

**BOARD OF WATER AND SOIL RESOURCES  
520 LAFAYETTE ROAD N., LOWER LEVEL BOARD ROOM  
ST. PAUL, MINNESOTA 55155  
WEDNESDAY, SEPTEMBER 28, 2016**

**BOARD MEMBERS PRESENT:**

Patty Acomb, Jill Crafton, Jack Ditmore, Doug Erickson, Kathryn Kelly, Tom Landwehr, DNR; Tom Loveall, Terry McDill, MPCA; Brian Napstad, Tom Schulz, Rob Sip, MDA; Faye Sleeper, MES; Steve Sunderland, Gerald VanAmburg, Paige Winebarger

**BOARD MEMBERS ABSENT:**

Joe Collins; Chris Elvrum, MDH; Neil Peterson, Nathan Redalen, Gene Tiedemann

**STAFF PRESENT:**

Mary Jo Anderson, Angie Becker Kudelka, Kevin Bigalke, Dan Fabian, Travis Germundson, Tom Gile, Tim Gillette, Ryan Hughes, John Jaschke, Al Kean, Melissa Lewis, Mary Peterson, Dave Weirens, Julie Westerlund

**OTHERS PRESENT:**

Leah Hedman, Attorney General's Office  
Amy Mace, Crow Wing County legal counsel  
Patrick Schmeichel  
Jason Garms, DNR  
LeAnn Buck, MASWCD  
Jennifer Berquam, AMC

**Chair Napstad called the meeting to order at 9:03 a.m.**

#### **PLEDGE OF ALLEGIANCE**

**\*\* 16-69 ADOPTION OF AGENDA** – Moved by Doug Erickson, seconded by Paige Winebarger, to adopt the agenda as presented. *Motion passed on a voice vote.*

**MINUTES OF AUGUST 25, 2016 BOARD MEETING** – Jill Crafton noted an error on page four, under the Buffers, Soils & Drainage Committee, the word conscience should be replaced with conscientious.

**\*\* 16-70** Moved by Kathryn Kelly, seconded by Tom Schulz, to approve the minutes of August 25, 2016 as corrected. *Motion passed on a voice vote.*

#### **PUBLIC ACCESS FORUM**

- Patrick Schmeichel addressed the Board and provided a brief summary of a wetland application approved by Crow Wing County in April and then remanded. He respectfully asked the Board if they were held to the same standards as others. He asked for the Board to understand their situation and consider their request. Chair Napstad thanked Mr. Schmeichel for his comments.
- Jill Crafton addressed the Board, representing the Great Lakes Coalition, providing information from the Heal the Waters-Great Lakes Coalition annual conference she attended in Ohio. Jill stated she is proud of what BWSR is doing. Chair Napstad thanked Jill for her comments.

#### **CONFLICT OF INTEREST DECLARATION**

- SWCD Technology Capacity Survey & Report Grant

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**

- John Jaschke introduced Kevin Bigalke, Central Region Manager
- Melissa Lewis introduced Julie Westerlund, 1W1P Coordinator, St. Paul Office

Chair Napstad welcomed Kevin and Julie to BWSR.

#### **REPORTS**

**Chair & Administrative Advisory Committee** – Brian Napstad reported that he attended the AMC Policy Committee meeting on September 15 in Alexandria. He thanked John Jaschke, Angie Becker Kudelka and Les Lemm for their attendance and providing information on BWSR programs.

Chair Napstad attended the EQB meeting on September 21<sup>st</sup> and provided a summary of the meeting discussions: designation of Responsible Governmental Unit for environmental review; interagency pollinator coordinator and team update; Clean Power Plan in MN; incorporating climate change in environmental review; and updates on the status of pipeline projects.

**Administrative Advisory Committee (AAC)** – Chair Napstad reported that the AAC met this morning; recommendations are on the agenda later today.

**Executive Director's Report** – John Jaschke reviewed information in the board members' packets. John stated that a special legislative session is not expected. He reported that Anna Henderson is the Governor's water policy advisor, a new position in the Governor's office, to provide information to Governor Dayton regarding water issues. John attended the AMC Policy Committee meeting; staff are attending MASWCD area meetings statewide.

