



Minutes of Regular Meeting
Board of Managers
Wednesday, March 19, 2014
Council Chambers, Chaska City Hall, 7:00 p.m.
Approved May 21, 2014

1. **CALL TO ORDER AND ROLL CALL**

Attorney Bruce Malkerson gave the oath of office to President Francis who was reappointed by Carver County to a new three year term of office which will expire March 1, 2017.

The Wednesday, March 19, 2014, meeting of the Board of Managers of the Lower Minnesota River Watershed District (LMRWD) was then called to order by President Francis at 7:03 PM in the Council Chambers of the Chaska City Hall, Chaska, Minnesota. President Francis then asked for roll call to be taken. The following Managers were present: Kent Francis and Yvonne Shirk. Also present were Linda Loomis, LMRWD Administrator, Bruce Malkerson, LMRWD Attorney, Taylor Luke, L & S Marine, Troy Kuphal and Scott Schneider both from the Scott SWCD.

It was noted that according the bylaws of the LMRWD a quorum was present.

2. **APPROVAL OF THE AGENDA**

President Francis introduced this item. Manager Shirk requested the addition of Item 6.E. TAC Meeting Discussion and 6.F. Plan Amendment Update.

Moved by President Francis and seconded by Manager Shirk and motion carried unanimously to approve the agenda of March 19, 2014.

3. **CITIZEN FORUM**

No Citizen Input

4. **CONSENT AGENDA**

President Francis introduced this item. Administrator Loomis requested the February 19, 2014 minutes be removed from the consent agenda.

A motion was made by President Francis and seconded by Manager Shirk to approve the consent agenda with the minutes from the February 19, 2014 meeting removed. The Consent Agenda includes the February Financial Reports, the Payment of Invoices, and award review of the WMP for the City of Carver to Momentum Environmental LLC. VOTE: Ayes 2; Nays 0, Motion carried.

5. **NEW BUSINESS**

A. Presentation by Scott Schneider of the Scott County SWCD monitoring results.

Mr. Schneider identified the types of monitoring that is conducted on behalf of the LMRWD in Scott County, such as thermal monitoring of trout streams and monitoring the WOMP station on Eagle Creek. Brown Trout populations have been increasing Savage Fen wells It

was noted that Eagle Creek exceeds the limit for E. Coli in the winter months because of the duck population that resides in open water upstream of the monitoring site. MPCA E. Coli standards do not apply in the winter months.

The Managers thanked Mr. Schneider and Troy Kuphal for the presentation.

Mr. Kuphal asked the Managers approve the agreement for 2014 monitoring services, which is essentially the same as last year with the inclusion of the Dean Lake Monitoring.

President Francis made a motion to approve the 2014 agreement for services and authorize President Francis to sign the agreement. Manager Shirk seconded the motion, which carried unanimously.

B. License Agreement Amendment

At the March meeting Administrator Loomis informed the Managers that she had received a question from Fredrickson & Byron on behalf of the owner of property that is encumbered by a license agreement with the LMRWD. The request was in regards to a license agreement benefitting the LMRWD and an encroachment upon the property licensed to the LMRWD. The Managers authorized Attorney Malkerson to investigate the request. Mr. Malkerson reviewed the License Agreement in question and an amendment to the agreement is before the Managers this evening. Mr. Malkerson provided the history of this license to the Managers. The License Agreement in question was sought by the LMRWD in order to allow the USACE to conduct hydraulic dredging and place a pipeline across the property in question so that dredged material could be placed upon a parcel of property further inland. Mr. Malkerson has conferred with the USACE, who stated they do not intend to conduct hydraulic dredging nor do they intend to use the property in question to reach the inland parcel, further Mr. Malkerson reported the License Agreement is terminable upon 4 month notice and advised the Managers to approve the amendment to the License Agreement.

A Motion was made by Manager Shirk, seconded by President Francis and carried unanimously to authorize the President to sign the amendment to the license agreement, which Attorney Malkerson has with him.

6. Old Business

A. Seminary Fen/Chaska Ravine Update

Administrator Loomis reported to the Managers that Stantec has revised the scope of the project in order to fit within the budget. Administrator Loomis reported that Stantec looked at piping the water from the top of the ravine to the bottom. John Smyth of Stantec looked at that option but didn't proceed with an estimate of that option as it appeared the pipe solution would exceed the money the LRMWD and City of Chaska had available. The Managers were informed that the next step is to speak with BWSR to see how they would view of the project now that the scope has been revised and to begin the process to amend the plan.

