



LOWER MINNESOTA RIVER WATERSHED DISTRICT

Minutes of Regular Meeting

Board of Managers

Monday, November 19, 2018

Carver County Government Center, 602 East 4th Street, Chaska, MN 7:00 p.m.

Approved January 7, 2019

1. CALL TO ORDER AND ROLL CALL

On Monday, November 19, 2018, at 7:00 PM in the Board Room of the Carver County Government Center, 602 East 4th Street, Chaska, Minnesota, 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: Managers Adam Frey, David Raby and President 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; Lindsey Albright, Dakota SWCD. Randy Donnell, Savage Riverport; Jake Hamlin, CHS, Inc.; Lee Nelson, Upper River Services; Dean Jacobs and Becca Martin, Cargill; Lisa Brickey Mosaic; Matt Friedrich and Mike Bush, Superior Minerals; and Taylor Luke, LS Marine.

2. APPROVAL OF THE AGENDA

Administrator Loomis requested the removal of the September 17, 2018 and the October 24, 2018 regular meeting minutes.

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

3. CITIZEN FORUM

There were no citizens who wished to address the board on non-agenda items.

4. CONSENT AGENDA

President Hartmann introduced the item.

A. Approve Minutes for ~~September 17, 2018 and October 24, 2018~~ Regular Meeting

B. Receive and file Financial Report

C. Presentation of Invoices for payment

- i. Burns & McDonnell - July & August 2018 Engineering services
- ii. Star Tribune - Publication of 2019 Budget public hearing notice
- iii. State Department of Administration - publication of Request for proposals for engineering and legal services
- iv. US Bank Equipment Finance - November 2018 copier rental
- v. Young Environmental Consulting Group, LLC - August 2018 technical & engineering services
- vi. Coalition for a Clean Minnesota River - sponsorship of 11th Minnesota River Congress
- vii. Daniel Hron - November 2018 office rent

- viii. **Metro Sales - payment copier maintenance service agreement**
 - ix. **Rinke Noonan - September 2018 legal expenses**
 - x. **Star Tribune - Publication of 2nd notice for 9-foot channel public hearing**
 - xi. **Naiad Consulting, LLC - August 2018 administrative services & expenses**
 - xii. **Time Saver Off Site Secretarial - preparation of August meeting minutes**
 - xiii. **HDR Engineering, Inc. - website maintenance**
 - xiv. **Young Environmental Consulting Group, LLC - September 2018 technical & engineering services**
- D. Dakota County Landscaping for Clean Water Grants**
- E. 2019 Agreement with Time Saver Off-site Secretarial**

Manager Raby made a motion to approve the consent agenda with the September and October meeting minutes removed. The motion was seconded by President Hartmann. The motion carried unanimously.

5. Public Hearing

A. Continuation from the September meeting

President Hartmann gave a brief overview and explained possible action to be taken by the Board. He then asked if anyone was present that wished to address the Board.

Dean Jacobs, Tax Advisor for Cargill, handed out some materials he prepared. Mr. Jacobs addressed the board back in September. He noted that Cargill is comprised of an east and west facility. The east facility has multiple businesses and some of those do not have any benefit or association with using barges or the river for transportation. Mr. Jacobs provided his analysis of which parcels he believes benefit and those that do not. He went through the list of parcels and explained how Cargill determines expenses for different business units housed at Cargill East. He said he included Mosaic in the analysis, because Cargill has a building on the Mosaic site. He stated they are requesting that \$6.25 million in buildings and excess land be removed from consideration for benefit.

President Hartmann asked for a clarification of the uses of some of the building Mr. Jacobs had labeled in the handouts he provided to the Board. Mr. Jacobs answered President Hartmann's questions.

Jake Hamlin, Director of Government Relations, CHS, Inc., thanked the board for the opportunity to comment and for the opportunity to work with the District over the course of this process. He also thanked the Board for including the reference to the resolution. He feels there are other opportunities to fund management of dredge material. He asked that the current process be abandoned to allow for more time to work with the city and others to find alternates sources of funding. Manager Raby asked how much time Mr. Hamlin thinks is needed. Mr. Hamlin said it depends on what level the city or county want to participate in but he thought 12-18 months.

