

Minnesota Board of Water and Soil Resources
90 West Plato Boulevard
First Floor
St. Paul, Minnesota 55107

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

MAY 16 1988

Jean Anderson Howe
Secretary of State

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
ORDER

In the Matter of the Petition for the
Establishment of the Mustinka-Rabbit River-
Bois de Sioux Watershed District filed on
July 27, 1987 (Minnesota Statutes Section
112.37)

On July 27, 1987 a nominating petition for the establishment of a Mustinka-Rabbit River-Bois de Sioux Watershed District signed by Wilkin, Traverse, Big Stone, and Stevens Counties was filed with the Minnesota Water Resources Board pursuant to Minn. Stat. ch. 112 (1986). The territory of the proposed watershed district included all of the lands in the watershed of the Bois de Sioux River within the State of Minnesota. A contested case hearing on the proposed watershed district was held on January 11, 1988 in Wheaton, Minnesota. The report of Administrative Law Judge Peter C. Erickson was received by the Board of Water and Soil Resources (the Board of Water and Soil Resources superceded the Water Resources Board effective October 1, 1987) on March 11, 1988.

The Board of Water and Soil Resources (Board) provided parties to the proceeding an opportunity to present their exceptions to the law judge's report at a regular meeting on March 23, 1988.

Four Board members attended the entire hearing and reported to the full Board on March 23, 1988. The Board jointly reviewed the law judge's report and received copies of the post-hearing briefs from

Petitioners' Attorney Timothy E. J. Fox and Intervenors' Attorney Stephen F. Rufer on March 23, 1988. Board members reviewed all the exhibits in the record at a regular meeting on April 27, 1988.

Having considered the entire record of the proceeding, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

I. Findings 1 through 41 of the attached report of Administrative Law Judge Peter C. Erickson are adopted by the Board with the following exceptions:

- A. Strike the word "county" in the second sentence of Finding 7.
- B. After the words "published in" in the second sentence of Finding 8 insert "the Fergus Falls Daily Journal,".
- C. Strike the word "all" in the first sentence of Finding 9 and insert "most". After the word "River" in the second sentence of Finding 9 insert "within the State of Minnesota". At the end of Finding 9 insert "Roughly 900 square miles of land in North and South Dakota are also tributary to Lake Traverse and the Bois de Sioux River."
- D. Strike the words "many years ago" in the second sentence of Finding 12.
- E. Before the word "use" in the first sentence of Finding 13 insert "land".
- F. Strike the words "A pilot who had flown" in the third sentence of Finding 14 and insert "The Vice-Mayor of the City of Breckenridge who has taken three aerial surveillance flights".

- G. At the end of Finding 18 add "Pet. Ex. 10 (p. 39)".
- H. Strike the word "County" the first time it appears in the second sentence of Finding 19.
- I. Strike all of the wording of Finding 23 and insert "The clerk of Clifton Township in Traverse County reported that the local assessor had to reduce property valuations because of recurrent crop losses on area farms caused by flooding. At the same time, the Township had to raise additional money to replace washed-out bridges and repair flood-damaged roads."
- J. After the word "relations" in the third sentence of Finding 24 insert "--as happened between Traverse and Wilkin Counties on Judicial Ditch 11, and between Grant and Traverse Counties over work on a Grant County ditch near Herman (see, Tr. 16 and 110)".
- K. Strike the words "be effective" in the second sentence of Finding 27 and insert "raise an adequate administrative fund".
- L. Strike the first sentence of Finding 33 and insert "Testimony was given that watershed districts are not needed to manage inter-county drainage systems because counties can establish joint powers agreements or joint county ditches."
- M. Strike the words "do not hold other" in the first sentence of Finding 35 and insert "cannot serve as county commissioners or hold other state or federal".

N. Strike the word "wasteland" in the first sentence of Finding 37 and insert "wetlands". Strike the words "protected against drainage" in the fourth sentence of Finding 37 and insert "subject to DNR regulations". Strike the fifth, sixth, seventh, eighth, and tenth sentences of Finding 37.

O. Strike "individual ditch boards," in the first sentence of Finding 38.

P. Strike the second sentence of Finding 39. Strike the fifth sentence of Finding 39 and insert "A person who wants a manager removed does not have the opportunity to vote for another candidate, but rather, must persuade the county board not to reappoint that manager."

II. The Board makes the following additional findings:

42. Attorney Stephen F. Rufer appeared before the Board on March 23, 1988 and presented exceptions to the law judge's report on behalf of Citizens Concerned for Water Management. He also filed written exceptions on April 14, 1988. Also appearing before the Board to present exceptions on March 23, 1988 were the following individuals: Charles Foss, Sidney Bordson, Gerald Lacey, Dennis Stock, and Lyle Alvstad. Several of the foregoing amendments to the law judge's findings are based on the exceptions presented.

43. Robert Richards, Grant County Commissioner, offered copies of minutes of Grant County Board meetings from

January 1977 to November 1987. He had highlighted the minutes wherever ditches and other water concerns were discussed. The minutes show that the Grant County Board discussed ditch problems a total of 114 times during the 10-year period. The problems affected 20 of the county's 24 public drainage systems. Mr. Richards also prepared a chart and map that provide a detailed breakdown of when and where the ditch problems were experienced. A total of 98 of the 114 problems occurred in the portion of Grant County within the proposed watershed district. Tr. 144. Ex. 105, 106, and 107.

