



# LOWER MINNESOTA RIVER WATERSHED DISTRICT

## Lower Minnesota River Watershed District

5:30 PM, Wednesday, November 6, 2024

White Oak Room, Chaska Community Center, 1661 Park Ridge Drive, Chaska, MN 55318

Approved \_\_\_\_\_, 2024

### 1. CALL TO ORDER

#### A. ROLL CALL

On Wednesday, November 6, 2024, at 5:30 p.m. CST, in the White Oak Room of the Carver County Government Center, 602 East 4th Street, Chaska, Minnesota, Vice President Theresa Kuplic called to order the workshop meeting of the Lower Minnesota River Watershed District (LMRWD).

Vice President Kuplic asked for the roll call to be taken. The following Managers were present: Manager Theresa Kuplic, Manager Apollo Lammers, and Manager Lauren Salvato. In addition, the following attended the meeting in-person: Linda Loomis, Naiad Consulting, LLC, LMRWD Administrator; and John Kolb, Rinke Noonan, Attorney at Law, LMRWD legal Counsel.

### 2. WATERSHED PURPOSE, GOVERNANCE AND OTHER MATTERS

The meeting discussed the establishment of Lower MN River Watershed District, its potential for development in various areas, and covered governance rules and government statutes.

- Lower MN River Watershed District was established in the 1950s by petition to the state of Minnesota.
- Today, the main beneficiary of the Navigation Channel is Scott County, but other areas could potentially use it for development.
- The meeting covered general governance rules, data practices, gift bans, campaign finance disclosure, and other government statutes.

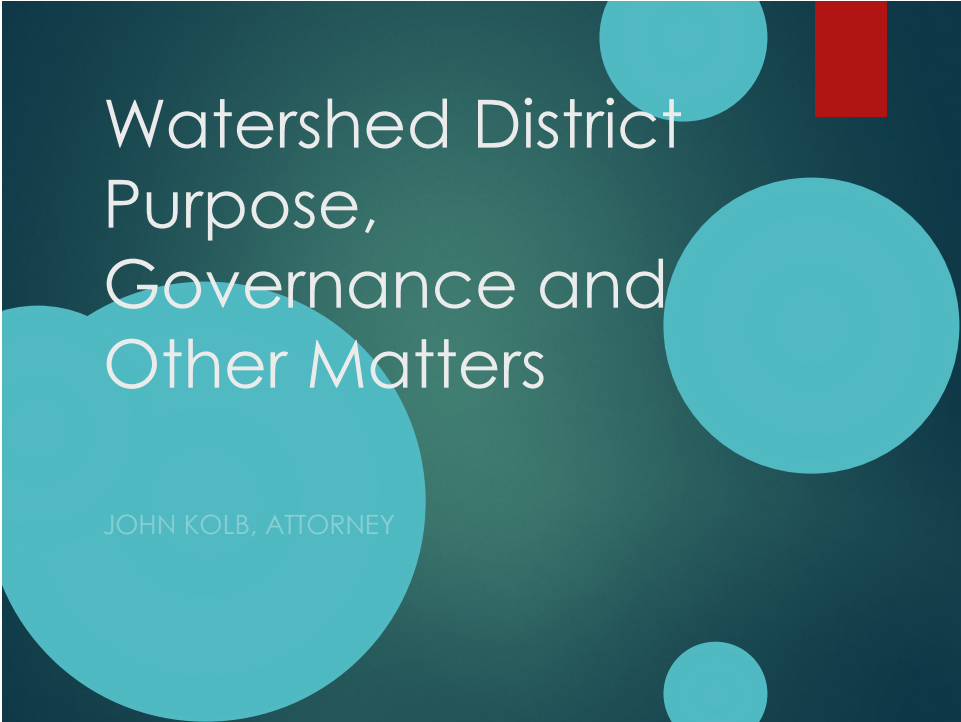
### 3. ADJOURN

**Vice President Kuplic adjourned the workshop meeting at 6:58 p.m.**

Attest:

\_\_\_\_\_  
Lauren Salvato, Secretary

\_\_\_\_\_  
Linda Loomis, Administrator



# Watershed District Purpose, Governance and Other Matters

JOHN KOLB, ATTORNEY

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## Overview

- ▶ General Information/Roles
- ▶ Opening Meeting Laws/Communication
- ▶ Parliamentary Procedure
- ▶ Campaign Finance

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# Watershed District Purpose

To conserve the natural resources of the state by land use planning, flood control, and other conservation projects by using sound scientific principles for the protection of the public health and welfare and the provident use of the natural resources

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# Promoting the Purpose of the WD

- ▶ Managers
  - ▶ A watershed district has the power, to the extent necessary for lawful conservation purposes to perform all acts expressly authorized, and all other acts necessary and proper for the watershed district to carry out its purpose
- ▶ Employees and Consultants
  - ▶ The managers may employ a chief engineer, professional assistants, and other employees, and provide for their qualifications, duties, and compensation.