Randy Donnell, District Manager of Riverland Ag, said there has been a lot of talk about a recession and commented on prices for agricultural products. He said an assessment of this level will cause hardship on the businesses operating along the channel, because they do not control the price of grain. He doesn't understand why the changes to the site are needed as the site has been used for years. He wanted to know what has changed. He questioned if this is necessary and if there are other alternatives available. He said if this project is absolutely necessary, he wants the board to think about the \$100,000 that is spent every year dredging private terminals. Material dredged from the private terminals comes from upstream and none of the businesses that may be asked to pay are responsible for the sediment that must be removed from the channel and terminals. He said Riverland operates on a very tight margin and

P & L. They do not handle salt or fertilizer, only grain. Mr. Donnell said they pay \$30,000 a month in property taxes and talked about his ability to recoup expenses if an assessment were to be made. He said if they reduce what they pay the farmer, farmers will look for less expensive alternative; eventually, leading to business going away. He compared the channel to a freeway system that should be kept open to keep commerce in this area. He noted the Channel has widespread benefits. He said the true beneficiaries are the people upstream that have drain tiled and farm without consideration of the downstream impacts. He reiterated that the Board evaluate whether this project is really necessary, and if so, execute it with the least amount of expense and then spread it over the widest tax base as much as possible.

Lisa Brickey, manager of the Mosaic warehouse in Savage, said the whole process feels like giving a blank check because they don't know how much exactly or exactly who is going to do it or when. Ms. Brickey noted that MNDOT is planning an overpass at Dakota/Yosemite Avenues & TH 13 in 2022 that is going to cost about \$22 to \$25 million. She said the Mayor of Savage told her that people in southern Minnesota were responsible for getting that project going because they wanted better access to the ports. She said maybe they would be willing to pay to keep the ports open. She thought that maybe there would be other money available.

Lee Nelson, Upper River Services, said they service the benefitting property owners. They move the barges to and from Savage. He said he supports Mr. Hamlin's suggestion for more time. He is concerned with the report prepared by Mr. Dodd about who benefits. He provided some history of the District and asked why the cities in the area would have petitioned to form the District if there was no benefit to the communities. He listed many others that he believes benefit from the Channel. He said some of the properties identified as benefitting do not use the river at all, yet they are in the report. He said he wanted more time to look at ways that all the beneficiaries can help pay for the project.

Mike Bush, Superior Mineral Companies, said they are a small family owned company. He talked about the company and provided some background about why they are worried about this assessment. If the board passes the assessment the company will have to pass that increase on to the customers. This would raise the price of shingles in the area or cause manufacturers to look for other source. Superior Minerals recently purchased additional land in the area and this capital expenditure will take them years, possibly decades to pay off. Mr. Bush asked the board to remember all the good the companies have done.

Rebecca Martin, Cargill, said she wanted echo the comments of Mr. Hamlin and Mr. Nelson. She asked that the decision be postponed to allow them more time to look for other funding sources.

Seeing and hearing no one else wishing to speak, President Hartmann closed the public hearing.

Attorney Kolb wanted to clarify a few things for the board. The Board is not deciding tonight to assess anyone; all they are doing is turning on a legal authority. So when it comes time to make decisions on how to fund modifications of or improvements to the dredge material handling site or even maintenance, the Board has this additional tool at its disposal in addition to other authorities it has to raise revenues to do the work. He said the question was raised about the necessity of this project. He said the question is even simpler than that - does the District incur expenses in the operation of the site? The answer is yes. He then asked if the District has an obligation to maintain the site. The answer is yes. Staff recommended improvements to the site for various reasons.

He said the reasons for the staff recommendations are twofold. One is to increase the efficiency of management of the material; to configure the site in such a way as to allow material to

dewater faster so it can be removed from the site. The second reason is the site is at risk right now for the following reasons. The containment berms were not originally constructed to any engineering specification, there are certain requirements under the Conditional Use Permit from the City of Savage related to how the District has to manage and maintain the site, and there are stormwater management and compliance issues that the District can only get its arms around by reconfiguring the site. He continued, could the improvements be put off? Possibly yes, but putting off improvements doesn't change the fact that the district incurs certain expenses every year on the site just to maintain it, just to manage it.