44. In January 1987 the U.S. Army Corps of Engineers published their "Lake Traverse Reservoir Operation Plan Evaluation-Problems Appraisal Report" (87 Corps Report). The 87 Corps Report summarizes information on problems in the Bois de Sioux basin, and represented the initial phase of their reevaluation of the operational plan for the gated dams on Lake Traverse (Reservation Control Dam) and Mud Lake (White Rock Dam). The reevaluation was prompted by public concern over damages caused by high reservoir levels. The 87 Corps Report identified the following conditions and problems in the Bois de Sioux basin: that the flat topography in the central portion of the basin together with limited channel capacity contributes to widespread flooding; that the basin's flood conditions are seldom aggravated by Red River main stem flooding; that the basin on the average contributes about 6.5 percent of the total Red River flow at the

Canadian boundary; that high-intensity summer rains cause a significant amount of flood damage, which is significantly influenced by local drainage; that open ditching and tile installation has probably significantly increased the volume of runoff into the Bois de Sioux; that these practices have probably reduced the volume of natural water storage in the basin and increased flood damage potential in downstream areas; that significantly more acres of floodplain and marginal land, such as drained wetlands, have been placed into row crop production since the two Corps dams were built; that basin land use changes have probably increased the frequency of high flowrates in the Bois de Sioux River; that flood flows on the Rabbit River can induce flooding on the Bois de Sioux for up to 8 to 10 miles upstream due to backwater effects; that in 1986 high water levels on Lake Traverse caused about \$500,000 in damages to structures around the lake; that significant additional damage included lost resort business, evacuation of homes and cabins, and lost crop production; that other damages included shoreline erosion, debris deposits along the shoreline, and the spread of noxious weed seeds; that lake and stream habitats are being degraded by siltation; that algal blooms and high turbidities have limited habitat and spawning sites for game fish and panfish in Lake Traverse; that until Lake Traverse water quality is improved, fishing can be expected to continue to decrease in quality; that the Bois de Sioux,

Mustinka, and Rabbit Rivers all experience periods of no flow or low flow and are high in dissolved solids, and are inadequate to meet the needs of a municipal water supply; that the City of Moorhead (which along with Fargo relies on the Red River for its main municipal water supply) expended \$80,000 for added water treatment chemicals in December 1984 - January 1985 to deal with large releases of very poor quality water from Lake Traverse; that the Cities of Wahpeton and Breckenridge have both switched from river water to ground water for their main water supply; that long-term, comprehensive water supply planning is needed in the basin; that summer base flows into Lake Traverse and the Bois de Sioux are so limited that the Bois de Sioux has limited ability to help maintain summer flows in the Red River; that in 1986 the Corps of Engineers received several complaints from boaters about increased sediment deposition at the mouth of the Mustinka River in Lake Traverse; that Lake Traverse and Mud Lake have been declining in fishing, waterfowl hunting, and other water-related recreation activities; that given the importance of Lake Traverse and Mud Lake as recreational and economic resources measures to control water pollution and improve recreational opportunities should be actively pursued; and that the Corps of Engineers does not have authority to implement measures to reduce either point or nonpoint pollution.

45. Grant County resident Charles Foss testified that Grant County had decided to go along with the 15-county local water planning effort in the Red River Basin. All of the affected counties, except Big Stone, have passed resolutions to develop county water plans under the Comprehensive Local Water Management Act (Minnesota Statutes, Chapter 110B). The Legislative Commission on Minnesota Resources is providing state cost-share grants to 54 counties currently participating in planning efforts under Chapter 110B. There was no testimony from any of the affected counties on the status of their Chapter 110B planning efforts or its relevance to the need for the proposed watershed district.
46. On March 23, 1988 the Board members who attended the public hearing in Wheaton reported back to the full Board. The hearing panel recommended that: the Board accept the recommendation of the Administrative Law Judge and establish the proposed watershed district; the official name be the "Bois de Sioux Watershed District"; the principal place of business be located at Wheaton; the legal boundary be established as proposed by the petition; the board of managers have nine members; and the managers be distributed among the affected counties as recommended by the Administrative Law Judge.

CONCLUSIONS OF LAW

- I. Conclusions 1 through 3 of the attached report of Administrative Law Judge Peter C. Erickson are adopted by the Board.
- II. The Board makes the following additional conclusions:
 4. The record shows severe water-related problems in the Bois de Sioux basin but no commitment among all six affected counties to join forces to formulate and implement solutions.
 5. The record shows a strong need for a mechanism to coordinate water resources management in the Bois de Sioux basin. A watershed district can coordinate water management across political boundary lines through hydrologic data collection, watershed-wide planning and communication, public education, regulation of activities affecting water resources, and project implementation and maintenance.
 6. If the affected counties successfully complete comprehensive local water plans, they will benefit by having a watershed district in place to serve as a vehicle to facilitate implementation of multi-county improvements and other comprehensive watershed management activities.

IT IS THEREFORE ORDERED THAT

- I. The proposed watershed district is hereby established and given the corporate name of "Bois de Sioux Watershed District". The Bois de Sioux Watershed District shall have all the powers, duties, and purposes provided by law.

II. The territory of the Bois de Sioux Watershed District includes all of the tracts of land described below, including all bodies of water therein. The described lands may contain all or parts of quarter-quarter tracts, government lots, and lots within platted areas. The territory of the Bois de Sioux Watershed District is described as follows:

A. Wilkin County 5th Principal Meridian

1. Township 132 North, Range 47 West (Breckenridge)

That portion south of the northerly right-of-way line of the Burlington Northern Railroad within the State of Minnesota. Section 8

That portion south of the northerly right-of-way line of the Burlington Northern Railroad within the State of Minnesota. Section 9

S 1/2 of the N 1/2 " 13
S 1/2 " 13

NW 1/4 of the NE 1/4 " 14
S 1/2 of the NE 1/4 " 14
W 1/2 " 14
SE 1/4 " 14

All of Sections 15 through 36, within the State of Minnesota.

2. Township 132 North, Range 46 West (Sunnyside)

S 1/2 of the N 1/2 Section 18
S 1/2 " 18

All of Sections Sections 19 and 20

SE 1/4 of the NW 1/4 Section 28
W 1/2 of the NW 1/4 " 28
SW 1/4 " 28
W 1/2 of the SE 1/4 " 28
SE 1/4 of the SE 1/4 " 28

All of Sections Sections 29 through 35

W 1/2 Section 36
SE 1/4 " 36.

3. Township 131 North, Range 47 West (Brandrup-West)

All of Sections 1 through 36,
within the State of Minnesota.

4. Township 131 North, Range 46 West (Brandrup-East)

All of Sections 1 through 36.

5. Township 131 North, Range 45 West (Bradford)

All of Section	Section	1
SW 1/4 of the NE 1/4	"	5
W 1/2 of the NW 1/4	"	5
SE 1/4 of the NW 1/4	"	5
S 1/2	"	5
All of Sections	Sections	6 through 36.

6. Township 130 North, Range 47 West (Campbell-West)

All of Sections 1 through 36,
within the State of Minnesota.

