

MEMORANDUM

TO: Office of the Secretary of State
Attn: Nancy Breems (Interoffice)

FROM: Ian Lewenstein, Legal Assistant/Rules Coordinator
Office of Administrative Hearings

DATE: June 24, 2019

SUBJECT: OAH 84-0335-35664
Creation of Ash River Sanitary District



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Attached is a certified copy of the **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CREATING THE ASH RIVER SANITARY DISTRICT** in the above-referenced matter which is filed pursuant to Minn. Stat. § 442A.04, subd. 9 (2018). Please contact Star Holman at 651-361-7909 or star.holman@state.mn.us if you have any questions.

Attachment

CERTIFICATION

State of Minnesota

County of Ramsey

I, Ian Lewenstein, Legal Assistant/Rules Coordinator of the Office of Administrative Hearings, hereby certify that the attached copy of the **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CREATING THE ASH RIVER SANITARY DISTRICT** (OAH 84-0335-35664) is a true and correct copy of the original on file at the Office of Administrative Hearings.

Dated: June 24, 2019



IAN LEWENSTEIN
Legal Assistant/Rules Coordinator
Office of Administrative Hearings



STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Petition
for the Creation of the
Ash River Sanitary District

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER CREATING THE
ASH RIVER SANITARY DISTRICT**

On January 31, 2019, St. Louis County petitioned the Chief Administrative Law Judge of the Office of Administrative Hearings to approve the creation of the Ash River Sanitary District pursuant to Minn. Stat. § 442A.04 (2018).¹

Upon review of all the files and proceedings herein, the Chief Administrative Law Judge makes the following:

FINDINGS OF FACT

Background

1. Voyageurs National Park, located in northern Minnesota, is the nation's only water-based national park. It is made up of more than 84,000 acres of water and 134,000 acres of land.²

2. In October 2009,³ St. Louis County and Koochiching County jointly formed the Voyageurs National Park Clean Water Joint Powers Board (JPB) to identify and resolve environmental issues caused by subsurface sewage treatment systems (SSTs) in populated areas with poor soil and other problematic geographic conditions in and around Voyageurs National Park. These areas include Crane Lake Township, Kabetogama Township and the unorganized area of Ash River in St. Louis County and Island View in Koochiching County.⁴

3. According to a June 2010 Comprehensive Wastewater Plan (Plan) prepared by Short Elliott Hendrickson Inc. (SEH Engineering), initially retained by the Namakan Basin Joint Powers Board to outline a feasible strategy for improving and

¹ Petition for Creation of the Ash River Sanitary District (Petition) (Jan. 31, 2019).

² SEH Engineering, *Voyageurs National Park Clean Water Projects* (VNPCWP website), <http://www.sehinc.com/online/namakan> (last visited June 4, 2019) (cited pursuant to the authority of Minn. R. 1400.8100 (2017); see also Minn. R. 1408.0070 (2017)).

³ JPB, Minutes of Organizational Meeting (Oct. 22, 2009), available at <http://www.kabtowship.org/joint-powers-board> (cited pursuant to the authority of Minn. R. 1400.8100).

⁴ Petition at 1.

sustaining the region's water quality, the area is being negatively affected by human impact including by wastewater from existing developments. Eighty-four percent of the occupied parcels within the Plan area are served by onsite wastewater systems along with wastewater generating parcels with no wastewater facilities; many of these SSTs are old and/or non-compliant with existing regulations. The Plan found that "[t]his water quality degradation threatens the long-term health of the ecosystem and the economic health of the tourism industry upon which the local economy is based."⁵

4. The Plan revealed that an unspecified number of SSTs were out of compliance with county standards and failed to protect groundwater. The Plan divided the project region into three areas: Kabetogama Township, Ash River Unorganized Area, and the Crane Lake Water and Sanitary District.⁶

5. The Plan findings were based upon a desktop level review of the SST system through collection of data from St. Louis County and/or the Minnesota Pollution Control Agency together with responses to 640 questionnaires sent to property owners, 65% of which were returned.⁷

6. Since 2010, the JPB has secured over \$25 million in grants to complete projects designed to improve wastewater treatment. Projects have been completed at Crane Lake and Pucks Point on Lake Kabetogama, and another is underway at Island View.⁸

7. In the Ash River Unorganized Area addressed by the Plan, there are approximately 146 wastewater producing parcels including the following resorts: Ash Trail Lodge; Ebel's Houseboats; Ash Riviera; Sunset Resort; Ash-Ka-Nam Resort; and Frontier Resort.⁹

