

**MINUTES OF REGULAR MEETING  
OF THE  
COMFORT LAKE - FOREST LAKE  
WATERSHED DISTRICT  
Thursday, September 26<sup>th</sup>, 2013**

**1. Call to Order**

The President called the September 26<sup>th</sup>, 2013 regular Board meeting to order at 6:30 p.m. at the Forest Lake City Offices, 220 North Lake Street, Forest Lake, Minnesota

Present: President Richard Damchik, Vice President Jackie Anderson, Secretary Wayne Moe, Treasurer Jon Spence, and Manager Stephen Schmaltz

Absent: None

Others: Amy Carolan (CLFLWD), Greg Graske (EOR), Chuck Holtman (Smith Partners), Andy Schilling (Washington Conservation District)

**2. Setting of Agenda**

The President called for the reading and approval of the September 26<sup>th</sup>, 2013 Regular Board meeting agenda. The President asked if there were any changes or additions. Administrator Carolan recommended the item "Manager's Oath of Office" be moved to item #3 on the Agenda. Motion to approve the agenda as amended was made by Manager Moe and seconded by Manager Spence. Discussion. Upon vote, the motion passed.

**3. Richard Damchik and Stephen Schmaltz - Oath of Office**

Administrator Carolan noted that the office had received letters from Washington County informing the District that Manager Damchik had been reappointed to the board for a three year term expiring in September of 2016 and that Mr. Steve Schmaltz had been appointed to the board for a one year term expiring in September of 2014. Attorney Holtman presented and read the oath of office to Manager Damchik and Mr. Schmaltz and asked each to sign two original copies of the Oath of Office that he had prepared. One original copy would be submitted to the Board of Water and Soil Resources by the Administrator the other would be kept on file in the District office.

**4. Reading and Approval of Minutes**

The President called for the reading and approval of the minutes of the August 22<sup>nd</sup>, 2013 Regular Board Meeting. Staff offered the following changes to the minutes: Under Old Business, item 8b, second full paragraph modify the second sentence to read: "Administrator Carolan stated that it was her understanding that the delay had been caused by the time it took for the Project Agreement to make its way through Target's internal processing procedure and that EOR could not move forward with the project design until Target had signed the project agreement with the District." Under Old Business, item 8b, third full paragraph, modify the sentence to read: "Manager Anderson moved to approve the EOR change order as presented in the packet which changes the project schedule only, but does not involve

changes to the overall project cost or add any additional work items. Seconded by Manager Moe. Discussion. Upon vote the motion passed.” Under Old Business, item F, final paragraph, modify the sentence to read: “Manager Anderson made a motion to direct the Administrator to work with EOR to come back to the board in September with an outline for diagnostic study work and identify potential funding sources that might be available for funding the work. Seconded by Manager Moe. Discussion. Upon vote the motion passed.” Motion to approve the August 22<sup>nd</sup> Regular Board meeting minutes, as amended, was made by Manager Anderson and seconded by Manager Moe. Discussion. Upon vote the motion passed.

## **5. Public Hearing – Hilo Lane Stormwater Retrofit Project**

Manager Damchik called the public hearing to order at 6:40 pm. Manager Damchik asked if there was anyone in the audience that wished to speak either for or against the Hilo Lane Stormwater Retrofit project. Hearing none he closed the hearing at 6:45 pm.

## **6. Public Open Forum**

Manager Damchik opened the floor to anyone in attendance wishing to comment on items that are not already scheduled to be discussed as part of the meeting agenda.

