



# LOWER MINNESOTA RIVER WATERSHED DISTRICT

## Minutes of Regular Meeting

### Board of Managers

Wednesday April 18, 2018

County Board Room, Carver County Government Center, Chaska MN, 7:00 p.m.

Approved May 16, 2018

#### 1. CALL TO ORDER AND ROLL CALL

On Wednesday, April 18, 2018, 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, Manager David Raby and Manager Jesse Hartmann. In addition, the following were also present: Linda Loomis, Naiad Consulting, LLC, LMRWD Administrator; John Kolb, Rinke Noonan, Legal Counsel; Della Schall Young and Lisa Buchli, Young Environmental Consulting Group, LLC, Technical Consultant; Ron Leaf, Kimley-Horn, representing the City of Burnsville; Bryan Gruidl, City of Bloomington; Jennie Skancke, MN DNR; Lindsey Albright, Dakota, SWCD; Chris Penwell, Siegel Brill, P.A.; Julie Blackburn, RESPEC; and members of the public; Duane Saunders, Tim Marpe, Ron Nelson, Tom & Bev Weber

#### 2. APPROVAL OF THE AGENDA

Managers noted that the February 21, 2018 meeting minutes was not listed on the agenda, but it was included in the packet. Manager Hartmann noted that it was listed on line.

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

#### 3. CITIZEN FORUM

Ron Nelson, 163 Spring Valley Drive, Bloomington, MN 55420. Mr. Nelson wanted information regarding the MN Valley State Trail proposed to run along the north bank of the river, behind his home. He said it is his understanding the proposed trail will be paved and asked if the LMRWD had any information about that. President Shirk asked if Administrator Loomis could answer Mr. Nelson's questions.

Administrator Loomis said that trail is being constructed by the MN Department of Natural Resources and is in the design phase. She said that it is proposed to pave the trail. Mr. Nelson asked about parking lots. Administrator Loomis said she doesn't believe additional parking lots are part of the proposal. She noted that Mr. Bryan Gruidl from the city of Bloomington was in the room and perhaps he could give Mr. Nelson additional information.

#### 4. CONSENT AGENDA

Manager Raby said he did not notice any reference in the March 21, 2018 meeting minutes to the Board's acceptance of the Rinke Noonan proposal for legal services. Administrator Loomis said she will review the recording of the meeting and amend the minutes accordingly. Manager Raby said that would be acceptable. President Shirk also noted the February 21, 2018 meeting minutes were

not on the printed agenda even though they were in the meeting packet. Manager Hartmann noted that they were on the agenda on the website. The agenda was amended to include the February minutes. The Consent Agenda included the following items:

- A. Approval of Minutes for February 21, 2018 and March 21, 2018 Regular Meeting**
- B. Approval of Financial Reports**
- C. Presentation of Invoices for payment**
  - i. Carver County - for 1st quarter 2018 financial services**
  - ii. Freshwater Society - for sponsorship of 2018 Road Salt Symposium**
  - iii. Kaul Design Group, LLC - Final invoice for logo redesign**
  - iv. Liberty Mutual Insurance Co. - for 2018 surety bond premium**
  - v. MAWD - for 2018 membership dues**
  - vi. Pace Analytical Services, LLC - for chloride testing of Ike's Creek**
  - vii. Time Savers Off Site Secretarial - preparation of January & February 2018 Board meeting minutes**
  - viii. State of MN - for publication advertisement for engineering & legal services proposals**
  - ix. US Bank Equipment Finance - March copier rental**
  - x. Greg Zeck - Dec & Jan webmaster services, web hosting & domain name renewals**
  - xi. Burns & McDonnell - for Dec & Jan engineering services**
  - xii. Culligan Bottled Water - bottled water for Chaska office**
  - xiii. Rinke Noonan - for Jan & Feb legal services**
  - xiv. Steinkraus Development LLC - for March office rent**
  - xv. Naiad Consulting - for December 2017 admin services, mileage & expenses**
  - xvi. Scott County Treasurer - for reporting to auditor for annual audit**

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

## **5. PUBLIC HEARING**

### **A. Continuation of October 25, 2017 Watershed Plan Amendment Public Hearing**

Administrator Loomis noted this is a continuation of a public hearing held October 25, 2017. She reminded everyone that at that hearing the Board continued the hearing in order to allow staff time to hold information meetings throughout the District and have an additional Technical Advisory meeting.