8. In 2016, 2017 and 2018, the JPB discussed the potential development of a community sewer system for the Ash River area at various public meetings.¹⁰

Creation of Sanitary District

9. On June 26, 2018, the St. Louis County Board (County Board) adopted Resolution No. 18-419 directing that a public hearing be held on July 24, 2018 for the

⁵ Namakan Basin Joint Powers Board, Comprehensive Wastewater Plan (Plan) at 1, 8 (June 2010), available at <http://www.sehinc.com/sites/default/files/project/docs/Draft%20Comprehensive%20Wastewater%20Plan%20061710.pdf> (cited pursuant to the authority of Minn. R. 1400.8100).

⁶ Plan at 2, Exhibit (Ex.) A; VNPCWP website, *Project Overview* (cited pursuant to the authority of Minn. R. 1400.8100).

⁷ Plan at 8-9.

⁸ VNPCWP website.

⁹ Plan at 6.

¹⁰ Petition at 2; Digital Recording (July 24, 2018) (on file with the Minn. Office of Admin. Hearings).

purpose of gathering the public's views regarding the creation of a sanitary sewer district in the Ash River area.¹¹

10. By correspondence sent on June 27, 2018, 107 property owners were notified of the scheduled public hearing and invited to participate in person or to submit comments by mail or email.¹²

11. The Notice of Public Meeting was published for two successive weeks in the Cook News-Herald on July 12 and 19, 2018, the Duluth News Tribune on July 10 and 17, 2018, and posted on the St. Louis County website (www.stlouiscountymn.gov) on June 27, 2018.¹³

12. Pursuant to Minn. Stat. § 442A.04, subd. 2(b), on July 24, 2018, a public meeting was held at the Orr American Legion, 4543 Highway 53, Orr, Minnesota, to consider the proposed creation of the Sanitary District.¹⁴

13. The County Board convened the July 24, 2018 public hearing at approximately 9:40 a.m., at which time members of the public heard a presentation from County representatives, one member of the public asked questions, and the County representative responded with additional information.¹⁵

14. Following discussion at the July 24, 2018 public hearing, the County Board adopted Resolution Number 18-463 authorizing its Environmental Services Department to prepare and submit its duly adopted Petition for Creation of the Ash River Sanitary District.¹⁶

15. At the direction of the County Board, adoption of Resolution Number 18-463 was published in the Cook News-Herald on August 23, 2018 and on the St. Louis County website on July 27, 2018.¹⁷

Office of Administrative Hearings Review

16. On January 31, 2019, the County Board filed the Petition with the Chief Administrative Law Judge of the Office of Administrative Hearings, requesting approval of the creation of the Ash River Sanitary District (Sanitary District).

¹¹ Digital Recording; Petition at Affidavit of Mailing, Website and Newspaper Publication, signed by Phil Chapman (Aug. 6, 2018); Exs. A-C.

¹² Petition at 3, Ex. C.

¹³ Petition at Exs. D, E, G.

¹⁴ Digital Recording; Petition at 2.

¹⁵ Digital Recording.

¹⁶ Digital Recording; Petition at 2.

¹⁷ Petition at Ex. F.

17. The proposed Sanitary District is located in Unorganized Townships 68-19 and 69-19 in St. Louis County, Minnesota,¹⁸ and is legally described as follows:

Section Four (4), Township 68 North, Range 19 West

Government Lot 2
Government Lot 3
Government Lot 4
Government Lot 5

Section Five (5), Township 68 North, Range 19 West

Government Lot 1
Government Lot 2
Government Lot 5
Government Lot 6
That Part of Government Lot 7 Platted as ASH RIVER
PALISADE
Government Lot 8
Government Lot 9
Government Lot 10
Northwest Quarter of Southwest Quarter (NW¼ of SW¼)