He noted again that if the Board were to take an action, it would only turn on the authority to be able to make an assessment if the Board chose to do so. He said the District justified the use of state money to fund improvements on the site because the sediment filling in the channel and terminals is coming from outside the District and is therefore beyond the control of the District. He pointed out that the District added managing dredge material to its capital improvement plan, which allows the District to levy ad valorem tax across the entire district for some of those costs. He said the District could allocate expenses between the different sources of revenue rather than use one source to pay for it all. Attorney Kolb stated tonight is an acknowledgment and adoption of a benefits rule for these properties that would serve as the basis for allocation of those assessments if they were to be made. He also pointed out that before any assessment would be made there would be a hearing. He explained that there is time to explore alternative sources of funding before assessments would be made regardless of making a decision tonight. He said everyone that spoke this evening should partner up with the LMRWD at the State to request funding of managing dredge material by the State.

The big issue before the Board tonight is a policy issue; do they want to trigger this authority and have it as a tool or do they not. If they do then the Board would move toward adopting an order that would confirm a benefits rule. If they don't and the Board wants to keep things as they are with ad valorem tax and whatever money the District can secure from the State and work with those present to try to secure State funding, the Board could choose that as well.

Lastly, if the board determines they want to move forward and add this tool then they need to talk about the actual benefits determinations and assessments. If this is the direction, Mr. Kolb said he would like some clarification from Mr. Jacobs about the materials he provided. The concern Mr. Kolb has is the assessment done by Mr. Dodd did not go to the level of detail Mr. Jacobs provided tonight. Mr. Kolb said the dollar amount in the LMRWD documents are not the actual assessment, but only the value determined for individual parcels. He noted that if the Board chooses not to decide tonight they can continue this and provide direction to staff.

Manager Raby noted they are not making any decisions establishing any assessments at this point in time. He said the Board has always indicated that it would look at other sources of funding. He noted the Board should have every tool available to it when funding a project. He said he would like to go ahead and establish the benefits analysis approach to use in the event they need it.

Manager Frey said he agrees. They are not agreeing to anything other than the option.

President Hartmann said he too agreed. He noted the District has to do the site maintenance. He noted that we are all here for the same reasons and should use all tools available. He welcomes everyone's help to secure other sources of funding. He agrees with a lot of what was said tonight and they (the LMRWD) need help.

Manager Raby said there is additional time whether the Board authorizes this tool or not.

Manager Frey said others could help with some of the regulation imposed upon the District.

Lee Nelson asked the board to think about the message they are sending to the terminal operators. Is there anything that precludes the Board from making this decision in the future? He said that everyone talks about partnering, but then you don't want to partner with me until you have a larger hammer. He said to have this held over their heads is a rough way to get started. President Hartmann said that is not how he views this. He noted that if the LMRWD did not have the site it would be difficult for everyone to maintain the channel.

Manager Raby said that what the Board is being asked to do is to continue to allow all of the constituents of the LMRWD to fund the cost of managing dredge material and that they also are not responsible for material getting to the river. He thinks the District needs to have options to raise revenue and he views this as just one more options available to the District.

Attorney Kolb said noted that Mr. Nelson did give an accurate history of the founding of the District. Mr. Kolb noted that it is the obligation of the District, as local sponsor, to find sites for dredge material to be placed and that over the years it has become next to impossible to find sites to place dredge material and the District is now limited to this single site. He noted how the communities did benefit from the economic activity created by the channel. Taxes generated by the business activity went back into the communities.

Mr. Kolb said it is clear from the record that predecessors to this Board found there were specifically two types of benefits created by the channel; general benefits to the District that justified district-wide ad valorem taxes and then special and unique benefits to certain properties that were able to take advantage of the navigation channel. What it didn't do was to say that this property benefits in this way or that another parcel benefitted in other ways. It is true there is an economic engine generated by the navigation channel and it is important for the Board to keep that in mind as it proceeds. A residential property owner will pay more as a proportion of overall value in taxes to the District than commercial/industrial properties. If the Board is inclined to move forward, Mr. Kolb handed out findings for the Board to adopt. He did note there were some corrections needed if the Board wanted to adopt the resolution tonight.

Randy Donnell questioned when they look at other funding, if this vote, to open the door to assessing benefitting properties, would impact how the State would view any request for funds. Attorney Kolb said he said the State knows what means are available to the District and would advise that the District be very transparent when speaking to the State. He thinks this opens the door to let the state know why they should be doing something different. He said he would hope that everyone would be willing to tell the State the same story they have told the Board this evening; how the benefits of channel extend beyond the District, how an assessment will impact the business activity and how sediment coming from outside the District impacts them.

