

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

**WEDNESDAY, FEBRUARY 16, 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., Wednesday, February 16, 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) and Michael Welch (Smith Partners)

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

Other Attendees: Shelby Roberts (NMCWD Citizen Advisory Committee)

**2. Approval of Regular Meeting Agenda**

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

**3. Reading and Approval of Minutes**

**a. Draft Minutes of the January 6, 2022, Board Workshop**

**Manager Kvam moved, seconded by Manager Olson to approve the minutes of the District's January 6, 2022, Board workshop as posted. On a roll call vote, the motion was approved 5-0.**

**b. Draft Minutes of the January 19, 2022, Regular Board Meeting**

Manager Hunker moved, seconded by Manager Butler to approve the minutes of the District's January 19, 2022, Regular Meeting as posted. 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**

**7. Treasurer's Report**

Manager Kvam pointed out there are no pay applications this month. She highlighted the invoices and disbursements listed in the report.

Manager Olson moved, seconded by Manager Butler to accept the Treasurer's Report and approve paying the District's bills as presented. On a roll call vote, the motion was approved 5-0.

**8. Citizen Advisory Committee**

Education and Outreach Coordinator Zembal introduced Citizen Advisory Committee member Shelby R. Shelby talked about the big picture things the CAC is working on, including the Salt Watch program to collect data about chloride levels of stormwater runoff flowing into the creek and local lakes. She talked about cost share grant applications, noting the CAC will review them in April. Education and Outreach Coordinator Zembal announced a post card is being developed for a

summer mailing to educate people about not blowing leaves and grass clippings into the creek (geared toward those who live next to Nine Mile Creek). She said more information will be provided about this postcard at a future meeting.

9. **Administrator's Report**

Administrator Anhorn noted correspondence received, including a letter from Redpath & Co. about the initiation of the annual audit for 2021. He said the audit will be available for the March 16<sup>th</sup> meeting. Administrator Anhorn said there were no findings in the audit and Treasurer Kvam will meet with Redpath to review the audit report.

Administrator Anhorn said registration is open for the annual Minnesota Association of Watershed Districts' March 16-17 legislative event, and he gave an overview of the schedule. He asked managers to let him know if they want to attend. Administrator Anhorn reported the limited-liability chloride bill is receiving committee hearings.

Administrator Anhorn reported on the recent numbers of Covid cases in Hennepin County and stated that the 7-day running average has been trending down. He said most metro watersheds are still holding meetings online, and that he would continue to have discussions with President Cutshall and the Board as to when everyone feels comfortable about having in-person meetings. Administrator Anhorn reminded the Board of its March 3<sup>rd</sup> workshop, which will include a public hearing on the Lynmar Basin Stormwater Retrofit Project. He said staff is looking to apply for hosting a Minnesota GreenCorps member, who would start in September and work with the District through the following August. Administrator Anhorn announced other items on the March 3<sup>rd</sup> workshop agenda and the March 16 regular meeting agenda.

10. **Unfinished Business**

a. **Governance Manual**

i. **Draft Resolution 22-01 – Adopting An Electronic Signature Policy**

Attorney Welch said the resolution adopts an electronic-signature policy for inclusion in the NMCWD Governance Manual. He said there's no change to this resolution compared to what was presented to the managers last month. Attorney Welch said pay applications can be made to work with the electronic-signature policy. He added that this policy will allow for better contract management and a more efficient signature process. Attorney Welch clarified a place where the reference to "him" was removed and suggested all gender references could be removed. The Board agreed with the idea of removing the gender references. Permit and

Water Resources Coordinator Foley asked what would be required if in the future the Board authorizes her to sign permits. Attorney Welch clarified that the resolution does not provide for delegation of the administrator's authority to staff, and staff would need to work with the administrator to ensure that permits are timely executed.

**Manager Butler moved, seconded by Manager Hunker to adopt resolution 22-01 with minor changes to remove gender references. On a roll call vote, the motion was approved 5-0.**

**b. NMCWD Low-Floor Policy**

**i. Draft Resolution 22-02 – Adopting a Policy Refining the Definition of “Structure” for Purposes of Subsection 2.3.1 of the NMCWD Rules**

Administrator Anhorn reviewed the background on the unintended result of the definition of “structure” as applied to the low-floor or freeboard requirement in subsection 2.3.1 of the District's rules. He said staff recommends the Board adopt resolution 22-02 to adopt a policy refining the definition of “structure.” As codified in the rules, the definition requires application of the two-foot freeboard criterion to paved areas such as parking lots and tennis courts that the engineer does not find to present the kind of risk meant to be addressed by the freeboard requirement.

Attorney Welch explained that in keeping with the discussion at the February workshop, the resolution states policy that the freeboard requirement will apply only to buildings, boardwalks, and bridges. He said this clarifies that if something isn't a building, boardwalk, or bridge, it isn't subject to the low-floor requirement. Manager Cutshall wondered whether at some point NMCWD might want to consider whether setting a low elevation for parking lots isn't a good idea.

**Manager Olson moved, seconded by Manager Kvam to adopt Resolution 22-02. On a roll call vote, the motion was approved 5-0.**

**c. EOR Revised Scope of Work for Environmental Assessment Worksheet for South Fork of Nine Mile Creek Restoration Project**

Administrator Anhorn reminded the Board the original scope of work did not include development of an environmental assessment worksheet and subsequently staff determined that preparation of an EAW will be required. He said he asked EOR to submit the draft scope of work in the meeting packet. Administrator Anhorn explained that the EAW scope in the packet includes

review of impact of the project on climate adaptation and resilience, and describes this element as required, but this element is part of a pilot program and is not required, so the managers could remove it. The managers directed the EAW to include assessment of climate adaptation and resilience.