She provided background information about the formation of the LMRWD and history of the Watershed Management Plans the LMRWD has prepared up until this most recent version. SHE provided the additional meetings the District held at the direction of the Board.

Attorney Kolb talked about the statutory requirements for the watershed district regarding the preparation of plans. He stated the plan is required to be revised every 10 years. He said the main discussion has been about the definition of standards. The plan also has to include a schedule. He explained that once the LMRWD adopts the plan the LGUs within the boundaries of the watershed district will have 18 months from the date of adoption to make revision to local plans and official controls in order to come into conformity with the Watersheds Plan. Attorney Kolb noted the process has been extensive in terms of how we deal with review and interagency coordination and also with the Board of Water and Soil Resources. The District is in the middle of the comment period that has been extended multiple times to allow for some local informational meetings, so that the District could be responsive to the many concerns that were presented to the Board during the hearing and the public comment process. This evening is part of the process. Once the public hearing is completed the Board will have to look at final revisions that it determines are necessary, based on public comment and responses before

submitting it to BWSR for its 90 day review. At the end of its review, BWSR will have a hearing and determine whether or not to recommend approval.

Ms. Young walked through the amendment process. She noted the Plan was updated in 2011 and the next update was not due until 2021. This amendment was done in response to changes to state administrative rules (8410) and upon a recommendation for the LMRWD's Technical Advisory Committee. This amendment process will set new dates and the District will not be required to update its plan again for another 10 years

She said the approach was to consider the districts mission and responsibility for protecting, preserving and restoring water resources within the District. Ms. Young said the District assessed the resources through that lens of protection, preservation and restoration. Part of the process was to put together a Statement of Needs and Reasonableness (SONAR), as requested by some of the municipalities. Some of the issues identified were the vulnerabilities of fens and trout waters, landslides, slope instability and erosion, floodplain encroachment and financing the dredge management. Once issues were identified, staff did a gap assessment and research review to bring things back up-to-date.

Ms. Young detailed all the review staff did in order to prepare the plan amendment. She explained how the District looked at high value resources, trout waters and fens and developed more strict standards for those areas. The floodplain standard was clarified to make sure the standard addressed the District's dredge site and to clear up misunderstandings that some seem to have understanding when compensatory storage is needed when fill is placed in the floodplain.

Ms. Young stated the bluff standard has received the most attention. She said it is now going to be called a steep slope standard in order to simplify the standard. She noted a number of comments were received on how that would affect the public and municipalities so staff was directed to go back and take a look at this. Ms. Young explained the modification that was made was presented to the Board for approval in December. The standard is now permissive and should still protect the slopes. Landowner can now plan activities in the overlay zone, however they will need to consult a licensed engineer to ensure the activity will not destabilize the slope.

She went through the Capital Improvement Plan and explained projects that have been added to the CIP. She also went through the programs like a vegetation management plan, especially in the overlay district. The proposal is to put a plan together that residents can look at for advice on how to address buckthorn and other things and help with how to fund that. She also explained that from time to time projects arise that may not be in the plan, but are projects that the LMRWD want to participate in for one reason or another. The plan accounts for this in the implementation plan

Ms. Young explained the public input and explained the timeline. She noted before the draft plan amendment was released for the 60-day comment period, there were four technical advisory committee meetings and then meetings with all the municipalities. The plan amendment was released for the 60-day comment period in July 2017. She continued with all the activities completed to date.

She then explained the schedule moving forward.

