# BOARD OF WATER AND SOIL RESOURCES 520 LAFAYETTE ROAD NORTH LOWER-LEVEL BOARD ROOM ST. PAUL, MN 55155 WEDNESDAY, APRIL 24, 2024

# **BOARD MEMBERS PRESENT:**

Joe Collins, Jill Crafton, Jayne Hager Dee, Mike Runk, Rich Sve, Lori Cox, Ted Winter, LeRoy Ose, Kelly Kirkpatrick, Eunice Biel, Todd Holman, Ron Staples, Mark Zabel, Glenn Skuta, MPCA; Joel Larson, University of Minnesota Extension; Thom Petersen, MDA; Steve Robertson, MDH; Jason Garms, DNR

## **BOARD MEMBERS ABSENT:**

Kurt Beckstrom, Neil Peterson

#### STAFF PRESENT:

John Jaschke, Rachel Mueller, Tom Gile, Travis Germundson, Ryan Hughes, Chad Severts, Dan Shaw, Jason Beckler, Karlie Swenson, Sara Reagan, Julie Westerlund, Annie Felix-Gerth, Chad Severts, Dave Weirens, Suzanne Rhees, Melanie Bomier

#### OTHERS PRESENT:

Jeff Berg, MDA; Brian Martinson, AMC; Jan Voit, Minnesota Watersheds; Sheila Vanney, MASWCD; Rob Sip, RRWMB Anita Provinzino, Becca Reiss, Jamie Beyer, Tara Solem, Phil Norvitch, Ilena Hansel

## Chair Todd Holman called the meeting to order at 9:00 AM

#### PLEDGE OF ALLEGIANCE

Chair Holman stated we will be moving the Northern Region Committee item up in the agenda after the Dispute Resolution Committee to accommodate schedules.

- \*\*
  24-18

  ADOPTION OF AGENDA Moved by Rich Sve, seconded by Jill Crafton, to adopt the agenda as amended.

  Motion passed on a roll call vote.
- \*\* MINUTES OF MARCH 27, 2024 BOARD MEETING Moved by Jill Crafton, seconded by Mike Runk, to approve the minutes of March 27, 2024, as circulated. *Motion passed on a roll call vote*.

#### **PUBLIC ACCESS FORUM**

#### INTRODUCTION OF NEW STAFF

Tom Gile introduced Chad Hildebrand, Buffer Specialist and Jared House, Soils Programming Coordinator.

#### **CONFLICT OF INTEREST DECLARATION**

#### Chair Holman 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. Any member who declares an actual conflict of interest must not vote on that agenda item. All actual, potential, and perceived conflicts of interest will be announced to the board by members or staff before any vote."

## **REPORTS**

Chair & Administrative Advisory Committee – Chair Todd Holman reported they met this morning and had no action items. John Jaschke stated he provided a legislative update. They discussed committee processes with members receiving meeting materials four days in advance. They also talked about board decisions and how they come from the committee to the board and how external parties could be provided notice.

Chair Holman reviewed and summarized John Jaschke's annual performance review conducted with the Vice-Chair with input from Board Members and section managers. Stated he attended the North and Central Region and Grants Program and Policy committee meetings. Attend the EQB meeting where they approved the Tribal Coordination and Consultation Policy and are continuing to work on their Strategic Plan.

**Executive Director's Report** - John Jaschke reported a copy of his annual performance review will be sent to Board Members via U.S. Postal Service. Stated there have been several meetings with the Tribal Governments.

Lori Cox asked if there would be a Tribal membership added to this board. John stated a statute would need to be changed to accomplish it. Jill Crafton thought this could be valuable.

John provided a legislative update.

Audit and Oversight Committee - Joe Collins reported the committee has not met.

**Dispute Resolution and Compliance Report** – Rich Sve reported they have not met. Travis Germundson reported there are presently three appeals pending and there have been no new appeals filed since the last report.

File 24-2 is an appeal of a WCA Notice of Decision for a property located in Meeker County. The appeal has been denied.

File 23-15 is an appeal of a WCA notice of decision in Morrison County. They are waiting on the summary judgement, there's a hearing scheduled for June 5<sup>th</sup>.

File 23-6 is an appeal of two separate after-the-fact replacement plan applications in Brown County. They were able to reach a settlement agreement and the case is dismissed.