Moved by President Francis, and seconded by Manager Shirk to direct the Administrator to proceed with submitting the revised plan to BWSR and begin whatever action is determined appropriate by BWSR. Motion carried unanimously.

B. Dredge Material Update

i. USACE Right of Entry Agreement Update

Attorney Malkerson informed the Managers that he, Administrator Loomis and Taylor Luke from L & S Marine have met with the USACE to discuss the ROE that had been provided to the LMRWD by the USACE. Mr. Malkerson updated the Managers about the discussion. Mr. Malkerson told the Managers there are three basic issues confronting the LMRWD in regards to the USACE ROE Agreement: 1) The Agreement requires the LMRWD hold harmless and indemnify the USACE, 2) LMRWD must comply with the USACE's permit from the MPCA and 3) can the RMP 14.2 site accommodate both main channel and private dredge material.

Mr. Malkerson advised the Managers that the USACE will not budge on the issue of indemnification. The USACE told the LMRWD that the Minneapolis Agreement is not standard wording and they would not sign such an agreement again.

Dredging activities executed by the USACE are governed by a general permit issued to the USACE by the MPCA. The USACE's position is that once dredge material is placed on the RMP 14.2 site the LMRWD must comply with the permit by extension.

USACE informed the LMRWD that the MPCA permit covers the entire site. The USACE was concerned that the placement of private material would violate the permit. Mr. Malkerson advised the Managers that this issues should be able to be worked out as negotiations continue. Mr. Malkerson outlined liabilities issues for the LMRWD. Mr. Malkerson asked the Managers to authorize consultation with an attorney that specializes in environmental liability law, if necessary after the LMRWD consults with its Insurance Representatives.

Environmental testing is conducted by the USACE, but the testing they conduct does not meet the requirements imposed by the MPCA in its *Managing Dredge Material in Minnesota 2012 Manual*.

President Francis made a motion to authorize Attorney Malkerson to retain an Environmental Law Specialist if necessary, to investigate LMRWD liability risk in reuse of dredged material. Manager Shirk seconded the motion which carried unanimously.

ii. Rachel Contracting Update

Attorney Malkerson provided information to the Managers regarding the offer from Rachel Contracting. Mr. Malkerson informed the Managers that the Conditional Use Permit from the City of Savage that covers the RMP 14.2 site limits the number of trucks in and out of the site to 15 per day. It is not economic for anyone to use dredge material unless the CUP can be amended

President Francis made a motion to authorize staff to hire consultants/specialists at a cost up to \$5,000 that may be needed to amend CUP with the City of Savage. Manager Shirk seconded the motion which carried unanimously.

The Contract with Rachel is still under negotiation. The two parties have agreed in concept to how the payments will be received for material and material will be reserved for Rachel. Rachel has agreed to add the LMRWD as an additional insured on its environmental liability insurance.

Manager Shirk authorized staff to continue negotiations with Rachel Contracting with the end goal of having an agreement for the Managers to consider at the April meeting. President Francis seconded the motion, which carried unanimously.

iii. L & S Marine Update

Taylor Luke of L & S Marine attended the meeting and the role of L & S was discussed as part of the previous discussions. Managers intend to negotiate a contract with L & S Marine to manage the RMP 14.2 site.

No action was taken.

iv. MAC Dredge Material Management Site

Administrator Loomis updated the Managers of activity that has been undertaken since the last meeting. Administrator Loomis informed the Managers that the Cost Estimate prepared on behalf of the LMRWD has been sent to the USACE, who has provided comments, which have been provided to the Managers. The Administrator also informed the Managers that BWSR has indicated that MAC is the LGU for WCA compliance.

No action was taken.

v. Bonding Request Update

Administrator Loomis updated the Managers regarding lobbying activities and contacts that have been made. It appears money will be in the bonding bill for Port Development through the Port Development Assistance Program, committees have indicated they will not " earmark" money for the LMRWD.

