



LOWER MINNESOTA RIVER WATERSHED DISTRICT

Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting

Wednesday, April 21, 2021

Agenda Item

Item 6. G. - 2021 Legislative Action

Prepared By

Linda Loomis, Administrator

Summary

Both LMRWD bills were included in the final omnibus bills this session. [HF 1621/SF 1841](#), which allows the LMRWD to use money appropriated for dredge to be used for the Seminary Fen ravine project and [HF 1799/SF 1288](#), which continues the state appropriation to the LMRWD for dredging were included in the Omnibus bills from the Environment and Natural Resource Committees in both the House and Senate. The House and Senate bills can be found as; [HF 1076](#) (lines 35.31 & 36.5)/[SF 959](#) (lines 33.10 & 34.15).

HF 1621/SF 1841 replaces the grant for the Seminary Fen project that was lost because the District filed the report late. The next steps is for the bills to go to the House and Senate for a vote and then to conference committee to reconcile differences between the House and Senate versions. After the conference committee, bills will go back to the House and Senate for approval and then will be sent to the Governor for his signature.

Additional bills that the LMRWD has been following

- [SF 261/HF731](#) - *Appropriating money to study storm water retention and infiltration and for a water storage plan.* In the Senate the authors are Senators Weber, Wiger and Eaton. In the House the author is Representative Torkelson. This bill was included in the Omnibus environment, natural resources bill. Lisa and MAWD lobbyist have been working to have this language revised. Lisa consulted with Ron Harnack, the previous lobbyist for the LMRWD on this language. The reason there is concern is that Lisa, Ron and MAWD feel it is a bad bill that gives BWSR more authority over the activities of watershed districts and is vague. There also has not been any money allocated for the provision of the bill.
- [SF 1037/HF 932](#) - *Water quality and storage program establishment and appropriation.* Senate author is Senator Hawj. House author is Representative Fischer. This bill designates funding to create upland water storage and was supported by the Minnesota River Congress. It made it into both the House and Senate Omnibus Natural Resources bills. In August 2019, the LMRWD adopted resolution 19-08 supporting managing water flows in the MN River Basin through increased water storage and other strategies and practices. The District supported the MN River Congress work in getting this initiative approved. The Governor has also included funding in his budget for water storage. It seems in the final language that this bill has become intertwined with the language of HF 731/SF 261. Lisa will be following this legislation along with others to see if the language is revised to improve it.

- [SF 81/HF 518](#) - *Watershed management provided, and water quality and storage in Minnesota River program established.* In the Senate, authors are Frentz and Weber. In the House, authors are Lippert and Fischer. It appears that this bill has been included in the language of the Omnibus Environment and Natural Resource bill.
- [SF 1113/HF 701](#) - *Soil-health farming goals established, soil-health farming financial incentives created, data collection required, data classified, and money appropriated.* Authors in the House are Representative Lippert and others. It has been authored in the Senate by Senators Eken, Fateh, Murphy and Tommassoni. This bill has been included in the Omnibus Legacy bill SF 0971/HF 1079.
- [SF 793/HF 1010](#) - *Statewide soil health action plan development funding provided, precision agriculture research and outreach funding provided, agricultural best management practice loan program funding increased, and money appropriated.* Senate author is Senator Eken. House authors are Representatives Lippert and Fischer. This bill has been included in the Omnibus Legacy bill SF 0971/HF 1079.
- [SF 884/HF 1660](#) - *Salt applicators certification program establishment; water softeners that cause excessive chloride pollution; process to adopt and amend water quality standards report requirement; water quality programs appropriation.* This bill is being authored in the Senate by Senators Eaton, Cwodzinski and Franzen and in the House by Representative Fischer. This bill was not heard in the Senate. It was introduced in the House and referred to the Environment and Natural Resources Finance and Policy Committee/

In addition to the bills noted above, three more bills were introduced that are of interest to the LMRWD:

