

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

WEDNESDAY, APRIL 20, 2022

1. Call to Order of the Regular Board Meeting

President Cutshall called the regular meeting of the Nine Mile Creek Watershed District Board of Managers to order at 7:00 p.m., April 20, 2022. 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 to meet in person.

Managers Present: Grace Butler, Bob Cutshall, Erin Hunker, Peggy Kvam, and Larry Olson

Advisors Present: Janna Kieffer, Barr Engineering; Michael Welch, Smith Partners

Staff Present: Randy Anhorn, Brett Eidem, Lauren Foley, Erica Sniegowski, and Gael Zembal

Other Attendees: John Arthur (NMCWD Citizen Advisory Committee member) and Ross Bintner (City of Edina)

2. Approval of Regular Meeting Agenda

Administrator Anhorn said the review of the Edina permit application for work on the Hawkes Lake lift station property is not ready for board consideration, but the project will be discussed instead. He noted that the review of his performance is on the agenda twice and will be removed from New Business and handled in closed session.

Manager Butler moved, seconded by Manager Hunker to approve the meeting agenda as amended. On a roll call vote, the motion was approved 5-0.

3. **Reading and Approval of Minutes**

a. **Draft Minutes of the February 16, 2022, Regular Board Meeting**

Manager Kvam moved, seconded by Manager Olson to approve the minutes of the District's February 16, 2022, regular meeting as presented. On a roll call vote, the motion was approved 5-0.

b. **Draft Minutes of the March 16, 2022, Regular Board Meeting**

Manager Olson moved, seconded by Manager Butler to approve the minutes of the District's March 16, 2022, regular meeting as presented. On a roll call vote, the motion was approved 5-0.

4. **Public Open Forum**

a. **General Interest**

No items of general interest were raised.

5. **Consent Agenda**

a. **Administratively Approved Permits**

b. **Permit Inspection Report**

c. **Staff Reports**

i. **Permit and Water Resources Coordinator**

ii. **Education and Outreach Coordinator**

iii. **Natural Resources Planning and Project Manager**

iv. **Program and Projects Manager**

v. **Engineer's Report**

6. **Hearing of Permit Applications**

a. **2021-163 Edina Lift Station Hawkes Lake 5709 Warden Avenue: Edina**

Administrator Anhorn said the City of Edina is proposing the rehabilitation of a lift station located on a small parcel of land near Hawkes Lake that already has some localized flooding. He said the proposed project would raise the elevation of the lift station to 0.3 feet above the 100-year flood-management elevation. He explained the project proposes to lift the equipment inside the building two feet above the 100-year flood evaluation, but raising the building itself would more fill in the floodplain than is presently proposed. He stated that because the low-floor elevation of the proposed building is not at least two feet above the 100-year flood elevation, a variance under the Floodplain Management

and Drainage Alterations Rule may be requested by the applicant. Administrator Anhorn indicated that the applicant may also request a variance from compliance with the Floodplain Management and Drainage Alterations Rule because the city is planning to place approximately 400 cubic yards of fill in the floodplain. Administrator Anhorn said the additional fill would increase flood elevations in the area. He noted staff has been working with the City of Edina to suggest options to reduce or eliminate the amount of fill. Administrator Anhorn said modifications to the proposed site design to reduce floodplain fill could impact the ability of the city to meet the District's Stormwater Rule requirements, so a variance from compliance with the Stormwater Rule may be requested by the applicant.

City of Edina staff member Ross Bintner provided additional details about the project, including the City of Edina's objective to raise the lift station to minimize potential for disruptions to the sanitary service and the potential for sanitary backflows due to flood inundation. He discussed the challenges of balancing flood risks and explained that raising the lift station requires placing fill in the floodplain, which results in an increase in flood elevation of downstream Hawkes Lake.

Mr. Bintner shared a slide regarding the City of Edina's flood risk-reduction strategy and highlighted the primary pathways to structural flood risk, including surface water, groundwater, and sanitary backflow. He said the city sees protecting key pieces of infrastructure, like sanitary lift stations and manholes, as key to its flood risk-reduction strategy.

