

**BOARD OF WATER AND SOIL RESOURCES  
520 LAFAYETTE ROAD N.  
LOWER LEVEL BOARD ROOM  
ST. PAUL, MINNESOTA 55155  
WEDNESDAY, OCTOBER 24, 2018**

**BOARD MEMBERS PRESENT:**

Jill Crafton, Jack Ditmore, Kathryn Kelly, Tom Landwehr, DNR; Tom Loveall, Nathan Redalen, Tom Schulz, Jeff Berg, MDA; Steve Sunderland, Rich Sve, Gerald Van Amburg, Shannon Lotthammer, MPCA; Joe Collins, Chris Elvrum, MDH; Duane Willenbring, Patty Acomb, Harvey Kruger

**BOARD MEMBERS ABSENT:**

Neil Peterson, Paige Winebarger, Joel Larson, University of Minnesota Extension;

**STAFF PRESENT:**

John Jaschke, Angie Becker Kudelka, Hannah Pallmeyer, Al Kean, Melissa Lewis, Kevin Bigalke, Cari Pagel, Melissa King, Bethany Espeseth, Dave Weirens, Marcey Westrick, Hannah Hoeger, Doug Thomas, Suzanne Rhees

**OTHERS PRESENT:**

Emily Javens, Minnesota Association of Watershed Districts (MAWD)  
Jason Garms, Minnesota Department of Natural Resources (DNR)  
Brian Martinson, Southern Minnesota Beet Sugar Cooperative  
Amanda Bilek, MN Corn Growers Association  
LeAnn Buck, Minnesota Association of Soil and Water Conservation Districts (MASWCD)  
Josie Lonetti, MN Farm Bureau

**Chair Gerald Van Amburg called the meeting to order at 9:05 AM**

## **PLEDGE OF ALLEGIANCE**

**\*\* 18-58** **ADOPTION OF AGENDA** - Moved by Tom Schulz, seconded by Kathryn Kelly, to adopt the agenda with a minor modification. ***Motion passed on a voice vote.***

**\*\* 18-59** **MINUTES OF SEPTEMBER 26, 2018 BOARD MEETING** – Moved by Nathan Redalen, seconded by Jill Crafton, to approve the minutes of September 26, 2018 meeting, as circulated. ***Motion passed on a voice vote.***

## **PUBLIC ACCESS FORUM**

### **INTRODUCTION OF NEW STAFF**

- Melissa King, Board Conservationist
- Cari Pagel, Office and Administrative Specialist
- Bethany Espeseth, Accounting Technician

Chair Van Amburg and the board welcomed the new staff to BWSR!

## **CONFLICT OF INTEREST DECLARATION**

**Chair Van Amburg read the statement:**

*“A conflict of interest, whether actual, potential, or perceived, occurs when someone in a position of trust has competing professional or personal interests and these competing interests make it difficult to fulfill professional duties impartially. At this time, members are requested to declare conflicts of interest they may have regarding today’s business.”*

## **REPORTS**

**Chair & Administrative Advisory Committee** – Chair Gerald Van Amburg reported that the Environmental Quality Board (EQB) met last week. One of the items on the agenda was Emerald Ash Borer, which is affecting many communities in Minnesota. Taking care of the infected trees will likely be expensive for some communities. Additionally, trees provide economic benefits for communities and that will also be a loss. It is important to have diversity in tree planting to prevent something like this from happening in the future. Another issue discussed by the EQB was Environmental Review and proposed changes. Additional discussions are underway before this issue returns to the EQB.

The EQB also met with representatives of youth environmental groups. Youth speakers shared their experiences working on water, air, and climate protection. The EQB decided to reserve one annual board meeting for meetings with youth.

Commissioner Tom Landwehr acknowledged that there are strong opinions about environmental review. Chair Van Amburg mentioned the climate report that was released earlier this month from the Intergovernmental Panel on Climate Change (IPCC) and how this is connected to environmental review.