## **7. Old Business**

### **a. Forest Lake – South Shore Subwatershed Assessment – Andy Schilling (WCD)**

Administrator Carolan indicated that the Washington Conservation District was nearly complete with their assessment of the south shore of Forest Lake. Mr. Andy Schilling of the WCD was in attendance at this evenings meeting and provided a short presentation on the top projects that had been identified for implementation through the assessment work. Mr. Schilling would provide the board with a written copy of the report when it was prepared. During the presentation, Mr. Schilling provided detail on the following:

- The project background and process
- Review of the top 11 projects identified through the completion of the subwatershed assessment and their locations on the south shore of Forest Lake
- Review of the project ranking table and cost estimates
- Review of cost-effectiveness of each of the projects and the pollutant load reductions associated with each
- Review of options related to good housekeeping such as street sweeping
- Review of areas that may be best for focused outreach regarding the District’s existing cost-share program

Manager Schmaltz commented on how implementing all of the outlined projects would result in a significant reduction of phosphorus to Forest Lake. Manager Anderson also reminded the board that they were moving ahead with the Hilo Lane project which would also have an associated load reduction. Manager Anderson reminded the board how important it would be to get a good map of where City-owned storm sewers emptied into the lake. Manager Anderson also discussed how residents in the area get excited when they see projects moving ahead whether it be a residential cost share project or other, it helped drive interest in District programs. Manager Anderson thought the results of this study could be promoted to local residents.

**b. Permit #13-003 – St. Croix Cleaners**

Administrator Carolan indicated that the District had received an application for permit number 13-003 for the construction of a new commercial building and parking lot in Forest Lake. Administrator Carolan then asked Engineer Graske to review his permit review document which was included in the board packet. Engineer Graske explained that the project site was located on 12<sup>th</sup> Street, 180 feet north of 5<sup>th</sup> Avenue. Engineer Graske further explained that the project would include the construction of a commercial building and parking lot on a 0.61 acre site, resulting in 0.51 acres of impervious cover on a currently undeveloped parcel. The project site was within 1,000 feet of a public water and triggers the need for a stormwater management permit and an erosion and sediment control permit from the District. Engineer Graske explained that the applicants were able to meet the rules of District for stormwater management and erosion control. Rate control would be achieved through the use of a regional pond which was built previously but sized to accept runoff from the site currently being developed. The project would also include the installation of pervious asphalt to meet volume control standards and the project overall would reduce phosphorus loading in a manner which meets the 50% reduction required by District rules. The project as proposed also meets the District's rules relating to erosion and sediment control and will utilize rock construction entrances, inlet protection, rip-rap and permanent re-vegetation to ensure the project remains stable during and after construction. Mr. Graske recommended that the board approve the permit application with five conditions as presented in the engineers permit review report. Manager Anderson moved approval of permit #13-003 with the five conditions outlined in the engineers permit review report. Seconded by Manager Moe . Discussion. Upon vote the motion carried.

**c. Permit #13-005 Morley Industrial Building – Extension of Review Period**

Administrator Carolan noted the letter that she had distributed prior to the meeting regarding permit application #13-005. Administrator Carolan indicated that staff had worked with the project applicant to agree to extend the District's permit review period by 30-days as the applicant had indicated that changes to the submitted project plan were being required by the City of Forest Lake. The changes may add additional impervious surface to the site and would need further review by the District once the changes were made to the site plan. Administrator Carolan indicated that she was providing written notice of the extension period to the board as was required by the formerly approved resolution #08-12-03. The 30-day extension would expire on November 21<sup>st</sup>, 2013 which would allow the board to review the permit application at the October or November board meeting.

**d. Peshorn Ag-BMP Payment Authorization**

Administrator Carolan noted the memorandum in the board packet regarding the Peshorn Agricultural BMP project. Administrator Carolan indicated that the project was complete and that a final walk through of the project was completed by District staff, Chisago SWCD, and the project engineer on August 15<sup>th</sup>. Carolan further indicated that the project engineer had submitted as-built plans as well as a letter of certification indicating that the project had been built per plan. Carolan explained that the cost-share eligible items totaled \$18,321.00, but that the agreement between the District and the landowner indicated that the District would pay 100% of project costs not to exceed \$17,511. Manager Moe moved to authorize cost-share reimbursement to Ms. Julie Peshorn in the amount of \$17,511. Seconded by Manager Spence. Discussion. Upon vote the motion carried.