Administrator Anhorn asked the Board to authorize him to amend the District's agreement with EOR to add EOR's cost for doing the EAW to the overall scope for the project, establishing a new contract total of not-to-exceed \$64,000.

**Manager Kvam moved, seconded by Manager Hunker to amend the District's agreement with EOR for the South Fork feasibility study to not-to-exceed \$64,000 and authorize the Administrator to execute the amendment. On a roll call vote, the motion was approved 5-0.**

**11. New Business**

**a. Aquatic Invasive Species Rapid Response Plan**

**i. Comments and Responses**

**ii. Plan**

Administrator Anhorn talked about the comments received on the draft aquatic invasive species rapid response plan. He said the draft plan in front of the Board have been revised after consideration of comments received. Administrator Anhorn displayed the plan and went through the plan's overall framework and the flowchart for determining priority lakes. He reminded the Board the District's budget includes \$20,000 for AIS rapid response.

Manager Cutshall noted that the managers may wish later to increase the administrator's spending authority for emergency AIS response.

**Manager Butler moved, seconded by Manager Olson to accept the AIS plan and direct staff to follow the guidance as set out in the plan. On a roll call vote, the motion was approved 5-0.**

**b. Lynmar Basin Stormwater Retrofit Project**

**i. Feasibility Study**

Administrator Anhorn reminded the managers that at their September 15<sup>th</sup> regular Board meeting, the Board authorized Barr Engineering to undertake this feasibility study. He said the District is holding a public hearing on the proposed project on March 3<sup>rd</sup>.

Engineer Kieffer presented the study and conclusions. She went through the Engineer's opinion of probable cost for two options: Option A

- the Lynmar Basin Retrofit, which would involve work in the park only and Option C - the Lynmar Basin Retrofit + the LE\_24 Subwatershed, which would involve storm-sewer changes in the referenced drainage area to bring more water to the basin in the park. Engineer Kieffer shared the engineer's opinion of probable cost for each option as follows:

Lynmar Basin Retrofit:

- Planning level cost-estimate: \$998,000
- Planning level cost range: (-15% to +20%): \$849,000-\$1,198,000
- Estimated Annualized Cost per Acre-foot of Runoff Reduced: \$3,900
- Estimated annualized cost per pound total phosphorous removed: \$4,800
- Flood storage unit cost (\$/cubic ft. of additional storage): \$11

Lynmar Basin Retrofit + LE\_24 Subwatershed:

- Planning level cost-estimate: \$1,255,000
- Planning level cost range: (-15% to +20%): \$1,067,000 - \$1,506,000
- Estimated Annualized Cost per Acre-foot of Runoff Reduced: \$2,600
- Estimated annualized cost per pound total phosphorous removed: \$3,200
- Flood storage unit cost (\$/cubic ft. of additional storage): \$14

Engineer Kieffer outlined next steps, including the District's March 3<sup>rd</sup> public hearing, Barr finalizing the feasibility report, the Board's consideration of ordering of the project at its March regular meeting, and the drafting of a cooperative agreement between the District and the City of Edina. She said the Lynmar Basin Retrofit + LE\_24 Subwatershed option offers a better value in terms of stormwater volume and phosphorus reduction, and she recommends this option, but it is a more expensive project overall.

Administrator Anhorn said the District has \$191,000 in Clean Water Land and Legacy funding for this project. He reported there is opportunity to add to this amount from the \$100,000 of Watershed-Based Implementation Fund money allocated to the Nine Mile Creek drainage area by the Board of Water and Soil Resources. Administrator Anhorn noted those BWSR funds are exclusively for project included in a water management plan, so any projects not in the District's plan would need to

be added to be eligible. He said the District also could apply for Hennepin County's opportunity grant program.

There was discussion about the proposed depth of the basin, and whether the basin should be deeper to increase the stormwater volume reduction and pollutant removal benefits. Engineer Kieffer explained that this could be evaluated in more detail as part of the project design, but there may be opportunities to achieve additional benefits without increasing the depth of the basin by adjusting the design of the outlet from the basin.

The Board directed Engineer Kieffer to present Option C, including the drainage from the LE\_24 subwatershed, at the March 3 public hearing.

**Manager Hunker moved, seconded by Manager Butler to accept the feasibility report with direction to the District engineer to finalize the report with corrections as she sees fit based on the discussion tonight and to proceed with a discussion of option C with the City of Edina. On a roll call vote, the motion was approved 5-0.**

## 12. Attorney's Report

Attorney Welch reported that the Board of Water and Soil Resources has issued a request for comments on changes to the Wetland Conservation Act rules. He said BWSR is focused only on rectifying differences between the statute and rules. He doesn't have a recommendation for the District to comment. Attorney Welch noted that the Minnesota Association of Watershed Districts has started a diversity, equity and inclusion work group.

Attorney Welch said the District has decided to meet virtually in March and revisit the topic regarding its April meetings.

## 13. Managers' Reports

Manager Butler reported the salt limited-liability bill, Senate File 2768, is proceeding through legislative committee hearings. Manager Butler said the bill was unanimously approved by the Senate Environment and Natural Resources Policy and Legacy Finance committee. She expressed optimism that the bill will pass this year.

Manager Butler raised the topic of equity in water management and said she hopes there could be a video or piece of content that could help the managers engage and have the same background on the topic. Education and Outreach Coordinator Zembal provided some background on initial work District staff has done. She said

she would be willing to work on an initiative to get the Board and staff to a common level of understanding.

**14. Adjournment**

**It was moved by Manager Olson, seconded by Manager Hunker to adjourn the meeting at 8:51 p.m. On a roll call vote, the motion was approved 5-0.**

Respectfully Submitted,



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Grace Butler, Secretary