



LOWER MINNESOTA RIVER WATERSHED DISTRICT

Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting

Wednesday, March 18, 2020

Agenda Item

Item 6. E. - Watershed Management Plan

Prepared By

Linda Loomis, Administrator

Summary

Staff has been working through the official notification process. Notification of the adoption of rules was published in the Star Tribune on Sunday, March 8th and will appear again on Sunday, March 15th. Regulating Governmental Units (RGUs), counties and state agencies, were notified by email March 6th and given a link to the rules posted on the website. A hard copy will be sent to all municipalities by certified mail and to the County Recorders in Carver, Dakota, Hennepin and Scott Counties.

Staff is working with HDR to update the LMRWD website with information about permit application and the rules process. We hope to have the permit pages live by Monday, March 23rd.

At the February 19, 2020 Board meeting the City of Burnsville requested more time to bring official controls into conformance with the LMRWD Watershed Management Plan. The Board should consider how the District will address this request and others.

According to MN Statute §103B.235 local government units having land use planning and regulatory responsibility for territory within the watershed are required to prepare or cause to be prepared official controls as necessary to bring local water management into conformance with the watershed plan within the time period prescribed in the implementation program of the watershed plan. The LMRWD watershed management plan, which was adopted on October 24, 2018, required local government to adopt official controls (Compliant with Appendix K) within 18 months of plan adoption. That date, May 1, 2020, was noted to local government in their notice of plan adoption. (Notification attached)

The District's rules give the Board authority to enforce the standards in the absence of compliant municipal, official controls. It was actually the plan and not the current rules that set the timeline for municipal compliance. We have heard many arguments that municipalities need more time because the rules are so new. In fact, the performance standards in the rules are the same (with a few non-material exceptions) as the performance standards adopted in the plan (Appendix K). Local government has had the last 17 months to prepare compliant official controls.

If a municipality does not adopt compliant standards and implement a system of official controls, then pursuant to statutes section 103D.335, subd. 23, the LMRWD may apply its rules to regulate the use and development of land under the conditions specified in section 103B.211, subd. 1. Section 103B.211, subd. 1(a)(3)(i), states that a metropolitan watershed district can regulate land use in the watershed when the local government unit exercising planning and zoning authority over the land does not have a local water management plan approved and adopted in accordance with the requirements of

section 103B.235 or has not adopted the implementation program described in the plan. The adoption of compliant official controls is an essential component of the local water management plan pursuant to 103B.235. The LMRWD's rules (and specifically the municipal permit) are the mechanism by which local government can demonstrate compliance and move forward within their existing framework to serve the interests of their residents without regulatory duplication.

It was always the hope and expectation of the LMRDW that it would not have to implement an individual permitting program for residents of the District. Rather, it was its hope and expectation that local government would see both wisdom and economy of scale in applying the standards through the existing land use permitting systems.

The only city that staff is aware of that will meet this deadline is the city of Bloomington. There may be others that have official controls that conform to the standards in the LMRWD Plan, that staff is not aware of. The City of Bloomington will be holding a City Council meeting Monday, March 16, 2020 to change zoning of properties in its bluff protection zone. They have inquired as to how the District will deal with cities that have not changed official controls. Staff has discussed this and legal counsel will be at the meeting to advise the Board and answer any questions the Board may have.

Attachments

November 13, 2018 letter to Local Governments

Recommended Action

Provide direction to staff



LOWER MINNESOTA RIVER
WATERSHED DISTRICT

Carver

Vacant

Dakota

Vacant

Hennepin

David Raby
Secretary/Treasurer

Adam Frey
Vice President

Scott

Jesse Hartmann
President

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November 13, 2018

To all concerned:

By order dated September 26, 2018 (attached), the Board of Water and Soil Resources approved the Lower Minnesota River Watershed District's (LMRWD) Watershed Management Plan. At its regular meeting on October 24, 2018, the LMRWD Board of Managers adopted resolution 18-14 (attached) by which the Board adopted the Watershed Management Plan for implementation in accordance with MN Statutes §103B.231, subd. 10; and authorized implementation of the Capital Improvement Program contained in the plan and the development of rules, as necessary, to accomplish the purposes of the Watershed Management Plan, Statutes Chapters 103B and 103D and to implement the powers of the managers.