7. Township 130 North, Range 46 West (Campbell-East)

All of Sections 1 through 36.

8. Township 130 North, Range 45 West (Champion)

All of Sections 1 through 36.

B. Otter Tail County 5th Principal Meridian

1. Township 132 North, Range 43 West (Buse)

S 1/2 of the SW 1/4	Section	26
SE 1/4 of the SE 1/4	"	27
S 1/2 of the SW 1/4	"	28
W 1/2 of the SE 1/4	"	28
SE 1/4 of the SE 1/4	"	28
S 1/2 of the SE 1/4	"	29
E 1/2 of the E 1/2	"	32
All of Sections	Sections	33 through 35
SW 1/4 of the NW 1/4	Section	36
SW 1/4	"	36.

2. Township 131 North, Range 44 West (Western)

Government Lots 6 and 7	Section	6
E 1/2 of the SW 1/4	"	6
SW 1/4 of the SE 1/4	"	6
All of Section	"	7
E 1/2	"	10
All of Section	"	11
W 1/2 of the W 1/2	"	12
SE 1/4 of the NE 1/4	"	13
NW 1/4 of the NW 1/4	"	13
S 1/2 of the NW 1/4	"	13
S 1/2	"	13
All of Sections	Sections	14 through 36.

3. Township 131 North, Range 43 West (Aastad)

W 1/2 of the NE 1/4	Section	1
W 1/2	"	1
All of Sections	Sections	2 through 4
E 1/2 of the SE 1/4	Section	8
All of Sections	Sections	9 through 11
S 1/2	Section	13
All of Sections	Sections	14 through 17
SE 1/4 of the NW 1/4	Section	18
Government Lot 2	"	18
S 1/2	"	18
All of Sections	Sections	19 through 36.

4. Township 131 North, Range 42 West (Tumuli)

SW 1/4 of the NE 1/4	Section	18
SE 1/4 of the NW 1/4	"	18
Government Lot 3	"	18
SW 1/4	"	18
W 1/2 of the SE 1/4	"	18
W 1/2	"	19

4. Township 131 North, Range 42 West (Tumuli) (Cont.)

W 1/2	"	30
S 1/2 of the SE 1/4	"	30
All of Section	"	31
SW 1/4	"	32.

C. Grant County 5th Principal Meridian

1. Township 130 North, Range 44 West (Lawrence)

All of Sections 1 through 36.

2. Township 130 North, Range 43 West (Stony Brook)

All of Sections 1 through 36.

3. Township 130 North, Range 42 West (Pomme de Terre)

SW 1/4 of the NW 1/4	Section	4
W 1/2 of the SW 1/4	"	4
SE 1/4 of the SW 1/4	"	4
SW 1/4 of the SE 1/4	"	4
All of Sections	Sections	5 through 9
NW 1/4 of the SW 1/4	Section	10
S 1/2 of the S 1/2	"	10
All of Sections	Sections	15 through 21
N 1/2	Section	22
SW 1/4	"	22
W 1/2 of the SE 1/4	"	22
W 1/2 of the E 1/2	"	27
W 1/2	"	27
All of Sections	Sections	28 through 33
N 1/2	Section	34
SW 1/4	"	34
W 1/2 of the SE 1/4	"	34
SE 1/4 of the SE 1/4	"	34.

4. Township 129 North, Range 44 West (North Ottawa)

All of Sections 1 through 36.

5. Township 129 North, Range 43 West (Elbow Lake)

All of Sections 1 through 36.

6. Township 129 North, Range 42 West (Sanford)

N 1/2	Section	3
SW 1/4	"	3
N 1/2 of the SE 1/4	"	3
All of Sections	Sections	4 through 9
W 1/2 of the NE 1/4	Section	10
SE 1/4 of the NE 1/4	"	10
W 1/2	"	10
SE 1/4	"	10
S 1/2 of the S 1/2	"	11
N 1/2	"	14
SW 1/4	"	14
All of Sections	Sections	15 through 22
W 1/2 of the E 1/2	Section	23
W 1/2	"	23
W 1/2 of the SW 1/4	"	25
SE 1/4 of the SW 1/4	"	25
All of Sections	Sections	26 through 33
N 1/2	Section	34
SW 1/4	"	34
W 1/2 of the SE 1/4	"	34
N 1/2 of the NE 1/4	"	35
NE 1/4 of the NW 1/4	"	35
NW 1/4	"	36.

7. Township 128 North, Range 44 West (Gorton)

All of Sections 1 through 36.

8. Township 128 North, Range 43 West (Delaware)

All of Sections 1 through 36.

9. Township 128 North, Range 42 West (Lien)

NW 1/4 of the NW 1/4	Section	3
N 1/2	"	4
NW 1/4 of the SW 1/4	"	4
N 1/2	"	5
N 1/2 of the S 1/2	"	5
SW 1/4 of the SW 1/4	"	5

9. Township 128 North, Range 42 West (Lien) (Cont.)

All of Sections	Sections	6 and 7
W 1/2 of the W 1/2	Section	8
S 1/2 of the SW 1/4	"	16
W 1/2 of the W 1/2	"	17
SE 1/4 of the SE 1/4	"	17
All of Sections	Sections	18 through 20
W 1/2 of the NE 1/4	Section	21
W 1/2	"	21
SE 1/4	"	21
W 1/2 of the SW 1/4	"	22
W 1/2 of the NW 1/4	"	27
S 1/2	"	27
All of Sections	Sections	28 through 34
S 1/2 of the N 1/2	Section	35
S 1/2	"	35
S 1/2 of the N 1/2	"	36
SW 1/4	"	36
N 1/2 of the SE 1/4	"	36
SW 1/4 of the SE 1/4	"	36.

10. Township 127 North, Range 44 West (Logan)

All of Sections 1 through 36.

11. Township 127 North, Range 43 West (Macsville)

All of Sections 1 through 36.