No action was taken

C. MN River Valley State Trail

Manager Kremer asked for this item to be placed on the agenda as Representative Lenczewski has introduced a bill to provide funding for the segment of trail from the US Fish and Wildlife Center to the Bloomington Ferry Bridge. Manager Kremer would like the LMRWD to draft a letter of support for the trail. Administrator Loomis reminded the Managers that the LMRWD adopted a resolution in support of the Trail at the February meeting. The Managers discussed how legislators are inundated with correspondence right now and wondered how effective one more email or letter will be.

The Managers directed the Administrator to use her discretion when speaking to Legislators about LMRWD bonding request and mention LMRWD support for the Trail and the resolution adopted by the Board of Managers. Administrator Loomis also suggested that the LMRWD offer to testify in favor of the Trail at committee hearings. The Managers agreed.

D. RFP Update

Administrator Loomis informed the Managers that the Request for Proposals was published in the State Register. The deadline for proposals is April 4, 2014.

No Action Taken.

E. TAC Meeting Update

Manger Shirk asked this item to be added to the Agenda. She would like to see a decision tree with a rating system developed to determine when the LMRWD would participate in projects with the cities and others. Administrator Loomis informed the Managers that she would like to see the TAC meet quarterly and so schedule a meeting for May

Manager Shirk moved to authorize the Administrator to work with HDR at a cost not to exceed \$2,500 to develop a process to evaluate LRMWD participation in projects to present to the TAC and develop plans for the next TAC meeting.

F. Plan Amendment Update

Administrator Loomis advised the Managers that the plan amendment is contingent upon the TAC providing input to the Managers.

No action taken.

7. COMMUNICATIONS

A. Administrator's Report - Administrator advised Managers that the 120 hours contracted per month was not sufficient this month and may not be enough next month.

Closing the office has been coming along slowly. Managers will need to determine where to store LMRWD records when office is closed. There are several options from renting storage space, to sending the files to a records storage business. Administrator Loomis said another

option is to find a city or county that is willing to provide space, but most cities and counties are short on space themselves. Files are being cataloged and moved into storage boxes. The LMRWD will need to adopt a record retention policy.

Administrator Loomis advised Managers that she requested Carver County Finance to provide the LMRWD with an adopted 2014 Budget, which they have done. Managers asked to receive the adopted budget.

A student from the University of Minnesota Morris contacted the LMRWD to see if a position for an intern is available. Manager discussed this possibility of hiring an intern. Managers said an unpaid internship would be preferable. The Managers do not wish to begin having employees again. The Administrator will continue to investigate this possibility of an unpaid internship.

Manager Kremer informed Administrator Loomis that the MPCA has issued a draft Sediment Reduction Strategy for the Minnesota River Basin and the South Metro Mississippi. Manager Kremer suggested the LMRWD comment on the Plan. The Managers directed the Administrator to look at the Plan and comment as appropriate.

Administrator Loomis reminded the Managers that they requested to have an update on the TH 101/CSAH 41 Project from Ron Leaf at SEH. The April Managers meeting will have a report from MAC and Carver County WMO Monitoring. The Administrator asked for direction about requesting an update on this project. Managers directed the Administrator to speak to Ron leaf to see if an update would be appropriate for the May Manager meeting.

Administrator Loomis requested authorization to cancel the Workers' Compensation Insurance Coverage and the Auto Insurance Coverage. President Francis stated he would take care of this.

Riley/Purgatory/Bluff Creek Watershed District is rewriting its rules and will be permitting projects in the watershed moving forward. The new rules will include permitting for surface and groundwater appropriations that are not currently permitted by the DNR.

Riley/Purgatory/Bluff Creek will start permitting projects within its watershed once the new rules are adopted.

The Administrator advised the Managers of meetings she is planning to attend MAWD Day at the Capitol, a meeting of the Upper Mississippi Waterway Association and a meeting the MPCA is holding on Friday to provide information on the Watershed Accountability Act MAWD summer watershed tour will be held in Stillwater

- B. Chair** - No Report.
- C. Commissioners** - No Report
- D. Committees** - No Report
- E. Legal Counsel** - No Report
- F. Engineer** - No Report

Managers set the next meeting date for April 23, 2014

8. ADJOURNMENT

It was moved and seconded to adjourn at 8:55 PM VOTE: Ayes 2 ; Nays 0.

LOWER MINNESOTA RIVER WATERSHED DISTRICT
BOARD OF MANAGERS
Wednesday, March 19, 2014
MEETING MINUTES

Kent Francis, President

Attest:

Linda Loomis, Administrator