

Board of Water and Soil Resources (BWSR) Board Meeting

December 15, 2022

Gerald Van Amburg called the meeting to order at 9:02 a.m. The Pledge of Allegiance was recited. The agenda was adopted. The minutes of the October 26, 2022 BWSR Board (Board) meeting were approved. No one was present to address the Board in the Public Access Forum. New staff were introduced. The conflict-of-interest declaration was read. **Items of note to members are highlighted in gray.**

REPORTS

Chair & Administrative Advisory Committee

Chair Van Amburg reported on the recent meeting of the Administrative Advisory Committee and the review of the draft Diversity, Equity, and Inclusion plan for BWSR. He also mentioned the Environmental Quality Board (EQB) meeting. A resolution was approved to support the chair of the EQB in replacing the current Environmental Assessment Worksheet (EAW) with the revised December 22 EAW form. This form contains significant changes on what is considered for climate change.

Executive Director

Executive Director Jaschke reported that he attended the MAWD, AMC, and MASWCD annual conferences. Award information will be posted on each entity's website. He updated the Board on the Climate Action Framework, governor's budget process, Clean Water Fund, and the Outdoor Heritage Fund. Committee chairs for the House and Senate are being decided.

Audit & Oversight Committee

Vice Chair Collins reported that the committee will meet on January 12, 2023.

Dispute Resolution and Compliance Report

Rich Sve reported that the committee has not met. There are currently five appeals pending, with two new appeals filed since the last report.

Buffer Compliance Status Update: BWSR has received Notifications of Noncompliance (NONs) on 96 parcels from the 12 counties BWSR is responsible for enforcement. Currently there are no active Corrective Action Notices (CANs) and 3 Administrative Penalty Orders (APOs) issued by BWSR that are still active. Of the actions being tracked over 93 of those have been resolved. Statewide 35 counties are fully compliant, and 48 counties have enforcement cases in progress. Of those counties (with enforcement cases in progress) there are currently 516 CANs and 68 APOs actively in place. Of the actions being tracked over 2,340 of those have been resolved.

Grants Program and Policy Committee

Todd Holman explained that there are two action items on the agenda. The committee meets again on January 23, 2023.

Reinvest In Minnesota (RIM) Reserve Committee

Jayne Hager Dee reported that there are three action items on the agenda.

Water Management and Strategic Planning Committee

Vice Chair Collins reported that the committee met with the grants committee for an action item that is on today's agenda.

Wetland Conservation Committee

Jill Crafton informed the Board that the committee met and heard a presentation about WCA rulemaking.

Buffers, Soils, and Drainage Committee

Mark Zabel stated that the committee will hold a meeting on January 24, 2023.

Drainage Work Group (DWG)

Neil Peterson and Tom Gile reported that the DWG met on December 8. The DWG is working to convene a technical group regarding outlet adequacy. Discussion continues regarding the drainage registry. The DWG received a presentation from the Minnesota Department of Natural Resources (MDNR) early coordination concepts.

AGENCY REPORTS

Minnesota Department of Agriculture (MDA)

Peder Kjeseth gave an update on the soil health initiative. The deadline for the cost-share program to update irrigation systems is December 16.

Minnesota Department of Health (MDH)

Steve Robertson reported that the MDH is concerned about infrastructure, lead, and CDCs in drinking water. EPA will be issuing new guidance. He also provided an update on the Future of Drinking Water planning effort.

MDNR

Katie Smith gave an update on behalf of Commissioner Strommen. MDNR representatives attended both the MAWD and MASWCD meetings and presented awards. Invitations for the DNR Roundtable were sent. The event will be held in January 2023.

She provided an explanation of MDNR's policy regarding early coordination. A drainage authority often invests money in planning a drainage project before any environmental land use review is complete. This is inefficient if the project is not permittable. MDNR is proposing a change in statute to require the environmental analysis earlier in the process. Through this legislation, meetings would be required to be held and ensure the right people are at the table upfront. Following this process will be more efficient and transparent. The result will be generating a report that anyone that is interested can see before the project starts.

She stated that concern has been expressed at the DWG. A lot of the concern was about the process, rather than the content. As far as process goes, agency legislative proposals were confidential until they are further along in the process. Now the governor allows agencies to engage earlier in the process. At the October DWG meeting, MDNR staff shared that the legislative proposal was being developed and wanted to get input and feedback. It would have been hard to share information about this earlier in the process.

MDNR spent time in October and November meeting and talking with groups, specifically MAWD, AMC, MCEA, and IWL. MDNR staff made it clear that we are open to changes in the language and want to get input and hear from everyone. The MDNR's best intentions are to make this process better for everyone.