File 23-4 is an appeal of a WCA notice of decision involving a banking plan in Aitkin County. A DRC convened on March 7, 2024, and the committee recommendation will be presented to the board this morning.

File 24-1 is a restoration order in Wright County that was denied and has been appealed.

**Grants Program & Policy Committee** – Mark Zabel reported they met and have three items on the agenda for today.

John reviewed the Day of Packet that included Snapshot articles.

**RIM Reserve Committee** – Jayne Hager Dee reported they met and have two items on the agenda for today.

Water Management & Strategic Planning Committee – Joe Collins reported they have not met. They will be scheduling a meeting May 13<sup>th</sup> at 3:30 p.m.

**Wetland Conservation Committee** – Jill Crafton reported they have not met. They will be meeting on the 29<sup>th</sup>.

**Buffers, Soils & Drainage Committee** – LeRoy Ose reported they met last night. Tom Gile reported they went through a detailed update on a couple of grant programs. One was the Multipurpose Drainage Management Grant Program and the other was the Soil Health Programs. Tom provided an update on both programs.

Chair Holman stated he could see where cover crops made a difference in parts of Central Minnesota .

**Drainage Work Group (DWG)** – Tom Gile reported the House and Senate both approved a sunset extension as an alternative for repair projects, which was part of the package the Board authorized from the workgroup last year. The Drainage Work Group will be meeting in June.

### **AGENCY REPORTS**

Minnesota Department of Agriculture – Thom Petersen reported they are working through the legislative session. They are focused on the EPA petition in southeast Minnesota. Stated they'll be spending some time on the avian influenza; the virus has been found in milk.

Jayne Hager Dee asked if there would be restrictions on raw milk sales. Stated they will be looking into it but haven't put any restrictions on raw milk yet.

Ted Winter asked how they can tell if a cow is sick. Thom stated they need to be tested.

Minnesota Department of Health – Steve Robertson reported EPA released new primary drinking water standards for several PFAS compounds. Stated they would like to get more resources for testing technical systems; it's still being acted on by legislature. The Minnesota Ground Water Association Conference is tomorrow and is virtual.

Minnesota Department of Natural Resources – Jason Garms reported the Get Out More Initiative webpage is continually being updated with information. Jason provided a legislative update. An important item for them this year was the electronic licensing system. Stated they completed a Native Rough Fish Report. Their Native Query Bank Easement Program will have some changes on how they structure the payment rate. Stated they will be combining their Wildlife and Fisheries Oversight Committees.

Minnesota Extension – Joel Larson reported the Soil Health Action framework will be presented at the end of our meeting today. Climate Adaptation Partnership is continuing to build capacity to help the State respond to climate change. Stated they are finishing a project with the Department of Health to provide input to the State's ten-year drinking water plan.

Ted Winter asked when they'll have recommendations on the ten-year plan. Steve Robertson stated if there were a recommendation for state standards it would take a statutory change.

Minnesota Pollution Control Agency – Glenn Skuta reported last legislative session it was required to compile a response protocol for when there is a fish kill in the state and that response protocol is on public notice now. Earth day was on Monday where Commissioner Kessler announced a new initiative to monitor the Mississippi River from the Headwaters to the lowa boarder this season. Stated they completed Watershed Restoration and Protection Strategy (WRAPS) for all eighty of the watersheds in the state and will now work on updating those WRAPS as needed.

Mark Zabel asked what the frequency, repeatability, and sound of monitoring the Mississippi headwaters to the boarder will be. Glen Skuta stated he will connect Mark with Kim Lang who can provide him more information.

Jill Crafton stated she is interested in the monitoring and where they are going with it. Glenn stated he will also connect Jill with Kim Lang.

## **ADVISORY COMMENTS**

Association of Minnesota Counties — Brian Martinson provided a legislative update. One of their top priorities is addressing tax profit of property updates to the law. Another priority is solid waste proposal around product stewardship for packaging waste. Policy bill passed with a number of provisions, including updates to WCA. Brian provided an update on the drainage tile disclosure.

Ted Winter asked if the drainage tile is recorded anywhere now. Brian stated the current requirement would be to hold onto that information for a six-year period and as a landowner or purchaser of land you should understand what's out there.