- [SF 1707/HF 1700](#) - *appropriating money for levee restoration in Carver; authorizing the sale and issuance of state bonds* This bill was authored in the Senate by Coleman and Nash and Boe in the House. It was referred to the Capital Investment Committee in both the House and Senate. No further actions were taken.
- [SF 1132/HF 1974](#) - *appropriating money for the restoration of the Minnesota River riverbank in the Shakopee area; authorizing the sale and issuance of state bonds.* Authored by Senators Pratt and Draheim and Representative Mortenson in the House. It was referred to the Capital Investment Committee in the Senate and the Legacy Finance Committee in the House
- [SF 2086/HF 1824](#) - *appropriating money for river watch program.* This bill was authored in the Senate by Coleman and in the House by Boe. This legislation was included in the Omnibus Legacy bill. It provides \$50,000 in each year of the biennium to the Friends of the Minnesota Valley for its River Watch program. The LMRWD supported this program in 2020 with a \$10,000 grant.

At the March meeting Manager Salvato asked about the lack of detail on invoices from Frenette Legislative Advisors (FLA). Legal Counsel suggested that a copy of the agreement between FLA and the LMRWD be provided to the Board. An agreement between FLA and the LMRWD was never executed. An agreement was drafted, but was never executed. The agreement was conditionally approved by the Board in January 2018. At the time the Board made the conditional approval there were some items that needed to be worked out. The items were not big obstacles for either party, but the legislative session began and the agreement was lost in the shuffle. The draft agreement is attached. FLA and the LMRWD will revise the agreement with current dates and will execute the agreement.

When the LMRWD retained FLA it was on an annual basis for an agreed upon cost of \$20,000 annually. FLA has been invoicing the LMRWD monthly for the agreed upon \$20,000. FLA provides service to the LMRWD year round and that was why the decision was made to pay the fees monthly.

Attachments

Draft Governmental Relations Service agreement
January 2018 LMRWD Board of Managers meeting minutes

Recommended Action

No action recommended

**CONSULTING AGREEMENT BETWEEN
THE LOWER MN RIVER WATERSHED DISTRICT
and FRENETTE LEGISLATIVE ADVISORS**

This Agreement is entered into between Frenette Legislative Advisors (FLA) and the Lower MN River Watershed District (LMRWD). In consideration of the mutual terms and conditions set forth herein, including the obligations of mutual consideration, the sufficiency of which is hereby acknowledged, LMRWD and FLA agree as follows:

1. Scope of Work

FLA will perform the LMRWD legislative support services related to the function and interests of the LMRWD. These services may include but are not limited to:

- a) securing state financial resources for the LMRWD navigational channel maintenance and operation responsibilities and obligations related to the MN River 9 foot channel;
- b) promoting legislation aimed at reducing sedimentation and erosion in the Minnesota River Valley; developing governmental structures or programs to implement coordinated projects to reduce sedimentation and erosion in the Minnesota River; and establishing basin-wide initiatives to fund grade stabilization and other practices to reduce sedimentation and erosion in the Minnesota River; and
- c) consulting with the LMRWD between legislative sessions to develop legislative and policy priorities to be implemented in subsequent years.

Additional services may be added to this scope of work by amendment to this contract and may include additional compensation as determined by the parties.

2. Independent Contractor

FLA is an independent contractor under this Agreement. FLA shall select the means, method and manner of performing the Services. Nothing in this Agreement is intended or should be construed to make FLA the agent, representative or employee of the LMRWD. Personnel performing the Services on behalf of FLA or a subcontractor shall not be considered employees of the LMRWD and shall not be entitled to any compensation, rights or benefits of any kind from the LMRWD.

FLA confirms and acknowledges it is not entitled to any employment benefits of any kind in association with the Services rendered under this Agreement, including health insurance, retirement benefits, paid vacation or sick leave.

FLA acknowledges that it is obligated to comply with all state and federal tax requirements, and is responsible for reporting and paying all income and self-employment tax with respect to income derived from his performance of the Services under this Consulting Agreement.

3. Subcontract and Assignment

Contractor shall not assign, subcontract or transfer any obligation or interest in this Agreement or any of the Services without LMRWD's written consent. Written consent to any subcontracting, assignment or transfer shall not relieve FLA from his responsibility to perform any part of the Services, nor in any respect its warranty, insurance, indemnification, duty to defend or agreement to hold harmless with

respect to the Services. FLA shall incorporate this Agreement as an exhibit to any assignment, subcontract or transfer agreement.

