

**BOARD OF WATER AND SOIL RESOURCES
520 LAFAYETTE ROAD N.
LOWER LEVEL CONFERENCE ROOM
ST. PAUL, MINNESOTA 55155
WEDNESDAY, DECEMBER 16, 2015**

BOARD MEMBERS PRESENT:

Patty Acomb, Joe Collins, Jill Crafton, Jack Ditmore, Doug Erickson, Rebecca Flood, MPCA; Sandy Hooker, Kathryn Kelly, Tom Landwehr, DNR; Tom Loveall, Brian Napstad, Neil Peterson, Tom Schulz, Rob Sip, MDA; Steve Sunderland, Gene Tiedemann, Gerald Van Amburg, Paige Winebarger

BOARD MEMBERS ABSENT:

Chris Elvrum, MDH
Faye Sleeper, MES

STAFF PRESENT:

Mary Jo Anderson, Angie Becker Kudelka, Tim Dykstal, Bill Eisele, Travis Germundson, Tim Gillette, Jim Haertel, Al Kean, Tim Koehler, Bob Kronik, John Jaschke, Dave Johnson, Jeff Nielsen, Dan Shaw, Doug Thomas, Marcey Westrick

OTHERS PRESENT:

Jennifer Berquam, AMC
Barb Huberty, LWC

Chair Napstad called the meeting to order at 9:00 a.m.

PLEDGE OF ALLEGIANCE

15-82 **ADOPTION OF AGENDA** – Chair Napstad reported one addition to the agenda; under Introduction of New Employees. Moved by Kathryn Kelly, seconded by Paige Winebarger, to adopt the agenda as presented. ***Motion passed on a voice vote.***

15-83 **MINUTES OF OCTOBER 28, 2015 BOARD MEETING** – Moved by Gene Tiedemann, seconded by Paige Winebarger, to approve the minutes of October 28, 2015 as circulated. ***Motion passed on a voice vote.***

PUBLIC ACCESS FORUM

Travis Germundson stated that due to the travel involved, Franz Schauer was unable to attend the meeting today, therefore he provided written comments pertaining to the Dispute Resolution Committee hearing on WCA appeal exemption and no-loss determination McLeod County File 14-9. Travis, on behalf of Franz Schauer, stated that the comments are included in board members packets.

CONFLICT OF INTEREST DECLARATION

Chair Napstad explained that the Conflict of Interest Disclosure process is being used today on agenda items:

- FY16-17 Cooperative Weed Management Area Grant Awards
- FY16 CWF Competitive Multipurpose Drainage Management Grant Awards
- FY2016 CWF Competitive Grant Program Awards

Chair Napstad read the statement:

“A conflict of interest, whether actual, potential, or perceived, occurs when someone in a position of trust has competing professional or personal interests and these competing interests make it difficult to fulfill professional duties impartially. At this time, members are requested to declare conflicts of interest they may have regarding today’s business.”

INTRODUCTION OF NEW EMPLOYEES

Bill Eisele introduced Bob Kronik, Lead Accounting Officer, St. Paul Office. Jim Haertel introduced Dave Johnson, Clean Water Specialist, Central Region. Chair Napstad welcomed Bob and Dave to BWSR.

REPORTS

Chair’s Report - Brian Napstad reported that the EQB is meeting today at 1:00 PM in this room; BWSR Board meeting will need to adjourn on time. Chair Napstad stated that he appreciated BWSR staff Dave Weirens and Al Kean’s participation at the AMC annual meeting; and John Jaschke presented the County Conservation Award to Lake of the Woods County.

Audit & Oversight Committee – Chair Napstad reported that the Audit & Oversight Committee has not met; an hour meeting will be scheduled before the next Board meeting to review the PRAP Report.

Executive Director’s Report – John Jaschke attended the MAWD and MASWCD annual meetings, well attended, good information and educational sessions. BWSR awarded the 2015 Outstanding Watershed Employee of the Year to Dan Wilkens, District Administrator of the Sand Hill River Watershed District. The 2015 Outstanding SWCD Employee of the Year was awarded to Brad Mergens, District Manager of the West Ottertail SWCD; and Darren Newville, District Manager of the East Otter Tail SWCD. John

stated that this is the first time BWSR, based on the joint nomination submitted, has awarded two individuals in the same year.