Jill Crafton stated that during the buffer rule, DNR was asking where the waters were and asked if they could verify the waters. Brian stated DNR was responsible for updating maps and that the buffer law is tied to public waters. Jason Garms stated the DNR's roll became map maker, and it was the first time in doing this.

Kelly Kirkpatrick asked if Tribal Nations weighed in the data for public and private areas of the mapping. Brian stated the public parts inventory was established in the late 70s early 80s and doesn't know what extent Tribal Governments engaged in the public process.

Minnesota Association of Conservation District Employees - No report was provided.

Minnesota Association of Soil & Water Conservation Districts – No report was provided.

Minnesota Association of Townships — Eunice Biel reported there was a State and Local Fiscal Recover Funds(SLFRF) program for members. State auditor Julie Blaha presented in March the State of Main Street Findings and that presentation is available on the Association of Townships website. Eunice provided a legislative update stating one of their issues for 2024 is transportation funding. Stated they will be introducing the Annexation Reform bill.

Minnesota Watersheds – Jan Voit thanked John and the BWSR staff that helped with the 103D language modernization. A survey went out Monday to members to see what human resource issues could be provided at future trainings or events. Their summer tour will be June 25<sup>th</sup> and 26<sup>th</sup> at the Essence Event Center in St. Paul, hosted by Ramsey Washington Metro and Capitol Region Watershed District.

**Natural Resources Conservation Service** – John Jaschke reported they had their Technical Advisory Committee meeting last week where a couple BWSR staff attended.

**Red River Water Management Board** – Rob Sip presented a Red River Water Management Board update.

Chair Holman called a recess at 10:54 a.m. and called the meeting back to order at 11:00 a.m.

## **COMMITTEE RECOMMENDATIONS**

#### Dispute Resolution Committee

WCA Appeal (File 23-4) of a Wetland Bank Plan Decision Aitkin County – Rich Sve and Travis Germundson presented WCA Appeal (File 23-4) of a Wetland Bank Plan Decision Aitkin County.

The appeal was brought before BWSR on June 16, 2023 by Bryan Huntington with Larkin Hoffman on behalf of Eric Trelstad (member of the public) to appeal a WCA Notice of Decision involving property located in Aitkin County. The May 22, 2023 decision by Aitkin County determined that the site is eligible for banking and approved a wetland bank plan for Ecosystem Investment Partners (landowner) based on Technical Evaluation Panel (TEP) findings and recommendations. The wetland bank plan is referred to as the North Mille Lacs Meadows Wetland Mitigation Bank and incorporates approximately 622 acres of land that is projected to result in 433.45 credits. The county relied in part on a 2015 Plan (agreement)

regarding best management practices for previous ditch maintenance activities that occurred on site. The county determined the site to be compliant with WCA and therefore eligible for wetland banking pursuant to Minn. Rules 8420.0526. Credits will be generated by restoring hydrology and native vegetation through an alternative method guidance (hydrologic restoration on cultivated fields (CFC)). The appellant claims that unauthorized drainage took place after the enactment of the WCA making the site not eligible for banking credits. The appellant maintains that the 2015 plan is not a decision and that the county's reliance on it is improper. The appeal requests that additional evidence be included into the record and that BWSR reverse the county's decision.

The Dispute Resolution Committee heard oral arguments from the parties to the appeal on March 7, 2024 during a public hearing. After review of the record, written briefs, and oral arguments, unanimously voted to recommend that the Aitkin County's decision be affirmed (denying the appeal) and declined the appellant's request to supplement the record with additional evidence. Determining that Aitkin County's existing record contains substantial evidence to support the decision and those additional documents were not material enough to be omitted into the record.

Moved by Rich Sve, seconded by Joe Collins, to approve the WCA Appeal (File 23-4) of a Wetland Bank Plan Decision Aitkin County. *Motion passed on a roll call vote*.

## Northern Regional Committee

24-20

Rainy Headwaters-Vermilion Watershed Comprehensive Watershed Management Plan – Ryan Hughes and Rich Sve presented Rainy Headwaters-Vermilion Watershed Comprehensive Watershed Management Plan.

