

LOWER MINNESOTA RIVER WATERSHED DISTRICT MINUTES

WEDNESDAY, SEPTEMBER 16, 2009

1. CALL TO ORDER

President Kremer called the regular meeting of the Board of Managers of the Lower Minnesota River Watershed District to order at 7:01 PM on Wednesday, September 16, 2009 in the Council Chambers at the City of Chaska, Chaska Minnesota.

2. ROLL CALL

Managers present: Len Kremer, Ed Schlamp, Larry Samstad, Don McCready, Kent Francis
Also present: Travis Bistodeau, Dakota County, Clint Gergen, CHS Harvest States,
Chris Ellison and James Fallon, USGS, Della Young and Dan Murphy,
HDR Inc. Susan Seeland and Ruth Hustad of Hustad Investment Corp.;
District's attorney Bruce Malkerson, staff members Terry Schwalbe and
Joan Ellis

3. ELECTION OF OFFICERS

President Kremer moved and Manager Samstad seconded that the election process be by each position. VOTE: Ayes 5; Nays 0.

President: Nominations were opened for the officer position of President by President Kremer. Manager Schlamp nominated Larry Samstad. Manager Francis nominated President Kremer. **Manager McCready made a motion and Manager Kremer seconded to close the nominations for President. VOTE: Ayes 5; Nays 0.**

President Kremer indicated that all those in favor of Manager Samstad for President raise their hands. Managers Samstad, Schlamp and McCready voted for Manager Samstad to be President. Manager Samstad is elected President.

Vice President: Nominations were opened for the officer position of Vice-President. Manager Francis and President Samstad seconded to nominate Manager McCready for Vice President. **President Samstad moved to close the nominations for Vice President. VOTE: Ayes 5; Nays 0. As the only nominee for Vice-President by acclamation Manager McCready is to be Vice-President. VOTE: Ayes 5; Nays 0.**

Secretary: Nominations were opened for the officer position of Secretary. Manager Francis nominated and Manager McCready seconded the nomination of Manager Francis for Secretary. No other nominations were made. **It was moved by Manager McCready and seconded by Manager Kremer to close the nominations. VOTE: Ayes 5; Nays 0. As the only nominee for Secretary by acclamation Manager Francis is to be Secretary. VOTE: Ayes 5; Nays 0.**

Treasurer: Nominations were opened for the officer position of Treasurer. President Samstad nominated and Manager Francis seconded the nomination of Manager Schlamp for Treasurer. No other nominations were made. **It was moved by President Samstad and seconded by Manager Francis to close the nominations. VOTE: Ayes 5; Nays 0. As the only nominee for Treasurer by acclamation Manager Schlamp is to be Treasurer. VOTE: Ayes 5; Nays 0.**

Assistant Treasurer: No one wished to serve.

Manager McCready and Manager Kremer moved officer nominations be closed.

VOTE: Ayes 5; Nays 0.

4. APPROVAL OF MEETING AGENDA

Manager Kremer requested that two additional grant programs be added -the Clean Water Legacy Program and the Lessard Outdoor Legacy Program be added as 12. f. and g. for discussion.

President Kremer added that he would like to make comments on Conflict of Interest at 13.c. **It was moved by Manager Schlampp and seconded by Manager McCready to approve the meeting agenda as amended. VOTE: Ayes 5; Nays 0.**

5. CONSENT AGENDA

It was moved by Manager Schlampp and seconded by Manager McCready to approve the Consent Agenda. VOTE: Ayes 5; Nays 0.

6. OPEN FORUM (time is allotted at five minutes maximum)

No one spoke.

7. August 19, 2009 Minutes , Treasurer's Report and Payment of Bills*

The minutes, Treasurer's Report and Payment of Bills were approved under the Consent Agenda.

8. PRESENTATIONS

There were none.

9. PRESENTATIONS FOR BOARD ACTION

There were none.

10. NEW BUSINESS

a. Proposal by USGS for Turbidity and Bed load Studies, James Fallon and Chris Ellison, USGS

Mr. Schwalbe refreshed the manager's memories that the proposals for 10. a. and b. were disseminated to the manager prior to this meeting as preparation for the presentations.