John reported that Governor Mark Dayton announced yesterday the submittal of a \$795 million proposal to USDA for a CREP in Minnesota. John introduced Angie Becker Kudelka as the new Assistant Director of Strategy and Operations. John reviewed information in board members' packets.

Dispute Resolution Committee (DRC) – Travis Germundson provided a brief overview of the appeals filed with BWSR; currently 8 appeals are pending. File 14-9 will be on the agenda later today.

Grants Program & Policy Committee – Steve Sunderland reported that the Grants Program & Policy Committee met on November 12 and December 15; recommendations are on the agenda later today.

Water Management & Strategic Planning Committee – Jack Ditmore reported that the Water Management & Strategic Planning Committee met last night; an item will be presented to the Board in January. The Committee is reviewing the draft 1W1P Transition Plan to be released in March; with a goal to have it in place by June. Jack stated that 1W1P information is posted on the BWSR website.

Buffers, Soils & Drainage Committee – Chair Napstad reported that the new Buffers, Soils & Drainage Committee met this morning; recommendations are on the agenda later today.

Drainage Work Group – Tom Loveall reported that the Drainage Work Group met on November 12. Al Kean provided a brief overview of the meeting. The DWG's next meeting is January 14, 2016. Chair Napstad thanked Al for his participation in the consolidated conservation lands pilot ditch system abandonment.

COMMITTEE RECOMMENDATIONS

Southern Region Committee

Blue Earth County Comprehensive Local Water Management Plan Extension Request – Kathryn Kelly reported that Blue Earth County currently has a Comprehensive Local Water Management Plan that will expire December 31, 2015. On October 8, 2015, Blue Earth County submitted a formal request for an extension of their current Plan. BWSR staff reviewed this request and recommends approval. The Southern Region Committee met on November 5, 2015; reviewed the extension request and recommends approval. The State's expectations for the extension request must be sent to Blue Earth County. Moved by Kathryn Kelly, seconded by Sandy Hooker, to approve the Blue Earth County Comprehensive Local Water Management Plan Extension until December 31, 2016. Jeff Nielsen stated that Blue Earth County is very active; the extension request is due in part by staff illness and temporary absence. Discussion followed. ***Motion passed on a voice vote.***

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15-84

Fillmore County Comprehensive Local Water Management Plan Extension – Kathryn Kelly reported that Fillmore County submitted a resolution requesting a one-year extension of their existing ten-year plan. On November 5, 2015, the Southern Region Committee reviewed the extension request for Fillmore County Comprehensive Local Water Management Plan. Fillmore County is an active planning participant in the Root River One Watershed, One Plan Pilot with 100% of the County in the planning boundary. The Committee recommends approval. Moved by Kathryn Kelly, seconded by Sandy Hooker, to approve the Fillmore County Comprehensive Local Water Management Plan Extension until December 31, 2016. ***Motion passed on a voice vote.***

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15-85

Pipestone County Local Water Management Plan Amendment – Kathryn Kelly reported that Pipestone County submitted their Local Water Management Plan Amendment (9-9-15 version), a record of the public hearing, and copies of all written comments pertaining to the Update to the Board for final State review on September 21, 2015. On November 5, 2015, the Southern Region Committee reviewed the recommendation of the state review agencies regarding final approval of the Pipestone County Local Water Management Plan Amendment and recommends approval. Moved by Kathryn Kelly, seconded by Sandy Hooker, to approve the Pipestone County Local Water Management Plan Amendment; the Plan will be in effect until December 31, 2020. Jeff Nielsen stated that the summary distributed earlier had an error, new version is in board members packets. Discussion followed. **Motion passed on a voice vote.**

Rebecca Flood arrived at the meeting at 9:54 a.m.