Joe Collins asked about what projects this legislative change would address. Katie Smith replied that MDNR has concerns regarding environmental review and permits for drainage improvement projects. Drainage authorities often work with proposers and the MDNR doesn't hear about a project. The project progresses and MDNR hears about it because of a complaint. It is frustrating that this happens and MDNR is informed in the middle of the process.

Jill Crafton stated that she knew there have been robust conversations about this. Drainage authorities in northern Minnesota have a good relationship with MDNR. There are statutes in place for how this should be done. She was happy that MDNR is welcoming input.

Katie Smith said that there is a difference of opinion of a repair versus an improvement, whether a project impacts downstream waters. The interpretation is different between the proposer, drainage authority, and MDNR. It is necessary to have this conversation earlier in the process.

Neil Peterson stated that our watersheds and counties have a good working relationship with MDNR and keep everybody in the loop. His suggestion would be to get this proposal in front of AMC committees and

give presentations. We have heard that this is proposing a panel of all agencies. In his experience, the more groups involved, the slower the processes get. Our counties are overregulated and blindsided by this.

Katie Smith responded that the MDNR does not want to make this process onerous on anyone. MDNR wants it to be more efficient. The purpose is not about creating a panel of people to judge a project and make it lengthier and more cumbersome. It is for the benefit of getting together and providing concerns in a written format that is transparent and upfront. MDNR does not want to overregulate or have this be cumbersome or extend their regulatory authority.

LeRoy Ose stated that it seemed to him that we already have everyone getting together. This does not seem necessary. Katie Smith replied that it is great to hear examples of this working well. That is not everyone's experience.

Ron Staples asked if the MDNR had a timeline for this process and if they were planning to take it to the legislature this session. Katie Smith responded that it is MDNR's hope to go through the legislative process. If there are groups that are concerned about this, she asked them to please reach out. MDNR staff would be happy to attend meetings and discuss this more. MDNR wants this to be a helpful and beneficial for everyone. They want this to be a collaborative process.

When asked if the MDNR would introduce this legislation in the 2023 legislative session, Katie Smith replied that was the intent.

Minnesota Extension

John Bilotta gave an update on advertising a new position for an irrigation extension educator, the 2022 Soil Management Summit, onsite sewage treatment program, and the stormwater program. They are currently seeking research proposals on urban stormwater ponds, appointed a new advisory board for 2023 to 2025, and are implementing a pilot clean sweep for water quality education and training program to train city staff across the state.

Minnesota Pollution Control Agency (MPCA)

Katrina Kessler provided an overview a meeting of the Gulf of Mexico Hypoxia Task Force in Washington, DC. MPCA is also working through the inner agency budget process and climate package.

ADVISORY COMMENTS

Association of Minnesota Counties (AMC)

Brian Martinson gave an update on the AMC annual conference. They have an updated platform regarding issues of rough fish, public waters, public waters inventory, and drainage. AMC has been engaged in discussions at the DWG. He is upset to hear the comments from the MDNR. They have been a participant in the DWG as a state agency. They had indicated to us and through one of the assistant commissioners that they would not pursue legislation that did not reach DWG consensus. MDNR did present language for the first time recently. It is bothersome to AMC as a representative of drainage authorities that MDNR would pursue legislation without working it through the process. If that occurs from a state agency member of the DWG, AMC should reconsider whether that work group has any value.

Minnesota Association of Conservation District Employees

No report was given.

Minnesota Association of Soil and Water Conservation Districts (MASWCD)

No report was given.

Minnesota Association of Townships (MAT)

Eunice Biel said that the 2023 annual meeting will be held in St. Cloud in December. MAT has offered webinars for traffic best practices and culvert installation. Scholarship applications are due June 1. The Township Day at the Capitol will be held February 1 and 2, 2023.

Minnesota Association of Watershed Districts (MAWD)

I provided an update on the annual conference including the Drainage, Watershed Management, and Staff Development workshops, concurrent education sessions, Strategic Plan, and election of officers. I thanked BWSR staff for their assistance with the Drainage and Watershed Management Workshops. I also concurred with Brian Martinson’s comments regarding MDNR’s proposed legislation on early coordination and stated that if the legislation is pursued without consensus, it would likely be the end of the DWG.

Natural Resources Conservation Service (NRCS)

No report was given.

[A five-minute break was taken.]

COMMITTEE RECOMMENDATIONS

Grants Program and Policy Committee

One Watershed, One Plan Mid-Point Grants

Julie Westerlund, BWSR explained the earliest comprehensive watershed management plans have reached the mid-point of their 10-year plan life. The One Watershed-One Plan policy requires plans to include a “five-year” evaluation and to consider plan amendments at this time. BWSR learned from the [One Watershed, One Plan program evaluation](#) that partnerships were looking guidance and financial support for this process. BWSR staff developed [guidance for plan evaluations](#); mid-point grants are to carry out the recommendations in the “evaluation” section of that guidance and for potentially amending plans if warranted. The policy was adopted.