Kathryn Kelly asked about statewide sewer systems – John will ask staff or MPCA to provide information; and Terry McGill will contact MPCA staff as well. Chair Napstad mentioned a possible presentation at a future Board meeting.

Kathryn Kelly stated that SWCDs are incorporating natural plantings for pollinators in buffer programs.

**Dispute Resolution Committee (DRC)** – Travis Germundson provided a brief overview of the appeals filed with BWSR, currently there are 14 appeals pending. Travis reported that a hearing before the DRC took place on August 22<sup>nd</sup>; the DRC's recommendation of the WCA appeal of a replacement plan in Crow Wing County, File 15-9, that Patrick Schmeichel addressed during the Public Access Forum is on the agenda later today.

**RIM Reserve Committee** – John Jaschke stated that BWSR is diligently working on a CREP agreement with USDA-FSA.

**Water Management & Strategic Planning Committee** – Jack Ditmore reported that the Committee will be reviewing and updating the BWSR Strategic Plan in the year ahead.

**Wetland Conservation Committee** – Gerald VanAmburg reported that the Committee will meet October 12 in Detroit Lakes.

**Buffers, Soils & Drainage Committee** – Brian Napstad reported that the Committee will meet today immediately following adjournment of the Board meeting.

**Drainage Work Group** – Tom Loveall reported that the Drainage Work Group met on September 15. Al Kean provided an overview of the meeting. Discussion followed. Rob Sip thanked Al for his efforts on the Drainage Work Group.

## **COMMITTEE RECOMMENDATIONS**

### ***Central Region Committee***

**Brown's Creek Watershed District 2017-2026 Watershed Management Plan** – Kevin Bigalke stated that Joe Collins, chair of the Committee, is on vacation this week. Kevin reported that the Central Region Committee met on September 8, 2016. Dan Fabian reported that the Brown's Creek Watershed District (BCWD) was established in 1997 primarily to resolve flooding issues that its predecessor organization, the Brown's Creek Watershed Management Organization, was unable to resolve. Located in the east central portion of the metropolitan area the BCWD encompasses approximately 29.9 square miles of Washington County, contains several land uses and a number of significant natural resources, Brown's Creek ultimately flowing into the St. Croix River. This plan will be the fourth BCWD Plan approved by the Board under the Watershed Act, Minnesota Statutes Chapter 103D and the 1982 Metropolitan Surface Water Management Act, Minnesota Statutes Chapter 103B. It builds upon the successful implementation of the 2007 to 2016 Plan with a new implementation program designed to meet the BCWD's updated goals and priorities. The Central Region Committee unanimously recommends approval.

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16-71 Moved by Faye Sleeper, seconded by Jill Crafton, to approve the Brown's Creek Watershed District Watershed Management Plan. A correction on page 3, Findings of Fact #11 noted it should read DOT rather than MDH. Kevin provided clarifications in the Order; substance of the Order remains the same. **Motion passed on a voice vote.**

**Vadnais Lake Area Watershed Management Organization Plan 2017-2026** – Kevin Bigalke introduced Mary Peterson. Mary reported that the final draft Watershed Management Plan of the Vadnais Lake Area Watershed Management Organization (VLAWMO) was filed with the Board on July 5, 2016. The watershed is located in the northeast metro area within Ramsey and Anoka Counties and encompasses the City of North Oaks and portions of the Cities of White Bear Lake, Gem Lake, Vadnais Heights, Lino Lakes and White Bear Township. The Central Region Committee met September 8<sup>th</sup> and unanimously recommends approval. Moved by Patty Acomb, seconded by Kathryn Kelly, to approve the Vadnais Lake Area WMO Watershed Management Plan. **Motion passed on a voice vote.**

