



Item 4A
LMRWD 12-20-17

Minutes of Regular Meeting
Board of Managers
Wednesday November 15, 2017
County Board Room, Carver County Government Center, 7:00 p.m.
Approved December 20, 2017

1. CALL TO ORDER AND ROLL CALL

On Wednesday, November 15, 2017, at 7:00 PM in the Board Room of the Carver County Government Center, Chaska, Minnesota, President Shirk called to order the meeting of the Board of Managers of the Lower Minnesota River Watershed District (LMRWD) and asked for roll call to be taken. The following Managers were present: President Yvonne Shirk, and Managers Jesse Hartmann and David Raby. In addition, the following were also present: Della Schall Young, Young Environmental Consulting Group, LLC, LMRWD Technical Advisor; John Kolb, Rinke Noonan, Legal Counsel and Linda Loomis, Naiad Consulting, LLC, LMRWD Administrator. Marianne Breitbach, Prior Lake/Spring Lake Watershed District, Manager; Lindsey Albright; Dakota County SWCD; Members of the public: Duane Saunders; Tom Moehn.

2. APPROVAL OF THE AGENDA

Administrator Loomis requested removal of Item 4. A. - Approval of October 25, 2017 Regular Meeting and the addition of New Business Item 5. C. - Receive and File Letter and Resolution from the city Bloomington.

President Shirk made a motion to approve the agenda as amended. The motion was seconded by Manager Hartmann. The motion carried unanimously.

3. CITIZEN FORUM

Marianne Breitbach, Manager from the Prior Lake/Spring Lake Watershed District (PLSLWD), said she had some handouts. She reported information about PLSLWD Outlet Channel which runs through the LMRWD. She talked about planned maintenance of the channel on segment 6 and 5, where a sediment delta has formed. They also plan to stabilize areas of the channel bank that have eroded. She noted there is FEMA money. She showed a map of where the outlet channel goes.

Tom Moehn, 5025 Overlook Circle, Bloomington, said he has a couple concerns. He asked about the database of all the people affected by the bluff. He provided a document of the MN Freedom of Information Act and requested a database of all the names, addresses and phone numbers of everybody impacted, so they can possibly start doing some mailings. Mr. Moehn commented that this is public information. Mr. Moehn said he understands that the LMRWD Board meetings are recorded, that the recordings are also public information. He then cited MN Official records act and MN Statute requirements. He said the recordings should be made public.

He said that the LMRWD website is not ADA accessible. He said he tried to use a screen reader and said the website doesn't follow normal screen reader activity. He said because the LMRWD is a state board and has federal funding that the LMRWD is required to follow ADA conventions accessibility and the laws and regulations. Mr. Moehn provided documentation on the meeting notices. He questioned why he had received no meeting notice, when he had requested it at the last meeting. He said he had to find it on the website. Mr. Moehn said he had some documentation he would give the LMRWD about meeting notices, and the recording of open meetings and the policy of the state of Minnesota, which he said he would leave behind. He commented that he could not find the agenda from last month on the website and wondered why it wasn't included as a link on the website.

Legal Counsel for the LMRWD, John Kolb, asked Mr. Moehn if he had a specific written data practices request. Mr. Moehn said he would like to provide a request, but didn't know who to give it to. Administrator Loomis said she is the District Administrator and the data practices official for the LMRWD. And that the letter could be given to her. Attorney Kolb explained the District staff will have to verify that the information Mr. Moehn is seeking is actually a document or record that the District has produced and is in its possession. He further explained that staff will evaluate whether or not disclosure of the information is prohibited as non-public or private. Legal Counsel Kolb said he thinks the information requested may be more than what they have in the public record.

Administrator Loomis said the October agenda should be on the website. She will see that the agenda is posted. She noted they are in the process of building a new website and they are hoping to go live with the new website in February. The new website should meet ADA standards.

Duane Saunders, 9901 Riverview Road, Eden Prairie, commented on the hearing at the last meeting. He said he heard numerous people question why the new standards need to be implemented and there was never an answer. He wanted to know where he could find the answers. He said no one has talked about the problems. He said an article in the Eden Prairie News mentioned erosion. He said there is no erosion on his property or his neighbors. He stated if erosion is the issue then erosion needs to be addressed but don't enforce your rules on properties that have no erosion problem. Mr. Saunders commented on how long the standards can take to be implemented and said it should not be delayed. He said the District should either kill it or go forward with it. He said uncertainly is already affecting the property values, which have already dropped just because of the threat of the standards.