4. Warranty and Indemnification

FLA warrants that it will perform the Services in accordance with usual standards of professional care. FLA shall defend and hold harmless the LMRWD up to the amount of compensation that FLA has received.

5. Payment for Services

The LMRWD shall represent the LMRWD on legislative issues for 2018. LMRWD agrees compensate FLA in the amount of \$20,000 for services beginning January 1, 2018 through December 31, 2018, payable in five equal monthly payments of \$3,333.33 beginning January 1, 2018 through May 30, 2018, and a sixth payment of \$3,333.35 to be paid in November, 2018.

Payment will be made within 30 days of receipt of invoice. Consistent with its ethical obligations, FLA may withdraw for non-payment.

6. Termination

The Agreement shall remain in force from January 1, 2018 through December 31, 2018.

The LMRWD may terminate this Agreement at its convenience, by a written termination notice by certified mail, stating specifically what prior authorized or additional services is required for FLA to complete. FLA shall receive full compensation for all authorized work performed prior to the receipt of notice of termination. In the event of termination of this Agreement on or after May, 2018, FLA shall receive full compensation for services under this Agreement. All amounts of the \$20,000 payment for services not previously paid shall become due and payable on June 1, 2018 or 30 days after receipt of notice of termination.

FLA may terminate this Agreement by providing sixty (60) days written notice to the LMRWD. FLA will perform the Services until the expiration of the 60-day notice period. FLA will not be compensated for any Services beyond this 60-day notice period.

7. Waiver

The failure of either party to insist on the strict performance by the other party of any provision or obligation under this Agreement, or to exercise any option, remedy or right herein, shall not waive or relinquish such party's rights in the future to insist upon strict performance of any provision, condition or obligation, all of which shall remain in full force and affect. The waiver of either party on one or more occasion of any provision or obligation of this Agreement shall not be construed as a waiver of any subsequent breach of the same provision or obligation, and the consent or approval by either party to or of any act by the other requiring consent or approval shall not render unnecessary such party's consent or approval to any subsequent similar act by the other.

Notwithstanding any other term of this Agreement, the LMRWD waives no immunities in tort. This Agreement creates no rights in and waives no immunities with respect to any third party.

8. Insurance

At all times during the term of this Agreement, FLA shall have and keep in force the following insurance coverage:

A. Automobile liability: For any personal vehicle used in performing the Services, combined single limit each occurrence coverage for bodily injury and property damage covering all owned and non-owned vehicles, \$1 million.

B. General liability: \$1 million each occurrence and aggregate, covering completed operations and contractual liability.

9. Compliance with Laws

FLA shall comply with the laws and requirements of all federal, state, local and other governmental units in connection with performing the Services, and shall procure all licenses, permits and other rights necessary to perform the Services. FLA will not commence work until it has completed the necessary registration as a lobbyist under state law.

FLA hereby acknowledges that all of the data it creates, collects, receives, stores, uses, maintains, or disseminates in performing the Services may be subject to the requirements of the Government Data Practices Act of Minnesota Statutes Ch. 13, and that FLA must comply with those requirements as if it were a covered government entity.

10. Continuation of Obligation

It is understood and agreed that document retention requirements shall survive the completion of the Services and the term of this Agreement as required by law.

11. Choice of Law, Venue and Jurisdiction

This Agreement shall be construed under and governed by the laws of the State of Minnesota.

12. Whole Agreement

The entire agreement between the two parties is contained herein and this Agreement supersedes all oral agreements and negotiations relating to the subject matter hereof. Any modification of this Agreement shall be valid only when reduced to writing as an amendment to this Agreement and signed by the parties hereto.

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto execute and deliver this Agreement.

Frenette Legislative Advisors

**LOWER MINNESOTA RIVER
WATERSHED DISTRICT**

Lisa Ann Frenette

By

Its _____

Date: _____

Date: _____

people out. Administrator Loomis said there is also a wire that was put up to keep vehicles out.

Administrator Loomis questioned the maintenance of Vernon Avenue. Since the city has indicated that the District is responsible for maintaining Vernon Avenue would \$1 - \$2 per yard be enough to cover maintenance of the roadway. Mr. Luke commented on the potholes and said they will be back every year. He said they fill the potholes before the private material is hauled out and the potholes are back

Administrator Loomis had concerns about the city's view of material being sold on a first come first serve basis. She wanted to talk to the city before any material would leave the site. Mr. Luke said it is a little more formal than someone just showing up with a truck and taking material. He also said that if you run into problems with anyone you sell material to, then you just don't do business with them.