Manager Raby said he thinks the Board needs to move forward.

President Hartmann asked what the Board needs to do to wait until the next meeting to take action. Attorney Kolb said they can continue the hearing to a date and time certain without having to provide additional notice.

President Hartmann made a motion to recess the public hearing and continue to Wednesday, December 19th meeting at this location at 7 p.m. The motion was seconded by Manager Frey. The motion carried unanimously.

6. NEW BUSINESS

A. MAWD Annual meeting

Administrator Loomis said the MAWD Annual meeting is next week. The Board should appoint two delegates if any of the Board is planning to attend. No members indicated they will be

attending. Manager Hartmann asked if Board members could participate remotely. Administrator Loomis said MAWD does not have provisions for remote attendance.

Administrator Loomis explained the letter Board members were given from the Heron Lake Watershed District to the MAWD Board taking issue with statements made by speakers on the Minnesota River Boat Tour. She mentioned that she had spoken with a member of the MAWD Board about this and the issue the Board has with the MAWD dues structure. The MAWD Board member said she would be happy to talk to the Board at the January meeting.

B. Set dates for 2019 meetings

Manager Raby said he is leaving 1/9. The January meeting will be 1/7. The rest of the dates did not have any conflicts.

President Hartmann made a motion to set the 2019 meeting dates discussed above. The motion was seconded by Manager Raby. The motion carried unanimously.

C. 2018 Cost Share Application - Carver County

Administrator Loomis said she received a request from Carver County for LMRWD participation in a cost share project. The project has already started because the County did not realize the project was located in the LMRWD. The amount requested was \$2,400 and Carver County is paying for half so the district would pay \$1,200. Manager Raby noted they have the money in the budget. He commented on the sign.

Manager Raby made a motion pay the \$1,200 for the Carver County cost share. The motion was seconded by President Hartmann. The motion carried unanimously.

7. OLD BUSINESS

A. Dredge Management

i. Review Process for funding of maintenance of Navigation Channel

Administrator Loomis said there is no additional information to report other than what was in the meeting packet. Attorney Kolb noted a draft order was handed out regarding the assessment of benefitted properties and if the Board has any comments they should let staff know so that the comments can be incorporated into the document in time to be included in next month's meeting packet.

ii. Vernon Avenue Dredge Material Management site

No additional information other than what was reported in the meeting packet.

iii. Private Dredge Material Placement

President Hartmann asked about the disposal of private dredge material. Administrator Loomis noted that Cargill has found someone to take the private dredge material off the LMRWD site. Material will now be taken off site in smaller amounts, so the traffic will not be impacted as much it is when site is emptied in total. Material will be taken by a customer of Cargill's. It is expected this option will be less costly to the terminal operators.

B. Watershed Management Plan

Administrator Loomis stated the resolution adopting and implementing the approved Plan was adopted at the October meeting. She said notification has been sent to all parties required to be notified.

C. 2019 Legislative Action

Administrator Loomis said proposed legislative positions were provided in the meeting packet. Manager Raby thought it was a good list. Administrator Loomis noted funding dredge

management will be to first priority. She said some of these items were placed here, in case it comes up at the legislature. The LMRWD can lend its support without coming back to the Board for approval.

Manager Raby made a motion to authorize staff use the list in working with the legislature. The motion was seconded by President Hartmann. The motion carried unanimously.

D. Education and Outreach Plan

No new information since last update

E. 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

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

iii. Seminary Fen ravine stabilization project

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

iv. East Chaska Creek (Carver County Watershed Based Funding)

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

v. Schroeder Acres Park (Scott County Watershed Based Funding)

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

vi. Shakopee Downtown BMO Retrofit (Scott County Watershed Based Funding)

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

vii. PLOC (Prior Lake Outlet Channel) Restoration (Scott County Watershed Based Funding)

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

viii. Dakota County Fen Gap Analysis and Conceptual Model (Dakota County Watershed Based Funding)

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

ix. Hennepin County Chloride Project (Hennepin County Watershed Based Funding)

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

x. Vegetation Management Plan

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

xi. Sustainable Lake Management Plan - Trout Lakes

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

xii. Geomorphic Assessment of Trout Streams

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

F. Project/Plan Reviews

i. Carver County 2040 Comprehensive Plan review

Administrator Loomis said this resolution has been revised since it was distributed in the meeting packet. She noted she received a phone call from Paul Nelson at Scott County who noted the LMRWD does not need to approve the County Comprehensive Plan, just the surface water management sections of the plan. She noted there are resolutions for both Carver County and Scott County and managers can adopt both with one resolution.

ii. Scott County 2040 Comprehensive Plan review

See comments above for Item 7.F.i.