The Rainy Headwaters-Vermillion Watershed planning area was approved for a One Watershed, One Plan planning grant at the regularly scheduled meeting of the BWSR on August 26, 2021. The planning partners established a Memorandum of Agreement (MOA) for the purposes of writing a Comprehensive Watershed Management Plan. The organizations signing the MOA included Cook County, Cook Soil and Water Conservation District (SWCD), Lake County, Lake SWCD, St. Louis County, and North St. Louis SWCD. Koochiching County and SWCD did not sign the Planning MOA due to the small area of their jurisdiction within the planning area.

The partnership held a 60-day plan review process that ended on January 6, 2024, and held the required public hearing on January 26, 2024. The final draft of the Plan, a record of the public hearing, and copies of all written comments were submitted to the state review agencies on February 5, 2024. The partnership has addressed and documented agency and public comments received throughout the Plan review process.

On April 3, 2024, the Northern Regional Committee met to review and discuss the Plan. Board regional staff provided its recommendation of Plan approval to the Committee. After discussion, the Committee's decision was to present a recommendation of approval of the Plan to the full Board.

Ted Winter asked about the Boundary Waters and what kind of review was done with the long-term view of the watershed. Becca Reiss stated the boundary waters are federal protected and they targeted outside of the boundary waters and outside of public ownership. They are focused on what they can do with local governments.

Joe Collins thought the report was reflective of the area.

Jill Crafton asked about the Tribal Government involvement. Ryan stated they have been reaching out and making them aware of the program and opportunities that we have.

Moved by Rich Sve, seconded by Thom Petersen, to approve the Rainy Headwaters-Vermilion
 Watershed Comprehensive Watershed Management Plan. *Motion passed on a roll call vote.*

## **Grants Program and Policy Committee**

**Cooperative Weed Management Area Grants** – Dan Shaw presented Cooperative Weed Management Area Grants.

Cooperative Weed Management Areas (CWMAs) are partnerships of federal, state and local government agencies, tribal governments and a wide range of other partners that manage noxious weeds or invasive plants across geographic areas. The FY 2024-25 CWMA Program has a total of \$200,000 to distribute to eligible applicants including SWCDs, Counties and Tribal Governments for newly developing and existing CWMAs/CISMAs in Minnesota. There were 17 applications for the FY 2024-25 CWMA grant applications requesting a total of \$255,000. The CWMA Interagency Advisory Team met on March 12th 2024 to rank grants and made the decision to award 13 applications. The Grants Program and Policy Committee, at their April 15, 2024 meeting, reviewed the proposed grant awards and recommended approval to the Board.

Lori Cox asked if some of the eligibility gets ranked based on the methods being used. Dan stated they have a ranking criteria that is focused on using an integrated pest management approach and an ecosystem approach for management.

Commissioner Thom Petersen left the meeting at 11:30 a.m. and Jeff Berg joined.

\*\* Moved by Jill Crafton, seconded by Mike Runk, to approve the Cooperative Weed Management Area 24-21 Grants. *Motion passed on a roll call vote*.

Habitat-Friendly Utilities Program – Dan Shaw presented Habitat-Friendly Utilities Program.

The Minnesota Board of Water and Soil Resources has had a Habitat Friendly Solar program since 2016 and was appropriated funding in 2023 to expand the effort to include conservation efforts on additional types of utilities in partnership with utility companies and the larger conservation community. The purpose of the program is to provide financial and technical assistance to promote the successful establishment of native vegetation as part of utility projects, including solar and wind projects, pipelines, and electrical transmission corridors, and requires that the Board establish criteria for grants or payments, and allows the Board to collaborate with and enter into agreements with Federal, State, and local agencies; Tribal Nations; utility companies; nonprofit organizations; and contractors to implement and promote the program. This Board Order directs and authorizes staff to develop program criteria, issue solicitations for participation in the program, approve awards, and enter into agreements with program partners.

Mark Zabel asked if they could outline the intent for the award criteria. Dan stated they are working with a larger advisors group, they are helping to identify the pilot sites in addition to working with a wide range of partners. They have several criteria for decision making.

Lori Cox asked if there would be a maintenance plan implemented for long term success. Dan stated they want these pilots to result in management plans that can act as templates for the program.

Kelly Kirkpatrick asked about grazing management with panels up high. Dan stated they are encouraging sheep grazing as part of this.