Pursuant to statutes section 103B.235, subd. 1, the local government units having land use planning and regulatory responsibility for territory within the watershed shall prepare or cause to be prepared a local water management plan, capital improvement program, and official controls as necessary to bring local water management into conformance with the watershed plan. As the Board has outlined, local government official controls must be in place to meet the standards contained in the plan within 18 months of the plan adoption. This requirement will be reiterated to local government along with the statutorily required transmittal of the approved and adopted plan.

As of today, the officially approved and adopted plan is not posted on the LMRWD website. However, the final draft, as reviewed by BWSR, is located at <http://www.lowermnriverwd.org/news/90-day-draft-plan-review-20180701>, along with supporting materials from the plan development and hearing process. The Steep Slope Standard is found in appendix K.

If you have any questions, please contact district administrator, Linda Loomis at 763-545-4659, or by email at naiadconsulting@gmail.com.

Sincerely,

Linda Loomis
Administrator
Lower Minnesota River Watershed District

att

cc: LMRWD Board of Managers
Steve Christopher, MN Board of Water & Soil Resource
Della Young, Young Environmental Consulting Group, LLC
John Kolb, Rinke Noonan, Attorneys at Law

Minnesota Board of Water and Soil Resources

520 Lafayette Road North
Saint Paul, Minnesota 55155

In the Matter of the review of the Watershed Management Plan for the Lower Minnesota River Watershed District, pursuant to Minnesota Statutes Section 103B.231, Subdivision 9.

**ORDER
APPROVING
A WATERSHED
MANAGEMENT PLAN**

Whereas, the Board of Managers of the Lower Minnesota River Watershed District (LMRWD) submitted a Watershed Management Plan (Plan) dated June 2018 to the Minnesota Board of Water and Soil Resources (Board) pursuant to Minnesota Statutes Section 103B.231, Subd. 9, and;

Whereas, the Board has completed its review of the Plan;

Now Therefore, the Board hereby makes the following Findings of Fact, Conclusions and Order:

FINDINGS OF FACT

1. **LMRWD Establishment.** The Lower Minnesota River Watershed District (District) was originally petitioned for establishment in 1957 but was challenged and defeated in the courts. The District was later re-petitioned by the five counties of Carver, Dakota, Hennepin, Ramsey, and Scott and was established on March 23, 1960, by order of the Minnesota Water Resources Board under the authority of the Minnesota Watershed Act (Minnesota Statutes, Chapter 112). The District's original charter specified that it serve as the local sponsor to the U.S. Army Corps of Engineers for assisting in the maintenance of the Minnesota River nine-foot navigation channel. The first water resources management plan for the District was prepared and adopted in 1961. The second plan was then revised in accordance with the Metropolitan Surface Water Management Act of 1982 (Minnesota Statutes, Chapter 103B), and approved by the Board of Water and Soil Resources in September 1999. The most recent plan was approved in 2011 and amended in 2015.
2. **Authority of Plan.** The Metropolitan Surface Water Management Act requires the preparation of a watershed management plan for the subject watershed area which meets the requirements of Minnesota Statutes Sections 103B.201 to 103B.251.
3. **Nature of the Watershed.** The District is approximately 80 square miles in size and located in the five counties of Carver, Dakota, Hennepin, Ramsey, and Scott, which includes the bluffs on either side of the Minnesota River from Ft. Snelling at the confluence of the Minnesota and Mississippi Rivers, 32 miles upstream to the city of Carver. The land use in the watershed consists of a mix of single family residential, commercial, industrial, and agriculture. A large component in the central portion of this linear watershed is within the 100-year floodplain and the Minnesota Valley National Wildlife Refuge. Much of the MSP airport property is also located in the District. Development pressure within the watershed is projected to slightly increase in the municipalities south of the river through the life of this Plan. Water resources in the District include floodplain lakes, quarry lakes, creeks and streams including trout streams, springs, calcareous fens, and other wetlands. However, the headwaters to most of those resources originate outside of the District boundary. The following municipalities lie partially within the District: Bloomington, Burnsville, Carver, Chanhassen, Chaska, Chaska Township, Eagan, Eden Prairie, Lilydale, Jackson Township, Louisville

Township, Mendota, Mendota Heights, Savage, and Shakopee. The District is bound by four watersheds to the south: Prior Lake Spring Lake WD, Scott WMO, Black Dog WMO, and Gun Club WMO, and six watersheds to the north: Carver County WMO, Riley Purgatory Bluff Creek WD, Nine Mile Creek WD, Minnehaha Creek WD, Richfield Bloomington WMO, and Capitol Region WD.