President Hartmann made a motion to adopt resolution 18-19 for the Carver County and resolution 18-18 for Scott County. The motion was seconded by Manager Raby. The motion carried unanimously.

- iii. **City of Chanhassen - TH 101 Improvements**
No information other than what was reported in the Executive Summary.
 - iv. **City of Savage - 12113 Lynn Avenue**
No information other than what was reported in the Executive Summary.
 - v. **City of Richfield/Bloomington - TH 77 & 77th Street underpass**
No information other than what was reported in the Executive Summary.
 - vi. **MPCA - MN River TSS TMDL**
No information other than what was reported in the Executive Summary.
 - vii. **MN Valley State Trail - EAW (Environmental Assessment Worksheet)**
No information other than what was reported in the Executive Summary.
 - viii. **Hennepin County - CSAH 61 - Flying Cloud Drive**
Administrator Loomis commented on conditions found by inspection of the construction project. Manager Raby asked if staff has had any feedback from others that received the inspection report. Administrator Loomis said USFWS is concerned and is waiting for the project to be completed before they determine what restoration should be made.

The City of Eden Prairie is also concerned and has said they would like to attend other inspections. There was discussion about the erosion issues and what can be done. The contractor is looking for direction and everyone is reluctant to give them specific direction. Attorney Kolb said the response to the contractor should be for them to come into compliance with the NPDES permit and to hire a consultant to tell them how to do that.

Manager Raby asked about a scenic overlook the city has now constructed in the slope on the south side of CSAH 61 near Charlson Road. Staff said they were not aware of this project. Administrator Loomis said it was not part of the County's project. Administrator Loomis said she would check with the city.
 - ix. **MNDOT - I494/TH 5/TH 55 Mill & Overlay project**
No information other than what was reported in the Executive Summary.
 - x. **MNDOT - I35W Bridge Replacement**
No information other than what was reported in the Executive Summary.
 - xi. **MNDOT - I494 from TH169 to Minnesota River**
No information other than what was reported in the Executive Summary.
 - xii. **City of Shakopee - Amazon Fulfillment Center drainage**
No information other than what was reported in the Executive Summary.
 - xiii. **MAC/LMRWD/MCWD boundary realignment**
No information other than what was reported in the Executive Summary.
 - xiv. **Fort Snelling - Dominion Housing**
No information other than what was reported in the Executive Summary.
 - xv. **USACOE/USFWS - Bass Ponds, Marsh & Wetland**
No information other than what was reported in the Executive Summary.
- G. MPCA Soil Reference Values - no change since last update**

No new information since last update.

7. COMMUNICATIONS

- A. **Administrator Report:** Administrator Loomis said the report was posted online. She walked through the report; there was notice of a public meeting for improvements of the trail head at the Cedar Avenue Boat Launch; the final report from the Metro Children's Water festival was provided. She reported on the MN River Congress November 8th. The Annual Report from the Dakota County Landscaping for Clean Water was provided. Staff has been exploring options for data sharing of LMRWD documents. Manager Hartmann said he has noted issues with accessing Sharepoint with Google Chrome. She reported on a meeting with Metropolitan Council Environmental Services. She invited Managers to attend the River Resource Forum.
- B. **President:** No report
- C. **Managers:** Manager Raby asked about the expansion of C.H. Robinson and asked if that is within the LMRWD or in the Riley/Purgatory/Bluff Creek Watershed District. Administrator Loomis said she thinks it is in the LMRWD and will check with the city of Eden Prairie about the status of that project.
- D. **Committees:** No report
- E. **Legal Counsel:** No report
- F. **Engineer:** No report

8. ADJOURN

President Hartmann made a motion to adjourn. Manager Raby seconded the motion. The meeting was adjourned at 9:12pm. The next meeting of the LMRWD Board of Managers will be 7:00, Wednesday, December 19, 2018 and will be held at the Carver County Government Center, 602 East 4th Street, Chaska, MN.

Dave Raby, Secretary

Attest:

Linda Loomis, Administrator