federal constitutional arguments equally unavailing. Clearly, a government cannot deprive a person of "life, liberty, or property without due process of law." U.S. Const. Amends. V, IX; Minn. Const. Art. 1, § 7. As correctly noted by the District Court, where a protected interest is at stake, both the state and federal constitutions require reasonable notice and an opportunity to be heard.

(App. at 5 (*citing Programmed Land, Inc. v. O’Conner*, 633 N.W.2d 517, 528-29 (Minn. 2001))). The District Court specifically found that the Section 34 ditch was in existence at the time the Watershed District issued its Order. (App. at 6.) It is also clear that the Section 34 Ditch had been used for drainage since the 1950s, clearly prior to the time when Minch acquired property in Section 34. The Order did not require new or additional construction, but simply cleaning silt from a ditch to return it to its fully operable condition. In other words, Minch was unable to state any protected interest such that his due process rights would be implicated.

b. Even if Minch’s Right of Due Process Was Implicated, the District Court Properly Found that Minch Received Actual Notice and Actual Opportunity to be Heard.

Even if Minch’s due process rights were implicated, the District Court found that Minch received actual notice and was afforded actual opportunity to be heard by the Watershed District prior to issuance of its Order. (App. at 7.) The District Court specifically found that Minch and his attorney were physically present at the November 8, 2004 and November 22, 2004 meetings of the Watershed District. (Id.) Indeed, Minch concedes that he “made a practice of attending” Watershed District meetings (see Appellant’s Br. at 6), such that his presence certainly could be anticipated by the Watershed District. The District Court found that the matter of cleaning the Section 34 Ditch was thoroughly discussed at both of those meetings, particularly during the latter meeting, and that Minch’s attorney participated in the meetings. (Resp. App. at 3-15.) Minch and his attorney spent an hour again discussing and arguing about the ditch cleaning order at the December 13, 2004 meeting. (Id. at 10-15.)

Minch received actual notice and actual opportunity to be heard. Due process requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). In fact, it is axiomatic that statutes and rules requiring notice exist not to ensure merely that *procedures* are met, but to ensure that *actual notice* be given. See, e.g., Minnesota Mining & Mfg. Co. v. Kirkevold, 87 F.R.D. 317, 324 (D. Minn. 1980) (stating purpose of service of process rules is to make likely that actual notice be brought to defendant); see also State v. Green, 351 N.W.2d 42, 44 (Minn. Ct. App. 1984) (“actual receipt of the notice is not required to meet the due process requirement”). Due process clearly has been afforded when notice actually reaches the intended person. O’Sell v. Peterson, 595 N.W.2d 870, 873 (Minn. Ct. App. 1999); see also Deli v. Univ. of Minn., 511 N.W.2d 46, 50 (Minn. Ct. App. 1994) (due process requirements are met when intended party is given clear and actual notice and a reasonable time and opportunity to present testimony) (citation omitted). Minch had notice. The issue of the Section 34 Ditch had been discussed with him by Watershed District managers. He attended and participated at length in Watershed District meetings during which the Section 34 ditch was discussed **before** the Watershed District issued its Order. A review of the three sets of meeting minutes shows that Minch had an opportunity to be heard on all of his stated issues before the Watershed District in 2004. (Resp. App. at 3-15.) Minch brings up no new facts herein that were not adequately heard or addressed at the time the order was made by the Watershed District. Accordingly, what Minch clings to is a mere technical argument that he was not served with a specific written notice of the hearing, rather than

any substantive argument that he was not afforded an opportunity to have his position heard.

Minch's claim that he had no prior notice of the Watershed District's December 8, 2004 Order, and that letter gave him only five days to clean his ditch at his own expense is vastly misleading and is wholly unsupported by the evidence. The November 8 and November 22, 2004 meeting minutes make it clear that the Section 34 Ditch cleaning issue had been negotiated actively for a year, and was discussed at both meetings, with full participation by Minch and his attorney. (Resp. App. at 3-9.) The Watershed District's Order at the November 22, 2004 meeting specifically gave Minch the December 13, 2004 deadline to clean his ditch. (Resp. App. at 7.) Minch's feigned ignorance about the order until after December 8, 2004, boldly asserting that he only had five days to respond to the Order should be disregarded by this Court as hyperbole and of questionable candor to this Court. (See Minch Br. Issue Statement.)

