

**MINUTES OF THE SPECIAL MEETING
OF THE
BOARD OF MANAGERS
OF THE
NINE MILE CREEK WATERSHED DISTRICT**

THURSDAY, APRIL 2, 2020

Call to Order

Chair Peterson called the Special Meeting of the Board of Managers of the Nine Mile Creek Watershed District to order at 3:00 p.m., Thursday, April 2, 2020. The meeting was conducted by web-based video conference, pursuant to Minnesota Statutes section 13D.021 after the president determined that because of the COVID-19 pandemic it was not prudent for the board of managers, or any committee thereof, to meet in person.

Managers Present: Bob Cutshall, Erin Hunker, Larry Olson, Grace Sheely, and Jodi Peterson

Manager Absent: None.

Advisors Present: Randy Anhorn, Janna Kieffer, Lauren Foley, Erica Sniegowski, Gael Zembal, and Michael Welch

Discussion on the District's Current Work Activities and the Governor's Executive Order 20-20

Chair Peterson explained the Board is meeting to discuss the District's work activities in light of the Minnesota Governor's Emergency Executive Order 20-20. Administrator Anhorn said the Board will consider what work the District finds to qualify as falling within a "critical sector," such that it is exempt from the principal tenet of the order, which is that everyone should stay home. He reported staff and advisors discussed the District's activities and field projects, and the discussion was the basis for the resolution in front of the Board today.

Administrator Anhorn pointed out that even for District work the Board establishes as essential and critical, the District will not direct contractors to do the work. He reported staff has contacted the contractors, and they have all communicated they are able to safely proceed with the work presented in the resolution.

Attorney Welch summarized the governor's stay-at-home order and talked about specific exemptions, including operation of dams and water conveyance systems and essential public

works facilities, and priority services that local governmental subdivisions deem necessary or essential for the health, safety and welfare of the public, and preserve the essential elements of the financial system of government. He described the process District staff and advisors conducted to evaluate the District's work and projects through the lens of the governor's order and its exemptions.

Attorney Welch provided an example of work the District could find that permit inspections are critical priority services because the District has a legal obligation to process permits and a role to play in approving construction. He clarified that the action the Board is taking to identify and approve work as critical services is the first step, which is followed by the District coordinating with its staff and contractors to make sure health guidance on social distancing and can be followed while the work proceeds. Attorney Welch explained the resolution delegates authority to Administrator Anhorn to work with the District engineer, legal counsel, District staff, and Chair Peterson to update and maintain the list.

Administrator Anhorn went through the resolution with the managers.

Attorney Welch pointed out the resolution's language that addresses the effective period of the executive order. He said the declarations made with the resolution will carry on if the governor's order is extended.

Chair Peterson asked if there were any questions. Manager Cutshall asked for a summary of the work the District will discontinue. Administrator Anhorn replied the stream and lake monitoring program. Program and Project Manager Sniegowski said the District has cancelled most of the District's April education and outreach events, and staff is working on setting up some virtual events through Microsoft Teams and working on what educational materials the District can provide digitally. Engineer Kieffer noted the District is suspending groundwater monitoring.

Administrator Anhorn said he will bring this topic up after the Board acts on the resolution, but if the governor's order is extended, District staff, advisors, and Chair Peterson will revisit the discussion about the discontinued items and will reevaluate.

Attorney Welch asked Engineer Kieffer how she is directing her field staff at Barr Engineering regarding safety protocols. Engineer Kieffer said she has been in contact with field staff and is confident Barr can conduct the work, as identified by the District through the resolution, safely using the Department of Health guidelines.

Attorney Welch recommended the District authorize legal counsel to prepare a letter from the District to its contractors to notify the contractors of the District's decision and clarify that the District's resolution isn't a directive to them, they are free to and should make a decision on their own regarding whether to work, following the governor's order, and applying the order to their work and workers, independent of the District. Responding to managers' questions, he said the District's contracts provide for no-fault extension of contract deadlines in the event of an act of god, such as the pandemic.

It was moved by Manager Sheely, seconded by Manager Olson, to adopt Resolution 2020-03 for the Determination of Nine Mile Creek Watershed District Critical Sector Work with the amendment to the resolution by inserting at the end of the third resolution “EEO 20-20, as may be amended, supplemented, or revised.” On a roll call vote, the motion was approved.

Administrator Anhorn brought up the Lake Cornelia in-lake alum treatment, scheduled to occur sometime between May 15 and May 30. He said that for the project to move forward, the City of Edina needs to undertake the curlyleaf pondweed herbicide treatment. Administrator Anhorn reported that at this time, the City of Edina is anticipating doing the treatment as planned, but he said he’s not sure the impact to the scheduled treatment if the stay-at-home order is extended. Engineer Kieffer explained the timing of the herbicide treatment and said it needs to be done by May 10 to avoid impacting the timeline of the in-lake alum treatment. Administrator Anhorn presented possible actions in the event the City of Edina can’t conduct the herbicide treatment by May 10, noting the District would talk to the in-lake alum treatment contractor about moving the project to the fall. Administrator Anhorn explained this postponement could require changing the agreement, which could change price and could require going out for quotes.

Administrator Anhorn talked about the District building addition. He said construction generally is subject to an exemption from the order and the NMCWD project is set to start on May 15. Administrator Anhorn said he feels the project will keep moving forward. There was discussion about considering protective equipment and cleaning as the construction date draws closer.

Administrator Anhorn noted the District has planned for five use attainability analyses in 2021. He explained that to do the modeling efficiently, a fair amount of data is needed. He said if data collection is impacted beyond a certain length of time, the UAAs may get pushed back to 2022 to allow for data collection in 2021, which could impact implementation of other items in the District’s water management plan. He said staff will be evaluating this issue during the month.

Administrator Anhorn pointed out the non-profit BMP projects awarded by the District to Sunram Construction are not in the resolution just adopted by the Board. He said staff and advisors will evaluate this work if the governor’s order is extended. There was brief discussion about the timeline, and staff plan to monitor the situation in light of the timeline.

Administrator Anhorn reported if the governor’s order is extended, staff and advisors will evaluate the two projects, including the office landscaping and maintenance, scheduled to start in the end of April to beginning of May to see how the timelines could be modified.

Manager Sheely commented on her goal of reviewing the District’s 10-Year Plan and considering ideas in light of the possibility that COVID-19 directives and impacts may extend until fall and considering the possibility that prices may be affected.

Adjournment

It was moved by Manager Sheely, seconded by Manager Olson, to adjourn the meeting at 3:49 p.m. On a roll call vote, the motion was approved.

Respectfully Submitted,

Erin Hunker, Secretary