



# LOWER MINNESOTA RIVER WATERSHED DISTRICT

Minutes of Regular Meeting

Board of Managers

Monday September 17, 2018

Scott County Law Enforcement Center 301 South Fuller Street, Shakopee, MN 7:00 p.m.

Approved January 7, 2019

## 1. CALL TO ORDER AND ROLL CALL

On Monday, September 17, 2018, at 7:00 PM in the Room 241 of the Scott County Law Enforcement Center, 301 South Fuller Street, Shakopee, Minnesota, Vice President Hartmann 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: Manager Adam Frey, Manager David Raby and Manager Jesse Hartmann. In addition, the following were also present: Linda Loomis, Naiad Consulting, LLC, LMRWD Administrator; Della Schall Young, Young Environmental Consulting Group, LLC, Technical Consultant; John Kolb, Rinke Noonan, Legal Counsel; Clay Dodd, Patchin Messner Dodd & Brumm, consultant for the LMRWD, Eric Watruba, Burns & McDonnell, LMRWD Engineer; Jake Hamlin and Greg Oberle, CHS; Jeff Webb, Ruben Chong, Dean Jacobs, Cargill; Lisa Brickey, Mosaic; Tim Koch, Randy, Donnell, Stephen Kucala, Ceres Global; Mike Bush, Superior Minerals; Kirby Templin, City of Shakopee, Water Resources-Environmental Engineer; and Lindsey Albright, Dakota SWCD

## 2. APPROVAL OF THE AGENDA

Administrator Loomis requested the removal of the July 18, 2018 and August 15, 2018 Regular Meeting minutes. She requested the addition of Item 7. F. ii. Old Business - Riley Creek Cooperative Agreement.

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

## 3. CITIZEN FORUM

There were no citizens who wished to address the board.

## 4. CONSENT AGENDA

Vice President Hartmann introduced the item.

**A. Approve Minutes for June 13, 2018, ~~July 18, 2018 and August 15, 2018~~ Regular Meeting**

**B. Receive and file Financial Report**

**C. Presentation of Invoices for payment**

- i. **Barr Engineering - No-rise modeling & Riley Creek**
- ii. **Culligan Bottled Water - bottled water for LMRWD office**
- iii. **Managers - 1st half 2018 per diem & expenses**
- iv. **Metro Sales - Payment for copier service agreement**

- v. **MAWD - reimbursement to MAWD for additional bus expense related to MAWD Summer Tour**
  - vi. **Rinke Noonan Attorneys at Law - June 2018 legal services**
  - vii. **Steinkraus Development LLC - for August & September 2018 office rent**
  - viii. **Burns & McDonnell - May & June 2018 engineering/technical services**
  - ix. **US Bank Equipment Finance - September 2018 copier rental**
  - x. **Waypoint Insurance Advisors - Directors & officers insurance**
  - xi. **Western National Insurance Company - Liability insurance**
  - xii. **Freshwater Society - payment for Lake Coring Project**
  - xiii. **Naiad Consulting, LLC - for June & July 2018 admin services & expenses**
  - xiv. **USGS - Annual payment for sediment and flow monitoring**
  - xv. **Dakota County SWCD - 2nd Quarter monitoring service**
  - xvi. **TimeSaver Off Site Secretarial Services - for preparation of August 2018 meeting minutes**
- D. Resolution 18-12 Approving the Local Surface Water Management Plan for the City of Mendota Heights**

**Manager Raby made a motion to approve the consent agenda with the July 18, 2018 and August 15, 2018 meeting minutes removed. The motion was seconded by Manager Hartmann. The motion carried unanimously.**

## **5. Public Hearing**

### **A. The matter of the None Foot Channel Permanent Disposal Sites Acquisition and Development Basic Water Management Project**

Manager Hartmann introduced the item and explained the proceedings for the hearing.

Administrator Loomis provided a brief description of how notice of the public hearing was distributed, including direct mail to owners of record of all impacted properties. Notices were mailed to address of record in the Counties' tax systems. Public notice was also placed in the Star Tribune.

Attorney Kolb provided some history and background for the proceedings. He said the district previously performed an analysis of benefits of the navigation channel and has documented \$22.5 million in total annual savings using barge transport which is made possible by the dredge project. This is a capital improvements project and is presented as such in the LMRWD Watershed Management Plan.