Vanessa Strong, new Water Resources Coordinator for the City of Chanhassen, wanted to introduce herself and said they look forward to the partnership. She reported that the city of Chanhassen is also updating its local water management plan.

4. CONSENT AGENDA

The Consent Agenda included the following items:

- A. Approval of Minutes for September 20, 2017 and ~~October 25, 2017~~ Regular Meeting**
- B. Approval of Financial Reports**
- C. Presentation of Invoices for payment**
 - i. Burns & McDonnell - August & September 2017 engineering services**
 - ii. Steinkraus Development LLC - November 2017 office rent**
 - iii. US Bank Equipment Finance - November 2017 copier lease payment**
 - iv. Naiad Consulting - August 2017 administrative services**
 - v. Barr Engineering - Riley Creek CIP Project**
 - vi. Coalition for a Clean MN River - sponsorship of 9th MN River Congress**
 - vii. Metro Sales - copier maintenance agreement**

- viii. **Patchin Messner Dodd & Brumm - final installment for determination of benefit of navigation channel**
- ix. **Rinke Noonan - September 2017 legal services**
- x. **Greg Zeck - August & September webmaster service**

D. Receive and file 2017 Cost share reports

President Shirk made a motion to approve the consent agenda as amended. The motion was seconded by Manager Raby. The motion carried unanimously.

5. NEW BUSINESS/PRESENTATIONS

A. Approve 2018 Cost Share Program

Administrator Loomis said this is an annual program and there is \$20,000 in the 2018 budget. She said in 2017 there were more applications received and approved than in years past. She said she has prepared a spreadsheet from surrounding watershed districts for comparison. The draft program is based on the parameters from last year with a 50% match. She said she is asking Managers for approval of the program.

Manager Hartmann asked if there were any changes from last year. Administrator Loomis said the biggest change is how in-kind volunteer contributions will be considered. The program also specifies what volunteer time will be valued at.

Manager Raby said in general he does not have any issues with the program. He asked for someone to edit the document. He commented on the labor issue and said his concern is that the district has no way to monitor how much labor is exerted. He also said he would like to have the program state that labor costs cannot exceed material costs. He also had some other concerns with some of the processes laid out in the guidelines.

Administrator Loomis suggested tabling this so the edits can be made. President Shirk asked staff to bring this back in December.

B. Level II Smart Salting Training

Administrator Loomis said she was contacted by the None Mile Creek Watershed District to see if the LMRWD would be interested in partnering in the level II smart salting training. The trainers are being provided by a grant. The watershed district would just need to make space available and provide refreshments. She said they are looking at booking the Chaska Community Center.

President Shirk has a concern that training in March is a little bit of too little, too late.

Administrator Loomis pointed out that this is aimed toward city staff who are responsible for salting city streets and this is a level II training.

Manager Hartmann asked what the cost would be. Administrator Loomis said the room rental is \$180 and the refreshment's which may also include a lunch will be about the same.

President Shirk made a motion to authorize funding for the Level II Smart Salting Training. The motion was seconded by Manager Hartmann. The motion carried unanimously.

Manager Hartmann asked about the date for the training. Administrator Loomis said the date is scheduled for March 1, 2018.

C. Receive and file Letter and Resolution from the city Bloomington

Administrator Loomis said the LMRWD received the letter and resolution after the packet had been sent. She reminded Managers that the District received a similar letter and resolution from the city of Eden Prairie and had directed staff to prepare a response. She said legal counsel has drafted a response which has been provided to the Managers and asked for the

Managers to authorize the response. President Shirk said she has read it and is fine with the letter. Attorney Kolb noted the typos would be corrected.

President Shirk made a motion to receive, and file the city of Bloomington resolution and authorize staff to finalize the letter for her signature in response. The motion was seconded by Manager Hartmann. The motion carried unanimously.