This subject was discussed after a power point presentation by James Fallon and Chris Ellison of USGS.

b. Proposed Clean Water Grants for Turbidity and Bed load Studies, Dan Murphy, HDR

Mr. Murphy put together a grant for the Turbidity two-year study from the USGS due on Friday September 18, 2009. The USGS would contribute 30% of the labor costs so for the turbidity study would be \$23,000, the District \$90,000, and would be asking for a grant from the PCA for \$114,000 for a 50% match.

Chris Ellison said he has been working in the Wild Rice Watershed District collecting sediment and analyzing that data for turbidity, stream flow and suspended sediments. The costs for those

two sites that are part of the state wide eight sites are less than what is proposed in the turbidity and bed load studies in our District. The MPCA is funding the eight sites study and they are interested in the Minnesota River as well.

President Samstad asked if the USGS would accept a lesser amount from the District and the USGS said they think they would. Funding options was further explored by the board and the USGS.

Mr. Ellison said there are some options due to lack of funding at this time. The present plans calls for studies from Jordan to Fort Snelling and at each site we have bed load and suspended load. The other way to do this could be to do one of the sites and do bed load and suspended sediments cutting the costs in half or only do suspended sediment. Possibly the PCA might step in to help with further funding. (Side 1 & 2 Tape One)

President Samstad moved and Manager McCready seconded that any of this grant application that is going to be made will be continued to 2010 for discussion and do not fund anything from 2009 and Manager Francis added to the motion with a friendly amendment that the grant application not be presented two-three days before it is due. VOTE: Ayes 5; Nays 0.

c. HDR Contract Change Order Proposal for Updating the 509 Plan

Mr. Schwalbe and Mrs. Young, HDR, explained the need for making the change order in the amount of \$16,823.37 requested by the board on June 17, 2009. The original contract was for \$131,000 and left of that amount is \$7,000. With additional services requested the amount came up to \$141,000. Then with board input on each section and those fees requested at the June 17, 2009 added the total contract is now for \$157,860. Mrs. Young said if the District and HDR stick to the revised plan there should not be any further charges. **Manager Schlampp moved and Manager Kremer seconded approving the change order for an additional \$16,823.37 with the President's signature. VOTE: Ayes 5; Nays 0.**

d. Prior Lake-Spring Lake WD Third Generation Water Resource Management Plan

Mr. Schwalbe indicated the memo to the District from the District's engineer was in the packet and it meets our standards with comments.

Manager Kremer moved and Manager Schlampp moved to approve the Prior Lake-Spring Lake Watershed District's Third Generation Plan and when their rules are revised they address rate control for both 5-10- and 100 year events and provide a permanent pool volume of runoff from a 2.5 inch or 2.0 inch, 24-hour storm, as appropriate to the water resource being protected and or come up with an acceptable best management practice to reach further fluid reductions. VOTE: Ayes 5; Nays 0.

e. Eden Prairie's storm pond repair plans via letter from Mr. Tony Pillippi

Mr. Schwalbe reviewed Mr. Phillippi's letter sent August 21, 2009 with the board. The only thing the District reviewed on Mr. Phillippi's property was the overall maintenance plan for cleaning out various invasive species. He hired Bonestroo over a year ago to evaluate the situation. Mr. Phillippi wants the District to have Bonestroo review and comment on the city's preliminary drawing for the repair of the storm basin which original work failed almost immediately after two rain falls in 2002 according to Mr. Phillippi. We, however, due to a

potential conflict of interest, hired Wenck and Associates to review Bonestroo's work. The City of Eden Prairie or a developer built the pond. It is a pond that eroded into the MN River. There ensued a conversation between Manager Schlamp and Ruth Hustad and her daughter, Susan Seeland about property ownership.

f. HLB Tautges Redpath 2009 audit fees

Manager Schlamp moved that last year's audit fee be utilized for 2009. Due to lack of a second Manager Schlamp withdrew his motion.