#### ***Administrative Advisory Committee***

**Watershed District Model Buffer Enforcement Rule** – Dave Weirens reported that watershed districts can elect to enforce the Buffer Law. To facilitate consideration by watershed district boards, staff are proposing to amend an agreement with the Red River Watershed Management Board (RRWMB) to develop a model rule for consideration by watershed districts. Chair Napstad reported that the Administrative Advisory Committee (AAC) unanimously recommends approval. The Buffer Law allows watershed districts and counties to enforce. John Jaschke stated that MAWD and AMC support this effort; RRWMB supports this work if BWSR approves the proposed amendment. Moved by Brian Napstad, chair of the AAC; seconded by Doug Erickson, that the Board authorizes staff to amend the grant agreement authorized under Board Resolution #15-80 to provide up to \$30,000 to the RRWMB to support enforcement of the Buffer Law by watershed districts by developing model rule, administrative penalty and related compliance and enforcement language and guidance. Discussion followed. **Motion passed on a voice vote.**

*John Jaschke 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 grant items.*

**SWCD Technology Capacity Survey & Report Grant** – John Jaschke reported BWSR staff have been meeting with MASWCD to address the need for development of a statewide SWCD technology capacity survey and report, as well as future needs in partnership with NRCS. The survey will provide data to assess and formulate a plan of action that will address both current shortcomings in the operational agreements which will include technology services to SWCDs and recommend future models for how SWCD technology capacity needs can be met. LeAnn Buck, MASWCD, stated that an assessment of technology is needed that includes federal availability and security issues. Steve Sunderland stated the importance of SWCDs continuing to work with NRCS on conservation issues.

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16-74 Chair Napstad reported that the Administrative Advisory Committee met this morning and unanimously recommends approval of this effort. Moved by Chair Napstad, seconded by Steve Sunderland, to authorize a conservation delivery grant allocation of \$18,494 to the Becker SWCD upon approval of a work plan, to conduct, in partnership with MASWCD and BWSR, a survey, assessment, and report of SWCD technology capacity and needs to benefit all SWCDs. **Motion passed on a voice vote.**

Chair Napstad called for a break in the meeting at 10:48 AM. The meeting reconvened at 11:00 AM.

***Dispute Resolution Committee***

**Hearing on a Wetland Conservation Act (WCA) Appeal of a Replacement Plan Decision, Crow Wing County, File 15-9.** Travis Germundson introduced Leah Hedman from the Attorney General's Office and acknowledged that Patrick Schmeichel (appellant) and Amy Mace (legal counsel for Crow Wing County) are in the audience.

Leah Hedman provided general advising instructions to board members for making their decision.

Travis stated that this is the appeal that Patrick Schmeichel discussed during the Public Access Forum earlier today. Travis stated that the appeal was filed on behalf of Patrick Schmeichel (appellant) relating to Crow Wing County's Wetland Conservation Act (WCA) replacement plan decision made on August 21, 2015. The August 21, 2015 decision was to deny the replacement plan application for wetland impacts associated with the construction of a driveway and modest family cabin with handicapped access within the Shoreland Management District of South Long Lake.

Crow Wing County initially approved Mr. Schmeichel's application on April 30, 2015. That decision was appealed to BWSR (BWSR File 15-5) by an adjacent property owner with standing to appeal. On June 25, 2015 BWSR remanded the petition for appeal back to Crow Wing County because the local government units' record was not adequate. The decision to approve the replacement plan provided no substantial findings on impact avoidance or feasibility of alternatives, including a no build alternative as required under Minn. R. 8420.0520. These are elements under Sequencing, a required component of a replacement plan application.

Travis stated that WCA requires that a Local Unit of Government ensures that an applicant has demonstrated that the activity complies with all the principles of sequencing, and may not approve a wetland replacement plan unless the sequencing requirements are satisfied.

As a result the remand, the applicant submitted supplemental materials in support of the application including 6 alternatives to the proposed construction of a cabin on the site. The Technical Evaluation Panel and Crow Wing County determined that 4 of the 6 alternatives (purchasing other properties in that general area on South Long Lake) were feasible and prudent alternatives that would avoid wetland impacts and denied the replacement plan application.

Travis indicated that the appellant argues that the alternatives are not reasonable because the alternative sites are outside the project budget, they are currently not owned by the applicant, the LGU ignored the basic purpose of the project to construct a modest cabin that allows handicapped family members with easy access to the lake, and that the LGU misapplied the rule to the facts.