12. Township 127 North, Range 42 West (Roseville)

W 1/2 of the NE 1/4	Section	1
NW 1/4	"	1
N 1/2 of the SW 1/4	"	1
SW 1/4 of the SW 1/4	"	1
NW 1/4 of the SE 1/4	"	1
All of Sections	Sections	2 through 11
W 1/2	Section	12
N 1/2	"	14
N 1/2	"	15
SW 1/4	"	15
N 1/2 of the SE 1/4	"	15

17. Township 125 North, Range 48 West (Arthur) (Cont.)

N 1/2	Section	15
N 1/2 of the S 1/2	"	15
SW 1/4 of the SW 1/4	"	15
SE 1/4 of the SE 1/4	"	15
N 1/2	Section	16
N 1/2 of the SW 1/4	"	16
SE 1/4	"	16
NE 1/4	"	17
N 1/2 of the NW 1/4	"	17
N 1/2	"	18
E 1/2 of the NE 1/4	"	22
N 1/2	"	23
N 1/2 of the N 1/2	"	24
SW 1/4 of the NW 1/4	"	24.

18. Township 125 North, Range 47 West (Parnell)

All of Sections	Sections	1 through 18
N 1/2	Section	19
N 1/2 of the NW 1/4	"	20
All of Sections	Sections	22 through 27
All of Sections	"	34 through 36.

19. Township 125 North, Range 46 West (Tara)

All of Sections 1 through 36.

20. Township 125 North, Range 45 West (Leonardsville)

All of Sections 1 through 36.

E. Stevens County

5th Principal Meridian

1. Township 126 North, Range 44 West (Eldorado)

All of Sections 1 through 36.

2. Township 126 North, Range 43 West (Donnelly)

All of Sections	Sections	1 through 34
W 1/2	Section	35
N 1/2 of the NE 1/4	"	36
NE 1/4 of the NW 1/4	"	36.

3. Township 126 North, Range 42 West (Rendsville)

SW 1/4 of the SW 1/4	Section	2
S 1/2	"	3
All of Sections	Sections	4 through 10
SW 1/4 of the SW 1/4	Section	11
All of Sections	Sections	15 through 21
N 1/2 of the N 1/2	Section	22
Government Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9	"	22
NW 1/4 of the NE 1/4	"	27
NW 1/4	"	27
N 1/2	"	28
N 1/2 of the NE 1/4	"	29.

4. Township 125 North, Range 44 West (Everglade)

All of Sections	Sections	1 through 33
N 1/2	Section	34
N 1/2 of the S 1/2	"	34
SW 1/4 of the SW 1/4	"	34
N 1/2	"	35
N 1/2 of the S 1/2	"	35
N 1/2	"	36.

5. Township 125 North, Range 43 West (Pepperton)

W 1/2	Section	2
W 1/2 of the SE 1/4	"	2
All of Sections	Sections	3 through 10
W 1/2 of the E 1/2	Section	11
W 1/2	"	11
NW 1/4 of the NE 1/4	"	14
N 1/2 of the NW 1/4	"	15
N 1/2	"	16
SW 1/4	"	16
N 1/2 of the SE 1/4	"	16
SW 1/4 of the SE 1/4	"	16
All of Sections	Sections	17 through 19

5. Township 125 North, Range 43 West (Pepperton) (Cont.)

N 1/2	Section	20
NW 1/4 of the NE 1/4	"	21
NW 1/4	"	21
NW 1/4 of the SW 1/4	"	21
NW 1/4 of the NE 1/4	"	30
NW 1/4	"	30
NW 1/4 of the SW 1/4	"	30.

6. Township 124 North, Range 44 West (Baker)

NW 1/4 of the NW 1/4	Section	4
All of Sections	Sections	5 through 7
W 1/2 of the E 1/2	Section	8
W 1/2	"	8
Government Lots 1, 2, 3, and 4	"	17
N 1/2 of the SW 1/4	"	17
SW 1/4 of the SW 1/4	"	17
All of Sections	Sections	18 and 19
W 1/2 of the SW 1/4	Section	20
NW 1/4 of the NW 1/4	"	29
N 1/2 of the NE 1/4	"	30
SW 1/4 of the NE 1/4	"	30
NW 1/4	"	30
N 1/2 of the SW 1/4	"	30
SW 1/4 of the SW 1/4	"	30
NW 1/4 of the NW 1/4	"	31.

F. Big Stone County

5th Principal Meridian

1. Township 124 North, Range 47 West (Toqua)

All of Sections	Sections	1 and 2
Government Lots 1, 3, 4, and 5	"	3
NE 1/4 of the SW 1/4	"	3
S 1/2 of the SW 1/4	"	3
W 1/2 of the SE 1/4	"	3
N 1/2	"	10
SE 1/4	"	10
All of Sections	Sections	11 through 13

1. Township 124 North, Range 47 West (Toqua) (Cont.)

N 1/2	Section	14
N 1/2 of the S 1/2	"	14
SE 1/4 of the SW 1/4	"	14
S 1/2 of the SE 1/4	"	14
E 1/2 of the NE 1/4	"	15
NE 1/4 of the NE 1/4	"	23
N 1/2	"	24
N 1/2 of the SE 1/4	"	24
SE 1/4 of the SE 1/4	"	24.

2. Township 124 North, Range 46 West (Graceville)

All of Sections 1 through 36.

3. Township 124 North, Range 45 West (Moonshine)

All of Sections	Sections	1 through 24
N 1/2	Section	25
N 1/2 of the S 1/2	"	25
SW 1/4 of the SW 1/4	"	25
SE 1/4 of the SE 1/4	"	25
All of Sections	Sections	26 through 30
NE 1/4	Section	31
Government Lots 1, 2, 3, 4, 5, 6, 9, and 10	"	31
N 1/2 of the SE 1/4	"	31
SE 1/4 of the SE 1/4	"	31
All of Section	"	32
N 1/2	"	33
SW 1/4	"	33
N 1/2 of the SE 1/4	"	33
N 1/2	"	34
SW 1/4	"	34
N 1/2 of the SE 1/4	"	34
N 1/2	"	35
N 1/2 of the SW 1/4	"	35
SE 1/4 of the SW 1/4	"	35
SE 1/4	"	35
NE 1/4 of the NE 1/4	"	36.