Section Eight (8), Township 68 North, Range 19 West

North 600 feet of Government Lot 2

Section Thirty-Two (32), Township 69 North, Range 19 West

Government Lot 6
Government Lot 7
Government Lot 8
Government Lot 9

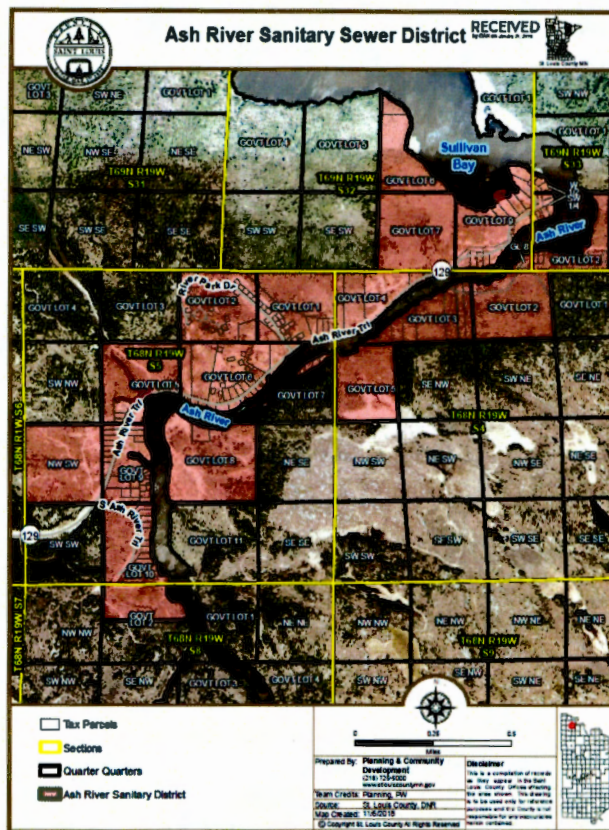
Section Thirty-Three (33), Township 69 North, Range 19 West

Government Lot 2
The West One-half of the Southwest Quarter (W½ of SW¼)
of Section 33 lying westerly of the Ash River

18. A map displaying the boundaries of the proposed Sanitary District is available at the Office of Administrative Hearings,¹⁹ and illustrated below.

¹⁸ Petition.

¹⁹ *Id.*



19. The proposed Sanitary District is not within twenty-five (25) miles of the boundary of a city of the first class.²⁰

20. The Chief Administrative Law Judge published the Notice of Intent to approve the creation of the Ash River Sanitary District in the Cook News-Herald on March 14, 2019.²¹ At the direction of the Chief Administrative Law Judge, the Office of Administrative Hearings also mailed the Notice of Intent to all the affected property owners using the addresses certified and provided by the St. Louis County Auditor.

21. The public notice period lasted for 30 days and ended on April 15, 2019.

22. By April 15, 2019, the Chief Administrative Law Judge had received one request for a hearing on the matter and six additional comments regarding the creation of the Sanitary District,²² all of which are summarized below.

- a. T. Spencer requested a public hearing and commented related to the proposed system's financial burden on seasonal property owners.

²⁰ *Id.*

²¹ Affidavit of Publication (Mar. 14, 2019).

²² Comments (on file with the Minn. Office of Admin. Hearings).

- b. A. Eidenschink inquired whether the County would reimburse property owners for the cost of a recently installed SSTS that meets code requirements and whether the County is adequately considering the needs of seasonal property owners.
- c. J. Gable questioned if fees would be assessed to properties with boat access only.
- d. C. Holton asked questions regarding: how the sewer system would work for properties without running water; whether blasting through rock would be required and, if so, whether there was a risk of harm to structures; and whether owners could choose not to hook up into the public system and, if so, what effect would that have on tax burden.
- e. N. Keske commented regarding a lack of information regarding how construction through a granite shelf would be accomplished for a property with no access to water.
- f. R. DuFresne raised questions regarding the cost, solid rock base, differences between proposed system and that installed at Crane Lake, winterization and seasonal maintenance, and whether hookup is mandatory.
- g. Mr. and Mrs. C. Spencer commented related to the dissatisfaction of the Crane Lake property owners with the public system installed there, raised concerns about winterization and increased taxes, and questioned "Why is it not possible to protect the environment by each property owner being in compliance with existing laws?"

23. The County Board directed its representatives to provide substantive responses to the commenters, as appropriate.²³

Statutory Factors Considered

24. The creation of the Sanitary District will serve the purpose of promoting the public health and welfare by providing an adequate and efficient system and means of collecting, conveying, pumping, treating and disposing of sewage within the Sanitary District.

25. There is a need for accomplishing these purposes as a means of improving the quality of the waters in the area by halting or at least reducing the current degradation which threatens the long-term health of the ecosystem and the economic health of the local economy.