Manager Butler asked if the city has looked at the snowmelt coming of a parking lot near the project location. She asked if the city could work collaboratively with the church regarding moving the parking lot snow pile offsite. Mr. Bintner said the city hasn't focused on any individual property. He said exporting snow might not be a feasible management effort. Mr. Bintner said under circumstances where the snowpack melt-off is very rapid, like the entire snowpack in 10 or fewer days, the city can pump ahead of time and as the water is coming in to free up storage in the lake.

Program and Project Manager Sniegowski commented that Good Samaritan United Methodist Church, the adjacent property, is one of the District's nonprofit project partners. She said a rain garden was installed as part of a District capital improvement project, and the rain garden collects water from the parking lot. She said she thinks the church stores snow in the rain garden as well.

Administrator Anhorn said he anticipates this permit will be in front of the board at its May 18 meeting.

7. **Treasurer's Report**

Manager Kvam noted there are no payment applications before the managers, and she highlighted the invoices and disbursements listed in the report.

Manager Olson moved, seconded by Manager Hunker to accept the treasurer's report and approve paying the bills. On a roll call vote, the motion was approved 5-0.

8. **Citizen Advisory Committee Update**

Citizen Advisory Committee member John Arthur introduced himself, sharing he has been a CAC member for a few years, and he is a Minnesota Water Steward and has been active in a number of other organizations. The president and managers welcomed Mr. Arthur to the meeting.

9. **Administrator Report**

Administrator Anhorn said the District has a workshop at 5:30 p.m. on May 5, which will be held virtually, and he noted some of the items that will be on the workshop agenda. He mentioned last night was the Arrowhead-Indianhead community stakeholder meeting and nine people attended. Administrator Anhorn said the people overall supported the majority of the District's recommendations. He said there were concerns about lily pads, and there was support for having a diversified native plant population. Engineer Kieffer commented that the residents are concerned about the density of the lily pads, but that is regulated by the Department of Natural Resources, not the District.

a. **Correspondence**

Administrator Anhorn reported the District received the Metropolitan Council's 2022 Water Resources Update memo highlighting recent Metropolitan Council water monitoring, assessment, and planning efforts, and it is included in the packet.

10. **Unfinished Business**

a. **Draft 2021 Annual Report**

i. **Draft 2021 Annual Report**

Administrator Anhorn noted the managers have had the opportunity to review the report and staff is seeking the board to approve

the annual report and direct staff to submit it the required entities. He said he would submit the report along with the annual audit.

Manager Butler moved, seconded by Manager Olson to approve the District’s 2021 annual report and submit it to the required entities. On a roll call vote, the motion was approved 5-0.

b. In-Person Meetings

Administrator Anhorn reported the number COVID-19 cases in Hennepin County and the recent increase in cases. Each of the managers commented he or she would be comfortable with in-person meetings nonetheless. , But Manager Kvam said she is comfortable unless the number of cases increase substantially, and President Cutshall remarked the District would need to keep watching the numbers. Manager Butler said she might choose to mask at the meeting if the group is unmasked. The board agreed to discuss meeting format again at the next meeting.

c. Lower Minnesota River Collaboration Chloride Cost-Share Grants

Administrator Anhorn stated the Nine Mile Creek Watershed District, along with Riley-Purgatory-Bluff Creek Watershed District, the Richfield-Bloomington Watershed Management Organization, and the Lower Minnesota River Watershed District all drain to the Minnesota River. He reported that approximately \$190,000 in state Watershed-Based Implementation Funding is available for chloride-reduction projects in the area, and the four watershed organizations are working collaboratively to develop candidate projects. Administrator Anhorn said Riley-Purgatory-Bluff Creek Watershed District is the fiscal agent. He said the administrators of the four organizations jointly review applications.

i. Draft Cooperative Agreement

Administrator Anhorn said all four entities are working to get a cooperative agreement to facilitate use of the funding, and he understands RPBCWD has approved the cooperative agreement. He said staff and legal counsel are recommending authorization of the president to execute the cooperative agreement. Attorney Welch added the agreement sets up a structure whereby the administrators of the four entities decide how to allocate funds until the \$197,000 is used up. He noted that the funding is available only through the end of the year. Administrator Anhorn commented that the project requires a 25% match, and grant are capped at \$20,000.