Mr. Ron Leaf, of Kimley Horn, representing the City of Burnsville. He wanted to highlight a few concerns. He noted they don't have the final draft language just the draft from January. Mr. Leaf commented on the no-rise certification and that even if there is fill on a project. He said

most of the comments are administrative, not technical. He feels the standards are quite burdensome on the city. He said the City supports a conditional use permit process to enforce the standards. The city would prefer a CUP process rather than a variance process. Mr. Leaf strongly encourages the board to incorporate a CUP process instead or in addition to the variance process.

Mr. Leaf said that the city is also concerned with the regulated activity and thresholds in section 4.2. It appears far too broad to be reasonably administered at the local level. There are some differences in the thresholds of cubic yards of disturbance and square yards of disturbance that brings far more small projects into the cities review process. He said the city does not have the resources to administer that.

Mr. Leaf said the flood plain concern has been taken care of. He said the city would really like to see the final document that will show what Appendix K will be to ensure the intent of the responses in the comment summary is incorporated in the language of Appendix K.

Mr. Duane Saunders was asked if he wanted to speak and Mr. Saunders responded that he had nothing to say.

Brian Gruidl, City of Bloomington, echoed Ron Leaf's comments. He said they appreciate the efforts by the District and the District staff to continue to work with them. He commented on the notice process and said it is the city's opinion that the district should be doing more than the statutory requirements and the property owners most affected by the standards should be receiving a mailed notice.

Mr. Gruidl said that under the bluff and steep slope standard the district is proposing to regulate activities that require municipal permits that result in a net increase in impervious or stormwater run off within the steep slope overlay district. There are many relatively small projects such as minor driveway widening, small sheds or small patios, that would trigger a permit and therefore would need to certify by an engineer. By requiring a certification, it would make many of these small projects cost prohibitive. The city requests that projects under the 5,000 square feet or 50-cubic yard threshold be removed. This would give the city flexibility to regulate small projects on a case by case basis in order to help protect the steep slope area. This would also help eliminate the potential for variances for these smaller projects. He said there the city requests an exemption for new impervious surfaces that do not drain toward the bluff, like the driveway example given earlier. The last comment is the high value resource area, Ike's Creek, and the city requests reconsideration for the inclusion of the Ike's Creek high value resource area, for the same reasons the DNR determine to not pursue trout designation.

Mr. Ron Nelson, 163 Spring Valley Drive, Bloomington, MN 55420, asked about the steep slope mitigation. He asked if verbiage in the plan makes reference to the authority to mandate corrections to the slope of homeowner's properties if it doesn't conform. He said he doesn't see where the plans would preclude that. Attorney Kolb said any violation of municipal control is subject to enforcement by the municipality. Mr. Nelson asked if the municipality would be enforcing this current proposal. Mr. Kolb said the municipality would be incorporating these standards into their official controls. However, each city will determine what level of enforcement they would apply and what remedies they would seek for violation of those controls. Mr. Kolb said the authority exists in law, but he cannot tell Mr. Nelson how the city would react.

Mr. Nelson asked if current state of property would be grandfathered in from violation of the new rules. Attorney Kolb said they don't think the grandfathering is necessary as the standard is currently proposed. Mr. Nelson asked if they could have language included in the amendment

that the certain state of condition could be grandfathered in. Attorney Kolb said the board can consider including this language if they choose to. Mr. Nelson noted it is the confusion he is looking to avoid.

Mr. Nelson said in 1961 the first plan was adopted which was strictly referencing barge and commercial traffic and now this is the 4<sup>th</sup> amendment. Each amendment has dramatically changed on how it impacted the property owner. He stated nothing is slowing down the authority over the homestead.

Mr. Nelson commented on the steep slope vegetation management plan. He asked if authorities can come in and tell him what to plant and un-plant? Ms. Young clarified the vegetation plan is a resource for residents. The plan is a tool for residents to use to help determine how to manage steep slopes. Mr. Nelson fears that in the future property owners will be told how to manage their properties. He said there is nothing in the wording that says taking this authority is prohibited.