The topic of the Section 34 Ditch is again the center of discussion at the December 13, 2004 meeting of the Watershed District. See Watershed District Meeting Minutes, Dec. 13, 2004. (Resp. App. at 10-15.) After 25 minutes into the discussion of the Section 34 Ditch, one manager objected to attorney Roger Minch's reiterating Minch's grievances that were previously "thoroughly aired at previous meetings, and objected to Roger Minch lecturing the Board." (Resp. App. at 14.) Attorney Minch's discussion and argument continued on for almost an hour, at which time a manager again asked Minch to "quit lecturing the board," noting "that the Managers have never experienced this type of treatment before." (Id. at 15) It is clear that Minch received ample time to be heard both before and after issuance of the Order.

In addition, the minutes of Watershed District meetings make clear that Minch not only raised the concerns he now raises on appeal, but that the Watershed District actually addressed those concerns. For example, Minch complains of the timing of the order, which was issued late in the fall. Meeting minutes make clear that “landowners [we]re still doing ditch work all over the district” at the time. (Resp. App. at 7.) After issuing its Order, the Watershed District recognized at its December 13, 2004 meeting that freezing conditions would make the clean-out unnecessarily difficult, and provided Minch until the spring to complete the work. (Resp. App. at 11 (“...because of the freezing weather, the Board might consider setting a date next spring for Minch to comply with the Order.”)). Records indicate that Minch and his attorney attended and again participated at length in that meeting as well. (Id.) In fact, Minch made clear that “he w[ould] not make any attempt to clean his ditch...until [a] culvert is closed, or something is done to compensate him for its drainage coming west.” (Id.)

Minch further complains that there are drainage issues on another parcel of land he owns in Section 28 that the Watershed District has postponed addressing until the matter of the Section 34 Ditch is resolved. Even assuming Minch’s opportunity to be heard on that unrelated issue was relevant, it is clear from the meeting minutes that the Watershed District, along with other landowners in the vicinity of Minch’s Section 28 property, agreed that a dike on one particular individual’s land is a problem that needed to be and would be addressed. (Resp. App. at 15.)

Finally, the meeting minutes also reveal the fundamental underpinning of this litigation: Minch simply has his own ideas about how water in the district should drain, and is unwilling to cooperate with the Watershed District’s drainage decisions when they

do not comport with his own. Minch had a plan that he believed would improve drainage for himself and Kragnes, which would send the Brendemuhl's water straight north rather than east across the Section 34 Ditch. (Resp. App. at 8.) The Watershed District opted to continue the historic drainage pattern from the 1950s rather than following the plan Minch wanted. The Watershed District's decision to continue the historic drainage resulted in the Watershed District, the County, Wayne Brendemuehl and Minch negotiating for over one year to get the Section 34 Ditch cleaned before the Watershed District finally ordered Minch to clean it. Minch stood firmly on principle and refused to clean his ditch, stating: "it was not to his advantage to clean the entire ditch, unless Brendemuehls make further drainage concessions" (Resp. App. at 3); "Minch refuses to consider cleaning the ditch without more concessions from the Brendemuhls" (Resp. App. at 4); "Minch stated that he was willing to clean his ditch, but wants the Brendemuhls to do more work...so that more of [their] drainage goes north" (Resp. App. at 8); "Minch added that he will not make any attempt to clean his ditch... until [the Brendemuhl's] culvert is closed, or something is done to compensate him for [Brendemuhls'] drainage coming west" (Resp. App. at 11). In response, Watershed District Administrator Bruce Albright explained "no one landowner has the right to refuse his neighbor's drainage." (Id.) Minch and his attorney testified, commented and argued for sometimes up to an hour at the Watershed District meetings on November 8, November 22 and December 13, 2004. (Resp. App. at 3-15.) This Court should not give a disagreeable landowner the power to single-handedly alter a watershed district's overall management plan for an area. Such would be a dangerous precedent to set.

III. The Cleanout of the Section 34 Ditch Has Not Resulted in a Taking.

Minch spends five pages arguing that the Watershed District's Order constitutes a taking of his farmland. (Minch Br. at 15-19.) Minch fails to cite one case to support this claim. Ample Minnesota eminent domain caselaw exists; none of which supports Minch's argument. Even if Minch had adequately briefed the issue, either in his appellate brief or at the court below, his claim is without merit.