The Administrative Advisory Committee met prior to the board meeting. The agenda included riparian aid pass-through grants, which will be discussed later in today’s meeting. The committee also discussed the bylaws update, the conflict of interest procedures, and the per diem policy update (all of which were

also reviewed by the Audit and Oversight Committee). These agenda items are on the board's agenda for discussion today.

**Audit and Oversight Committee** – Chair Gerald Van Amburg reported that the committee met on October 23, 2018, to discuss the bylaws update, the conflict of interest procedures, and the per diem policy update. The Audit and Oversight Committee also received information about the LCCMR Direct and Necessary Cost Policy. This policy provides for small amount of appropriations from the Environment and Natural Resources Trust Fund to direct and necessary costs. The committee discussed that there is no specific amount that LCCMR defines as direct and necessary costs.

**Executive Director's Report** - John Jaschke has been working to schedule some listening sessions with various groups and organizations to hear how their input could shape what BWSR does and how it does it.

An update was provided on CREP. The board approved modifications to the rates and criteria in June. About 13,000 acres are enrolled. CREP is currently on hiatus due to Congress not passing a Farm Bill or extension of the current Farm Bill, which means no contracts can be signed at this time.

Regarding buffers, the next deadline for public ditches is November 1, 2018. Due to large rain events, there have been some challenges in getting buffers seeded. Some flexibility may be needed due to heavy precipitation and the lack of ability for people to sign up for CRP due to the lack of a Farm Bill. BWSR will send out some guidance to Soil and Water Conservation Districts about this.

The Minnesota Office of Soil Health has hired Anna Cates to direct this work.

BWSR and MPCA have been discussing One Watershed, One Plan and the data that is collected under this project. The Clean Water Council is putting together their budget recommendations, which are due by December 1, 2018.

Various state agencies, including BWSR, have been asked to look into 404 assumption. The Army Corps of Engineers has changed their policy about what waters may be assumable, but staff have not yet analyzed what percentage of waters would be assumable under the new policy.

BWSR Academy begins on October 29, 2018 at Breezy Point for local government staff.

John Jaschke also reviewed the Snapshots stories provided to the board.

Board members appreciated that John Jaschke had recently attended the Metro MAWD meeting. Board members discussed what information goes into GRAPS. Chris Elvrum discussed the maps, information, and strategies that might be included in this and offered to have a staff person from the Department of Health to do a presentation to the board about this. At this point, Health is prioritizing areas that are receiving grants.

**Dispute Resolution Committee** – John Jaschke provided an update to the board. The appeal included in the packet has been dismissed, so there are no pending appeals before the board.

**Grants Program & Policy Committee** - Steve Sunderland reported that the committee met jointly with the Water Management and Strategic Planning Committee. There is one item on the agenda that will be discussed at today's board meeting.

**RIM Reserve Committee** – Tom Loveall reported that the committee has not met since the previous board meeting.

**Water Management & Strategic Planning Committee** - Jack Ditmore reported that the committee met jointly with the Grants Program & Policy committee. There is one item on the agenda that will be discussed at today's board meeting. The committee is scheduled to meet on December 18 around 5:30pm.

**Wetland Conservation Committee** - Tom Schulz reported that the committee has not met since the previous board meeting.

**Buffers, Soils & Drainage Committee** - Kathryn Kelly reported that the committee met and that an agenda item will be discussed later in the meeting.

**Drainage Work Group (DWG)** - Tom Loveall and Al Kean reported that the work group met on October 11, 2018. There is a pending court case about the DNR's role in reestablishment of records that the DWG discussed. The DWG communications committee met on October 3 to discuss plain language issues. The DWG process was also discussed and a process document was adopted at the October 11 meeting. The next meeting of the DWG is November 8. The board discussed that the DWG has been meeting since 2006, largely monthly except during the legislative session. Sometimes a subgroup will meet instead of or in addition to the full work group. The board requested that the DWG fact sheet be shared with the board in December.

