



# LOWER MINNESOTA RIVER WATERSHED DISTRICT

## Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting

Wednesday, June 17, 2020

### **Agenda Item**

#### **Item 5. C. - Future Board meetings and COVID-19**

### **Prepared By**

Linda Loomis, Administrator

### **Summary**

The Governor's Emergency has ended. However, the meeting location for Board meetings has not reopened to the public. The Board should discuss how it wishes to conduct future meetings. Legal Counsel for the LMRWD has provided an opinion for the Board's information. The Board should provide direction to staff, regarding future meetings, if the regular meeting location does not open to the public.

### **Attachments**

Legal opinion dated June 4, 2020 - COVID 19, District Operations Update

### **Recommended Action**

provide direction to staff



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**Office Memorandum**

To: Linda Loomis, Administrator, Lower Minnesota River Watershed District  
From: John C. Kolb (320) 656-3503  
Re: COVID 19, District Operations Update  
Date: June 4, 2020

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On May 13, 2020, Governor Walz issued Emergency Executive Order (EEO) 20-56, which continues to expand the sphere of permitted business activity. You have asked how this order affects: (a) the closure of public facilities used by the District; and (b) the Board's conduct of meetings by remote means pursuant to Minnesota Statutes §13D.021.

**Public Facilities Closure**

By Resolution, the Carver County Board authorized a minimum office presence to address essential administrative matters by designating that work as "Critical Sectors" work under EEO 20-20. At the same time, the County closed its facilities to the public – impacting the availability of the Watershed District's regular, in-person meeting location. EEO 20-48 (April 30, 2020) authorized local government to re-open its offices to employees generally, but not to the public. EEO 20-56 has broadened this authority further. The County Board now has the authority to re-open its offices both to employees and to the public. To do so, the County Board must adopt, maintain and train employees in a Preparedness Plan that contains the following:

- Protocols to follow Minnesota OSHA standards and MDH/CDC Guidelines.
- Policies and procedures, including health screenings, that prevent sick employees from entering the workplace.
- Social distancing policies and procedures.
- Hygiene and source control policies for employees.
- Cleaning, disinfection and ventilation protocols for the office.
- If the office is open to the public, additional elements to keep employees and the public safe in staff-public interactions.

EEO 20-56 contains a link to a template preparedness plan. If the County Board were to reopen its facilities under preparedness plan, the Watershed District's use of the facilities would be

subject to the plan. It is important to note that even as public facilities are reopened, workers must still work from home if able to do so.<sup>1</sup>

Relatedly, EEO 20-54 (May 13, 2020) sets forth employer obligations to protect employees from unsafe working conditions and against retaliation for raising concerns about such conditions. The District should review and required protocols before returning to in-person meetings or direct public interaction.

Note that while EEOs 20-48 and 20-56 allow for the re-opening of public facilities, they do not mandate it. Local government may continue to restrict public access to facilities if it finds that work is adequately being accomplished and that re-opening the facilities would not yet be prudent for employee or public health.

### **Board of Managers Meetings**

EEO 20-56 allows for in-person meetings of governmental bodies to occur, and states that such meetings are not subject to the limit on public gatherings of 10 persons or fewer. Accordingly, the Board of Managers may meet in person. In the same way as for public facilities re-opening, EEO 20-56 authorizes, but does not mandate, that the Board meet in person. In fact, the EEO "strongly encourages" the continuation of remote meeting.

Even if the Board decided to hold in-person, public meetings, it would likely have to accommodate access and participation to those with heightened risk factors or health and safety concerns. These individuals could include members of the public, Board members or employees.

EEO 20-56 does not explicitly require a Preparedness Plan, and associated training, in conjunction with a decision to hold an in-person meeting of a governmental body. It is my impression that this may be an oversight in the structure of the order. The District could seek guidance on this from the Department of Employment and Economic Development, or could decide that regardless of whether EEO 20-56 requires such steps, they would be prudent. Such a plan could address meetings in the District's regular (if available) or alternative meeting locations, in a location under others' control, and when members of the public are in attendance.

Minnesota Statutes §13D.021 states that the Board of Managers may meet remotely if the Board President "determines that an in-person meeting ... is not practical or prudent because of a health pandemic or an emergency declared under chapter 12." A health pandemic and a

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<sup>1</sup> Work defined as "Critical Sectors" work is not subject to the above-referenced requirements to prepare, train employees in and implement a Preparedness Plan. EEO 20-48, at paragraph 6.i(ii), designated as Critical Sectors work: "Workers supporting environmental compliance and assistance activities, field research, monitoring and surveying, habitat restoration, natural land and water management, and plant and animal population management." There is an ambiguity as to whether this refers only to workers engaged in field activities supporting the described activities, or whether it more broadly encompasses office work supporting such activities. We would advise a conservative reading that treats office work, beyond the essential work authorized by the Board or other specifically designated Critical Sectors work, as Non-Critical Business work under EEO 20-56 subject to preparedness requirements.

chapter 12 emergency are alternative bases for this determination. The Board President's determination was premised on both health pandemic and the Governor's emergency declaration. The Board's authority to meet remotely, then, is independent of the status of the Governor's emergency declaration, or of any other external finding as to pandemic status. Therefore, the Board may continue to meet remotely until the Board President, administrator or legal officer, in their judgment, withdraw the determination, or until the pandemic has resolved to the extent that the judgment that it is imprudent to meet in person becomes objectively insupportable.