Manager Francis moved and President Samstad seconded to approve a not-to-exceed \$6,975 to conduct the 2009 audit. VOTE: Ayes 4; Nays 1 (Manager Schlamp)

g. New Copier

Mr. Schwalbe explained the cost for leasing the new copier at \$192.79 after reviewing two bids recommends leasing with Consolidate Business Machines for a 10-year lease. Cost per copy is less expensive by five cents for black and white and ten cents per copy for color. Copiers don't hold their value in ownership. **Manager Francis moved and Manager Schlamp seconded to approve the lease of a new copier at a not-to-exceed \$200 a month. VOTE: Ayes 5; Nays 0.**

11. OLD BUSINESS

a. Ron Kraemer plaque

The board directed staff to mail the plaque to Mr. Kraemer.

b. Riverview Road RFP discussion

Mr. Schwalbe said that he received four proposals: URS, Wenck & Associates, SRF and HDR. He said Wenck is partnering with Stanley Group. The City of Eden Prairie has a copy of the engineering proposals and asked them for comments however none has been received as of today. Manager Kremer said he feels it is very urgent to move forward quickly because we need to have something to show the legislature about this site so waiting to get funding assistance from the City of Eden Prairie for the study may weaken the ability to be able to show the legislature study results. Mr. Schwalbe said he met with Scott Neal, City Administrator and Leslie Stovring to discuss the RFP and formulate the joint letter that went out to property owners. Scott Neal indicated to Mr. Schwalbe that the city wants to cooperate on this project to work together to come up with a solution. Mr. Schwalbe indicated that he was very disappointed when the Star Tribune article came out quoting Mr. Gene Dietz, Eden Prairie Public Works Director, that he was meeting with the USACOE on this issue that day and Mr. Schwalbe was not invited to the meeting. Mr. Schwalbe did email Scott Neal about not getting the invitation to meet and that he was very disappointed because working with the USACOE is a very integral part of this project.

Manager Kremer said he has reviewed the four proposals and they are all excellent and believes the District can't make a mistake in choosing one of the four as they are all good. Manager Kremer said Wenck is offering the hydrologic expertise, and the Stanley Group, is offering the geo-technical expertise. President Samstad agreed with Manager Kremer and from an engineering standpoint hiring Wenck & Associates is the best direction to proceed. **Manager Kremer motioned and Manager Samstad seconded to direct staff to work with a combination of Wenck & Associates and the Stanley Group to develop a contract to do a study of the Phase One of bank stabilization Riverview Road Study Area 3 and**

surrounding immediate area in the City of Eden Prairie and add (the engineering proposal talks about the possibility of needing some soil borings, and some inclinometers but is not currently in the proposal ask that they give us a cost estimate for adding those items in the contract if the engineers feel the borings and inclinometers are needed rather than negotiating it afterwards. The costing could be on a final or unit price. Staff is directed to bring the final contract to the board for final approval and authorize the administrator to sign the final approved contract. VOTE: Ayes 5; Nays 0. Motion passed.

12. ADMINISTRATOR REPORT

a. Seminary Fen

Mr. Schwalbe said he received an email from Brad Moe stating the appraisal is about ready to be bid out and he does not see any other issues so should have an appraisal by month's end.

b. Update on legislative resolution implementing a MN River Basin Commission and for federal and state funding

Mr. Schwalbe said there is a state-wide meeting in Redwood Falls October 1, 2009 by the Watershed Professionals put together by its steering committee which Mr. Schwalbe is a member. The meeting with Representatives Morrow, Hanson and Morgan is not coming together as Representative Morgan is a teacher and is not available but Mr. Davidman is trying to get Representatives Morrow and Hanson to a meeting hopefully soon.

c. USACOE Navigation Channel and dredge sites

Mr. Schwalbe did look at the dredge site and the contractor did go to the site and fixed the bed so hopefully the soil will flow inland and not into the MN River. The USACOE is looking at a better way to unload materials at the site.