**e. Whitney Residential Cost-Share Application**

Administrator Carolan presented the memorandum in the board packet, which included a cost-share application from Mr. Phil Whitney who owned property at 6573 North Shore Trail in Forest Lake. She explained that staff had visited the site in spring of 2013 to determine if the potential project was eligible for District cost-share. The proposed project would consist of a shoreline buffer restoration project on Forest Lake, Lake 1. The project would include the installation of a 2,650 square foot native buffer planting along 100 linear feet of shoreline. 750 native plugs would be installed along the shoreline as well as rock rip-rap and geotextile fabric to prevent erosion issues while the plants establish. The project as proposed would result in the following load reductions to Forest Lake, Lake 1: total phosphorous: 0.17 lbs/year; total nitrogen: 0.33 lbs/year; and total suspended solids: 11.0 lbs/year. The total project cost including contractor labor is estimated at \$17,479.50. The applicant was requesting \$3,000.00 in cost share which is the maximum allowed through the District's program. Administrator Carolan indicated that the proposed project had been reviewed and ranked by Andy Schilling of the Washington Conservation District, Manager Moe and herself and all recommended the project be funded. Manager Moe moved to approve the Whitney Residential BMP Cost-Share Incentive Program application for a shoreline stabilization buffer planting at a rate of 50% not to exceed \$3,000. Motion was seconded by Manager Spence. Discussion. Upon vote the motion passed.

**f. Audit Engagement Letter**

Administrator Carolan noted her memo in the board packet. She noted that HLB Tautges Redpath had submitted its 2013 audit proposal and engagement letter. She pointed out that the proposed cost to conduct the 2013 audit, prepare the annual financial report, and conduct a state legal compliance audit would be \$8,500.00. The proposed cost is \$400 (4.9%) more than the cost of the 2012 audit. Staff recommended approval of the 2013 engagement letter and scope of services as presented by HLB Tautges Redpath. Manager Anderson moved to accept and approve the attached Engagement Letter from HLB Tautges Redpath to conduct the District's 2013 Audit and authorize its execution by the Board President. Motion was seconded by Manager Moe. Discussion. Upon vote the motion passed

**9. Old Business**

**a. FY 2014 Clean Water Fund Grant Submittal Authorization**

Administrator Carolan noted the memorandum in the board packet. She explained that the Board of Water and Soil Resources had recently opened the application period for FY2014 Clean Water Fund Competitive Grant Applications. She further explained that \$8,545,000 was available in funding for on-the-ground practices and projects. At the August 22<sup>nd</sup> regular meeting the board had considered developing grant applications for a short list of projects. Following discussion, it was recommended by the board that staff develop a grant application focusing on a large scale, high profile project associated with the Sunrise River Water Quality and Flowage Project Report. The board had directed staff to do further research and to bring back a draft grant application at the September board meeting. Administrator Carolan explained that she had met with staff from the Board of Water and Soil Resources (BWSR) to discuss potential project applications. Using input from BWSR staff and the board, District staff drafted a grant application focused on a water quality/wetland enhancement project at Bixby Park in Forest Lake, one of the projects identified through the Sunrise River Water Quality and Flowage Project. A copy of the draft grant application language was included in the board packet. Administrator Carolan pointed out that EOR had updated their project cost estimate to indicate that the total project cost would be

approximately \$481,000 which would include design, legal, administrative, and construction costs. Administrator Carolan recommended that the board request grant dollars in the amount of \$360,750 and plan to provide project match in the amount of \$120,250.

Manager Anderson moved to authorize the Administrator to finalize and submit a grant application to support the implementation of the Bixby Park Water Quality Improvement Wetland Project as described in the board memorandum. Seconded by Manager Moe. Discussion. Upon vote the motion carried.