Rice County Local Water Management Plan Amendment – Kathryn Kelly reported that Rice County submitted their Local Water Management Plan Amendment, a record of the public hearing, and copies of all written comments pertaining to the Amendment to the Board for final State review on September 22, 2015. On November 5, 2015, the Southern Region Committee reviewed the recommendation of the state review agencies regarding final approval of the Rice County Local Water Management Plan Amendment and recommends approval. Moved by Kathryn Kelly, seconded by Joe Collins, to approve the Rice County Local Water Management Plan Amendment; the Plan will be in effect until December 31, 2019.

Jeff Nielsen stated that Jennifer Mocol-Johnson assisted in writing the plan while with Rice County and was then hired by BWSR; no conflict of interest. Discussion followed. Jack Ditmore asked for clarification on the comment date listed on page two of the order; Jeff stated that no comments were received; as second notice was sent again asking for comments. Joe Collins stated that he's amazed at what can be done outstate in comparison to costs in the metro area. **Motion passed on a voice vote.**

Waseca County Local Water Management Plan Amendment – Kathryn Kelly reported that Waseca County submitted their Local Water Management Plan Amendment, a record of the public hearing, and copies of all written comments pertaining to the Update to the Board for final State review on September 11, 2015. On November 5, 2015, the Southern Region Committee reviewed the recommendation of the state review agencies regarding final approval of the Waseca County Local Water Management Plan Amendment and recommends approval. Moved by Kathryn Kelly, seconded by Sandy Hooker, to approve the Waseca County Local Water Management Plan Amendment; the plan will be in effect until December 31, 2018. Discussion followed. **Motion passed on a voice vote.**

Shell Rock River Watershed District (SRRWD) Watershed Management Plan Update – Kathryn Kelly reported that the SRRWD was established by BWSR Board Order on June 25, 2003. The SRRWD has completed the planning process for its proposed ten-year plan: 2015 - 2025. The SRRWD distributed its draft Watershed Management Plan as required for final review and comment. The Southern Region Committee met on November 5, 2015 and unanimously recommends approval of the Plan Update. Moved by Kathryn Kelly, seconded by Sandy Hooker, to approve the Shell Rock River Watershed District (SRRWD) Watershed Management Plan Update. **Motion passed on a voice vote.**

Jeff Nielsen thanked the Southern Region Committee for 100% attendance at their meeting on November 5, 2015.

Dispute Resolution Committee

Hearing on Wetland Conservation Act Appeal of Exemption and No-Loss Determination McLeod County, File 14-9

- Travis Germundson introduced Jill Nguyen, Attorney General's Office, and that Mr. Schauer's comment letter was presented to the Board during the Public Access Forum. Travis referenced the record and the written briefs associated with the appeal. Travis reported that the appeals were brought before BWSR by staff member Jeremy Maul, a member of the McLeod County Technical Evaluation Panel. Initially Mr. Schauer, landowner, was issued a WCA Restoration and Replacement Order regarding unauthorized work completed in wetlands on his property. Consequently, Mr. Schauer submitted applications for exemption and no-loss determinations. The applications were submitted beyond the timeframe identified in the orders and in Minn. Rule Chapter 8420 (county did not object to the timeliness of the applications). During the application process Mr. Schauer requested an extension to the time deadline for agency action by signing a waiver properly extending the timelines under Minn. Stat. § 15.99.

McLeod County made a decision on August 18, 2014 denying the applications. After receiving the notice of decision on August 27, 2014 Mr. Schauer and his attorney argued that the applications were granted by operation of law pursuant to Minn. Stat. § 15.99. McLeod County later agreed that they failed to comply with statutory deadline for agency action and issued a second notice of decision on November 3, 2014 granting the applications with conditions. Following further correspondence from Mr. Schauer and his attorney McLeod County proceeded to issue a third notice of decision on November 19, 2014, and then a fourth notice of decision on December 2, 2014 removing all conditions associated with the approval.

Travis reported that the Dispute Resolution Committee conducted a hearing on October 28, 2015. After review of the record, written briefs, and oral arguments, unanimously voted to recommend that McLeod County's November 3, 2014; November 19, 2014; and December 2, 2014 decisions approving applications for exemption and no-loss determinations be reversed. Concluding that the BWSR has jurisdiction over the matter, that the applications were not timely, the county did not violate MN Stat. 15.99, and the decisions approved more than what was authorized (requested in the applications). Thus the county improperly applied the law to the facts.