\*\* Moved by Ted Winter, seconded by Mike Runk, to approve the Habitat-Friendly Utilities Program.

\*\* Motion passed on a roll call vote.

**FY25 Conservation Reserve Program State Incentives Grant Program** – Jason Beckler presented FY25 Conservation Reserve Program State Incentives Grant Program.

The BWSR FY25 Conservation Reserve Program State Incentives Grant Program is made possible through an appropriation from general funds (Laws of Minnesota 2023, Chapter 60, Article 1, Section 4 paragraph (s)). The FY25 Conservation Reserve Program State Incentives Grant Program is a continuation of a Pilot that started in 2023 with funding from the Legislative-Citizen Commission on Minnesota Resources' Environment and Natural Resources Trust Fund. Updates from the Pilot Program include the expansion of eligible Comprehensive Watershed Management Plan partnerships and increases to eligible watershed allocations. Staff have completed an internal program development and review process with BWSR Teams including the Conservation Contracts Team, Grants Team, and Senior Management Team. The Grants Program and Policy Committee (GPPC) was briefed on the program at the January 10, 2024, and February 28, 2024 meetings. The GPPC recommended approval of the Board Order and Watershed Allocation List to the full board at their April 15, 2024 meeting.

Additional details and basis for the recommendation is included in the Order and attachments. To be provided prior to the Board Meeting.

Kelly Kirkpatrick asked where the 2,000 acres went. John Jaschke stated if it expires it can go back to cropland or could also go into development.

Lori Cox asked if there was a map available. Jason stated there is not a map, but watersheds are listed in Attachment B.

Jason Garms asked about the signing bonuses, if there were any sideboards on how far the applicant goes with it. Jason Beckler stated its to be developed through a local policy process, the partnerships will get together and decide what the incentive rate is.

Lori Cox asked if there are variations in incentives. Jason stated it has been consistent.

Moved by Ted Winter, seconded by LeRoy Ose, to approve the FY25 Conservation Reserve Program State Incentives Grant Program. *Motion passed on a roll call vote*.

## RIM Reserve Committee

24-23

**Easement Alteration Request - RIM Easement #46-17-99-01** — Karli Swenson presented Easement Alteration Request - RIM Easement #46-17-99-01.

BWSR acquired RIM easement #46-17-99-01 in Martin County on March 26, 2001. The original easement is a 27-acre CREP easement, consisting of a 9-acre wetland restoration and 18 acres of upland seeded to a native grass and forb mix with some pre-existing trees and shrubs. The original easement grantors, Lawrence and Diane Sukalski, are still the current owners of the parcel. The 15-year CRP contract has since expired.

The landowner is requesting to release 1.75 acres of upland from the existing easement, for the purposes of constructing a machine shed and additional grain storage adjacent to the landowner's current bin site. The area proposed for release is currently prone to disturbance, as it is located between existing buildings that are part of the current farming operation, making the area ideal for traversing between sites and storing equipment. The landowner has stated there is no alternative site to construct the additional storage without creating erosion concerns. Release of this area would straighten the northern boundary of the easement, which is presently irregularly shaped, resulting in a more manageable easement boundary.

The landowner has offered to add 3.5 acres of additional cropland to the RIM easement, which would fulfill the required 2:1 replacement ratio of the Easement Alteration Policy. The replacement area is immediately adjacent to the existing easement boundary, resulting in more contiguous upland habitat, an enlarged wetland buffer, and would remove the 3.5 acres from row crop production. The replacement acres meet RIM crop history requirements, having been historically planted to corn, and will be seeded to a native prairie mix at the landowner's expense.

Both the Martin County SWCD Board and the MN DNR Area Wildlife Supervisor have submitted letters in support of this easement alteration request. The landowner has submitted the \$500 application fee for staff and board to consider the request.

MN Rule 8400.3610 says the Board may alter an existing conservation easement if the public interest and general welfare are better served by the alteration. As proposed, this request would provide clear benefits to the State by further enhancing the habitat and water quality functions of the RIM easement and result in a net gain of restored and permanently protected land.

# Recommendation

24-25

Easement staff and the RIM Reserve Committee recommend approval of this easement alteration request and to amend RIM easement #46-17-99-01 as proposed.