Manager Hunker moved, seconded by Manager Kvam to authorize the president with advice from counsel to execute the cooperative agreement for implementation of the Lower Minnesota River Chloride Initiative as finalized with such nonsubstantive changes as are necessary to implement the intent of the managers and facilitate the program. On a roll call vote, the motion was approved 5-0.

d. Whited Marsh Restoration Approach

Natural Resources Project and Planning Manager Brett Eidem reminded the board of the proposed approach to restoration of Whited Marsh.

Mr. Eidem stated that staff and the consultants will be contacting landowners, continuing to apply for grants and developing partnerships. He said once there is traction and momentum with landowners and partners, staff will SRF and RES to develop a scope of work for final design, schedule, permitting, and contracting to the managers for authorization. Mr. Welch asked whether the board wants to add a condition the development of a scope of work on a certain level of buy-in from property owners.

President Cutshall said landowner buy-in is critical, but he isn't sure how to quantify it. Manager Butler said she'd like to work with staff and see at least 50 percent landowner buy-in before the District spends more money on this project. She said she would like to see wetland associations form similar to lake associations.

Manager Kvam said she trusts staff to keep the board informed and to move ahead when the time is right or inform the board of roadblocks. President Cutshall asked staff if the project can effectively achieve long-lasting improvement if only 75 percent of the landowners buy in. He said he is concerned about invasives. Mr. Eidem said staff will work with Manager Butler and he thinks the project can be successful if the District secures access to the wetland and makes large strides in controlling the invasives in the wetland itself, then works on a landowner-by-landowner basis to secure rights to establish buffer.

11. New Business

a. Cost-share Grants

Program and Project Manager Erica Sniegowski presented the 2022 stewardship grant applications, including five residential, one association, one nonprofit, and one business. She said the total recommended funding amount is \$87,470.41, which is less than the total amount the District has budgeted for stewardship grants.

Ms. Sniegowski displayed a table of the recommended projects and funding. She noted the District funded 10 stewardship grants in 2021. She explained the Citizen Advisory Committee reviewed the residential applications and recommended funding all five applications at the requested amounts. Ms. Sniegowski said staff and two managers reviewed the three non-residential applications and recommend funding all three at the requested amounts.

Ms. Sniegowski noted that the one business application received is unique in that Nine Mile Brewing leases its brewery location. She said the District has written confirmation from the property owner acknowledging 9 Mile Brewing's application. She said staff and NMCWD legal counsel have included cost-recovery language in the agreement to address the uncertainties of the business closing or moving such that it would not be able to maintain the proposed pervious pavers for the required 10-year period. Ms. Sniegowski reported she met with the business owner and discussed the grant agreement including this provision. She said the owner has reviewed this draft agreement and is fine with it. Michael Welch noted that the draft agreement provides joint and several liability for Nine Mile Brewing and the owner of the business, Robert Countryman, meaning that NMCWD could recover from either in the event that the project is not maintained for the required 10 years.

Ms. Sniegowski stated there is a policy piece to this topic as well. She explained that cost-recovery language stating that in the case of property owners utilizing cost-share projects to meet regulatory requirements, the owners would have to repay part of those grant funds based on how long those projects were in the ground. She said staff is requesting adopt of this policy for the cost-share program.

Ms. Sniegowski said staff is requesting that the board authorize the administrator to enter into cost-share agreements with the stewardship grant applicants at the amounts shown in the table presented, with five-year maintenance agreements for grants of \$5,000 or less and 10-year maintenance agreements for grants more than \$5,000, and cost recovery for commercial, public, and institutional grants of more than \$5,000.

President Cutshall raised his concerns about a grant with a lessee and asked how going forward the District could tie in the landowner to a greater degree.

Manager Butler said generally projects have been completed as funded. She said she isn't seeing risk of loss – the projects are being maintained even longer than anticipated.

Ms. Sniegowski said District staff and the board should to consider and discuss equity in the District's cost-share program.