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## Administrative Rules

- ▶ the managers must adopt rules to accomplish the purposes of this chapter and to implement the powers of the managers
- ▶ the managers may implement a permitting program to secure compliance with administrative rules

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## Tracking Progress

- ▶ the managers must prepare a yearly report of the financial conditions of the watershed district, the status of all projects, the business transacted by the watershed district, other matters affecting the interests of the watershed district, and a discussion of the managers' plans for the succeeding year

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## Charting the Course

- ▶ the managers must adopt a watershed management plan for any or all of the purposes for which a watershed district may be established
  - ▶ the plan must give a narrative description of existing water and water-related problems within the watershed district, possible solutions to the problems, and the goals and objectives of the watershed district

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## Subsequent Planning

- ▶ the managers must revise the watershed management plan at least once every ten years after the original watershed management plan is approved
- ▶ the plan may include a separate section on proposed projects

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# Projects

- ▶ projects may not be initiated until the board approves a watershed management plan
- ▶ projects that are to be paid for by assessment of benefited properties must be initiated:
  - ▶ by a project petition
  - ▶ by unanimous resolution of the managers
  - ▶ as otherwise prescribed by chapter 103D

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# Manager Initiated Projects

- ▶ the managers may initiate a project by resolution of at least a majority of the managers if 50 percent grant and costs less than \$750,000
- ▶ the managers may undertaking all or a portion of a basic water management project as identified in the watershed management plan

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## Maintaining Existing Projects

- ▶ the managers are responsible for maintaining the projects of the watershed district in a condition so that they will accomplish the purposes for which they were constructed
- ▶ the cost of maintenance of the projects of the watershed district shall be paid from each project's maintenance fund

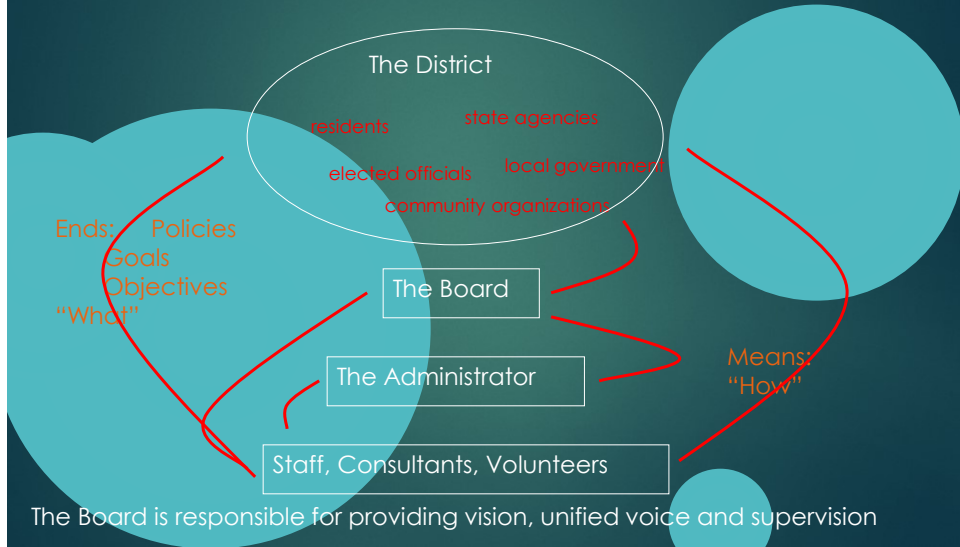
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## Role of Individual Manager

- ▶ Manger statutory duties are performed by the Board as a whole.
- ▶ Most important responsibility is to participate at Board meetings—make and second motions, participate in discussion, and vote on matters before the Board.
  - ▶ Prepare and read packet
  - ▶ Talk to staff in advance about questions
- ▶ Devote time to problems of basic policy and act as liaisons between the watershed district and the public.