Attorney Kolb noted that it is important to note that the LMRWD was successful with negotiating with the Corps of Engineers to eliminate the need for additional dredge sites. The COE has agreed to place dredge material at the LMRWD site at RMP 14.2, if the LMRWD pays the cost to transport material dredge from below I-35W. Attorney Kolb said at one point this project was \$300,000 in debt and is now currently at \$200,000 in debt. He said they are now looking at how to go forward and how the project can be sustainable.

Attorney Kolb said the LMRWD was successful in obtaining State of Minnesota bond money, which is sitting in trust with the State. If the project moves forward, those funds will be drawn upon first. He detailed the options available to the LMRWD to pay for the cost of the project.

Attorney Kolb reported on the value analysis that was used to determine value related to the project and said this is not an appraisal. The LMRWD will use the consulting appraiser's report as a basis to determine benefits if it chooses to do so.

Attorney Kolb stated as part of the proceedings a copy of the project plan was submitted to the board of Department of Natural Resources and Board of Water & Soil Resources. No negative

comments have been filed regarding the project plan. Mr. Kolb detailed information contained in the notice of the hearing that was distributed to the public. He explained what was contained in the hearing notice that was sent and published in the newspaper. He outlined explained that once public comments have been taken, the Board will then deliberate, taking into consideration the engineer's report, the consulting appraiser report, comments received, agency review comments staff recommendations and any other information relevant to the proceedings. If the Board determines to order establishment of the project, the order must include findings. Because the project might be funded in part by benefitted lands assessment findings must include a determination of each benefitted properties portion of any funds to be raised by assessment. Mr. Kolb then provided possible options for the Board to take, should they determine to move forward with the project.

Mr. Kolb asked if the Managers had any questions and turned the meeting over to Della Young.

Della Shall Young introduced herself. She introduced Eric Watruba, senior environmental engineer with Burns & McDonnell, the environmental engineer for the project. Ms. Young explained the roles of Burns & McDonnell and Young Environmental Consulting Group, LLC. She explained preliminary details of the studies and work needed on the site.

Mr. Watruba explained that Burns & McDonnell looked at the cost the LMRWD can expect to incur over the next twenty year. The cost estimate included; maintenance items, capital projects and operations. Mr. Watruba commented two types of material temporarily stored on site; material from the navigation channel, which is a sandy material and private slip dredge material, which is siltier. He spoke about the time it takes for each type of material to dewater.

He said the cost analysis focused on bigger pictures items and spoke about capital improvement projects, site operations and maintenance and regulatory consideration. He first spoke about capital projects the district had asked him to look at; reconfiguration of the site, replacement and maintenance of the culvert and upgrading Vernon Avenue, leading into the dredge site. He said they looked at on-site operations and maintenance items; on-site management of the dredge material, routine maintenance of the site, any erosion issues due to heavy rain and flooding events and general upkeep of the site. He explained that it is the intent of the LMRWD to sell dredge material for beneficial re-uses, but that if no market for the material can be found it would have to be disposed of off-site at a cost to the District to ensure there is room for placement of new material when needed. Taking excess material to a local landfill was figured into the cost analysis.

He said regulatory changes were also taken into consideration. Regulations are changing all the time; floodplain & wetland regulations, threatened & endangered species and water quality.

Mr. Watruba said the total cost for reconfiguration of the site is majority of the expense and comes in at \$1.5 million. The reconfiguration of the site includes creating berms that are more permanent around the site and for containment of private dredge material and incorporates operational items.

Culvert replacement and Vernon Avenue upgrade are estimated to cost about \$103,000 and \$125,000 a piece. These two improvements benefit both the District management of material from the main channel and the private dredge material.

Mr. Watruba showed some pictures. He identified where the private dredge material is stored and the material from the main channel is stored. He stated the estimated capacity of material storage. It is estimated that about 75,000 cubic yards of material from the main channel can be stored. He identified access roads and loading and off loading points.

They looked at annual costs the District can expect to incur. Over the course of the next 10-year and 25-year period, the largest cost incurred is hauling of the material to a local landfill every 3 years, if beneficial re-uses of the material cannot be found.

He then explained other costs that were taken into consideration.

Ms. Young said the evaluation of the site has everything to do with regulations. She explained some of the regulations imposed on the District by the city of Savage, such as removing material off the site in case of a flood event. The city does not want to increase the flood stage in the city because of storage of material. Analysis of flood frequencies and elevation were determined and used in the cost analysis. The District is working with the city to determine when material would need to be removed and a permanent flood elevation to manage the site to.

