

**MINUTES OF SPECIAL MEETING  
OF THE  
COMFORT LAKE - FOREST LAKE  
WATERSHED DISTRICT  
Thursday, October 29, 2014**

**1. Call to Order**

The President called the October 29, 2014 Special Board meeting to order at 6:30 p.m. at the Forest Lake City Offices, 220 North Lake Street, Forest Lake, Minnesota

Present: President Richard Damchik, Vice President Jackie Anderson, Treasurer Jon Spence and Manager Stephen Schmaltz

Absent: Secretary Wayne Moe

Others: Mike Kinney (CLFLWD District Administrator) and Chuck Holtman (Smith Partners)

**2. Oath of Office**

Manager Schmaltz took the oath of office.

**3. Professional Services Selection Process**

Administrator Kinney presented proposals for services.

- a) Auditing – Only one firm applied and it was noted that Redpath did not apply for auditing.
- b) Accounting – Three firms applied. One proposal from a Stillwater firm was expected, but was not received.
- c) Legal – One firm applied.
- d) Engineering – Seven firms provided full proposals. One, which was left out, provided a proposal for stream restoration services that could be considered for future Sunrise River related projects.

Manager Schmaltz asked if the District is required to take the low bid. Administrator Kinney replied that for engineering, which involves multiple staff members working on various projects, it is hard to discern the low bid. It might be best to look at a firm's qualifications and experience with other watershed districts. Mr. Holtman stated that the only legal requirement is to solicit bids every two years. Other than that the District has complete discretion and is not limited to low price or any specific methodology. If the board felt like they missed something, they can seek additional proposals beyond the due date. Manager Anderson stated that she would not mind if Administrator Kinney clarified with Redpath if they intended to miss the deadline for auditing services, but would not feel comfortable waiting for another accounting firm. She also stated that in the past, each Manager rated the individual proposals and firms were invited to make presentations to the Board. With seven proposals for engineering, she suggested that the board could use a tally to whittle down bids and invite the top rated firms to make presentations.

Given the singular submission for legal services by Smith Partners, it was suggested that the Board approve their proposal.

President Damchik moved to accept Smith Partners' proposal for legal services. Seconded by Manager Anderson. Discussion. Upon vote, motion carried 3-0-1.

Manager Anderson stated that it is always good to hear from engineering firms because they play a critical role in capital projects and provide analysis on projects in general. The rating scale should be standard for everyone. It was agreed that Administrator Kinney would provide a rating scale.

#### **4. Appoint MAWD Conference Delegates**

Managers Anderson and Schmaltz stated that they are interested in attending. Administrator Kinney will register for himself and both Managers by November 21.

Manager Spence moved to appoint Managers Anderson and Schmaltz as delegates to the Minnesota Association of Watershed Districts annual conference. Seconded by President Damchik. Upon vote, motion carried 4-0.

Manager Schmaltz asked if discussion on office space could be added to the agenda because a potential office space might not be available if the Board waits until the November meeting. Mr. Holtman responded that the agenda for a special meeting cannot be amended. The Board can make findings as to the need for, and convene, an emergency meeting after the special meeting or schedule another special meeting. It was agreed to notice and convene a special meeting on Saturday, November 8 at 8:00 a.m. at the Forest Lake City Hall.

#### **5. BWSR Rule 8410 Comments**

Manager Spence stated that he is concerned with the timing and alignment rule changes. Manager Anderson shared some comments that Mr. Olivier of EOR provided. Mr. Olivier is concerned that changing the timing of local government units (LGUs) plans would require watershed districts to change their rules and update their capital plans, which is a laborious process. By eliminating groundwater language, he is concerned that watershed districts would have no control over groundwater feeding lakes. Mr. Holtman stated that though the new rules take out language requiring watershed districts to specifically review their groundwater-related activities in the plan, districts still have the legal authority under state statute with respect to groundwater management. But he added that agencies might interpret this to mean watershed districts now have a more subordinate role. He agreed with Manager Anderson that counties have jurisdiction on regional groundwater matters and districts follow the counties. Manager Anderson noted that both Chisago and Washington counties have groundwater plans. If the District has a problem, it can appeal to the county. Administrator Kinney stated that the District still establishes goals, with the option to reference the county goals. The District management plan also has some groundwater goals for example to provide further analysis of Sylvan Lake and the eastern part of Forest Lake where water quality is better because of the interaction of groundwater and surface water. After further discussion around the impact of the new rule related to the role of watershed districts in

governing groundwater, the Managers felt that current state statute allows districts to address groundwater issues when necessary and that language changes in Rule 8410 were not to diminish watershed district's impact, but to broaden the perspective of groundwater supply matters to the counties and Metropolitan Council.