For there to be an unconstitutional taking a landowner must demonstrate that he has been deprived, through governmental action or inaction, of all the reasonable uses of his land. Czech v. City of Blaine, 312 Minn. 535, 539, 253 N.W.2d 272, 274 (Minn. 1977). The burden is on the landowner to demonstrate that governmental action denied the landowner all reasonable use of the property. Larson v. County of Washington, 387 N.W.2d 902, 907-08 (Minn. Ct. App. 1986). If an alternative use is available, even if it is not the most profitable use, the regulation has not denied the property all economically beneficial use. Id. at 908; McShane v. City of Faribault, 292 N.W.2d 253, 258 (Minn. 1980).

On this test, there can be no taking. The Section 34 Ditch has been in place since the County road was constructed, prior to the time when Minch purchased land in Section 34. The ditch historically has and continues to carry water and drain adjacent land. Minch concedes that two culverts, which connected the eastern end of the Section 34 Ditch to property east of Minch's land, were in place at the time he purchased his property in the late 1970s.⁷ In fact, property owners east of Section 34 have been assessed the benefit of this drainageway since the 1950s. Any claim for a taking that may

⁷ Although irrelevant, Minch alleges that one of these culverts was plugged until recently, alleging that a Brendemuhl family member removed a culvert obstruction without a permit.

have occurred in establishing the ditch obviously is barred by the long lapse of time between construction of the ditch and Minch's complaint.

The Order requiring Plaintiff to remove obstruction to allow for an ongoing, established use of the Section 34 ditch hardly constitutes a taking. As stated, in order to constitute a taking, the government action must "deprive the property of all reasonable uses." Concept Properties, LLP v. City of Minnetrista, 694 N.W.2d 804, 824 (Minn. App. 2005). Restoring the ditch to its original, cleaned status does not deprive the property of all reasonable uses, as it will still constitute a valuable use to drain Minch's property in Section 34. See In re Petition of Bailey, 626 N.W.2d 190, 195 (Minn. Ct. App. 2001) (requirement that adjoining landowners contribute to construction of partition fence to achieve public purpose of keeping animals confined was not unconstitutional taking where adjoining landowners would not be deprived of all reasonable uses of their land but would instead benefit from increased privacy); see also Dosedel v. City of Ham Lake, 414 N.W.2d 751, 756 (Minn. Ct. App. 1987) (no taking where increase in value of benefited land from improvement is equivalent to special assessments for such improvement). Moreover, drainage itself is a reasonable use of property, particularly where the improved flow benefits the rest of the parcel. Minch simply cannot claim to have suffered any loss.

Minch fails to cite a District Court record citation for his claim that 10-15 feet of Minch's farmland would be taken due to the Watershed District's order. It is noteworthy that Judge Vaa's Order was not to widen, enlarge or expand the ditch, but merely clear it of excess siltation within the original ditch only. Minch's "widening the ditch" mantra is yet another red herring without support in the record.

IV. The Order of the District Court Neither Was Impermissibly Vague Nor Did It Constitute an Improper Delegation of Judicial Authority.

Finally, Minch complains that the Order of the Watershed District was vague and improperly delegated judicial authority to the County Engineer to define the parameters of its execution. Such a contention is without merit. It is undisputed that an injunction or other court order cannot be so ambiguous and imprecise that it leaves the enjoined party in doubt as to his obligations. See Josephson v. Fremont Indus., Inc., 282 Minn. 51, 55, 163 N.W.2d 297, 301 (Minn. 1968) (requiring that injunction cannot be so ambiguous or imprecise that it leaves the enjoined party in doubt as to his obligations). Nevertheless, Minch's contention that the District Court's order in this case was so vague as to provide him with no direction for meeting its requirements is absurd. In particular, Minch objects to language ordering the ditch to be cleaned to the unstated specifications of the County Engineer. Minch further objects that the record does not include any written specifications from the County Engineer. Minch's argument to this Court is misleading in two respects. First, Minch knows that there are actually written specifications discovered after the summary judgment hearing in this matter, so his intent to mislead the Court by arguing about the lack of written specifications is troubling. Second, the record is clear that, regardless of whether any specifications were put on paper, there is a "long standing rule on specifications....cleaning should be only to the clay layer, as anything further would require a permit. Three inches of topsoil should be returned atop the clay." (Resp. App. at 36.) Minch's counsel specifically sent a letter to the County Engineer on June 13, 2005 confirming his understanding of the County's long-standing guideline on cleaning ditches. (Resp. App. at 37.) Minch's feigned ignorance and repeated reference to the existence of actual written specifications is simply another red herring.