She explained the implications wetlands have on the management of the site. She said the actual footprint of any wetlands needs to be identified so that any impacts to wetlands can be avoided. The cost of this type of analysis was included in the estimate of cost of site operations. She said the District also needs to determine if any wildlife is impacted by the operation of the site and if the wildlife are threatened and endangered species that call for special attention.

Ms. Young said the last and final part is looking at water quality. She noted that water quality regulations are changing regularly. She noted that the MPCA has been looking at soil reference values for pollutants that might be contained in dredge material and how the District may have to deal with such regulations.

Mr. Watruba summed up the overall evaluation. He said the total cost is about \$4.3 million over 10 years and \$11.8 million over 25 years. He noted that these numbers did not include the cost of money needed for emergency evacuation of the site in the event of a flood.

Attorney Kolb said that the analysis uses worst case numbers. He noted the District has gone out and secured state funding to address some of the costs identified in the analysis and expects to continue to seek state funding, to the extent necessary. The Board has consistently maintained that the channel benefits go beyond the confines of the LMRWD.

Attorney Kolb said that if the District were called upon to expend funds on any of the large expenses called out in the cost analysis it would likely use a variety of funding sources; district wide levy, state funding and assessment of benefitted properties. He commented the special benefits study was prepared to help the Board determine benefits. Mr. Kolb explained all the different data the appraiser used. He said this is a recreation and commercial navigation. Attorney Kolb pointed out the study area. The properties potentially benefitted were identified and listed. Mr. Kolb explained the obligations of the District and how meeting that obligation has changed since the beginning of the District.

He provided the Board with a listing of the benefitted properties and how the benefits are apportioned.

Attorney Kolb reviewed the options for the board.

Manager Hartmann called for a 5-minute recess at 8:02 p.m.

Manager Hartmann reconvened the meeting at 8:07 p.m and invited those wishing to the podium.

Jake Hamlin, Director of State Government Relations, CHS, Inc., 5500 Cenex Drive, Inver Grove Heights, respectfully asked the decision be deferred until a detailed presentation about the site cost analysis; special benefit study is made to all potential benefitting properties. He also asked

for an economic impact analysis. Mr. Hamlin asked for an economic impact analysis of the project and to explore other public and federal funding options.

President Hartmann asked staff to address Mr. Hamlin's questions. Attorney Kolb said the detailed presentation is tonight. He asked what other information the properties might be addressed. He noted that He said an informational meeting could be held with those properties that might be affected.

Attorney Kolb said the funding options are limited by agreement with the Corps of Engineers and said he will provide the documents to anyone that would like to see them. He said that agreements with other local sponsors may be different from the obligations of the LMRWD identified in the agreement with the Corps, because of the date the Minnesota River project was identified by the federal river and harbors act. He reminded the Board that additional study, like and economic impact analysis would come out of the state funding the District received. He said this hearing could be recessed to a later date with instructions from the board to set up an informational meeting. He urged other parties, like CHS, to approach the state to secure more regular funding by the state.

Rubin Chong, Plant Manager, Cargill, comment on the cost and asked if this will increase the cost to use the land for placement of private dredge material. He asked why the cost of reconfiguration is solely charged to the private use of the site. Mr. Watruba said the reason why the site was listed as a private cost is because the reconfiguration of the site is necessary for the placement of private dredge material. He explained some of the constraints of the site, such as the high voltage power lines and the need to avoid wetlands and such.

Mr. Kolb explained the berms containing the private dredge material were not constructed to any specification and that the material does not dry out much over the year it remains on the site. He noted this is only an estimate and are preliminary and based on a worst case scenario. More definite numbers will be available once the District begins design and the Board will decide what gets paid for and how the costs will be distributed. Mr. Chong noted that Cargill is almost 50% of the cost and will be highly impacted. He noted he would like to respectfully disagree with the proposed action.

Randy Donnell, Interior Facilities Manager and Tim Koch, Co-manager, Savage Riverport facility, said they are concerned about the emergency removal material in the event of floods. He said there have already been two high water events this year. He said to have to remove material in the event of a flood would be very expensive. He noted that requirement should be removed. Manager Raby said the District would like to have it removed too. Administrator Loomis said the District does not have control over that condition. Ms. Young said this is part of the flood plain ordinance and flood plain management. She explained discussions the District has had with the city and that the District is working to better define that condition.