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# Board Governance Model



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# Open Meeting Law, Chapter 13D

- ▶ All meetings, including executive sessions, must be open to the public. This includes meetings of any public body or committee thereof when required or permitted by law to transact public business.
- ▶ Interpretation of the Open Meeting Law is driven by the concept that the public's business should be conducted in public.
- ▶ The Open Meeting Law exists for the public benefit and should be construed most favorably to the public

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## Open Meeting Law, Chapter 13D

- ▶ Meeting: A gathering of a quorum or more members of a public body, or a quorum of a committee or subcommittee at which members discuss, decide or receive information as a group on issues relating the official business of the public body.
- ▶ Chance, accidental or random social encounters of members of the public body are not subject to the Open Meeting Law. However, the public body cannot plan a social event in order to avoid requirements. When in doubt, post notice of a special meeting.
- ▶ Members of the public body may not avoid the Open Meeting Law by using consecutive phone calls or emails to discuss matters or conduct polls. The State Supreme Court has held that serial conversations to forge consensus are improper.

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## Open Meeting Law, Chapter 13D

- ▶ If less than a quorum meets, can there still be an Open Meeting Law violation?
- ▶ Usually the answer is no, since less than a quorum cannot conduct business. However, even if less than a quorum of a committee or subcommittee is present, the Open Meeting Law could apply if the public body had delegated authority or tasks to the individuals to make decisions on behalf of the public body.

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# Remote Attendance at Meetings

- ▶ Subject to any policies adopted by the Board, Mangers may appear and participate in a meeting remotely using "interactive technology"
- ▶ Requirements
  - ▶ One member must be physically present
  - ▶ All members of the public and Board must be able to see and hear each other
  - ▶ Votes must be conducted by roll call
  - ▶ Each location must be open and accessible to the public
  - ▶ Minutes need to reflect the reason for remote appearance

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# Political Straight Talk

It is better to promise to investigate than to promise to act.

It is better to say 'If other Board members will go along with me' than to say 'I will get your zoning changed.'

It is better to say 'Let me see what I can do' than to say 'I can do.'

It is better to speak about the larger picture than about specific citizen demands until you have the facts.

It is better to say 'I don't know what can be done' than to promise action when you are not sure.

It is better to blame official constraints (state law, federal law, court decisions) than to say you can do what is beyond your ability.

It is better to say "No" than to say "Yes" and then have to make excuses why not.

It is better to be realistic about "getting half a loaf" than to be idealistic about "getting the whole loaf."

It is better to say "I haven't made up my mind" than to tacitly support any and every demand by constituents.

—Robert J. Horgan, Associate Professor of Political Science  
University of Richmond, Richmond, VA

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# Meeting Process/Procedure

- ▶ Quorum
  - ▶ A minimum of three Board Members needed
- ▶ Open Meeting Law
  - ▶ Meetings must be open to the Public
  - ▶ Violations occur when three or more Board Members meet and decide business in private
  - ▶ Exceptions include performance evaluations, discussion of non-public data, attorney-client privilege, misconduct allegations/charges, and labor negotiations
  - ▶ Do not "reply all" to any email which includes a quorum of Boardmembers.
- ▶ Quorum Outside of Meetings

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# Role in Preserving Order

- ▶ The presiding officer is vested with the authority to:
  - ▶ Follow approved agenda and limiting discussion to current agenda items.
  - ▶ Rule on questions of procedure.
  - ▶ Call members of the Board or public to order if they are being unruly and removing if necessary – may request law enforcement assistance.
  - ▶ Declare meetings recessed or adjourned.

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## Example Motions

- ▶ **Motion to Refer:** Made by a member when another has the floor to refer a topic to a subcommittee/staff for further information.
- ▶ **Motion to Limit/Extend Debate:** Can be made to limit or extend the time of a debatable topic.
- ▶ **Point of Order:** A member declares a point of order; chair recognizes the point, and rules.
  - ▶ If another member does not like the chair's ruling that member can motion for an appeal, and if seconded, the question at issue will be put to a vote.