²³ *Id.*

26. Given the location of the subject area within unorganized territories and not within any other elected or other defined government with jurisdiction over the waters and properties of the entire area, there is no better alternative for managing the public health impacts of the currently degrading water quality in the area other than the creation of the Sanitary District. The only other available alternative, based on the current record, is relying on each of the owners of the 146 properties to individually invest in and continually monitor their SSTS for regulatory compliance, a strategy which has proved ineffective to date.

27. As defined in the Plan and as reiterated by the County Board during the July 24, 2018 public hearing, the Sanitary District Board will continue to consider public input and take into account concerns regarding cost and geographic realities of affected properties in considering alternative components of project proposals to manage the public health impacts of the water quality in the area.

28. The JPB's history of seeking public input, gathering necessary funds from all available sources, limiting project starts to coincide with the area property owners' ability to fund ongoing debt and maintenance costs, and structuring the proposed Sanitary District with a Board of Directors made up of resident voters, all establish that the purposes of the Sanitary District can be effectively accomplished on an equitable basis once the Sanitary District is formally created.

29. Given the Petitioner's fundraising efforts and retention of experts to design and complete necessary projects, the creation and maintenance of the Sanitary District is administratively feasible and furthers the public health, safety, and welfare.

Based upon these Findings of Fact, the Chief Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Chief Administrative Law Judge of the Office of Administrative Hearings has jurisdiction over the proposed creation of the Ash River Sanitary District pursuant to Minn. Stat. §§ 442A.01-.29 (2018).

2. The Petitioner has met all the public notification, public interaction and other procedural requirements of Minn. Stat. §§ 442A.04, as well as other substantive and procedural requirements of law and rule.

3. Minn. Stat. § 442A.04, subd. 3(b), requires the Chief Administrative Law Judge to hold a hearing if fifty (50) or more written requests are received by the end of the public comment period. Because only one request for hearing was received throughout the comment period, no public hearing was required.

4. Following review of the relevant factors as required by Minn. Stat. § 442A.04, subd. 5, and as set forth above, the Chief Administrative Law Judge concludes as follows:

- a. The proposed Sanitary District is administratively feasible;
- b. The proposed Sanitary District provides a long-term, equitable solution to pollution problems affecting public health, safety, and welfare;
- c. Property owners within the proposed Sanitary District were provided notice of the proposed district and opportunity to comment on the petition proposal; and
- d. The Petition complied with the requirements of all applicable statutes and rules pertaining to sanitary district creation.

Based upon these Conclusions of Law, the Chief Administrative Law Judge issues the following:

ORDER

1. The Ash River Sanitary District is hereby created to include the portions of St. Louis County identified below:

Section Four (4), Township 68 North, Range 19 West

Government Lot 2
Government Lot 3
Government Lot 4
Government Lot 5

Section Five (5), Township 68 North, Range 19 West

Government Lot 1
Government Lot 2
Government Lot 5
Government Lot 6
That Part of Government Lot 7 Platted as ASH RIVER
PALISADE
Government Lot 8
Government Lot 9
Government Lot 10
Northwest Quarter of Southwest Quarter (NW¼ of SW¼)

Section Eight (8), Township 68 North, Range 19 West

North 600 feet of Government Lot 2

Section Thirty-Two (32), Township 69 North, Range 19 West

Government Lot 6
Government Lot 7
Government Lot 8
Government Lot 9

Section Thirty-Three (33), Township 69 North, Range 19 West
Government Lot 2
The West One-half of the Southwest Quarter (W½ of SW¼)
of Section 33 lying westerly of the Ash River

2. The Office of Administrative Hearings will cause copies of this Order to be mailed to all persons described in Minn. Stat. § 442A.13, subd. 2.

3. Pursuant to Minn. Stat. § 442A.04, subd. 9, the Chief Administrative Law Judge will deliver a certified copy of this Order to the Minnesota Secretary of State for filing.

4. Pursuant to Minn. R. 1408.0030 (2017), the costs of all publications and mailings required to be made by the Office of Administrative Hearings by Minnesota Statutes, Chapter 442A, are to be paid by the Petitioner. An itemized invoice will be sent under separate cover.

Dated: June 5, 2019



TAMMY L. PUST
Chief Administrative Law Judge

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 442A.04, .11, .13 (2018). Pursuant to Minn. Stat. § 414.11, subd. 2, any person aggrieved by this Order may appeal to St. Louis County District Court by filing an Application for Review with the Court Administrator within 30 days of this Order. An appeal does not stay the effect of this Order.