Travis stated that a revised Order is in board members' packets today. Jill provided advising instructions to board members. Gerald Van Amburg thanked the Dispute Resolution Committee (Joe Collins, Tom Schulz, Tom Loveall, Jack Ditmore) for diligence; and thanked Travis and Jill for their direction. Gerald stated that BWSR has jurisdiction in this matter and provided an overview of the record; noting errors made by the County. The Committee determined that McLeod County incorrectly concluded that it had violated Minn. Stat. § 15.99 and properly made a decision within 120 days. Gerald stated the importance of dates recorded and decisions made.

****** Moved by Gerald Van Amburg, seconded by Tom Loveall, to approve the DRC's recommendation, the McLeod County's November 3, 2014; November 19, 2014; and December 2, 2014 decisions approving applications for exemption and no-loss determinations be reversed.

Jack Ditmore thanked Gerald for his leadership on the DRC, and asked Jill if the Order reflects the DRC decision. Jill stated that the Order is indicative of the DRC decision. Discussion followed. Jill stated that comments received by Mr. Schauer are not considered new evidence, merely comments. Tom Schulz also thanked Gerald for his leadership and asked that Gerald's comments be forwarded to Jill for information. Tom Landwehr supports the motion before us due to the facts received, McLeod County

errored. Tom Loveall thanked Travis for his great work. Travis stated that the County Board did not make the decision, it was the decision of staff delegated by McLeod County as the WCA LGU. Paige asked what happens next. Jill stated that the landowner could appeal to the Court of Appeals; or comply with the restoration order. **Motion passed on a voice vote.** Chair Napstad thanked Travis, Jill, and Gerald for their leadership.

Chair Napstad called for a break in the meeting at 10:35 a.m. The meeting reconvened at 10:51 a.m.

Chair Napstad stated that board members have submitted their completed Conflict of Interest Disclosure forms; the documents will be filed for the grant decision items. All board members are eligible to vote on the three grant items. Tom Loveall will not be voting on the FY16 CWF Competitive Grant Program Awards and the FY16 CWF Competitive Multipurpose Drainage Management Grant Awards.

Grants Program & Policy Committee

FY16 CWF Competitive Grant Program Awards – Marcey Westrick distributed maps reflecting funding throughout the state. Marcey reported that applications for the FY2016 Clean Water Fund Competitive Grants were accepted from July 6 through August 28, 2015 in three program categories: Projects and Practices, Accelerated Implementation, and Community Partners. Local governments submitted 133 applications requesting \$31,438,702 in Clean Water Funds. BWSR staff conducted multiple processes to review and score applications, involved staff of other agencies, and developed recommendations for grant awards as presented on spreadsheets. The BWSR Senior Management Team reviewed the recommendations on November 10th and met on December 8th to review the revised recommendations.

The BWSR Grants Program and Policy Committee reviewed the recommendations on November 12th and met on December 15th to review the revised recommendations and recommend approval of the following:

- 1) Approves allocations to implement the FY2016 Clean Water Fund Competitive Grants Program according to the attached funding recommendations spreadsheets and the attached scoring results and funding recommendations document for the following programs and recommended allocation amounts shown below:

<u>Grant Program</u>	<u>Allocated Funds</u>
A. Projects and Practices Grants	\$8,648,755
B. Accelerated Implementation Grants	\$2,000,000
C. Community Partners Conservation Program Grants	\$ 403,000

- 2) Authorizes staff to:

- A. Approve project workplans.
- B. Enter into grant agreements consistent with this resolution and Legislative Appropriations.
- C. Shift \$252,578 from the Community Partner Funds as follows:
 - i. \$ 6,078 of Community Partner funds to project C16-3691 (#19) under accelerated implementation;
 - ii. \$50,000 of Community Partners funds to fully fund C16-5293 City of Bloomington (#35) under projects and practices; and,

iii. \$196,500 of Community Partners funds to fully fund C16-7791 Pennington Soil and Water Conservation District (#36) under projects and practices.