6. OLD BUSINESS

A. MN River Clean Up Event

No new information since last update

B. Dredge Management

i. Review Process for funding of maintenance of Navigation Channel

Attorney Kolb talked about the Special Benefits report and said the bottom line is that the opinion is that the dredge project generates approximately \$20 million economic value annually to about 14 properties that are able to use the channel for commercial purposes. The breakdown of those properties is that Cargill East is the greatest beneficiary of the channel. Of that \$20 million of value Cargill East's allocation of that is \$6 million which is about 30% of the total. So thinking in round numbers; if the LMRWD wanted to generate \$100,000 from benefitted properties, assuming the District went through the process, the allocation of that to the largest of the interests on the river, the Cargill East site, is about \$30,000 of that \$100,000. The LMRWD knows from experience that it does not generate \$100,000 of costs in any given year; in fact we probably don't generate \$100,000 in costs on the site over a period of three to five years, maybe even longer than that.

When the Board moves forward, if the Board were to establish that at least a portion of the cost of the material management site were to be allocated to benefiting properties, it should understand that those values on an annualized basis would be very small. The goal here is to get to a hearing and give notice to the benefitted properties so that they can understand it, so that the Board can then gauge its options. Options are to continue as it has just funding those things via ad valorem taxation district wide or to create it as a combination benefitted property assessment and ad valorem tax, out of the general fund or out of a project fund. Or a third option would be to renegotiate the charge for material placement instead of an assessment, which may be a more expedient way to get to the same end; trying to allocate these costs fairly across the district as a whole vs. those individually benefitted properties.

Attorney Kolb said he wanted to give the Managers a summary that this is not as substantial an economic burden in comparison with the actual benefit from the project as a whole. This is based on the analysis provided by Mr. Dodd, in his opinion experience and expertise.

ii. Vernon Avenue Dredge Material Management site

No new information since last update

iii. Private Dredge Material Placement

Administrator Loomis said they need a motion to authorize execution of license agreement. She said the agreement has been finalized and is being circulated to the private parties for signature the license agreement. President Shirk asked if legal counsel has reviewed the agreement. Attorney Kolb said he had reviewed it and worked with the Cargill legal department. He explained that this is really a continuation of the previous agreement. He detailed some of the major changes to the agreement. This agreement addresses all the issues we had with the prior agreement.

Manager Raby said he has a couple questions. In item 5, he wanted to know why the District would need permission to add additional licensees. Attorney Kolb said there is an allocation distribution of space based on anticipated use of the site and in order to add another party the allocations would need to be readdressed. Administrator Loomis added that this was placed in the original agreement, because at the time the original agreement was considered, Cargill was in desperate need of a site to place material and needed to move ahead before the other parties were ready to approve the agreement. This was placed in the agreement to allow the other parties to sign on at a later date.

Manager Raby said in item 4 (b) and (c), it talks about a qualified contractor must be used to estimate quantities and questioned what a qualified contractor is. Attorney Kolb said if they are estimating quantities they have to demonstrate to the District that they are qualified to make such estimations. The District will need to pass that by the District Engineer to make sure that person would have minimal qualification. Manager Raby said he understands and thinks we could have worded it the way that legal counsel just explained it. Attorney Kolb said he understands Manager Raby's concern and offered as an explanation that he tried to disturb as little as possible of the language of the original agreement in order to avoid a lot of back and forth with the legal departments of the other parties to the agreement. So understanding that that provision was there to being with, it might actually have become worse. Manager Raby said he understands and was not a Manager at the time the original agreement was approved. Administrator Loomis pointed out that Attorney Kolb was not involved in the drafting of the original document.

President Shirk made a motion to authorize the license agreement once it has been signed by all other parties. The motion was seconded by Manager Hartmann. The motion carried unanimously.

C. Watershed Management Plan

Administrator Loomis said the public hearing was held at the last meeting and was recessed. She said there isn't much to add to what was presented in the Executive Summary, but it looks like the informational meetings will be held in February and March of 2018. The comment log will be released in early December. The Statement of Need and Reasonableness (SONAR) is being worked on and the target date for the release of the SONAR is February. Administrator Loomis said the hearing will reconvene the public hearing in April.