Mr. Nelson said they went from 30% to 18% to 12% on the 25-foot grade and asked about the line of impact is on the bluff. Ms. Young commented on the bluff definition. The overall desire is to manage the steep slopes. She said the District has not ever managed to a 12% slope.

Mr. Nelson asked if any study had been prepared regarding to the cost to home owners to implement the proposed plan. Administrator Loomis said no such study has been done.

Chris Penwell, Attorney with Siegel & Brill, said he wants to focus on undeveloped property. He said after the modifications were made to appendix K, he consulted an engineer about the path for building on undeveloped property. The cost of determining whether section 5.4 requirements can be met would be cost prohibitive, in the tens of thousands of dollars. How can building a structure and adding impervious surface to undeveloped property meet the requirement of preserving existing drainage patterns? It doesn't seem like there is any way that requirement can be met. He didn't want to repeat comments he made last October about regulatory taking, but unless these standards provide a real path to develop undeveloped property it is not really going to help.

Jenny Skancke, Area Hydrologist, DNR, said they still feel strongly about all the comments submitted in the letter regarding the amended Appendix K. She said they feel strongly that there should be some required setback or no development in the bluff impact zone for the protection of the resources. She stated that there are setback requirements in the Mississippi Critical Corridor that have proven effective and were not arbitrary. Regulation of steep slope was adopted for a reason. She stated they know what works and sometimes it is in the best interest of the landowners that these regulations are put in place. She asked that the district check in with the DNR regarding the designation of Ike's Creek designation.

Mr. Nelson said the residents along the bluff are just as concerned with maintaining what is best for the environment in their own backyards as is the DNR or anyone on the board. There are financial impacts that may detrimentally affect the resale value of properties. He asked the board to consider the welfare and concerns for what's best for all involved.

Jenny said she had one more item. She thought that the statement that there should be some language in the standards about drainage that doesn't drain to the bluff; they would support. She asked for clarification about the increase in impervious. She asked if the increase in impervious, would also have to trigger the volume and surface trigger. Ms. Young clarified that any net increase in impervious that would trigger a municipal permit would require certification.

Staff intends to look at the exemption that was proposed regarding new impervious that does not drain to the bluff makes sense and will be looked.

**President Shirk moved to close the public hearing and direct staff to prepare final revisions to the plan amendment in a manner consistent with the public comments and responses for final consideration at the May board meeting prior to submitting the proposed amendment to BWSR for 90-day review. The motion was seconded by Manager Raby. The motion carried unanimously.**

## **6. NEW BUSINESS/PRESENTATIONS**

### **A. Hennepin County Landslide Inventory**

Administrator Loomis said attention was drawn to this issue in 2014 after the slope failure behind Fairview Hospital and flooding at Methodist Hospital took two Level 1 trauma centers offline.

She said the county was concerned about slope failures and approached the University of Minnesota and Carrie Jennings of Freshwater to study historical slopes failures within Hennepin County and to see if there is a way to identify slope that are susceptible to failure. Over 600 failure features were identified within the portion of the LMRWD in Hennepin County. A table showing the type of landslide features found within each watershed district was provided in the executive summary. The county would like to do a second phase of this study and has agreed to dedicate \$10,000 toward that effort. Freshwater Society convened a meeting of all of the watershed districts in which slide features were identified to ask for their participation in phase 2. Administrator Loomis said the estimated cost of the phase 2 study is between \$40,000 and \$50,000. She said all the watershed district administrators that attended the meeting were agreeable to funding a phase 2 study. Riley/Purgatory/Bluff Creek WD and Minnehaha WD were not in attendance. Administrator Loomis said she recommends funding the project up to \$10,000.

Manager Raby asked about the watershed districts that were not at the meeting and if they are in agreement. Administrator Loomis explained that Freshwater Society was planning to check with those who did not in attend, but she has not heard back whether or not they had responded. Manager Hartmann asked if Administrator Loomis felt confident that the study would get funded and she responded that she believes it will be.