- D. Assign funds that may be included in (1) that may become available if funded projects are withdrawn, do not receive workplan approval by March 18, 2016 unless extended for cause, or are modified to reduce the state funding needed to accomplish the project; or returned Clean Water Competitive grant funds from previous years, to unfunded project and practices applications, in rank order.

** Moved by Steve Sunderland, seconded by Kathryn Kelly, to approve the Committee recommendations as presented. Discussion followed. Rob Sip asked why the nonpoint implementation plan was not referenced; Marcey stated that the RFP included the nonpoint information. Jack Ditmore requested the nonpoint implementation plan be referenced in future information. **Motion passed on voice vote; Tom Loveall abstained from voting.**

15-91

Targeted Watershed Program – Marcey Westrick reported that the Targeted Watershed Program is proposed to have a solicitation period from February 1 through March 9, 2016. The scoring process will be conducted by staff from the DNR, MDA, MDH, PCA, and BWSR and will operate under the FY2016 Clean Water Fund Policy. The Grants Program and Policy Committee met on November 12, 2015 and reviewed the draft Request for Interest (RFI) and recommends Board authorization of the program.

** Moved by Neil Peterson, seconded by Jill Crafton, to authorize staff to finalize, distribute and promote a Request for Interest for the Targeted Watershed Program consistent with the provisions of appropriations enacted in 2015, Minn. Stat. 103B.3369. Tom Landwehr asked that more explicit information be included with consistency to nonpoint implementation plan; Marcy will include this.

15-92 Discussion followed. **Motion passed on a voice vote.**

FY16 -17 Cooperative Weed Management Area Grant Awards - Dan Shaw reported that the 2015 Minnesota Legislature appropriated \$200,000 to the FY16-17 Cooperative Weed Management Area (CWMA) program for financial assistance to soil and water conservation districts. BWSR received 16 applications totaling \$239,296 in requested funds. The inter-agency CWMA Advisory Team met on November 16th and recommended 14 of the 16 applications be approved for funding. The BWSR Senior Management Team met on December 8th to review the Advisory Team's recommendations. The BWSR Grants Program and Policy Committee met on December 15th to review the recommendations of the Advisory Team and the Senior Management Team and recommends approval of the 14 CWMA applications received.

** Moved by Kathryn Kelly, seconded by Steve Sunderland, to authorize the grants be awarded to the 14 CWMA applications according to the recommendation of the Grants Program & Policy Committee. Discussion followed. Jack Ditmore asked for more explicit clarification of the top 14 applicants awarded included in the resolution. Chair Napstad stated that he's surprised more applications for terrestrial invasives were not received. Discussion followed. Paige Winebarger asked who in the state owns responsibility for pollinator issues. Rob Sip stated that MDA, DNR, and BWSR are involved in pollinator issues; he will contact Paige and provide information. Dan stated that BWSR's website has information on pollinator habitat. **Motion passed on a voice vote.**

15-93

FY16 CWF Competitive Multipurpose Drainage Management Grant Awards - Tim Gillette reported that applications for the FY2016 Clean Water Fund Competitive Multipurpose Drainage Management Grants were accepted from August 31 through October 30, 2015. Local governments submitted 12 applications requesting \$2,284,359 in Clean Water Funds. BWSR staff conducted multiple processes to review and score applications, involved staff of other agencies, and developed recommendations for grant awards.

The BWSR Senior Management Team met on December 8th to review the recommendations. The BWSR Grants Program and Policy Committee met on December 15th to review the recommendations and recommend approval. Moved by Gerald Van Amburg, seconded by Steve Sunderland, to approve allocations to implement the FY2016 Clean Water Fund Competitive Multipurpose Drainage Management Grant Program as recommended: 1) Allocate \$675,000 to the Multipurpose Drainage Management Grant Program; 2) Authorizes staff to: A) Approve project work plans; B) Enter into grant agreements consistent with this resolution and Legislative Appropriations; and C) Assign funds that may be included in (1) that may become available if funded projects are withdrawn, do not receive work plan approval by March 18, 2016 unless extended for cause, or are modified to reduce the state funding needed to accomplish the project; or returned Clean Water Competitive grant funds from previous years, to unfunded Multipurpose Drainage Management applications, in rank order. **Motion passed on voice vote; Tom Loveall abstained from voting.**

