

**RESOLUTION 2020-03**

**Nine Mile Creek Watershed District  
Board of Managers**

**Determination of NMCWD critical-sector work**

Manager Sheely offered the following resolution and moved its adoption, seconded by Manager Olson:

**WHEREAS** on March 25, 2020, Minnesota Governor Tim Walz issued Emergency Executive Order 20-20 – Directing Minnesotans to Stay at Home, directing all persons in the state to stay at home to limit the community spread of the virus;

**WHEREAS** EEO 20-20 includes exemptions from its principal stay-at-home mandate for work in “Critical Sectors” as informed by the federal Cybersecurity and Infrastructure Security Agency’s “Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response” and as may be informed by guidance issued by the governor’s office; and

**WHEREAS** among the Critical Sectors of work authorized to continue are:

- The operation, inspection and maintenance of dams, water conveyance systems and essential public works facilities and operations; and
- Other “priority services” as determined by political subdivisions of the state as necessary to ensure the health, safety and welfare of the public and preserve the essential elements of the financial system of government;

**WHEREAS** the NMCWD administrator, in consultation with the engineer and legal counsel, has identified the ongoing or pending NMCWD work described in Exhibit A, attached to and incorporated into this resolution, as work that cannot be conducted by employees or contractors from their homes, is exempt under EEO 20-20 and associated guidance as designated and described in Exhibit A, and should continue.

**NOW THEREFORE BE IT RESOLVED** that the Nine Mile Creek Watershed District Board of Managers hereby concurs in the administrator’s determination that the work described in Exhibit A is work that cannot be conducted by employees or contractors from their homes, is exempt pursuant to EEO 20-20 as designated and described in Exhibit A, and should continue;

**BE IT FURTHER RESOLVED** that the NMCWD Board of Managers directs that such work be conducted with the minimum possible number of workers necessary for safe and effective completion of the work, and in a manner that conforms to Minnesota Occupational Safety and Health Standards and the Minnesota Department of Health and the federal Centers for Disease Control guidelines related to COVID-19, including standards for social distancing and hygiene;

**BE IT FINALLY RESOLVED** that the NMCWD Board of Managers hereby authorizes and directs the administrator, in consultation with NMCWD staff, engineer, counsel and president, to maintain and update Exhibit A and ensure that it includes reasonable and appropriate bases under EEO 20-20 to support the determination that the work may continue, and to regularly update the board on continuing work under the provisions of this resolution through the effective period of EEO 20-20, as may be amended, supplemented or revised.

The question was on the adoption of the resolution and there were 5 yeas and 0 nays as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
CUTSHALL	X			
HUNKER	X			
OLSON	X			
PETERSON	X			
SHEELY	X			

Upon vote, the chair declared the resolution adopted.

April 2, 2020.

\* \* \* \* \*

I, Erin Hunker, secretary of the Nine Mile Creek Watershed District, do hereby certify that I have compared the above resolution with the original thereof as the same appears of record and on file with NMCWD and find the same to be a true and correct transcription thereof.

IN TESTIMONY WHEREOF, I set my hand this 2nd day of April, 2020.

  
Erin Hunker, Secretary

EXHIBIT A

Schedule of NMCWD Critical-Sector Work

Description of Work	Basis for Exempt Finding
<p>Regulatory Field Work</p> <ul style="list-style-type: none"> <li>• <i>Permit-site inspections</i></li> <li>• <i>Wetland Conservation Act onsite meetings</i></li> </ul>	<p>(Sec. 6.i(iii))<sup>1</sup> Inspecting wetlands and permit sites facilitates continuing economic activity (land-disturbing construction activities) subject to regulatory requirements; applicants rely on NMCWD review and oversight, and have a legal right to regulatory approval for which they qualify, making this work a priority service.</p>
<p>Normandale Lake Improvement Project</p> <ul style="list-style-type: none"> <li>• <i>Vegetation survey</i></li> <li>• <i>Temperature monitoring</i></li> <li>• <i>Water-quality monitoring</i></li> <li>• <i>Lake-level and flow-rate monitoring</i></li> <li>• <i>Herbicide treatment</i></li> <li>• <i>Fish surveys and management</i></li> </ul>	<p>(Sec. 6.i(iii)) Ongoing NMCWD project is a priority service needed to fulfill commitments to citizens and partner City of Bloomington, and comply with state permitting requirements.</p> <ul style="list-style-type: none"> <li>• Vegetation survey (mid-April); flow-rate, lake-level and temperature monitoring (through April) are critical to assessing success of prior investment of public funds and determining feasibility of herbicide treatment (late-spring and summer) to preserve and enhance value of past NMCWD water-quality improvement work and securing the benefits of past investment of public funds in improvements.</li> <li>• Fish surveys and management are separate but critical components of ongoing work and are designed to ensure gains achieved and</li> </ul>

<sup>1</sup> References are Emergency Executive Order 20-20 and associated documents. *See, please,* <https://www.leg.state.mn.us/archive/execorders/20-20.pdf>

	public expenditures to date are not lost.
<p>Flood-risk monitoring</p> <ul style="list-style-type: none"> <li>• <i>Lake-level sensor installation and reading</i></li> <li>• <i>Stream flow-rate data collection, including Watershed Outlet Monitoring Program monitoring</i></li> </ul>	(Secs. 6e; 6.g; 6.i(iii)) Assessment of spring flood risk is critical to public health and safety and integrity of public and private structures.
<p>Office Maintenance</p> <ul style="list-style-type: none"> <li>• <i>Includes mail, security, checking infrastructure (HVAC, computer server, etc.), posting notices – all only as needed</i></li> </ul>	(Sec. 6.i(iii); CISA guidance) Administration is required to ensure continuity of building functions and avoid loss of publicly funded operations and maintain office in accordance with legal commitments (including the development agreement with the city and applicable code requirements); critically facilitates timely processing of regulatory reviews in accordance with statutory and other legal requirements.