4. **Plan Development and Review.** The District initiated the planning process for the 2018-2027 Plan in January of 2017. As required by MR 8410, a specific process was followed to identify and assess priority issues. Stakeholders were identified, notices were sent to municipal, regional, and state agencies to solicit input for the upcoming Plan. The District held four workshops in early 2017 covering the areas of major revision for the new Plan. Following the workshops, District staff met with each municipality for additional specific input on the proposed standards and to identify projects that they could co-sponsor.

The Plan was submitted for formal 60-day review on July 10, 2017. The District received comments on the draft Plan and responded to Plan reviewers' comments in writing. A public hearing was held on October 25, 2017. Due to the volume and content of the comments, the District decided to delay moving forward with the 90-day draft and provide additional time to meet with stakeholders. The District held four additional stakeholders meetings jointly with member cities and concluded the public hearing on April 18, 2018. Modifications to the draft Plan were made and the final draft Plan with all required materials were submitted and officially received by the Board on July 2, 2018.

5. **Local Review.** The District distributed copies of the draft Plan to local units of government for their review pursuant to Minnesota Statutes Section 103B132, Subd. 7. Local written comments and edits were received from City of Bloomington, Bloomington Sustainability Commission, City of Burnsville, City of Carver, City of Chaska, City of Eden Prairie, City of Savage, City of Shakopee, Scott County, Upper Mississippi Waterway Association, Lotus Lake Conservation Alliance, Mitchell Lake Association, the United States Fish and Wildlife Service, and several citizens. The District responded to all comments.
6. **Metropolitan Council Review.** During the 60-day review, the Council noted concerns about the proposed standards, specifically on the Bluff and Steep Slope standards and suggested consistency of language with DNR. The District thanked the Council for its comments and made changes to the final draft.
7. **Department of Agriculture (MDA) Review.** MDA stated that they had no comments during the 60-day or 90-day final review periods.
8. **Department of Health (MDH) Review.** No comments were received during the 60-day or 90-day final review period.
9. **Department of Natural Resources (DNR) Review.** The DNR had numerous comments regarding the proposed standards including groundwater regulation and the new Bluff and Steep Slopes standard. The DNR also offered assistance on a number of initiatives included in the Plan. The District adequately responded to the comments and thanked the DNR for its cooperation.
10. **Pollution Control Agency (PCA) Review.** PCA participated in TAC meetings and provided feedback throughout the plan development process. During the 60-day review, PCA stated it had no additional comments.
11. **Department of Transportation (DOT) Review.** The DOT commented regarding the proposed standards. The District adequately addressed the comments.
12. **Board Review.** Board staff commended the District on a Plan and its increased role in water management since the most recent Plan adoption. Board staff also requested clarification/improved reporting for outcomes. District staff adequately responded to all comments.

13. **Plan Summary.** The Plan update focuses on several sections of the 2011 Plan rather than a full re-write. The sections amended are as follows:

- Section 3, Goals, Policies and Management Strategies
- Section 4, Implementation Program, which includes the District's Capital Improvement Program
- Adding a new Appendix K, LMRWD Draft Standards
- Other Sections of the plan have been revised to bring the Plan up to date

The new Draft standards is the most significant revision to the Plan specifically the Steep Slopes Standard and Water Appropriations Standard. Both of these will address the High Value Resource Areas (HRVA). The HRVA has been identified by the District as portions of land or a watershed that contribute runoff to a trout water and/or fen.

The Plan maintains the following nine goals:

1. Organizational Management – To manage the different and changing roles of the District
2. Surface Water Management – To protect, preserve, and restore surface water quality
3. Groundwater Management – To protect and promote groundwater quantity and quality
4. Unique Natural Resources Management – To protect and manage unique resources
5. Wetland Management – To protect and preserve wetlands
6. Floodplain and Flood Management - To manage floodplains and mitigate flooding
7. Erosion and Sediment Control – To manage erosion and control sediment discharge
8. Commercial and Recreational Navigation – To maintain and improve the Lower Minnesota River’s navigation and recreational use
9. Public Education and Outreach - To increase public participation and awareness of the Minnesota River and its unique natural resources

14. **Central Region Committee Meeting.** On September 6, 2018, the Board’s Central Region Committee and staff met in St. Paul to review and discuss the final Plan. Those in attendance from the Board’s committee were Jill Crafton, Jack Ditmore, Terry McDill, Duane Willenbring, Joel Larson and Joe Collins, chair. Board staff in attendance was Central Region Manager Kevin Bigalke. Lower Minnesota River Watershed District Administrator Linda Loomis and District Consultant Della Young provided highlights of the Plan and process. Board staff recommended approval of the Plan. After presentation and discussion, the committee unanimously voted to recommend the approval of the Plan to the full board.