Mr. Donnell said they are having a tough year and they don't mark up the price of grain. The price of grain is established by a world market and aren't able to readily pass this cost on. He said they pay over \$100,000 a year in dredging and removal. Mr. Koch said dredging of the private slip is necessary and increasingly expensive.

Mr. Donnell requested to do what is necessary and nothing beyond what is necessary. He asked the expense be shared since they are a member of the community and pay over \$300,000 in property taxes a year. He explained that if it becomes too expensive to maintain the channel it will become uneconomic for them to continue shipping by river. That will impact the larger community.

Dean Jacobs, Tax Advisor for Cargill, said they didn't realize this was the public hearing. He commented on the material flooding back in to the river. He questioned if the water level will go down if the material is taken out. He argued that dredging is creating capacity and it doesn't make sense to him that it impacts the flood stage. Attorney Kolb said the storage is self-mitigating. He said they will work with the legislature.

Mr. Jacobs commented on the containment walls and asked about the charge. He wanted to know why the entities placing private dredge material are being charged for construction of the berm for the containment of the material placed by the Corps of Engineers.

Mr. Watruba responded to Mr. Jacob's question. Mr. Jacobs asked the board to consider not charging private parties if it is not a benefiting cost.

Mr. Jacobs talked about the disputes with the county assessor's office over the value of the Port Cargill property. He questioned if Cargill is successful in reducing the county's valuation of the property, how does that impact future benefitted assessment?

Lastly, Mr. Jacobs said that not all of the Cargill owned parcels have operations that use the channel. He requested that those parcels not reliant on the channel be excluded from consideration. Attorney Kolb said there is the ability to change the assessments. He said it is a question for the Board as to how often the apportionment of benefits should be revisited. Attorney Kolb also noted that the use of individual parcels has been considered in the determination made by Mr. Dodd.

President Hartmann asked if there was anyone else present wishing to speak.

Attorney Kolb recommended not closing the public hearing and continue the hearing to another date, with instruction to staff to hold an informational meeting with landowners. He also added that the Board direct staff to look at addressing the flood plain issues and engineering to look at what is necessary in the project.

**Manager Raby made a motion to continue the public hearing with the above statements to Monday, November 19 at the Carver County Government Center at 7 p.m. The motion was seconded by President Hartmann. The motion carried unanimously.**

## 6. NEW BUSINESS

### A. Minneapolis/St. Paul Airport boundary changes between LMRWD and Minnehaha Creek WD

Administrator Loomis said the airport is doing some work and its engineer looked at the hydrology and notified the LMRWD that the boundaries do not match. Administrator Loomis said she has spoken with the Airport Commission representative about aligning the watershed boundaries to match the hydrological boundaries.

Manager Raby asked how much effort would be involved. Attorney Kolb explained the process. Manager Hartmann asked if there is money in the budget. Administrator Loomis said there is money for boundary adjustments. The board agreed to move forward.

### B. 2017 Annual Report

Administrator Loomis said the report is due 180 days at the end of the fiscal so the report is a little late. She noted there are minor edits that will be made.

**Manager Raby made a motion to authorize staff to finalize the report. The motion was seconded by President Hartmann. The motion carried unanimously.**

### C. Election of Officers

Attorney Kolb explained the process.

Manager Raby nominated Manager Hartmann to be president. Manager Frey seconded the nomination. Manager Raby made a motion to cast a unanimous ballot electing Manager Hartman as President. Manager Frey seconded the motion. **The motion carried unanimously.**

President Hartmann nominated Manager Frey as vice president. Manager Raby seconded the nomination. President Hartmann made a motion to cast a unanimous ballot electing Manager Frey as Vice President. Manager Raby seconded the motion **The motion carried unanimously.**

President Hartmann nominated Manager Raby for the combined position of Secretary/Treasurer. Manager Frey seconded the nomination. President Hartmann made a motion to cast a unanimous ballot electing Manager Raby as Secretary/Treasurer. Manager Frey seconded the motion. **The motion carried unanimously.**

**D. Support for MAWD emphasis on Chloride regulation legislation**

Administrator Loomis talked about putting more emphasis on the chloride regulation and supporting limited liability for commercial salt applicators. She said a resolution was included in the meeting packet.

**Manager Hartmann made a motion to Adopt Resolution 18-13. The motion was seconded by Manager Raby. The motion carried unanimously.**

**7. OLD BUSINESS**

**A. 2018 Financial Audit**

Administrator Loomis talked about what the other districts pay and who they use. She said a letter of engagement from Red Path was included in the meeting packet. This is a three letter of engagement so it includes audit for 2018, 2019 and 2020.