Manager Butler moved, seconded by Manager Hunker to authorize the administrator to enter into cost-share agreements with the stewardship grant applicants at the amounts shown in the table presented, with five-year maintenance agreements for grants of \$5,000 or less and 10-year maintenance agreements for grants more than \$5,000, and cost recovery for commercial, public, and institutional grants of more than \$5,000. On a roll call vote, the motion was approved 5-0.

b. Single-Family Homes Stormwater Rule Trigger

Administrator Anhorn reminded the board that Permit and Water Resources Coordinator Foley presented on the 2021 permit program two board meetings ago. He said that the board directed staff to explore options to better balance cost to NMCWD with the water-quality protection results achieved by regulating single-family home projects.

Ms. Foley reviewed the phosphorus-loading reductions achieved through application of the NMCWD stormwater requirements to single-family home projects in 2021, noting that the 20 non-single-family home permits that triggered the stormwater rule in 2021 resulted in an estimated removal of 85 pounds of phosphorus per year, while the 26 single-family home permits that triggered the stormwater rule resulted in an estimated removal of roughly seven pounds of phosphorus per year.

Ms. Foley presented possible new approaches to permitting single-family residential projects, including the idea of simply requiring installation of a best-management practice. Such an approach would mean NMCWD would not be able to calculate performance metrics. Manager Hunker said the difficulty with just requiring a BMP is that it requires the NMCWD engineer to decide whether a proposed BMP meets the goal or intent. She said she doesn't see how that determination could be made without performance standards. Manager Hunker added that some sort of drawing should still be included, not just a worksheet.

Ms. Foley discussed other options for revising the single-family home framework that involved changes to the percent-impervious or -disturbance triggers in the rule.

Chair Cutshall asked if the District should consider aligning with the cities' methods of regulating single-family homes. Ms. Foley said the difficulty in that approach is the different cities in the watershed have different methods. She also noted that there could be new issues to consider if the District's rules are redundant with the cities' rules.

Ms. Foley recommended the District eliminate the common scheme of development for single-family homes.

Manager Butler said she'd like the District to consider how many permits realistically staff can handle and will the proposed changes presented lessen the work for staff and reduce frustration for homeowners. She asked if rate control and phosphorous reduction could be achieved from methods besides BMPs. Manager Butler said she thinks the District should make stronger recommendations to the cities about their ordinances. She said the District hasn't gone to the cities to let them know the District needs to work with them and make this happen. Manager Butler said she wants the District to figure out how to work with each of the cities. She also said slopes and soils still need to be in the rules and the District needs to continue considering them. Manager Butler asked staff to provide her with the slides and information that Ms. Foley presented on this topic.

Program and Project Manager Foley said staff recommends they move ahead with developing the details for requiring a BMP only unless the board has another direction for staff. The board agreed.

12. Attorney's Report

Attorney Welch reported the extension of the Environment and Natural Resources Trust Fund is moving through the state legislature.

13. Managers' Reports

Manager Kvam reported she attended last night's metro Minnesota Association of Watershed Districts meeting. She said a Metropolitan Council representative talked about the recently released report with the Priority Waters list. Manager Kvam listed the NMCWD waters included on the list: Bryant Lake, Bush Lake, Normandale Lake, and Nine Mile Creek. She said these waterbodies were reviewed over seven categories and designated as regionally significant waters.

14. Administrator's Annual Performance Review – Closed Session and Chair's Summary

The board moved into closed session at 9:15 p.m.


The board reconvened the public meeting at 9:26 p.m. President Cutshall reported there were many comments about the excellent job Mr. Anhorn is doing and how he has managed the growth of the District with projects, staff, and responsibilities. President Cutshall reported the board is very pleased with the Administrator's performance and recommends a 4.5 percent salary increase retroactive to March 26, 2022.

It was moved by Manager Butler, seconded by Manager Hunker to approve an increase to Administrator Anhorn's salary by 4.5 percent retroactive to March 26, 2022. On a roll call vote, the motion was approved 5-0.

15. Adjournment

It was moved by Manager Olson, seconded by Manager Hunker to adjourn the meeting at 9:30 p.m. On a roll call vote, the motion was approved 5-0.

Respectfully Submitted,



Grace Butler, Secretary