Manager Raby asked about the updated response log and if that would be put on the website. Administrator Loomis said the comments were posted and that comments received after the 60-day comment period and those received at the public hearing will be incorporated in the updated log, which will be posted on the website. Della Young noted that all individuals that have sent emails with comments will also be notified by email when the comment log is updated.

Attorney Kolb noted that, as was mentioned by Mr. Saunders earlier this evening, the why part of the proposed standards. Staff is being careful to take the time to incorporate those things into the SONAR. Staff has been compiling the multitude of studies that have occurred within the various municipalities within the District over the last 20 years, some of the most recent within the last 6 to 10 years dealing with and addressing both the erosion and the stability issues on the bluffs and the steep slopes within the district. These are studies that the cities commissioned to try to figure out how to prevent this and stabilize it; address it in various ways. The issues are known and have been out there for a long time. In the mean time the District has seen continued development, changes in the precipitation patterns, frequencies and amplitudes of storms. The District is trying to catalog all that as part of the identification of issues into the

Watershed Management Plan and then try to convert that into the actual implementation, which would include the standard to be applied to address the resource concerns.

Then secondly, as indicated in the draft letter in response to the city resolutions, staff is working on developing some revision language to the bluff standard. The revised language will remove the prohibitive nature of the standard and make it a conditioned/permissive standard, which would address pre-existing non-conformities; it would address any expansion or new improvements on properties in this area of concern. It would place requirements on the development or expansion in a way that would promote responsible development and insure that the proposal meets the specific standards; which are 1) manipulation of the slope itself and 2) stormwater management on the slope. The comments of major substance that the District has heard so far have been concerns about value, what can I do on my property, its overly restrictive and it is a constitutional taking. The revised language being developed will address the resource concerns while allowing a reasonable opportunity for the landowners to make the improvements they desire on their property. That will come back in a more formalized recommendation to the Board for review. That may be a better path to address the concerns the Board has heard both the cities and residents that have provided comments thus far.

President Shirk asked if there are examples of things that have happened in the past that would not have happened if the standards had been in place. Ms. Young said they have looked at a document prepared as a result of the work done by Carrie Jennings analyzing slope failures; both from 2014 and historically. One of the reasons for failures that was uncovered in the report is that because of the geologic formation in this area slope failures manmade activity on the slopes make it susceptible for failure. She noted there are a good number examples where slope failures have happened and locations have been identified. These specific examples will be included in the SONAR.

Ms. Young said a lot of people brought up the issue with managing invasive species and staff is trying to figure out how to help people managing vegetation in bluff areas, as well as looking at grants.

D. 2018 Legislative Action

Administrator Loomis said Ron Harnack, the lobbyist the District has used in the past, has retired. He provided some recommendations as to lobbyists the LMRWD could consider to use in the future. She said she met with three individuals recommended by Mr. Harnack and provided the information about each of them to the Managers. She asked the Board for direction.

She said she has provided information to the Managers showing other organizations each of the people she has interviewed lobbies for. Manager Raby had some questions about the information that was provided to the Managers. Manager Raby said he thinks there should be someone who has worked with other districts and environmental groups. He said he had concerns about conflicts of interest from other organizations a lobbyist may represent that may come into play. He has feels that representing Soybean Growers and CHS in particular may come into conflict with the LMRWD goals. Administrator Loomis explained that the individual who is registered as a lobbyist for CHS will not be representing them in the future, as she has accepted the position lobbying for the Red River Board and representing CHS could pose a conflict in her representation of the Red River.

Managers said other than their concern over conflicts of interest, they feel it is appropriate for the Administrator to decide who she feels she would be comfortable working with.

Administrator Loomis said it will be a tough decision.

E. Website Redesign

Administrator Loomis informed the Managers that they all agreed on which of the logos they preferred. She said she and Della have spoken about when the updated website will go live. They decided that they will try to go live in February and populate the website as they go.

President Shirk made a motion to approve the selected version of the logo. The motion was seconded by Manager Raby. The motion carried unanimously.