CONCLUSIONS

1. All relevant substantive and procedural requirements of law and rule have been fulfilled.
2. The Board has proper jurisdiction in the matter of approving the Watershed Management Plan for the Lower Minnesota River Watershed District (District) pursuant to Minnesota Statutes Section 103B.231, Subd. 9.
3. The District's Watershed Management Plan, attached to this Order, defines the water and water-related problems within the District's boundaries, possible solutions thereto, and an implementation program through 2027.
4. The District's Watershed Management Plan will be effective September 26, 2018 through September 30, 2027.
5. The attached Plan is in conformance with the requirements of Minnesota Statutes Sections 103B.201 to 103B.251.

ORDER

The Board hereby approves the attached Lower Minnesota River Watershed District Watershed Management Plan dated June 2018.

Dated at Waite Park, Minnesota this 26th day of September 2018.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES



BY: Gerald Van Amburg, Chair

Manager _____ introduced the following resolution and moved its adoption:

LOWER MINNESOTA RIVER WATERSHED DISTRICT

RESOLUTION 18-14

RESOLUTION ADOPTING UPDATED WATERSHED MANAGEMENT PLAN

WHEREAS, pursuant to Minnesota Statutes Chapters 103B and 103D, and Minnesota Rules §8410, the Lower Minnesota River Watershed District (LMRWD) has approved and adopted a comprehensive Watershed Management Plan ("Plan") dated 2011, amended 2015 and 2016; and

WHEREAS, Minnesota Statutes §103B.231 requires the Plan to be updated every 10 years; and

WHEREAS, the LMRWD identified a need to update its Plan ahead of the 10-year statutory requirement in order to align timing of the plan update with the timing of local plan updates by municipalities within the LMRWD and the timing of watershed management plan updates by adjacent watershed management organizations; and

WHEREAS, the LMRWD designed and facilitated a robust stakeholder engagement process to solicit and incorporate comments from the public, the LMRWD's technical advisory committee (TAC), and state agencies, to ensure the District met the engagement requirement for its plan update; and

WHEREAS, the LMRWD prepared a draft Plan update and submitted the draft Plan for 60-day review and comment according to Minnesota Statutes §103B.231, subd. 7; and

WHEREAS, the LMRWD responded to all received comments, and;

WHEREAS, the LMRWD held a public hearing on the Plan to discuss the Plan and receive additional comment, pursuant to Minnesota Statutes §103B.231, subd. 7(c); and

WHEREAS, the LMRWD has completed the Plan update and prepared a 90-day review and approval copy, dated June 2018, according to Minnesota Statutes §103B.231, subd. 9; and

WHEREAS, the Minnesota Board of Water and Soil Resources completed its review of the Lower Minnesota River Watershed District's Comprehensive Watershed Management Plan and all relevant substantive and procedural requirements of law and rule have been fulfilled; and

WHEREAS, the Minnesota Board of Water and Soil Resources approved the Lower Minnesota River Watershed District's Watershed Management Plan on September 26, 2018 pursuant to Minnesota Statutes §§103B.201 to 103B.251; and

WHEREAS, the LMRWD finds that the adoption of the Plan is in accordance with the requirement of law and in the best interests of the public.

NOW, THEREFORE, BE IT RESOLVED that the Lower Minnesota River Watershed District Board of Managers adopts the Watershed Management Plan in accordance with MN Statutes §103B.231, subd. 10, and directs the Secretary to transmit a copy of the Plan to the county board of each county affected by the watershed district, the commissioner of natural resources, the director of the division of ecological services and waters (DNR), the Metropolitan Council, the governing body of each municipality affected by the watershed district, and soil and water conservation districts affected by the watershed district; and

FURTHER, the Lower Minnesota River Watershed District Board of Managers authorizes implementation of the Capital Improvement Program contained in the plan and the development of rules, as necessary, to accomplish the purposes of the Watershed Management Plan, Statutes Chapters 103B and 103D and to implement the powers of the managers.

Adopted by the Board of Managers of the Lower Minnesota River Watershed District this 24th day of October, 2018

Jesse Hartmann, President

ATTEST:

David Raby, Secretary/Treasurer