### **# 1 Plan Development and Amendment**

Manager Schmaltz stated that he liked the amendment process being simpler and liked the clarification comments (3 and 4) as to when plan amendments are needed. Manager Anderson asked Mr. Holtman to clarify what is meant by his comment that "The proposal offers more flexibility for watershed district cost-share and grant programs, but retains or even appears to add rigidity as to capital projects, water quality monitoring and other programs." Mr. Holtman replied that the rules applied to date have stricter requirements for capital projects. The district plans require specificity for capital projects, with changes requiring a major plan amendment. Other programs such as monitoring almost never require a plan amendment if projects are added or adjusted, as long as they are consistent with plan goals and priorities. Budgets for these programs are also not required in district plans. Under the new rules, the language is not clear. The new rules specify that the monitoring program must be in district plans, but in the plan amendment section there is nothing that exempts a district from amending its plan if the parameters of the monitoring plan are changed. If a monitoring budget is amended, is a plan amendment required? Currently there are three categories of requirements for plan amendments: 1) Major amendment, 2) Minor amendment 3) No amendment. The Board might want to ask BWSR to clarify that BWSR is not trying to bring more issues under the amendment process. Administrator Kinney concurred that currently changes to the monitoring program, such as adding or deleting a lake, can be done without a plan amendment. Making program changes through an amendment process is expensive and time consuming.

Manager Anderson also expressed objection to allowing counties to expand their review process of district amendments. This is just asking for roadblocks. Mr. Holtman noted that presently, in all practicality if a county objects to a plan change, BWSR will probably not treat it as a minor amendment. BWSR has complete discretion on major or minor amendments. It is best for districts to have good relations with counties and other LGUs. The Managers and staff agreed that they did not want another layer of approval status for minor amendments.

### **#2 WD/LGU Relationship**

Manager Schmaltz stated that comment 3 in Mr. Holtman's memorandum is very important and we should ask for clarification on how BWSR expects a district, in its plan, to evaluate LGU implementation of local water plans and address inadequacies. Mr. Holtman reviewed the four modes through which local units of government effect water resource policies (capital work, ordinances, development code, and management of municipal practices). Manager Schmaltz asked that he prepare a written summary of his remarks for the board.

### **#3 Timing of Plans and Revisions**

The rules would change the timing of local water plans so that they all would be prepared in advance of the 10-year comprehensive land use plan revisions required by state law. Manager Anderson stated that in the metro area aligning plans is a good direction to go. Manager Spence objected to BWSR requiring all LGU land use plans to be done at the same time, but keeping watershed district plans on the same schedule. It seems BWSR is saying it does not have the resources to review all district plans at one time, but watershed districts are on their own to review city plans. Manager Anderson stated that instead of asking for what we can't control which is the timing of LGU plans, we should ask for what we can control—that the date for submittal of watershed plans be aligned in advance of LGU plan preparation. It was agreed that this is positive, especially for cities within more than one watershed district because it sets a drop-dead date for plans. Manager Anderson stated that we will never get to a point that all Minnesotans want and that is protecting our waters unless we clean up our infrastructure and are much more coordinated in our efforts. We voted in extra taxes to accomplish this and this is what we need to do. This requires maintaining a strong connection between watershed and LGU plans.

#### **#4 Regulatory Program and WD/LGU Regulatory Coordination**

Manager Anderson asked for clarification on comment 2. Mr. Holtman clarified that the watershed district's current planning process has a structure that allows a district to prescribe, in its regulatory program, what LGU ordinances and enforcement programs need to include for LGUs to have autonomy in enforcement. The prescription can involve not only regulatory standards that must be met, but it can also specify other features LGUs must include in their regulatory programs such as notifying districts on certain types of permit applications or ensuring LGUs have the expertise to deal with technical issues. In other words, under rule 8410 there is explicit language for district plans to describe an enforcement process on the roles the district will play and the roles the district asks the LGUs to play. The new rule asks only what the district will do. This change makes roles just a little less clear. Manager Anderson stated that the authority, however, remains with the watershed district to set standards and require that LGU ordinances meet these standards even if the district standards are more aggressive than an LGU's MS4 requirement. Mr. Holtman concurred and added that if an LGU does not adopt a district standard, the district has the right to regulate within the boundaries of the LGU until the district standards are met. Manager Anderson stated that she agrees with taking out specificity of LGU enforcement in our plan. If LGUs are implementing our standards through rules in our boundaries, then they are meeting our requirements. She stated that our plan should be a statement of our goals and objectives and rules should be the specifics.

Manager Anderson agreed with Mr. Holtman's memo stating that "district rules are independent of water planning and a rule change should not trigger plan amendment procedures."

#### **#5 Evaluation**

Managers agreed strongly with Administrator Kinney that BWSR should take more of a leadership role in developing and standardizing performance measures and reporting. Managers would like to see a consistent form that provides a state-level standard for comparison purposes. Manager Anderson stated that if we are going to get the statistics that

we need as a state to measure our clean water goals, we have to have a standard at the state level where data can be collected in a systematic way and compared. Managers also suggested that BWSR provide templates for other reports such as an employee manual.

#### **#6 Governance**

The Managers felt that the changes are too restrictive. County boards already have the authority to remove a manager for nonfeasance and have a fair amount of latitude. District managers should not be removed for a violation of a district or county bylaw as bylaws are a matter for boards' own self-policing. If a watershed district is not performing well, Managers and staff feel BWSR should have a remediation plan and should be responsible for helping them. BSWR should provide tools, resources, oversight and performance reviews. They should offer more guidance, leadership and standardization. All agreed it is a positive change to provide BWSR discretion to deal with a well-performing district, despite stakeholders wanting the district to be terminated.

#### **11. Adjourn**

Manager Schmaltz moved to adjourn the CLFLWD special Board meeting at 8:30 p.m.  
Seconded by Manager Spence. Upon vote, motion carried 4-0.

Wayne S. Moe, Secretary \_\_\_\_\_