#### **COMMITTEE RECOMMENDATIONS**

##### **Grants Program and Policy Committee/Water Management and Strategic Planning Committee**

**Watershed-based Funding Program Development** – Melissa Lewis presented the agenda item. The purpose of the Watershed-based Funding Program Development Resolution is to initiate a stakeholder input process in the development of the Watershed-based Funding (WBF) program. The Watershed-based Funding Pilot Program was initiated by the Board (Resolution #17-96) and is being implemented within the Seven-county Metropolitan Area and with the five watersheds in the state that participated in the One Watershed, One Plan pilot. Future Clean Water Fund appropriations are anticipated to provide ongoing funding for this program. The future Program to implement these funds is best developed with input from key stakeholders including members of the Minnesota Association of Watershed Districts, the Minnesota Association of Soil and Water Conservation Districts, the Association of Minnesota Counties, League of Minnesota Cities, the Local Government Water Roundtable, agency partners, and others. This resolution would signal the Board's intent to gather and consider this input.

Note that one additional "Whereas" was added after the Committees met (WHEREAS, the Board's vision for comprehensive local watershed management plans is to align water planning on major watershed boundaries with existing state principles and strategies towards the goal of prioritized, targeted, and measurable implementation plans). This addition was based on the Committees' direction.

Board members appreciated the proposed process.

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18-60 Moved by Steve Sunderland, seconded by Tom Schulz, to approve the Watershed-based Funding Program Development. ***Motion passed on a voice vote.***

**Central Region Committee**

**Benton County Comprehensive Local Water Management Plan** – Kevin Bigalke presented the plan. The current Benton County Local Comprehensive Water Management Plan ran from August 2008 to December 2018. The County Commissioners began updating the plan on November 15, 2016 and the BWSR affirmed the county’s priority concerns on October 25, 2017. The Benton County Water Planner submitted the plan update for review on September 29, 2018. The state review agencies who provided comments recommended approval of the plan as submitted. The Central Region Committee met on October 11, 2018 and provided a recommendation to the full Board for approval of the Benton County Comprehensive Local Water Management Plan as submitted.

Board members appreciated the presentations by the local staff at the committee meeting and the challenges addressed in the plan. The plan also addressed pharmaceutical drug disposal to attempt to prevent additional chemicals from entering into the environment. Board members also appreciated the role of Jason Weirnerman, the Board Conservationist for this region. Commissioner Landwehr mentioned that DNR is working on ground water management to try to ensure that no one has water quantity issues, and appreciated that the county is considering this in their plan.

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18-61 Moved by Joe Collins, seconded by Jill Crafton, to approve the Benton County Comprehensive Local Water Management Plan with a clerical change to the order. ***Motion passed on a voice vote.***

**Mille Lacs County Comprehensive Local Water Management Plan** – Kevin Bigalke presented the plan. The Mille Lacs County Local Water Management Plan was approved on January 24, 2007 and was amended to expire on December 31, 2018. The Board affirmed the county’s priority concerns on March 28, 2018. BWSR received the plan on September 4, 2018. The central region committee meet on October 11, 2018 to review the plan and recommended the full board approve the Mille Lacs County Comprehensive Local Water Management Plan as presented.

The board discussed the change in land use in the county and the survey about what clean water means to the average citizen. The board discussed the role of the EQB in providing comments for local water plans. The EQB has agency members but also provides the opportunity for citizens to participate in this role.

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18-62 Moved by Kathryn Kelly, seconded by Joe Collins, to approve the Mille Lacs County Comprehensive Local Water Management Plan. ***Motion passed on a voice vote.***

Chair Van Amburg called a recess at 10:48am. The meeting was called back to order at 11:04am.

**Buffers, Soils and Drainage Committee**

**Outreach for Development of Options to Address Excessive Soil Loss and Rescinding Board Resolution #16-32** – Dave Weirens presented the agenda item. The current statute structure of the Excessive Soil Loss Law has led to diverse interpretation of its effects on implementation and how that may impact the prospect of a rule revision. As a result of this significant variation in interpretation the proposal is to formally halt the rulemaking process and further engage with stakeholders to build agreement on

potential options for implementation and if warranted to address the scope and scale of any potential rule revisions prior to any additional formal actions related to the rule under the current statutory structure.