Buffers, Soils & Drainage Committee

Buffer Law Implementation: Failure to Implement Policy – John Jaschke reported that staff developed the proposed failure to implement policy to begin laying out the state-local government relationship in implementing the Buffer Law. The Buffers, Soils & Drainage Committee has reviewed this policy on October 27 and met again this morning to review Version #4, dated December 15; and recommends adoption of the Buffer Law Implementation: Failure to Implement Policy. The policy is a result of specific language in the Buffer Law (Minn. Stat. 103F.48) that authorizes the State to withhold funds from a county, watershed district or SWCD that fails to implement the buffer law. The intent of the policy is to define specific duties and how the Board will determine failure to implement. Many other buffer program details have yet to be determined, which will require revisions to this policy no later than November 1, 2017. John stated that AMC, MAWD, and MASWCD reviewed and provided comments, their suggestions incorporated. Chair Napstad stated that the Buffers, Soils & Drainage Committee met this morning and recommends approval. Moved by Brian Napstad, seconded by Doug Erickson, to approve the Committee recommendation to adopt the Buffer Law Implementation: Failure to Implement Policy. Jack Ditmore added a friendly amendment to the resolution to add the date 12-16-15, adopted by BWSR. Discussion followed. Joe Collins asked for clarification, is BWSR the only enforcing agency? John stated that the law also includes new enforcement authorities to address potential landowner noncompliance and local government failure to implement. One such provision is: Minnesota Statutes 103F.48, Subd. 8. Funding subject to withholding. The state may withhold funding from a local water management authority or a soil and water conservation district that fails to implement this section. Funding subject to withholding includes soil and water program aid, a natural resources block grant, and other project or program funding. Funding may be restored upon the Board's approval of a corrective action plan. **Motion passed on a voice vote.**

NEW BUSINESS

2015 Grants Monitoring, Reconciliation, and Verification Report -Tim Dykstal reported that on June 22, 2011, to ensure its compliance with Office of Grants Management policies established by the Department of Administration, the Board adopted the Grants Monitoring, Reconciliation and Verification Policy. The policy calls for a report on grants monitoring activities to be delivered to the Board annually. Tim stated that the 2015 report includes data on the monitoring of Fiscal Year (FY) 2014 grants and the verification of FY 2013 grants. The report also describes other initiatives in grants monitoring at BWSR this year and looks ahead to next steps to streamline the process, more efficient and effective; financial reconciliation plan, and close the loop between monitoring and grant evaluation. Chair Napstad stated that the Audit and Oversight Committee reviewed the Grants Monitoring, Reconciliation and Verification Policy in October; and noted the importance of reporting. Discussion followed. Chair Napstad thanked Tim for his presentation.

AGENCY REPORTS

Minnesota Department of Natural Resources (DNR) – Tom Landwehr acknowledged BWSR for the effort to complete the CREP proposal, a monumental piece of work. Tom stated that Governor Dayton called for the Clean Water Summit in February; agenda unknown. Tom reported that DNR's sole role in the Buffers Law is mapping. A base map is now available for public review on the DNR website and they are seeking input from LGUs. DNR is using LIDAR tools to start mapping ditches.

Minnesota Pollution Control Agency (MPCA) – Rebecca Flood reported that MPCA Commissioner Stine and MDH Commissioner Ehlinger conducted eight listening sessions on municipal wastewater and drinking water infrastructure with over 100 communities participating. The sessions provided valuable information on water infrastructure, costs to upgrade drinking water and wastewater systems.

UPCOMING MEETINGS

- Grants Program and Policy Committee Meeting, January 26, 2016; 4:00-5:30 PM
- Water Management and Strategic Planning Committee Meeting, January 26, 2016; 5:30-8:00 PM
- BWSR Board Meeting, January 27, 2016, St. Paul

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15-96 Moved by Paige Winebarger, seconded by Doug Erickson, to adjourn the meeting at 12:33 PM. **Motion passed on a voice vote.**

Respectfully submitted,



Brian Napstad
Chair