4. Township 123 North, Range 46 West (Almond)

Government Lots 1, 2, 3, 4, 5, 6, 7, and 9	"	3
SW 1/4 of the NW 1/4	"	3
W 1/2 of the SW 1/4	"	3
SE 1/4 of the SW 1/4	"	3
SW 1/4 of the SE 1/4	"	3
All of Section	"	4
Government Lots 1, 2, 3, 6, 7, 8, and 9	"	5
E 1/2 of the SW 1/4	"	5
SE 1/4 of the SE 1/4	"	5
N 1/2 of the NE 1/4	"	8
NE 1/4 of the NW 1/4	"	8
N 1/2 of the NE 1/4	"	9
SE 1/4 of the NE 1/4	"	9
NW 1/4 of the NE 1/4	"	10
NW 1/4	"	10.

5. Township 123 North, Range 45 West (Malta)

Government Lots 1 and 2	Section	2
Government Lots 4 and 5	"	6.

III. The legal boundary of the Bois de Sioux Watershed District is defined as the perimeter of the whole land area described in the preceding paragraph and shown on the attached legal map. The District includes approximately 1,404 square miles.

IV. The board of managers of the Bois de Sioux Watershed District shall consist of nine managers. Managers shall meet the qualifications established by law.

V. The following persons are named as the initial managers of the Bois de Sioux Watershed District; their terms of office shall be for one year, effective the date of this Order:

<u>Name</u>	<u>Address</u>	<u>County</u>
1. Jerome Deal	Route 2, Herman, 56248	Traverse
2. Kenneth Baldry	1308 Fourth Avenue N. Wheaton, 56296	Traverse
3. George Ahlsten	Route 2, Wheaton, 56296	Traverse
4. Leonard Blume	Route 1, Herman, 56248	Grant
5. James Nelson	Route 1, Elbow Lake, 56531	Grant
6. Steve Wetherbee	R.R., Campbell, 56522	Wilkin
7. Don Gieselman	Route 1, Box 88 Donnelly, 56235	Stevens
8. Robert Taffe	Graceville, 56240	Big Stone
9. Dennis Stock	Route 4, Box 140 Fergus Falls, 56537	Otter Tail

VI. The distribution of the power to appoint managers to the Bois de Sioux Watershed District, upon the expiration of the one-year term of the initial managers, shall be as follows:

Traverse County	-	Three Managers
Grant County	-	Two Managers
Wilkin County	-	One Manager
Stevens County	-	One Manager
Big Stone County	-	One Manager
Otter Tail County	-	One Manager

VII. After the initial managers have served their one-year terms, the first county-appointed managers shall be appointed to staggered terms as follows:

Traverse County	-	One manager for a one-year term; one manager for a two-year term; and one manager for a three-year term.
Grant County	-	One manager for a one-year term; and one manager for a three-year term.

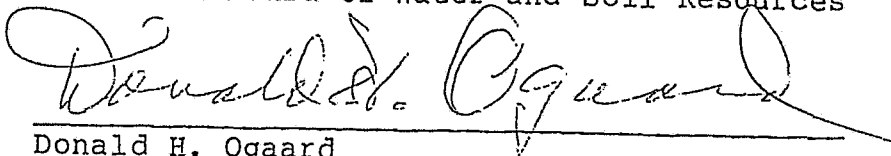
Wilkin County - One manager for a two-year term.
Stevens County - One manager for a three-year term.
Big Stone County - One manager for a two-year term.
Otter Tail County - One manager for a one-year term.

VIII. Following the expiration of the managers' terms in the preceding paragraph, all succeeding appointments shall be for terms of three years.

IX. The principal place of business of the Bois de Sioux Watershed District shall be located in the City of Wheaton, Minnesota 56296.

Dated at Saint Paul, Minnesota, 55107, this 11th day of May 1988.

Minnesota Board of Water and Soil Resources



Donald H. Ogaard
Chairman

WRB-88-003-PE
4-3300-2049-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA BOARD OF WATER AND SOIL RESOURCES

In the Matter of the Petition
for the Establishment of the
Mustinka-Rabbit River-Bois
de Sioux Watershed District
Filed on July 27, 1987

FINDINGS OF FACT,
CONCLUSIONS,
RECOMMENDATION
AND MEMORANDUM

The above-entitled matter came on for hearing before Peter C. Erickson, Administrative Law Judge, on January 11, 1988, in Wheaton.

Appearing on behalf of the Petitioners was Timothy E. J. Fox, Wilkin County Attorney, P. O. Box 214, Breckenridge, Minnesota 56520, and Jeanne L. Bringgold, Traverse County Attorney, P. O. Box 26, Wheaton, Minnesota 56296. Appearing on behalf of Citizens Concerned for Water Management, Inc., a nonprofit corporation opposed to the formation of the District, was Stephen F. Rufer, Rufer & Hefte, Attorneys at Law, 111 North Mill Street, P. O. Box 866, Fergus Falls, Minnesota 56537-0866. Appearing on behalf of the Dispute Resolution Committee of the Minnesota Board of Water and Soil Resources was Special Assistant Attorney General Paul Strandberg, 525 Park Street, S-200, St. Paul, Minnesota 55103. There were four Board members present at the hearing: Chairman Donald Ogaard, Loren Harste, William Cofell, and Jack Graba.

The record in this matter closed on February 10, 1988.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Board. Exceptions to this Report, if any, shall be filed with the Minnesota Board of Water and Soil Resources, 90 West Plato Boulevard, First Floor, St. Paul, Minnesota 55107. The Board's next regularly scheduled meeting is set for March 23.

STATEMENT OF ISSUE

Have the petitioning counties demonstrated that the establishment of the proposed district would be for the public welfare and public interest and would serve the purposes of Minn. Stat. Chapter 112?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural History and Jurisdiction

1. On July 27, 1987, a petition seeking the establishment of a Mustinka-Rabbit River-Bois de Sioux watershed district was filed with the Minnesota

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Water Resources Board. The Petition was signed by the chairman of the county boards of the counties of Wilkin, Traverse, Big Stone and Stevens. Attached to the Petition was an affidavit of service by mail of the Petition on the county auditors of Wilkin, Traverse, Stevens, Otter Tail, Grant and Big Stone Counties, as well as on the Commissioner of the Department of Natural Resources. Those were mailed on July 15, 1987.