**Manager Raby moved to allocate up to \$10,000 for the phase 2 Hennepin County Landslide project. The motion was seconded by President Shirk. The motion carried unanimously.**

## **7. OLD BUSINESS**

### **A. Engineering & Legal proposals**

Administrator Loomis reminded the Board that three proposals were received for engineering services and one for legal services. And that the Board had accepted the proposal for legal service from Rinke Noonan and tabled the decision on the engineering proposals.

President Shirk and Manager Raby agreed on continuing with Young Environmental.

Manager Raby asked how the relationship would be structured between Young Environmental, Burns & McDonnell and Barr Engineering and if they would be subject to the 10% mark up. Della Young responded that it would be structured exactly like the agreement that the District currently has with Burns & McDonnell and subcontracts with Young Environmental, only now Young Environmental would be the primary service provided.

Manager Raby then asked if any representatives from the other firms were in attendance. Julie Blackburn, from RESPEC, was in attendance. Manager Raby asked about the location of the

individuals who would be providing service. Ms. Blackburn responded to where RESPEC offices are located. She clarifies RESPEC was responding to the Request for Proposals to become part of a pool of service providers and talked about the services RESPEC can provide to the District. She continued that Della is a great consultant and service provider.

Manager Hartmann asked if they have the option of having an engineering pool. Attorney Kolb said yes. He pointed out that there was nothing in the proposal that would preclude the District from having one. Manager Raby said he does not think a pool would do the District any good and it might actually constrain the District in the future. He said they have a primary engineer but they can utilize any firm they want for projects.

**Manager Hartmann moved to approved Young Environmental Consulting Group, LLC. The motion was seconded by President Shirk. The motion carried unanimously.**

Ms. Young thanked the board and Ms. Blackburn for her comments.

**B. Metro-area Watershed Based Funding Pilot Program**

Administrator Loomis shared information on the projects staff is considering to submit to each county for funding under this program. She said the counties have until June 30th to submit a plan to BWSR for how each of them intends to allocate funds.

She said staff will submit the East Chaska Creek project in Carver County. In Dakota County, the project submitted would be the fen stewardship project that staff has been working on. In Hennepin County, staff is working with the water management organizations in the Minnesota River Basin to develop a project to establish a cost share program for cities and other to use to address the state-wide Chloride impairment And in Scott County, the plan is to have one large project county-wide project for \$150,000 and then divide the remaining money between the water management organizations. The LMRWD intends to use its funds to work with the city of Savage to develop a project in the Eagle Creek sub-watershed.

President Shirk asked about the cost of the Carver project. Administrator Loomis said the cost was in the feasibility study and she cannot remember the exact amount and she will get that information.

**C. Dredge Management**

Administrator Loomis said there is nothing additional other than what was in the executive summary.

**i. Review Process for funding of maintenance of Navigation Channel**

**ii. Vernon Avenue Dredge Material Management site**

**iii. Private Dredge Material Placement**

**D. Watershed Management Plan**

Administrator Loomis said there was a motion made at the end of the public hearing.

**E. 2018 Legislative Action**

Administrator Loomis said the board should consider adding funding the Minnesota River Data Center located at Mankato State University to the legislative priorities. President Shirk asked for a presentation to the board.

**F. Education and Outreach Plan**

**i. Education and Outreach Coordinator**

Administrator Loomis said the only proposal they received that addressed the District's education needs was from RESPEC. She said they will re-advertise so firms or individuals can apply. The Board concurred that this was appropriate.

**ii. Friends of the MN River Valley/LMRWD cooperative project**

Administrator Loomis had nothing new to report since last update.

**iii. Citizen Advisory Committee**

Administrator Loomis had nothing new to report since last update.

**G. LMRWD Projects**

**i. Eden Prairie Area #3 Stabilization**

No information other than what was reported in the Executive Summary.