## **b. Hilo Lane Stormwater Retrofit Project**

### **i. Long Term Maintenance Option**

Administrator Carolan noted the memorandum in the board packet regarding long-term maintenance associated with the Hilo Lane Stormwater Retrofit Project. Administrator Carolan indicated that as staff worked to develop the cooperative agreement between the District and the City, further direction was needed from the board on how they would like to handle long-term maintenance of the project in the future. Carolan stated that there were in general, three categories related to long term maintenance: 1) cleanout of the existing pond, conveyance structures and outlets 2) maintenance and replacement of the iron-enhanced sand filter, and 3) maintenance of vegetation, conveyance channels, and lake-shoreline stabilization work. The cost for maintaining the filter would be approximately \$39,000 every ten years, the remaining activities would cost approximately \$20,000 every ten years. Administrator Carolan further explained that staff would like direction from the board on who they would like to be responsible for maintenance - the District, the City or a combination and also who would be responsible for paying for the work – the District, the City or a combination of the two. Manager Schmaltz asked if any special skills were needed for maintaining a feature like the iron/sand filter, and would the District need to hire contractors trained to do the special kind of work. Administrator Carolan indicated that the City of Forest Lake had the necessary skills needed to maintain a standard stormpond or standard stormwater treatment facility, but may not necessarily be able to maintain the iron/sand filter as it was above and beyond a standard treatment feature. Manager Schmaltz stated that there would be some need for specialized work around the filter. Manager Anderson indicated that she was concerned about relying on the City to maintain the larger scale project improvements completed as part of the project. She acknowledged that they did have the crew available but felt that the direction needed to come from the watershed since the project was such a high priority for the District. She indicated that it may be necessary to have a tighter cooperative agreement for this type of project which allows the District to take corrective action if needed. She would like to see the watershed overseeing the maintenance work, inspecting the site and giving the City direction on when maintenance work is needed. Managers Spence thought that the District should be responsible for hiring and selecting the contractors as well as paying them for the work, to ensure that maintenance is done. Manager Spence thought if the City maintained the project as part of their normal routine maintenance schedule; it could be put off rather than done when needed. Manager Anderson thought there was an obligation on the part of the City for at least part of the maintenance funding. She thought the City did have an obligation to pay for a portion of the maintenance, what the percentage would be would be up to staff to determine through discussions with the City. Manager Schmaltz stated that the City is collecting funds each year through its stormwater utility fee to pay for maintenance of

stormwater features among other activities. He further stated that the City should be required to maintain the facilities through its MS4 permit. Manager Schmaltz thought this was a good case study for flushing out how the District could split funding of maintenance costs with the City on joint projects. Manager Moe stated that he believed both the District and the City had their own responsibilities for maintaining the improved facility when the project was complete. Manager Moe would like to see the District end up with a partnership with the City to get maintenance work accomplished. Manager Moe wanted to make sure that the District provided oversight so that things didn't get damaged around the sand filter. Manager Moe thought the City should provide some funding for the maintenance of the site, he thought those funds should be in the City's regular maintenance budget. Manager Anderson wanted to be sure that the Watershed District was overseeing any maintenance work so that the filter wasn't damaged. Manager Schmaltz wanted to be sure that the District maintained control of the future maintenance to be sure it was done as needed. Attorney Holtman stated that with the new MS4 permit there is a maintenance requirement but indicated that it is not overly specific or rigid. Basically, Cities need to inspect their facilities approximately once every five years and there is a standard if maintenance needs to be done, but there is no time frame on when the maintenance needs to occur. Holtman stated that given the current project situation, it would be appropriate and necessary that in the Project Agreement with the City there would be clear terms about who does maintenance and what the standard of diligence would be. As far as the City's financial proportion it would make the point that the City does have some financial responsibility under law to pay for maintenance activities even if the District completes the work. Manager Anderson stated that Administrator Carolan should work with the City Administrator to come up with an option that works best for protection of the lake. Manager Schmaltz wanted to be sure that the District set the time frame for completing maintenance activities and the District should complete the inspections. Administrator Carolan stated that she would use this input and work with Attorney Holtman to develop the cooperative agreement between the District and the City that would include terms for long-term maintenance of the project.