Travis reported that the Dispute Resolution Committee conducted a hearing on August 22, 2016 at 1:00 PM in the Central/West Board Room in the St. Paul. Following the close of the hearing, the Dispute Resolution Committee deliberated and voted 4 to 1 approving a motion that the County's findings of fact are not clearly erroneous, that the County correctly applied the law to the facts, and that the local government unit made no procedural errors prejudicial to the party. The Dispute Resolution Committee recommends that Crow Wing County's August 21, 2015 decision denying the replacement plan application be affirmed.

Gerald VanAmburg, chair of the DRC, thanked committee members for helpful assistance. Gerald stated the function of the DRC is to study the appeal, and make a recommendation as to affirm, modify,

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16-75

remand, or repeal the LGU's decision. The DRC found that the property is all wetland and the project is not wetland dependent, therefore not exempt from impact avoidance. For clarification, Gerald read Minnesota Rule 8420.0520, subpart 3. C. (2-4) on impact avoidance, and stated that the DRC's findings of fact and conclusions of the law is that Crow Wing County's decision was not clearly erroneous. Moved by Gerald VanAmburg, seconded by Tom Landwehr, that the August 21, 2015, decision of Crow Wing County denying Patrick Schmeichel's application for a Wetland Replacement Plan be affirmed.

Jack Ditmore stated that the DRC decision was not taken lightly; it was debated with lengthy discussion. Jack stated that his opinion differs from the majority of the DRC members; the County was erroneous in the decision; he disagrees with his colleagues' decision to affirm; he would reverse the decision. Indicating that the alternatives proposed are not economically feasible and that the need to provide handicapped accessibility is a unique situation. DRC members briefly commented. **Motion passed on a voice vote.**

### **NEW BUSINESS**

**Minnesota Public Drainage Manual (MPDM) Update** – Al Kean reported that BWSR received a legislative Clean Water Fund appropriation (\$235,000) in the FY14-15 biennium to update the Minnesota Public Drainage Manual (MPDM) first developed in 1991. The MPDM is to provide guidance to drainage authorities as they administer Chapter 103E drainage systems. Tim Gillette presented information on MPDM update project. The MPDM has multiple audiences: drainage authorities, their engineers, attorneys and inspectors; landowners; regulatory agencies; and other interested parties. It is a guidance document and is not rule or law. The updated MPDM will be accessible on BWSR's website in October. Al stated that the Drainage Work Group will make updates as needed. Discussion followed. Chair Napstad thanked Al and Tim for the information.

### **AGENCY REPORTS**

**Minnesota Department of Agriculture (MDA)** – Rob Sip reported that MDA Deputy Commissioner Jim Boerboom is retiring; Assistant Commissioner Matt Wohlman will serve as Deputy Commissioner. Rob stated that MDA can assist with pollinator questions.

**Minnesota Department of Natural Resources (DNR)** – Tom Landwehr reported that DNR is working on legislative proposals relating to the Governor's year of water. DNR received a good audit report last week regarding DNR's forest certification. Tom stated that the small game hunting season is now open. The Governor's pheasant opener will be in Montevideo. DNR looks forward to a good hunting season.

**Minnesota Extension Service (MES)** – Faye Sleeper reported that the Water Resources Conference will be held October 18-19; Governor Dayton is planning to be the keynote speaker on October 19. MES is working with DNR on a pilot for aquatic invasive species training on a watershed basis; ready next spring.

**Minnesota Pollution Control Agency (PCA)** – Terry McDill reported that sulfate standards will go before the new advisory board in November, out for comment in early 2017. PCA is hiring for the WRAPs program; scheduled to be in place by December.

### **ADVISORY COMMENTS**

**Minnesota Association of Soil & Water Conservation Districts (MASWCD)** – LeAnn Buck distributed the MASWCD Report and highlighted collaborative leadership efforts. LeAnn thanked BWSR for their continued assistance. LeAnn stated that the MASWCD annual convention is December 4-6.

**UPCOMING MEETINGS**

- BWSR Academy, October 24-26, 2016, Brainerd
- Next BWSR Meeting, Thursday, October 27, St. Paul

Chair Napstad stated that the Buffers, Soils and Drainage Committee meets immediately following adjournment of the Board meeting.

Chair Napstad adjourned the meeting at 12:27 PM.

Respectfully submitted,



Brian Napstad  
Chair