2. On August 19, 1987, the Water Resources Board considered the Petition. The Board found the Petition sufficient, subject to receipt of proof of service on the Director of the Division of Waters of the Minnesota Department of Natural Resources. The Board granted the Director an extension of time to prepare his report, and directed its staff to begin the process for scheduling a hearing on the Petition.

3. On August 31, 1987, a copy of the nominating Petition, accompanied by an affidavit of service by mail on the Director of the Division of Waters of the Minnesota Department of Natural Resources, was filed with the Water Resources Board.

4. On October 27, 1987, the Director of the Division of Waters of the Department of Natural Resources filed his report on the Petition. The report concludes that the Department supports the formation of the proposed district because it would have the opportunity to provide coordinated water resource management over the entire hydrologic basin.

5. On November 30, 1987, a preliminary watershed map prepared by the Department of Natural Resources was filed with the newly created Minnesota Board of Water and Soil Resources.

6. On December 8, 1987, the Board issued its Notice of and Order for Hearing in this matter. The Notice set the hearing for January 11, 1988 in Wheaton, Minnesota.

7. On December 15, 1987, copies of the Notice of and Order for Hearing were mailed to the county auditors of Big Stone, Grant, Otter Tail, Stevens, Traverse and Wilkin Counties. Copies were also mailed to the mayors of cities and clerks of townships within the boundaries of the proposed district, to county soil and water conservation districts in the affected area, to legislators representing the affected area, to three newspaper editors in the affected area, and to various other interested individuals.

8. On December 16, and again on December 30, the Notice of and Order for Hearing was published in the Grant County Herald, accompanied by a map showing the boundaries of the proposed district. On December 17, and again on December 24, the Notice and map were published in the Daily News of Wahpeton-Breckenridge, the Wheaton Gazette, the Morris Tribune, and the Northern Star.

Description of the Proposed District

9. The proposed district is roughly rectangular in shape, and includes all of Traverse County, as well as portions of Wilkin, Otter Tail, Grant, Stevens and Big Stone Counties. It constitutes the drainage basins of Lake Traverse and the Bois de Sioux River. The major tributaries are the Mustinka River to the south and the Rabbit River to the north.

10. The area of the proposed district is approximately 1,435 square miles. This is broken down among the various counties as follows:

<u>County</u>	<u>Square Miles</u>	<u>% of Total</u>
Traverse	546	38 %
Grant	381	27
Wilkin	198	14
Stevens	144	10
Big Stone	103	7
Otter Tail	63	4
	<u>1,435</u>	<u>100</u>

11. The dominant geographical feature of the district is the very flat plain which was the bed of glacial Lake Agassiz. That flat plain covers approximately 80 percent of the proposed district. The remaining 20 percent consists of ridges (allegedly old beach lines) and "upland" areas to the east of the ridges. The ridges and upland areas are to the east of the flat plain.

12. The counties of Traverse and Wilkin have very few wetlands or lakes which can serve to hold water after spring snowmelt or a rainstorm. Parts of Wilkin and Traverse Counties had large shallow water basins in years past, but they were drained many years ago. On the other hand, the counties of Otter Tail, Grant, Stevens and, to a lesser extent, Big Stone have numerous water bodies ranging in size from only a few acres to several hundred acres. Most of the larger water bodies are above the ridge. Tr. 113.

13. Agriculture is the dominant use in virtually the entire area proposed for inclusion in the district. The land has been intensively drained over the years. One of the primary causes of the flooding (which will be discussed more fully below) is the piecemeal and unplanned nature of this drainage. As more and more acres have been taken from slough, pasture or hay into row crops, they have been drained without attention to the cumulative downstream effects. When larger county ditches or joint ditches were engineered in the past, they were not engineered to carry all the water which is now being placed in them. While the rivers are, for the most part, natural (there has been some channelization and cleaning), they suffer from the same problem--inadequate capacity. They may have been adequate to carry the water that was placed in them in 1930, but they are not adequate to carry all the water that is being placed in them today.

Current Problems: Flooding

14. The extreme flatness of the Lake Agassiz basin causes large areas to be flooded by relatively small quantities of water. In the absence of roads, dikes, or other obstructions, water moves from field to field and section to section with relative ease. A pilot who had flown over the Rabbit River area during times of very high water found that the river was out of its banks by up to one and one-half miles. Tr. 45. Even in normal years, Wilkin County has 15 sites where highways and bridges are damaged each spring by the normal spring runoff. These sites will also be under water if rainfall in the area exceeds three inches. Tr. 14.

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15. In serious flood years, up to 60 highways or bridges have been damaged in Wilkin County alone. Years such as 1969, 1978, 1979, 1984 and 1986 have all presented serious financial problems for Wilkin County and its townships. Tr. 15 and 70.

16. Traverse County has experienced similar damage to its highways and bridges. In 1969, there was \$80,061 in documented damages. In 1978, there was \$119,307; in 1984, \$55,100; in 1986, \$41,155. Tr. 94.

17. Similar damages have been imposed upon farmers and town people. The record is replete with photographs and testimony showing whole fields covered by water. Many of these flood problems have occurred after crops have been planted, oftentimes destroying the crop entirely. Ex. 10, p. 37. The Rabbit River came out of its banks seven times, for example, in the bad year of 1986. Tr. 56. In the city of Breckenridge, the Red River met or exceeded flood stage four different times that year. Tr. 33.

18. Long term residents report that prior to 1950, flooding was not too much of a problem (with some notable exceptions, such as 1916). But since 1950, flooding has become more intense and more frequent. Tr. 80. Some say there is too much water coming too fast, while others say that there is probably the same amount of water, but it's coming much faster than it used to. Tr. 81 and 109. It is found that there is both more water, and it is coming faster. The primary reason for this change is the evolution of high intensity agricultural practices which permit the growing of row crops on well drained soils which, in the past, were too wet to support them. Drainage has permitted these lands to become far more productive, but it has had a negative effect on the productivity of downstream lands. In summary, flooding is a problem, and artificial alteration of the natural drainage system is one of the causes.

Other Current Problems

19. Erosion caused by flood waters is a serious problem. A supervisor on the Traverse County Soil and Water Conservation District Board characterized the erosion problem in Traverse County as "massive". Tr. 103. The erosion is a direct result of the quantity of water and the velocity at which it travels.