Mr. Malkerson wanted to know what the soil test results in the packet mean. Need to find out which of these soils ended up on the site. Where can the soils be placed/used: industrial zoned property, residential zoned property or does it have to go to a landfill. How does this fit within the MPCA guidelines as to where you can dispose of the soils. None of the testing results are from the materials that ended up on our site. The USACOE samples soils before they dredge. None of the soils testing shown in the report are from the District's site. The District needs to know the soils testing results at the District's site. Mr. Malkerson recommended Braun/Intertec as one of the top soil testing firm in the twin city area. **Manager Kremer moved and Manager Francis seconded obtaining a quote from Braun/Intertec for a representative soils sampling through one test at the District's dredge site and bring the results to the October 2009 board meeting. VOTE: Ayes 5; Nays 0.**

Manager Francis indicated that page 9 or 15 of the expired permit shows the results the board is looking for. He feels Braun/Intertec is the best firm to work with on this testing. Manager Francis could not understand why it has taken 19 years for the MPCA to update their permit. Manager Francis gave staff the name of Richard Mau to work with on this project.

d. USACOE Legislative Proposal

Manager Kremer moved and Manager McCready seconded a motion with a letter in support of the legislative proposal with USACOE proposal attached with copies to the USACOE, Senators and Congress. VOTE: Ayes 5; Nays 0

e. Hennepin County Riparian Restoration and Stream Bank Stabilization Program

It was moved by Manager Kremer and seconded by Manager Schlampp to apply for a grant for stabilization of the bank erosion Study Area 3 City of Eden Prairie in the amount of \$100,000 VOTE: Ayes 5; Nays 0.

f. BWSR Clean Water Legacy Funds

Manager Kremer said we should apply to BWSR for \$100,000 out of the Clean Water Act funds.

g. Lessard Outdoor Heritage Program

Manager Kremer said we should apply to the Lessard Outdoor Heritage Council and investigate the DNR grant application for Seminary Fen buffer easements and bring information to the next board meeting.

13. DISTRICT'S ATTORNEY REPORT

a. City of Eden Prairie Study Area 3 resolution requesting that the USCOE prepare a study to stabilize the North Bank

Manager Francis moved and seconded by Manager Kremer approving the resolution and sending to the USACOE similar to the City of Eden Prairie's requesting their assistance on the Study Area 3 erosion issues. VOTE: Ayes 5; Nays 0.

b. MAWD and State resolutions (to use with legislators) regarding state-wide funding in the state bonding bill for repairing bank erosion issues and to fund the 9-Foot Channel dredge materials sites

Mr. Malkerson said he has prepared a Resolution Requesting That the State of Minnesota Fund a Study to Stabilize the North Bank of the Minnesota River In Sections 34 & 35 T116 R22 Hennepin County Minnesota. **Manager Kremer moved and Manager Schlampp seconded requesting the State of Minnesota give reimbursement for Phase I of this project that has been awarded and requesting funding for Phase II. VOTE Ayes 5; Nays 0. Manager Schlampp withdrew his previous motion to send a resolution to MAWD.**

c. Outside attorney's opinion on Conflict of Interest concern

President Samstad said he is in receipt of Attorney George Hoff's report and frankly don't think it accomplished anything and is not in favor of paying him. President Samstad said he was never contacted and asked if the other board members were contacted. The only person that said he was contacted was Manager Kremer. Mr. Malkerson said the email from him to Mr. Hoff said that "you have stated the facts correctly. I would ask that you would email each manager in case he wants to add to same. Please include this email. The opinion should be emailed to all managers". Mr. Malkerson said Wendy Price, the legal assistant to Mr. Hoff sent on September 8 said "Please see the facts stated below by George Hoff as well as the email from Mr. Malkerson. Mr. Hoff will be using these facts for the basis for an opinion. Please advise if you

have comments or corrections to the Statement of Facts”. President Samstad said he will contact Mr. Hoff. Manager Francis said he was against hiring an attorney but he feels he should be paid.

d. Attorney General’s opinion on moving monies from one fund to another

Mr. Malkerson has talked to an attorney at the Attorney General’s Office and he is to put his request in writing but to be aware that their office doesn’t respond to all requests. Mr. Malkerson will move forward.

Managers need to decide on one of the funding options and include it in our new plan. Place on next meeting’s agenda.

14. ADJOURN

Manager Francis moved and Manager Schlampp seconded to adjourn the meeting at 9:15 PM. VOTE: Ayes 5; Nays 0.