Further, Minch has previously arranged for his ditches to be cleaned and applied for a permit with very detailed specifications on how he intended to clean his own ditch, so he is well aware of how to clean a ditch. (Resp. App. at 39-41.) In addition, the Section 34 Ditch also has the benefit of the 2003 County survey of the obstruction, the October 11, 2005 Letter from the County Engineer with specifications, and the general County policy of cleaning silt to the original clay layer. Cleaning ditches is a standard practice within the watershed district, done innumerable times per year, and is not quite so complex as Minch makes it out to be.

Minch apparently believes that a court order is required to contain some magic language or specific criteria before it will be enforceable, and that failure to use such words provides grounds for overturning or nullifying the order. That argument has been flatly rejected by this Court. See Lac Qui Parle-Yellow Bank Watershed District v. Wollschlager, No. C6-96-1023, 1996 WL 653921 at *3 (Minn. Ct. App. Nov. 12, 1996) (Resp. App. at 49). In that case, the landowner challenges a district court's order requiring him to fill a ditch, which he unlawfully constructed on his property, so that it was roughly level with the surrounding land. Id. The Court of Appeals held that the failure to provide the plaintiff with precise elevations did not make the order ambiguous, noting that the plaintiff's fear that he would not know if he had complied with the order was mitigated by the fact that the order further specified that he and the watershed district could employ a neutral third party to oversee the fill. Id. Likewise, the District Court's Order here does not instruct Minch to meet the Watershed District's specifications, but rather the specifications of *Clay County*, a neutral third party, with regard to its right-of-way ditches. (App. at 2.) It is standard practice for the Watershed District to condition

its own permits on approval from and oversight by the County Engineer, in order to ensure compliance with county right-of-way specifications. Moreover, it cannot be improper for the Court to defer to the specifications of an authority with jurisdiction over a particular area. Particularly telling with Minch's pretend claim of inability to understand "county specifications" is the fact that not once did Minch contact the County or a contractor to obtain clarification. Quite the opposite, Minch sent a letter to the County Engineer acknowledging his understanding of the long-standing County policy on ditch cleaning. (Resp. App. 37.)

CONCLUSION

Although the old adage that "whiskey is for drinking and water is for fighting" ironically originated in the American west, where water is scarce, it applies equally in a land where water is found in excess. Judge Vaa summed it up best in his July 13, 2005 Order:

It seems that the Plaintiff is using this lawsuit as leverage with respect to the Norby dike issue in section 28. It is improper for him to use this lawsuit as a vehicle regarding other disputes....It also appears that the Plaintiff may have some disputes with the Brendemuehl family regarding drainage issues. Again, Plaintiff cannot use this lawsuit as a vehicle for resolution of any disputes with the Brendemuhls."

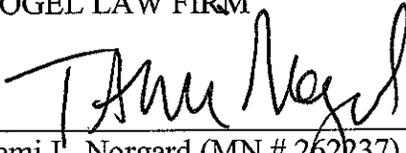
(Resp. App. at 34.)

However, the Minnesota legislature, in adopting the Drainage Act, determined that authority be delegated to a singular local body to coordinate large-scale drainage projects. Unfortunately, the instant case is not the first – nor will it be the last – occasion on which a landowner disagrees with the wisdom of the local watershed and drainage authorities. Nonetheless, Minnesota law has empowered those authorities to take steps

necessary to fulfill their statutory obligations and forward the object of reclaiming land and protecting agricultural practices.

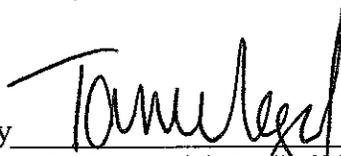
Dated this 7th day of March, 2006.

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ACKNOWLEDGEMENT

Plaintiff, through its undersigned attorney, acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded to the opposing party pursuant to Minn. Stat. 549.211.

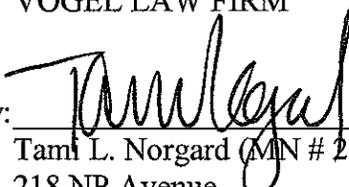
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CERTIFICATE OF COMPLIANCE

The undersigned, as attorney for the Respondent in the above matter, and as the author of the above Brief, hereby, certifies, in compliance with Rule 132.01, Subd. 3 of the Minnesota Rules of Appellate Procedure, that the above Brief, excluding words in the table of contents, table of authorities, any addendum containing statutes, rules, regulations, etc. and any appendix, signature block, certificate of service and this Certificate of Compliance, which was done in Microsoft Word for Windows using monospaced font of Times New Roman, totals 9,648 words.

Dated this 7th day of March, 2006.

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