The Board discussed which firm other watershed districts use. Administrator Loomis replied with information she had gathered from other districts.

**Manager Raby made a motion to accept Red Path's proposal and authorize staff to execute an agreement. The motion was seconded by President Hartmann. The motion carried unanimously.**

**B. Dredge Management**

Administrator Loomis didn't have anything to add other than what was in the packet. Managers agreed that they had discussed this issue under the public hearing.

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

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

**iii. Private Dredge Material Placement**

**C. Watershed Management Plan**

Administrator Loomis said BWSR Board is expected to approve the plan at its next meeting, so the LMRWD can adopt the plan at the next meeting.

**D. 2019 Legislative Action**

Administrator commented on asking the state to exempt the dredge placement site from state and local floodplain regulation. Brief discussion was held on this option and the modeling the LMRWD is doing to determine the impact on flood elevations caused by storage of dredge material.

**E. Education and Outreach Plan**

Administrator Loomis had nothing to report.

**F. LMRWD Projects**

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

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

**ii. Riley Creek Cooperative Project with Riley/Purgatory/Bluff Creek WD**

Administrator Loomis said she received a cooperative agreement from Riley/Purgatory/Bluff Creek Watershed District (RPBCWD). That the Board should approve if they want to participate in this project with the RPBCWD.

Manager Raby asked if there are any estimates on the sediment reduction. Administrator Loomis said she believes the reductions were probably included in the feasibility report. She added that legal counsel has reviewed the agreement and didn't have any concerns. Manager Raby commented on being partners on the plan. Ms. Young said there was a comprehensive project on Riley Creek which was the initial project and that is most likely what is being referred to.

Manager Raby asked about the 30-day review period and if that is adequate time. Ms. Young said usually 30 days is ok. It depends on the magnitude of the change.

Administrator Loomis said the Board could ask RPBCWD to come and walk the Board through the proposed project.

**Manager Raby made a motion to accept the agreement. The motion was seconded by Manager Hartmann. The motion carried unanimously.**

**iii. Seminary Fen ravine stabilization project**

Administrator Loomis said final payment of the grant has been requested.

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

Administrator Loomis had nothing to add.

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

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

**G. Project/Plan Reviews**

**i. Hennepin County - CSAH 61 - Flying Cloud Drive**

Administrator Loomis reported the LMRWD was notified of an inspection of this project by the MPCA. She assumed the LMRWD would be invited to further discussions of this project since it is within the LMRWD. She said the District was not notified of a follow up inspection that was conducted of the project. She has contacted the City of Eden Prairie to make sure the LMRWD is notified going forward. She has been informed that some areas that have been damaged are going to be difficult to restore because they are hard to access.

Staff is recommending that the LMRWD begin inspecting the construction project, because of ongoing issues related to failure of construction BMPs.

**Manager Hartmann made a motion for staff to conduct inspections of the construction site. The motion was seconded by Manager Frey. The motion carried unanimously.**

**ii. MNDOT - I494/TH 5/TH 55 Mill & Overlay project**

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

**iii. MNDOT - I35W Bridge Replacement**

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



- iv. **City of Shakopee - Amazon Fulfillment Center drainage**  
No information other than what was reported in the Executive Summary.
- v. **City of Eagan Comprehensive Plan & Local Water Management Plan**  
No information other than what was reported in the Executive Summary.
- vi. **City of Savage - Magellan Pipeline Project**  
No information other than what was reported in the Executive Summary.

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

**7. COMMUNICATIONS**

- A. Administrator Report:** Administrator Loomis reported that if any Managers are interested in attending the MAWD conference, they should book their rooms now. She said she is willing to make reservation, but Managers can reserve rooms on their own. She wasn't sure if the Board received the same notification from MAWD as she did.
- B. President:** No report
- C. Managers:** No report
- D. Committees:** No report
- E. Legal Counsel:** No report
- F. Engineer:** No report

**8. ADJOURN**

**Manager Hartmann made a motion to adjourn. Manager Raby seconded the motion. The meeting was adjourned at 9:36pm. The next meeting of the LMRWD Board of Managers will be Wednesday, October 24, 2018 and will be held at the Carver County Government Center, 600 East 4th Street, Chaska, MN.**

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Dave Raby, Secretary

Attest:

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Linda Loomis, Administrator