The board discussed how urban areas can address soil loss. One option is that the PCA has storm water regulations that can cover some soil loss issues for urban areas in the state. Another options would be to work with the watershed districts to address this. The soil loss ordinance was mostly designed to address soil loss issues in agricultural areas due to wind, rain, etc. The board discussed what groups might participate in the stakeholder process. The board also discussed a timeline for this agenda item and how issues are currently being addressed around the state.

An amendment was proposed to have a yearly report to the Buffers, Soils, and Drainage committee that would review the status of outreach and next steps and that would be shared full board.

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18-63 Moved by Kathryn Kelly, seconded by Tom Loveall, to approve the Outreach for Development of Options to Address Excessive Soil Loss and to Rescind Board Resolution #16-32, as amended. **Motion passed on a voice vote.**

Steve Sunderland and Kathryn Kelly left the meeting.

#### **Administrative Advisory Committee**

**Riparian Aid Pass-through Grants** – Dave Weirens presented the pass-through grant. Dodge, Carlton, and Wright counties elected jurisdiction prior to July 1, 2018. However the Riparian Aid distribution statute would not allow direct payment from the MN Department of Revenue to the Counties until Calendar year 2019 Aid is paid. As such, BWSR proposes to pass through the 2018 Riparian Aid Payments to these counties in the amounts identified on the 2018 Riparian Aid Distribution for the respective counties.

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18-64 Moved by Tom Loveall, seconded by Tom Schulz, to approve the Riparian Aid Pass-through grants. **Motion passed on a voice vote.**

**Bylaws Update** – Angie Becker Kudelka presented the bylaws update. Proposed bylaws updates were reviewed by the Administrative Advisory committee and the full board as an information item on August 23, 2018. A few additional updates are proposed to incorporate suggestions from board members.

The Audit and Oversight Committee reviewed the updated bylaws at their meeting yesterday. The Administrative Advisory Committee reviewed the updated bylaws prior to the full board meeting this morning.

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18-65 Moved by Rich Sve, seconded by Shannon Lotthammer, to approve the Bylaws Update. **Motion passed on a voice vote.**

**Conflict of Interest Procedure** – Angie Becker Kudelka presented the procedure. BWSR board members regularly review and vote on grants as part of the official business of the board. The Office of the Legislative Auditor (OLA) released a report in June 2018 that recommended that the Board of Water and Soil Resources actively manage potential conflicts of interest, as required by state law and policy. After further consultations with the OLA and the Department of Administration - Office of Grants Management (OGM), staff modified the conflict of interest form. One of the changes is to create a

procedure that provides information to board members about what constitutes a potential, perceived, or actual conflict of interest. The updated procedures describe how the BWSR Board will address conflicts of interests during the grant review process, and the related form provides the format to gather conflict of interest disclosures.

The Audit and Oversight Committee reviewed the conflict of interest procedure at their meeting yesterday. The Administrative Advisory Committee reviewed the conflict of interest procedure prior to the full board meeting this morning.

The board discussed that it would be helpful for staff to identify which grants are formula-based grants or grants that were independently scored and ranked. It would still be possible for a board member to have an actual conflict with these type of grants and properly disclose this. Board members commended staff for putting together this procedure. Staff can be available for questions from board members about how the procedure works but cannot tell a board member whether or how to vote. Board members discussed how they can amend their form before a vote.

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18-66 Moved by Jack Ditmore, seconded by Tom Landwehr, to approve the Conflict of Interest procedure. ***Motion passed on a voice vote.***

**Per Diem Policy Update** – John Jaschke and Hannah Pallmeyer presented the per diem policy update. The current per diem policy was implemented in January 2008. A few changes to the policy have been proposed to ensure judicious use of state resources and provide clarity to board members about when claiming per diems.