F. Education and Outreach Plan

i. Friends of the MN River Valley/LMRWD cooperative project

Administrator Loomis said she is planning to arrange a presentation for the Managers about the project this past summer at the county fairs. She also told the Managers that Ron Harnack had suggested registering for a table at the MASWCD trade show & annual conference. Information handed out would be similar to what was distributed at the county fairs. The managers were not sure how effective it would be and thought the time would be better spent elsewhere.

ii. Citizen Advisory Committee

Administrator Loomis said it might be a good time to take advantage of the interest in the public has shown in the draft Plan Amendment at this time. She recommended contracting with another person to help with the education and outreach.

Manager Hartmann asked where such a position would be advertised. Administrator Loomis said she would check with other watershed districts about what venues they use to advertise positions. She also said the LMRWD could directly contact people who do this kind of work. President Shirk asked if the District is required to advertise positions. Administrator Loomis said she would refer that question to legal counsel. Attorney Kolb said that the answer if no, other than legal consultants and engineering services, the district is not required to advertise for positions. Manager Raby said a lot of firms do have public involvement staff within the organizations that could be considered. Administrator Loomis said that if the LMRWD advertised with a request for proposal (RFP) some of those firms might apply. Different options were discussed.

Manager Raby asked how much time this position would be used; part-time, halftime? Administrator Loomis said it could start as a part-time or halftime position and then see if that worked out.

Administrator Loomis said that no decision needs to be made this month and it can be on the agenda for next month. President Shirk suggested that perhaps a RFP could be drafted for them to consider at the December meeting.

G. LMRWD Projects

i. Riley Creek Cooperative Project/Hennepin County Flying Cloud Drive/CSAH 61 reconstruction project

ii. Lake Coring Project with Freshwater Society

Administrator Loomis commented that pictures of the lake cares were provided to the Managers. President Shirk asked when a report would be ready for this project. Manager Raby reported that he appreciated the article from the Freshwater Society about this project.

iii. Seminary Fen ravine stabilization project

iv. Analysis of Dakota County Groundwater Project

v. East Chaska Creek/ CSAH 61 & TH 41 Transportation Improvement Project

vi. Savage Fen Ravine Project

Administrator Loomis said she has nothing to add to the report for any project apart for what was reported in the meeting packet.

H. Project Reviews

i. City of Bloomington - 2435 Old Shakopee Road

Administrator Loomis said the district was contacted by US Fish & Wildlife Service (USFWS) about its concern with the proximity of this development to Ike's Creek. She noted USFWS approached the LMRWD about sampling the Creek for chlorides. She informed the Managers she has approved for the district to pay for the analysis of the samples taken. The estimated cost of analyzing the samples over the course of the winter would be around \$720.

President Shirk asked if construction of the project has started. Administrator Loomis said yes it had and reminded the Managers that she had asked the Board's authorization to have the construction inspected; however no inspection has been made.

President Shirk asked if there is baseline information. Administrator Loomis said that is what they are hoping to get from this season's monitoring. President then asked if the LMRWD has any teeth if the chloride level spike. Administrator Loomis said that she did not know if the District did. She said other watershed Districts are in the process of writing rules to address chlorides. She said she asked the city of Bloomington if they regulate chlorides and they do not.

Ms. Young said that if there is an indication that the level of chloride increases from the baseline and may adversely impact the designated use for this water body, there are things the LMRWD could put in place given the existing regulations or for the NPDES requirements as well as the 303d listed impaired waters requirements. She said other water management organizations have been dealing a lot with chloride impairments and the LMRWD can look to them to see what the things that they have been doing are. The state of Minnesota, as a whole, is looking at how to address chlorides, because it is not only impacting surface water is also impacting groundwater. She said at the moment the best thing to do is to get the baseline data so then we know if the development is causing an increase of chloride in the water body, we can then work with them to mitigate it.

ii. City of Burnsville - Kraemer Quarry dewatering

Administrator Loomis said the LMRWD received a notification of changes to an already existing water appropriation permit. The changes are a result of a discrepancy in the existing permit. She said asked MS. Young to review the changes to the permit. The concern is the permit is not clear what is planned for the disposal of the water. The permit said they plan to direct water to the river for disposal; however the times they plan to dewater are at times when the river is already high; during rain events and in the spring during snowmelt. She noted the City of Burnsville takes water for municipal purposes and also sells water to the City of Savage for municipal use. The LMRWD asked for a clarification. She noted there has not been a response from the DNR yet.