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## Public Comment

- ▶ Audience members do not have the statutory right to take an active part in the Board's discussion at a meeting.
- ▶ Open Forum
  - ▶ Not required but is a common at meetings.
  - ▶ Should be managed by considering the following:
    - ▶ Limiting time and topic.
    - ▶ Advance written notice – prior to meeting or sign up sheet before open forum begins.
  - ▶ Board should consider policy of not responding immediately to open forum. Instead, refer to staff for additional information gathering and report back to Board.

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# Making Decisions

- ▶ The managers are generally tasked with gathering information to make decisions which are in the best interest of the District.
- ▶ A board will not always agree on the final decisions that are made – but Board members should be respectful of what decision the majority makes.

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# MN Government Data Practices Act

- ▶ All data maintained by Watershed
- ▶ District and Managers in official capacity is "government data." – private email account?
- ▶ Obligation to preserve data
- ▶ Most government data is public and must be made available.
- ▶ Some data is private and there are penalties for improper disclosure.
- ▶ Personnel data is biggest liability!
  - ▶ Don't talk about personnel data – refer requests to Administrator.
- ▶ Follow data practices policy adopted by Watershed District.

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## Why?

- ▶ Protects the District from liability
- ▶ Protects individual Board members

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## Statutory Conflict of Interest

- ▶ Minnesota Statute § 471.87 provides the general rule under state law that a public official is prohibited from participating in any matter where the official has a direct financial interest in the outcome. The law criminalizes such participation. Based on the information provided, it does not appear that either manager has a direct financial interest in the solicitation. Court cases and attorney general opinions explain that family relationship alone (with the exceptions of spouses) does not disqualify the making of a contract or limit a manager's participation.

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## Statutory Conflict of Interest

- ▶ If a manager does have a financial interest (ownership interest in the property or a business relationship with the applicant), further inquiry must be made. Minnesota Statute § 471.88, contains several exceptions to the general rule.

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## Perceived Conflict of Interest

- ▶ Even if an official conflict of interest does not exist, perceived conflicts may be a concern. Any appearance of impropriety can undermine the public's trust in the District. A best practice to minimize the potential for perceived conflicts, is for the manager to publicly disclose the concerning relationship and avoid participation unless necessary.

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# Ethics in Government Act

- ▶ The Minnesota Campaign Finance and Public Disclosure Board administration the Ethics in Government Act.
- ▶ Primary Responsibilities of the Board:
  - ▶ Campaign finance registration and disclosure
  - ▶ Public subsidy administration
  - ▶ Lobbyist registration and disclosure
  - ▶ Economic Interest disclosure by public officials
- ▶ Applies to managers of a watershed district
  - ▶ Considered public officials under the Act

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# Campaign Finance

- ▶ As a public official, the following must be filed with the Minnesota Campaign Finance and Public Disclosure Board, as applicable:
  - ▶ Statement of Economic Interest
  - ▶ Potential Conflict of Interest
  - ▶ Notice of Inability to Abstain from Potential Conflict of Interest
  - ▶ Representation Disclosure
- ▶ Gifts

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# Statement of Economic Interests

- ▶ Required in metropolitan governmental units
- ▶ Used to disclose information about personal financial interest
- ▶ Due 60 days after assuming duties of the position
- ▶ Economic Interest State for Soil and Water Conservation District, Watershed District, and Watershed Management Organization Public Officials due annually
- ▶ Civil penalties can be applied if not completed

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# Representation Disclosure

- ▶ Required when a manager represents a client for a fee in a rulemaking or contested case hearing that is held in front of an individual, board, commission, or agency that has rulemaking authority.
- ▶ Must be filed within 14 days after the date of the appearance

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# Violations

- ▶ Civil penalties can be imposed if requirements are not followed
  - ▶ False information: Up to \$3,000 civil penalty
  - ▶ Failure to File Representation Disclosure: Late fee of \$35 per day, up to a maximum of \$1,000; civil penalty up to \$1,000
- ▶ Signing a notice that the manager knows contains false information can be criminally prosecuted

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# Gifts

- ▶ Gift: Money, property (real or personal), a service, a loan, the forbearance or forgiveness of debt, or a promise of future employment, given and received without the giver receiving something of equal or greater value in return
- ▶ Managers may not accept gifts from a lobbyist or principal, with limited exceptions.
- ▶ The law prohibits gift to managers, not to the watershed district itself. Managers can still acquire real and personally property by gift for the watershed district.

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# Wrap-Up

▶ Any questions?

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