ii. **Deferred Maintenance Costs**

Administrator Carolan again noted the memorandum in the board packet. She indicated that one component of the proposed project was to excavate the existing pond for the purposes of restoring the ponds original capacity as well as to create space for the iron-enhanced sand filter bench. Carolan further explained the excavation of the existing pond would be considered a deferred maintenance activity and would not be eligible for the use of the grant funds provided by the MPCA for this project. Carolan did indicate that costs associated with the activity could be used as project match. Carolan further explained the excavation of the pond would likely cost approximately \$17,000, but could be more if pond sediments were found to be contaminated, which would require a more expensive disposal option. Administrator Carolan explained that the purpose of the agenda item was to get direction from the board regarding costs for the deferred maintenance activities and whether or not the costs for the activities should be included in the District's overall Hilo Lane Stormwater Retrofit Project. Carolan indicated that there a few options the board could consider including 1) move ahead with project development as planned and include costs and activities associated with deferred maintenance activities which will be tracked as project match according to the districts grant agreement with the MPCA, 2) request additional funds from the City to cover costs of deferred maintenance activities, 3) request that the City complete the deferred

maintenance activities prior to starting the project. Manager Anderson indicated that she was comfortable with the project budget as presented which included the cost of the deferred maintenance activities. Since the City was providing \$20,000 for project construction that could cover the \$17,000 cost estimate associated with excavating the existing pond and allow for a little bit of cushion. She did not feel it was necessary to go back to the City at this point and ask for additional funds. Carolan indicated that no board action was needed at this time; she just wanted to make sure the deferred maintenance issue was clarified prior to moving forward with the project development and cooperative agreement with the City.

### **c. Moody Lake Subwatershed Investigation**

Administrator Carolan again noted the memorandum in the board packet. She indicated that at the August Board meeting, EOR had presented their findings regarding the effectiveness of a potential in-lake treatment on Moody Lake. As part of that report, EOR had indicated that the Board should not move forward with an in-lake treatment on Moody Lake as watershed loading was still too high for the treatment to be effective. Following the presentation in August, the board had directed staff to develop a work order for their consideration which would work to identify areas in the Moody Lake subwatershed where dissolved phosphorous loading was still high. This work would likely focus on drained and modified wetlands in the subwatershed which have been impacted by agricultural activities in the past. Carolan indicated that Engineer Graske would present the Work Order which was included in the board packet. Mr. Graske indicated that the plan would include the set-up of an automatic sampler at the outlet of Fourth Lake. Monitoring of the Fourth Lake outlet would consist of the development of a stage-discharge relationship and installation of a staff gauge and/or level logger to monitor elevations on Fourth Lake. This work will be done in conjunction with monitoring that will be completed by the Washington Conservation District on Fourth Lake in 2014. The second component of the work plan will include watershed grab sampling. At least eight locations will be identified in the Moody Lake Subwatershed in an effort to begin isolating pollution hotspots within the subwatershed. The plan would be to start with 4-5 sites and then add additional sites as information was revealed. The third task of the work order would include additional monitoring activity on Moody Lake. Monitoring activities would work to provide a profiled assessment at a deep site in the lake and at an eastern station on Moody Lake. Lake bottom samples would also be taken. This task would again be completed in coordination with the Washington Conservation District and their routine monitoring tasks in 2014. The final task of the Work Order would include data review and a summary memorandum with recommendations on next steps. Mr. Graske explained that the estimated costs for the work order was \$25,036 with an additional allocation of \$2,000 needed to increase monitoring activities completed by the Washington Conservation District. Manager Anderson indicated that she liked the approach being presented. She wondered if it would help to use infrared photography when looking for hotspots in the subwatershed. Mr. Graske stated that EOR had not intended to use this type of image analysis as part of this project, but that he would check with staff at EOR to see if it would be helpful and get back to Manager Anderson with a response. Manager Anderson asked who would be responsible for completing the grab sampling. Mr. Graske responded that at this time it was set up for EOR to do the grab sampling. Manager Anderson asked if EOR would have staff available to respond immediately following rain events. Mr. Graske stated that they would have staff on-call. Manager Moe asked about responding on weekends. Mr. Graske stated that EOR could respond on weekends if needed. Mr. Schmaltz asked how important it was to move ahead with the project at this time and wondered how transferring funds would affect the District's reserve funds.