20. Siltation is a serious problem in Lake Traverse, the Bois de Sioux and Red Rivers, and at least some of the rivers and ditches that feed them. In February of 1985, for example, the City of Breckenridge contacted the Army Corps of Engineers to inquire about the possibility of dredging the Red River in order to increase its capacity. The Corps responded with the suggestion that the City work with local soil conservation service units to reduce the amount of erosion upstream of the river. Ex. 9 and Tr. 95.

21. The Department of Natural Resources has documented fish kills in Lake Traverse which are the result of excessive algae. Non-point source runoff is a common contributor to algal populations. Heavy rains will frequently cause nutrients to be washed away along with the eroded soil, delivering the nutrients to algae and other organisms.

22. There is also concern about groundwater quality. At least one person who recently dug a new well to an 86-foot depth has found that excessive nitrates in the water make it unsuitable for human consumption.

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23. The crop losses and soil erosion which result from flooding have caused landowners to seek reduced tax valuations from their local assessors. Assessors have lowered valuations, but township boards note that this occurs at the same time that they need to raise money for road and bridge repairs. Tr. 109.

24. Antagonisms, disputes and even litigation have arisen over water problems in this area. Landowners who are paying for ditches do not mind paying their fair share, but if the ditch is carrying water from upstream landowners who are not being assessed, those who are being assessed do object. While in some cases landowners have been able to cooperate across county boundaries -- as happened between Wilkin and Grant Counties in connection with County Ditch 20 (see, Tr. 19 and 25) -- other situations have resulted in litigation and unpleasant relations. Tr. 25 and 110.

History of Attempted Solutions

25. Approximately 25 years ago, a committee was formed to try to establish a watershed district. The project was dropped, however, in exchange for promises of informal cooperation. Tr. 75 and 78.

26. In August of 1984, the Wilkin County Board sent out a letter to adjoining counties soliciting their ideas about a possible watershed district. Ex. 31. All expressed interest, and in November of 1984, an initial meeting was held in Breckenridge.

27. During 1985, engineers and others were consulted about the feasibility of a watershed district. One of the ideas that arose from that consultation was that a district which encompassed only the Rabbit River Watershed was probably too small to be effective. Tr. 22.

28. In July of 1986, Senator Charlie Berg organized a meeting to hear complaints about Lake Traverse, and in September of 1986, the Corps sponsored a public meeting to attempt to define the problems. These meetings led to the Problem Appraisal Report, Ex. 10.

29. In January of 1987, the Corps of Engineers issued the Problem Appraisal Report on the Lake Traverse Reservoir Operation Plan. This report focused upon the details of the operations of the White Rock Dam and the Reservation Control Dam, but it verifies many of the problems outlined above. The report noted:

Water resources experts tend to agree that extensive drainage, such as found in the flat glacial Lake Agassiz area, can affect downstream flood levels under certain conditions. Comprehensive watershed planning, management, and public education in the project area could help control ditching, drainage, and abuse of marginal and flood plain lands . . . Watershed districts should be activated to accomplish the planning and management needed. The Soil Conservation Service and state resources agencies can help watershed districts to plan and implement land-use measures and runoff retention projects.

30. In February of 1987, the Traverse County Board of Commissioners initiated the formal actions necessary to establish a watershed district, and meetings were held in the spring and summer of 1987 to refine the proposal.

31. In July of 1987, the Petition was filed with the Board.

Other Factors Favoring the Establishment of the District

32. A watershed district would be able to coordinate water management across county lines, just as a county board is able to deal with problems that cross township lines. An obvious example of how this can be helpful occurs in connection with planning a ditch repair project. In a major project, the engineer is going to want to know how much water must be carried at different points along the ditch. A county board can figure out, with some certainty, how much water will be contributed by lands in the county. It is helpless, however, to determine how much water will be contributed by lands on the other side of the county line. It has no control over ditch work done by upstream counties or private landowners upstream. In a watershed district, the engineer can gather data and make projections on both sides of the county line. Tr. 14, 21, 50-51. Also, in a watershed district, an engineer can consider options that involve more than one county, and so the options presented can be those that are most technically feasible, without the limitations imposed by political boundaries. Tr. 106.

33. Joint powers agreements or joint county ditches are both alternatives to a watershed district. There are a fair number of joint ditches already in existence. There are ditches between Wilkin and Grant, Wilkin and Traverse, Wilkin and Otter Tail, Traverse and Big Stone, Traverse and Grant, and even one involving Traverse, Wilkin and Grant. Tr. 16, 51, 97, 98 and letter dated January 19 from Steven Raguse. Sometimes these units have worked well, and other times they have not. Tr. 97-98. Their scope, however, is limited to one ditch system, rather than a whole drainage basin. While they certainly can solve an immediate problem, they may just pass it on downstream, and not contribute to a basin-wide solution.

34. A watershed district can deal with a whole host of water-related problems, not just flooding. Water quality problems involving algae in Lake Traverse or nitrates in drinking water are caused by water flows well beyond the scope of any one ditch or ditch system. While they may even be caused by factors outside the boundaries of the proposed district, a district is better equipped to deal with them than a joint ditch board.

35. Watershed boards are made up of managers who, by law, do not hold other public offices. Oftentimes they are able to devote more time and attention to water problems than can reasonably be expected from a county board, which must deal with many other issues. The minutes of the Grant County Board in the record reflect frequent water-related discussions and decisions, but they are a very small percentage of the total work of the County Board. There are only so many meetings that officeholders can attend, and a watershed board allows others to share the work presently being borne by the county board. Tr. 16 and 30.

Other Factors Opposing the Establishment of the District

36. There is substantial opposition to the Petition from landowners in three of the affected counties. A watershed district was opposed by the

County Boards of Otter Tail and Grant Counties. Individuals from those counties stated they had no objection to Wilkin and Traverse forming a district, if they wanted to, but Otter Tail and Grant did not want it to include any of their lands. Big Stone County was one of the counties that signed the Petition in June of 1987. However, by letter dated January 26, 1988, the Big Stone County Board indicated a change of position. Petitions opposing the establishment of the district were signed by over 80 percent of the resident freeholders in Big Stone County whose lands would be included within the boundaries of the proposed district. Had the county board known that there was such strong opposition, it would not have joined in the signing of the Petition. The county board recognized, however, that the law specifically prohibits individuals, or a county, from withdrawing their names from a petition once it has been filed, unless all other petitioners consent to the withdrawal.