Ms. Young said there is extensive history on this site with the DNR and what the dewatering is doing. She said one of the things the LMRWD is trying to do, by asking these questions, is to get a sense for how the DNR evaluates applications for water appropriations permit and impacts on sensitive resources in close proximity.

Manager Raby commented on the exceeding average, it seems pretty precise. He asked if the DNR monitors the permit. Ms. Young said it is often based on pump capacity but the permittee is required to provide document logs, so they know when they have hit the allowed capacity.

iii. City of Burnsville - Xcel Energy Black Dog Plant

Administrator Loomis said the upland portion of this pipeline is complete. Xcel now needs to connection the upland segment to the plant. Managers have been informed of the unsuccessful attempts at horizontal drilling under Black Dog Lake, which has now been abandoned by Xcel. The plan is now to finish the installation through an open trench around the lake. Xcel will be required to apply for a conditional use permit (CUP) from the city of Burnsville. She received notice yesterday from the city that the CUP has been applied for. She stated the concern with the open trench is if there is going to be dewatering, what impact there will be on the groundwater in the area.

President Shirk asked if the pipeline will be exposed at the bridge. She was informed that it will be exposed at that point.

iv. City of Chanhassen - Comprehensive Plan review

Administrator Loomis said LMRWD received notice from the city that its Comprehensive Plan is out for review, however the storm water section was missing. Vanessa Strong said the city is working to finish the stormwater portion of the Comprehensive plan. She said the city hopes to get the Surface Water Management Plan complete and approved prior to getting the entire Comprehensive Plan approved.

v. City of Shakopee - Southbridge apartments

Administrator Loomis said this is not in a high resource area but close to Eagle Creek which was the concern. She noted the comments are meant to get a better understanding of how appropriations are evaluated.

vi. City of Shakopee - Veterans Memorial Park

Administrator Loomis said they are reviewing this project. This is a public waters works permit.

vii. MNDOT - I35W Bridge replacement

Administrator Loomis said she and Della attended the public hearing for municipal consent for this project in Burnsville. MNDOT also went to Bloomington the same night for a hearing. She said the plan is to let the contract for the construction May 9, 2018 and hope to begin construction in July/August 2018. She noted the project will raise the road bed out of the floodplain. This means that fill will be placed in the floodplain. She informed the Managers that staff will be meeting with MNDOT about this project next week. She asked if the Managers would like to hear from MNDOT about the project. All Managers indicated they would like to hear from MNDOT.

Ms. Young noted this project will be a design/build (not design/bid/build) project, so it will be fast paced. Manager Raby asked if the design/build RFP is out. Ms. Young said it will be out in December. She explained that it is unclear is the environmental documents going through a process and the LMRWD has not seen documents yet, so we are not sure how

they exactly how they are addressing floodplain impacts and municipal standards and things of that nature. MNDOT will keep the traffic open during the construction. The project is expected to be complete in 2021.

Both cities granted municipal consent.

viii. City of Burnsville - Union Pacific RR storm water improvements

Administrator Loomis said this project in the city of Burnsville. The city is both the proponent of the project and the LGU. This project involves the railroad just south of the Xcel Black Dog Plant. There are three culverts that direct storm water under the tracks that are failing. She said she attended a field visit of the wetland delineation. She commented on the wetlands, one of which has been pretty degraded. The field visit concurred with the delineation.

I. Dean Lake - no change since last update

Administrator Loomis said she attended a meeting at the MPCA for the 2018 303d impaired waters list. At the meeting she noticed that Dean Lake is being removed from the list, as it is no longer considered a shallow lake.

She noted the Credit River is being placed on the list as impaired for chloride.

J. MPCA Soil Reference Values - no change since last update

Administrator Loomis reported that she may be able to get an update on this item, because the Corps of Engineers is following this item and they hold a River Resource Forum in early December. This topic is usually discussed at those meeting.

7. COMMUNICATIONS

- A. Administrator Report:** No report
- B. President:** No report
- C. Managers:** No report.
- D. Committees:** No report
- E. Legal Counsel:** No report
- F. Engineer:** No report

8. ADJOURN

The meeting was adjourned at 8:42 PM.

Dave Raby, Secretary

Attest:

Linda Loomis, Administrator