CWF FY 23 Competitive Grant Application Recommendations

Annie Felix-Gerth, BWSR reported that the purpose of this agenda item is to allocate FY23 Clean Water Competitive Grants. On June 22, 2022, the Board adopted Board Order #22-31 which authorized staff to conduct a request for proposals from eligible local governments for Clean Water Fund projects in the following program categories: Projects and Practices, Projects and Practices Drinking Water, Soil Health and Multipurpose Drainage Management. Applications for the FY2022 Clean Water Fund Competitive Grants were accepted from June 27 through August 22, 2022. Local governments submitted 68 applications requesting \$27,018,389 in Clean Water Funds. BWSR staff conducted multiple processes to review and score applications and involved staff from other agencies to develop the proposed recommendations for grant awards per the attached spreadsheets. On November 28, the Grants Program and Policy Committee made a recommendation to the full Board. The Board Order was adopted.

Executive Director Jaschke asked the MDNR be given an opportunity to respond to concerns about the MDNR’s proposed early coordination language. Katie Smith stated that she wanted to respond and ensure that no one is left with the wrong impression. The DWG is absolutely key and MDNR needs to continue the conversation with the DWG. MDNR needs to draft a bill that everyone can support. They are happy to schedule more meetings. Neil Peterson asked that MDNR meet with the Minnesota Rural Counties Caucus, AMC, MASWCD, and MAWD.

RIM Reserve Committee

Easement Alteration Request for Conservation Easement #81-04-92-01 (Hanson)

Karli Swenson, BWSR explained that Board approval is requested to amend conservation easement #81-04-92-01 in Section 9, T106N, R22W, Waseca County, in accordance with MN Rule 8400.3610 and BWSR’s Easement Alteration Policy. This request would release 0.45 acres of upland from the 47.5-acre easement for the purpose of a future building site. The request would add 1.85 acres of additional land to the easement, fulfilling the required 4:1 replacement ratio, and meets all other conditions of the Easement Alteration Policy. BWSR Easement Staff recommend approval of this request. The proposal demonstrates how the State’s natural resource interest will be better served as a result of the alteration. The proposal would result in a net

gain of permanently protected land with existing habitat value and water quality benefits, that would alternatively be reduced or degraded. The easement alteration was granted.

Easement Alteration Request – RIM Easement #81-09-95-01

Karli Swenson, BWSR explained that Board approval is requested to amend RIM easement #81-09-95-01 in Section 25, T107N, R24W, Waseca County, in accordance with MN Rule 8400.3610 and BWSR's Easement Alteration Policy. This request would release 2.6 acres from the easement for the purposes of storing firewood, cooking maple sap, and storing other equipment. The request would add 5.2 acres of land to the easement, adjacent to the Le Sueur River. This request fulfills the required acre replacement ratio of 2:1 and meets all other conditions of the Easement Alteration Policy. Staff recommend approval of this request. The request meets all conditions of BWSR's Easement Alteration Policy, and the intended use of the release area would have minimal impacts to the environment. The lands proposed for replacement have habitat and water quality benefits that exceed those of the release area and would be valuable additions to the easement. The easement alteration was granted.

Resolution Authorizing RIM Reserve – One Watershed, One Plan Implementation

Bill Penning, BWSR explained that ML 2022, Ch. 77, Art. 1, Sec. 2, Subd. 5(b) designated funds "to acquire permanent conservation easements and restore and enhance wildlife habitat identified in One Watershed, One Plan for stacked benefit to wildlife and clean water." This program will utilize RIM easements to protect priority parcels identified in watershed plans developed through BWSR's One Watershed, One Plan program, in which local governments strategically set priorities for clean water and habitat, target implementation, and set measurable goals. BWSR currently distributes CWF dollars to partnerships with approved plans for water quality projects. This program will provide additionality by using Outdoor Heritage Funds to implement habitat protection as identified in Comprehensive Local Watershed Management Plans. This resolution authorizes staff to utilize these funds and future funds provided to the agency for similar purposes to develop and implement this program. The resolution was adopted.

UPCOMING MEETINGS

- **Northern Region Committee:** January 4, 2023 at 9:00 a.m., TBD
- **Central Region Committee:** January 5, 2023 at 2:30 p.m., St. Paul and virtually
- **Audit and Oversight Committee:** January 12, 2023 at 9:30 a.m., St. Paul and virtually
- **Administrative Advisory Committee:** January 24, 2023 at 9:00 a.m., St. Paul and virtually
- **BWSR Board:** January 25, 2023 at 9:00 a.m., St. Paul and virtually

The meeting adjourned at 11:52 a.m.

Notes submitted by Jan Voit