37. The rate of ditching to reclaim wasteland for agricultural purposes will not be as great in the future as it has been in the past, because there just isn't that much land left that can be legally and economically drained. In other words, it is wrong to assume that the increase in flows during the last 30 years, for example, will continue to get even bigger again. Many of the lands which are most attractive for drainage are protected by long-term easements or outright legal prohibitions against drainage. In Grant County, for example, the statewide inventory process for water bodies and wetlands identified a total of 188 basins which are protected against drainage. Tr. 114 and Ex. 104. The protection, however, is dependent upon a state law which can be changed whenever the legislature chooses to. At the present time, the lower limit for protection is ten acres. There is nothing to say the legislature could not change that number. But under current law, those water bodies and wetlands are protected from drainage. Additional protection comes from federal farm programs which have recently included provisions conditioning participation upon an agreement not to create additional cultivated acreage ("sodbuster-swampbuster"). This, too, may change in the future, but, for the present, it provides an incentive for farmers not to drain additional lands. Finally, additional drainage is limited by the practicalities of cost: at some point it becomes too expensive to drain in comparison to the expected return from the land. Digging 30 or 40 feet down for any substantial distance is simply not economical under current conditions. Tr. 141.

38. There are already a large number of governmental entities which have control over one or more parts of the total water management picture: the Army Corps of Engineers, the State's Department of Natural Resources, the counties, soil and water conservation districts, joint ditch boards, individual ditch boards, the Pollution Control Agency, and others. A watershed board has the possibility of overlapping and duplicating work already being done at taxpayer expense. Tr. 130 and Petitions, Ex. 100. As the DNR Director's report noted, the creation of a district does not diminish the authority of other agencies to carry out their jobs, unless there is a formal agreement to transfer responsibilities. If the problems of duplication and inconsistent regulation are to be avoided, communication channels must remain open and the district must limit its role to that assigned to it by law. If not, the fears of duplication expressed by the opponents can, in fact, come true.

39. A watershed district has the power to tax and the power of eminent domain. Both of these are powers traditionally reserved for elected units of

government, such as towns, counties, or the State. The board of managers is appointed, not elected and there is no easy way for citizens to cause a manager to be removed from office. Citizens may petition to increase the number of managers and they may petition for the termination of a watershed district at any time after five years from the date of its formation. As a practical matter, however, citizens do not have the direct control over watershed managers that they have over elected officials. On the other hand, this "distance" may result in the managers taking a broader view towards problems and solutions. One of the criticisms leveled at existing joint ditch boards was the parochial attitude that some had exhibited in the past. Tr. 97.

Managers

40. The original Petition proposed that the Board of Managers consist of nine members. It contained a list of 20 nominees for those nine positions. In addition to that list, two other persons have indicated a desire to serve as a manager. The first is Nick Daly, Route 1, Box 66, Donnelly, Minnesota 56235. Donnelly is in Stevens County. The second is Dennis Stock. Stock was nominated by a unanimous motion of the Otter Tail County Board on May 28, 1987. Tr. 142.

41. The Board is free to apportion the managers among the various counties in whatever form it chooses. In addition, the Board is free to set the number of managers at any number between three and nine. If the Board decided to go with nine managers as proposed in the Petition, and if the Board desired to apportion the managers as closely as possible to the percentage of land in the district (see Finding 10), but still give each county at least one manager, the apportionment would be as follows:

<u>County</u>	<u>% of Land</u>	<u># of Managers</u>
Traverse	38 %	3
Grant	27	2
Wilkin	14	1
Stevens	10	1
Big Stone	7	1
Otter Tail	4	1
	<u>100</u>	<u>9</u>

An alternative available to the Board would be to determine and identify manager areas within the territory of the district. Minn. Stat. § 112.42, subd. 3(d).

Based upon the foregoing Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The nominating Petition is valid in all respects. It meets the tests set forth in both Minn. Stat. §§ 112.37 (1986) and 112.37 (1987 Supp.).
2. Due, timely and proper notice of the hearing was given. All other relevant requirements of law or rule have been fulfilled. The Board and the Administrative Law Judge do have jurisdiction to determine the issues herein.


3. The establishment of a watershed district as proposed would be for the public welfare and public interest and would serve the purposes of Minn. Stat. ch. 112, particularly § 112.36, subs. 2 (1), (2), (3), (5), (6), (7), (9), (10), (11), (13) and (14) (1987 Supp.).

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Board establish the Mustinka-Rabbit River-Bois de Sioux Watershed District, fix the boundaries thereof as proposed in the original Petition, and name the first Board of Managers of the District.

Dated this 11 day of March, 1988.


PETER C. ERICKSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded, With Transcript Prepared By Jane I. Hosman.

MEMORANDUM

The boundaries of the proposed district were based upon science (hydrology) rather than on politics. It would have been easier for the Petitioners had they excluded lands in Grant and Otter Tail Counties in order to avoid the opposition that they must have known would come from those counties. That, however, would have been short-sighted and self-defeating. It is clear from the record that there have been a number of "ridge cuts" and tiles which allow water to flow from east to west across county lines. See, for example, Tr. 26, 61-62, and 83. Of course, a great deal of the water that is impacting the lowlands comes from the lowlands themselves; but there is no evidence as to what percentage comes from the upland and what percentage comes from the lowland, nor does it matter. What does matter is that there be a coordinated effort throughout the entire hydrologic basin to control the waters that are causing the flooding, erosion, siltation, ground water and water quality problems. Drawing the boundaries on a scientific basis, rather than on a political basis, at least gives the proposed district a chance at getting a handle on the problems. A different administrative law judge once recommended against the formation of a district because he believed the boundaries had been drawn improperly in order to exclude opponents of the proposed district. See, In the Matter of the Petition for the Establishment of the Rice-Koronis Watershed District (Counties of Stearns, Meeker and Kandiyohi), OAH Docket No. WRB-84-003-AK. Petitioners are commended for not taking that approach in this case.

P.C.E.

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**SEE
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DOCUMENT!!**

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