The Board thanked Mr. Luke and agreed not to work on the RFP right now.

iii. Private Dredge Material Placement

No new information since last report

B. Watershed Management Plan

Administrator Loomis said the comment log will be emailed and posted on the website. She reviewed the schedule of the public information meetings. Meetings have been scheduled with Bloomington, Eden Prairie and Burnsville. Staff will make a presentation to the Carver City Council. Staff will also make one last offer to cities for information meetings.

President Shirk asked about the timeline and getting approval of the board before any information is pushed out to the public. Administrator Loomis said staff doesn't want to go out to the public until staff is sure the Board is comfortable with the plan. President Shirk asked about the cost for a homeowner to get a certification from an engineer as is required by the plan. Administrator Loomis said it will depend on what the proposed project is. Manager Raby said from his perspective anyone who is proposing to do something extensive would want to have the geotechnical done. He also agreed it would be dependent upon what is being proposed.

Administrator Loomis noted legal counsel will be at the city meetings as well as the TAC meeting. Board members are also invited to attend.

C. 2018 Legislative Action

Administrator Loomis said she has the agreement with Lisa Frenette and is working with Legal Counsel to refine the agreement. She asked that the Board approve the agreement conditionally, subject to staff working out the agreement with Ms. Frenette.

Manager Raby agreed and commented on some specific items in the agreement. He said the scope of work needs to be more flexible and the navigation channel is the primary need, but we may have additional needs. He questioned the payment schedule. Administrator Loomis said she was shocked by the cost of lobbying, but both proposals we had were similar. She said that we were getting a good deal from Mr. Harnack

Manager Raby also pointed out the termination clause needs to be reworded and questioned insurance requirements. He also asked about having her registered to lobby for the LMRWD. Administrator Loomis said she has spoken with Ms. Frenette and asked her to register.

Manager Raby made a motion to authorize staff to work with legal counsel to prepare the agreement with the above suggestions. The motion was seconded by President Shirk. The motion carried unanimously.

D. Website Redesign

Administrator Loomis said she has a meeting scheduled for Friday. We should be able to get it up and running sometime in February

E. Education and Outreach Plan

i. Education and Outreach Coordinator

She is working on updating the job position as proposed at the last meeting.

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

There is no new information since last report.

iii. Citizen Advisory Committee

There is no new information since last report.

F. LMRWD Projects

i. Eden Prairie Area #3 Stabilization

No information other what was reported in the Executive Summary.

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

No information other what was reported in the Executive Summary.

iii. Floodplain Lake Coring Project with Freshwater Society

Administrator Loomis showed a PowerPoint presentation provided by Carrie Jennings. Cores were taken from Colman Lake in Hennepin County and Rice Lake in Scott County to be compared to nearby upland lakes. Both of these lakes (Colman and Rice) are frequently inundated by flood waters and both were flooded when the sediment cores were taken. She showed maps showing transects where cores were taken from each lake. She noted researchers said it is apparent that both lakes are receiving a considerable amount of stormwater. They based that on the observation of the green algae in both lakes. She showed several pictures of the cores at the lab and how the cores are sampled. She had pictures of the equipment used to scan cores. This project was showcased on one of the Dean's tours and visitors were impressed that work of this kind was being used locally. Graphs were shown with information that had been determined from the sampling of the cores taken. The Graphs showed the different kinds of pollens that were taken from the samples. She said one of the things the pollen counts show so far is that the cores did not go back far enough. They will also look at oak pollen to see if that will tell them anything.

The researchers were surprised with the depth of the sediment and are considering going back to take additional, longer cores. Snelling Lake will be added as cores from Snelling Lake are on file. Manager Hartmann asked to be notified when additional cores are taken, as he would like to be there.

iv. Seminary Fen ravine stabilization project

No information other what was reported in the Executive Summary.

v. Analysis of Dakota County Groundwater Project

No information other what was reported in the Executive Summary.

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

No information other what was reported in the Executive Summary.