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

Administrator Loomis said a proposal for this project was included in the packet. Staff thought the cost was high for the rerouting Riley Creek, but there is a savings by doing it as part of the county's project. Manager Raby asked if Barr put together an engineering estimate for the cost of the project. Ms. Young said an engineer's estimate was never put together, as it was the intent of staff to include this project as part of the county's project.

The Board discussed whether or not the proposed cost was included in the District original budget for this project.

**President Shirk moved to approve the Riley Creek Cooperative Project/Hennepin County Flying Cloud Drive/CSAH 61 reconstruction project with a reconfirmation of the budget. The motion was seconded by Manager Raby. The motion carried unanimously.**

**iii. Floodplain Lake Coring Project with Freshwater Society**

No information other than what was reported in the Executive Summary.

**iv. Seminary Fen ravine stabilization project**

No information other than what was reported in the Executive Summary.

**v. Analysis of Dakota County Groundwater Project**

No information other than what was reported in the Executive Summary.

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

No information other than what was reported in the Executive Summary.

**H. Project Reviews**

Administrator Loomis said the Board needs to action on the municipal plan reviews and needs to adopt the resolutions that were included in the packet.

**i. City of Savage - 7369 Highway 13: Valley Oil**

No information other than what was reported in the Executive Summary.

**ii. City of Chaska - MCES L-71 lift station project**

No information other than what was reported in the Executive Summary.

**iii. City of Chaska - Indoor Dog Park**

No information other than what was reported in the Executive Summary.



- iv. **City of Bloomington - Jefferson High School**  
No information other than what was reported in the Executive Summary.
- v. **Scott County - TH 169/41 Interchange**  
No information other than what was reported in the Executive Summary.
- vi. **City of Minneapolis - Comprehensive plan**  
No information other than what was reported in the Executive Summary.
- vii. **City of St. Paul - Comprehensive plan**  
No information other than what was reported in the Executive Summary.
- viii. **City of Bloomington - Local Surface Water Management Plan**  
See motion below.
- ix. **City of Bloomington - Hyatt House; 2343-2373 Old Shakopee Road**  
No information other than what was reported in the Executive Summary.
- x. **City of Chaska - Local Surface Water Management Plan Amendment**  
See motion below.
- xi. **City of Chanhausen - Comprehensive Plan/Local Water Management Plan**  
See motion below.
- xii. **City of Lilydale Local Water Management Plan Amendment**  
See motion below.
- xiii. **City of Burnsville - Xcel Energy Black Dog Plant**  
No information other than what was reported in the Executive Summary.
- xiv. **MNDOT - I35W Bridge replacement**  
No information other than what was reported in the Executive Summary.

**Manager Raby moved to adopt the resolution 18-04 approving the LSWMP for the City of Bloomington, resolution 18-02 approving the LSWMP for the City of Chaska, resolution 18-03 approving the LWMP for the City of Chanhausen and resolution 18-05 approving the LWMP for the City of Lilydale. The motion was seconded by President Shirk. The motion carried unanimously.**

- I. **MPCA Soil Reference Values - no change since last update**  
No new information since last update.

## **7. COMMUNICATIONS**

- A. **Administrator Report:** Administrator Loomis said she did not have time to prepare an Administrator report. Manager Raby commented that he thinks that in order to lessen the work for the Administrator that it is not a necessary item. President Shirk commented that she does like the information and from a historical perspective it is helpful for her. Attorney Kolb suggested that it not be an item that is prepared every month, but one that is provided to the Board as necessary. The Board agreed.
- B. **President:** No report
- C. **Managers:** No report
- D. **Committees:** No report
- E. **Legal Counsel:** No report
- F. **Engineer:** No report

**8. ADJOURN**

**President Shirk made a motion to adjourn. Manager Hartmann seconded the motion. The meeting was adjourned at 8:57 PM.**

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Dave Raby, Secretary

Attest:

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Linda Loomis, Administrator