Moved by Jayne Hager Dee, seconded by Ted Winter, to approve the Easement Alteration Request - RIM Easement #46-17-99-01. *Motion passed on a roll call vote*.

**Easement Alteration Request – RIM Easement #67-01-07-04** – Karli Swenson presented Easement Alteration Request – RIM Easement #67-01-07-04.

BWSR acquired a perpetual RIM Conservation easement #67-01-07-04 in Clinton Township, Rock County on April 24, 2007. The original easement is a 103.7-acre sensitive groundwater protection easement that has been seeded to native grasses.

In 2012, the original easement grantors sold 2.87 acres of the easement lands to Rock County for the purpose of installing drinking water wells. Though the wells themselves have minimal impact on the RIM easement, the County requires permanent, gravel access roads for year-round access and maintenance to the wells. Due to the permanent impact of the access roads, that land use is not compatible with the terms and conditions of the RIM easement as permanent vegetative cover cannot be maintained. Thus, BWSR easement staff have determined an easement alteration is warranted in this case.

MN Rule 8400.3610 states that the board may alter a conservation easement if the board determines the public interest and general welfare are better served by the alteration. The newly installed wells provide vital, clean and safe drinking water to citizens of Rock County.

Though this request does not meet all conditions of the current easement alteration policy which states that entities must pay 2x the current RIM rate, easement staff and the RIM Reserve Committee are in favor of the request as the activity of well installation aligns with the overall purpose of this easement which is wellhead and drinking water protection. This request does follow the MN Rule that governs the internal policy.

Rule 8400.3610 states that the board reserves the right to require special provisions to ensure at least equal resource value as a condition of approving the request. Because this RIM easement was acquired for the specific purpose of wellhead protection, and because the land was acquired and the wells installed over 10 years ago, the BWSR Easement Section Manager and RIM Reserve Committee have considered a special provision to allow Rock County Rural Water to compensate BWSR at 1x the 2023 RIM rate for Clinton Township for release of these acres. This will ensure at least equal resource value in accordance with the above rule. (The amount the State originally paid to acquire an easement on these 2.87 acres was \$3371).

Calculations for Release
2023 RIM Rate for Clinton Township = \$11,991.43/acre
2.87 acres released x \$11,991.43 = \$ 34.415.40

Rock County Rural Water has agreed to pay the amount of \$34,415.40 upon approval of the easement alteration request and has submitted the \$500 processing fee for BWSR staff and the board to consider the request.

#### Recommendation

Easement staff and the RIM Reserve Committee recommend approval of the easement alteration request to release 2.87 acres from RIM Easement #67-01-07-04 as proposed, upon receipt of the agreed-upon compensation from Rock County.

Moved by Jayne Hager Dee, seconded by Joe Collins, to approve the Easement Alteration Request – RIM Easement #67-01-07-04. *Motion passed on a roll call vote.* 

## **NEW BUSINESS**

24-26

Soil Health Action Framework - Tom Gile and Suzanne Rhees presented Soil Health Action Framework.

In 2022, BWSR received a grant from the McKnight Foundation to develop a "coordinated approach to climate change mitigation and landscape resiliency, by collaboratively identifying goals, strategies, and actions related to soil management." BWSR worked with the MN Office for Soil Health to convene an advisory committee representing a mix of practitioners in agriculture and conservation, and public and private sectors. During five meetings over 13 months, the group discussed goals, strategies, and potential actions for advancing soil health. The group was not asked to reach consensus or commit to actions, but to represent the diversity of voices in soil health work in Minnesota. The resulting Soil Health Action Framework was released in January, 2024, and is intended to serve as a framework of priority issues and potential strategies that individual interest groups can use to create their action plans.

# **UPCOMING MEETINGS**

- Wetland Conservation Committee is scheduled for April 29<sup>th</sup> at 9:30 a.m. by MS Teams.
- Grants Program and Policy Committee is scheduled for May 13<sup>th</sup> at 8:30 a.m. in St. Paul and by MS Teams.

BWSR Board meeting is scheduled for May 22<sup>nd</sup> at 9:00 a.m. in St. Paul and by MS Teams.

Chair Holman adjourned the meeting at 12:40 PM

Respectfully submitted,

**Todd Holman** 

Chair