Minnesota Statute 15.0575 Subd 3(a) states that “Members of the boards may be compensated at the rate of \$55 a day spent on board activities, when authorized by the board...” and Minnesota Statute 15.0575 Subd 3(c) adds, “Each board must adopt internal standards prescribing what constitutes a day spent on board activities for purposes of making daily payments under this subdivision.”

The Audit and Oversight Committee reviewed the per diem policy update at their meeting yesterday. The Administrative Advisory Committee reviewed the per diem policy update prior to the full board meeting this morning.

The board discussed various per diem scenarios. Commissioner Landwehr encouraged staff to advocate for a higher per diem rate for board members.

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18-67 Moved by Tom Landwehr, seconded by Rich Sve, to approve the Per Diem Policy Update. ***Motion passed on a voice vote.***

Patty Acomb left the meeting.

## **NEW BUSINESS**

**2019 BWSR Board Meeting Schedule** – Hannah Pallmeyer presented the agenda item. Meeting dates are being proposed for board meetings in 2019. Most meetings are the fourth Wednesday of the month, unless otherwise noted. The proposed calendar has meetings held in the same months as the 2018 calendar.

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18-68 Moved by Tom Loveall, seconded by Jill Crafton, to approve the 2019 BWSR Board meeting schedule.  
***Motion passed on a voice vote.***

#### **AGENCY REPORTS**

**Minnesota Department of Agriculture** – Jeff Berg discussed the Administrative Law Judge comments on the groundwater protection rule. Some new language will be proposed that the Administrative Law Judge and chief judge will review.

**Minnesota Department of Health** – Chris Elvrum mentioned that various agencies have formed an ad hoc work group to discuss how groundwater and drinking water are incorporated in a watershed framework. The agency has worked with the Clean Water Council to identify recommendations for how to spend Clean Water Fund dollars. These were adopted by the Clean Water Council and will be included in recommendations to legislature.

**Minnesota Department of Natural Resources** – Commissioner Landwehr announced that the Governor’s Pheasant opener was recently held in Luverne. The Governor was unfortunately unable to attend due to back surgery. This event highlighted southwestern Minnesota for hunting and the economic opportunity of hunting. The Governor’s deer hunting opener is in Hinckley next Thursday. Chronic Wasting Disease (CWD) has been found in 2 deer during archery season (none have ever been found in archery season). The DNR can take action on public lands but not on private lands. The board discussed the infectiousness of CWD. The federal government is the entity that would need to delist wolves before a hunt could be authorized.

**Minnesota Pollution Control Agency** – Shannon Lotthammer announced that the quarterly meeting of the Upper Mississippi River Basin Association is in Minnesota next week. There is a public part of that meeting. Agriculture Commissioner Dave Frederickson is the chair of the association. The We Are Water exhibit has been continued on a state level and is on display at the Institute on the Environment at the University of Minnesota until next month, and then it will travel to other locations in the state.

#### **ADVISORY COMMENTS**

**Minnesota Association of Soil & Water Conservation Districts** – LeAnn Buck reported that the MASWCD Annual meeting is December 9-11. The Resolutions Committee will meet at an upcoming meeting and resolutions will be forwarded to the appropriate agency, including BWSR. SWCDs are celebrating 80 years after Franklin D. Roosevelt sent a standard soil conservation district law to states for consideration.

**Minnesota Association of Watershed Districts** – Emily Javens reported that GRAPS will be discussed at the MAWD annual meeting, which will be held November 29-December 1. The BWSR bylaws and per diem policy will be shared with watersheds as examples. MAWD is also working on putting together resolutions for consideration by the membership.

**Minnesota Association of Townships** – Nathan Redalen reported that the MAT conference is November 15-17 in Duluth. Dave Weirens from BWSR will be invited.

#### **UPCOMING MEETINGS**

- Next BWSR Meeting is scheduled for 9:00am, December 19, 2018. Location information will be shared with the board and the public closer to the date of the meeting.

Chair Van Amburg adjourned the meeting at 12:37 PM.

Respectfully submitted,



Gerald Van Amburg, Chair