Administrator Carolan indicated that the District did have funds in reserve for in-lake treatments on Moody Lake that would not be needed in the near future and that in total the District had about \$770,000 in the designated contingency reserve fund. Manager Anderson indicated to Manager Schmaltz that for a number of years the District had kept funds in its annual budget for an in-lake alum treatment on Moody Lake, but as the District did more work and refined its efforts it became apparent that Moody Lake was not yet ready for an in-lake treatment. Manager Anderson made a motion to authorize EOR to move forward with the Work Order as proposed at \$25,036 for EOR tasks and an additional \$2,000 for the Washington Conservation District to complete additional monitoring work associated with the project; and to authorize the transfer of funds from the District's contingency reserve fund (100-2911) to the Moody Lake Engineering Fund (615-4532) in the amount of \$25,036 and transfer of funds from the District's contingency reserve fund (100-2911) to the lake monitoring fund (601-4715) in the amount of \$2,000. Manager Moe seconded the motion. Manager Moe indicated that he hoped this would get the District to a point where they would know how to best treat the water quality issues on Moody Lake. The president called the question. Upon vote the motion passed.

## **8. Report of Staff**

Administrator Carolan – Administrator Carolan noted the written report in the board packet. Manager Anderson asked for additional information regarding the DuCharme Wetland Excavation IUP. Carolan indicated that the City of Wyoming had provided her with a copy of an IUP application for excavating some of the wetland area on the DuCharme Property. Carolan indicated that the activity would be subject to an erosion control permit from the District and that she had provided the comment to the City. She also indicated that the area planned for excavation was outside of where the District had proposed to complete a water quality improvement project. Manager Anderson also asked about Carolan's meeting with the City of Wyoming regarding Greenway Ave. Carolan indicated that she had met with the City engineer to talk about future plans for reconstructing Greenway Ave. and what permits would be required.

Emmons and Olivier Resources (EOR) – Mr. Graske provided the board with more information about his background in engineering.

Smith Partners – Attorney Holtman explained that a grazing plan was being litigated in the federal court of appeals. He indicated that a case had come out this month involving a dairy farm in northern Minnesota. He explained that the dairy farmer had signed up for the NRCS EQIP program which provides cost-share for conservation practices. As part of the farmer's contract, he was responsible for implementing a grazing plan which had been prepared by the NRCS. Holtman indicated that the dairy farmer had lost a good part of his herd due to toxicity and had brought a lawsuit against the NRCS to federal court claiming that the NRCS had prescribed a seeding mixture that was too high in a certain type of clover that can be toxic to cows. In the federal court, the case was dismissed due to discretionary immunity which exists for federal government and at the state level, which basically protects policy makers when making a decision. The federal courts decided that the prescription of the seed mixture was a discretionary decision and therefore they dismissed the lawsuit. That decision was appealed to the Eighth Circuit and a three judge panel reversed and said that the suit could go forward. The NRCS then petitioned for a rehearing to be heard by the full Eighth Circuit panel which includes eleven judges. They issued a decision reversing the earlier decision and said it was protected by immunity. Three of the judges dissented. Holtman also indicated that there were other arguments about what else could have caused the toxicity in the cattle. Holtman did not know what the final outcome would be and how the decisions would impact the overall EQIP program.



## **8. Report of Treasurer**

### Approval of Bills

Treasurer Spence presented the Treasurer's Report (A copy of which is annexed and incorporated by reference) and bills and payroll totaling \$50,271.58.

Motion was made by Manager Anderson to approve the September 26<sup>th</sup>, 2013 Treasurer's Report and pay the bills and payroll as presented. Manager Moe seconded the motion. Discussion. Upon vote, the motion passed.

## **9. Reports of Officers and Managers**

Manager Damchik – Nothing new to report

Manager Schmaltz – Nothing new to report

Manager Spence – Nothing new to report

Manager Anderson – Manager Anderson reminded Administrator Carolan to check with the initiative foundation for potential funding for projects including Moody Lake.

Manager Moe – Shared that he had harvested wild rice for the first time in the last month. He explained that wild rice required very clean water and that it was now declining due to poor water quality. It used to be much more abundant.

## **10. Adjournment**

Motion to adjourn the CLFLWD regular Board meeting at 8:20 pm was made by Manager Anderson and seconded by Manager Spence. Upon vote, the motion passed.

**Wayne S. Moe, Secretary** \_\_\_\_\_