

Regular Meeting of the Middle St. Croix Watershed Management Organization
HELD REMOTELY DUE TO COVID -19 PANDEMIC

Thursday, February 11th, 2021

6:00PM

Present: Joe Paiement, City of Lakeland; John Fellego, Baytown Township; Mike Runk, Oak Park Heights; Tom McCarthy, Lake St. Croix Beach; Beth Olfelt-Nelson, St. Mary's Point; Brian Zeller, Lakeland Shores; Dan Kylo, West Lakeland Township; Susan St. Ores, Bayport alt; Administrator Matt Downing; Cameron Blake, WCD; Jay Michaels, EOR; Dawn Bulera, Lake St. Croix Beach alt.; Christopher Smith, Public; Matt Hieb, ACA Engineering.

Call to Order

Manager Zeller called the meeting to order at 6:02 PM.

Approval of Agenda

Manager Fellego motioned to approve the agenda as amended and Manager Perkins seconded the motion. The motion passed on a roll call vote with all in favor.

Approval of Minutes

Manager Runk motioned to approve the January 14th minutes and Manager Olfelt-Nelson seconded the motion. The motion passed on a roll call vote with all in favor.

Treasurer's Report

The treasurer's report was presented by Manager Kylo. He asked if the date at the treasurer's report was incorrect. Administrator Downing confirmed that the date was incorrect but the information in the report was accurate. The remaining checking account balance on February 11th for the month of January 2021 was \$388,113.57. First State Bank CDs were valued at \$38,549.15. The ending balance in the RBC savings account for January 2021 was \$71,134.80.

Bills to be approved this month are: Gabriel Curell: \$41.67; Mn Dept of Administration: \$54.00; Mn Dept of Administration: \$54.00; Emmons & Oliver: \$277.75; Emmons & Oliver \$4,079.25; Washington Conservation District (Administration): \$3,435.00; Washington Conservation District (Technical Services): \$5,050.50; Total: \$12,992.17.

Manager Fellego asked Administrator Downing if there was more detailed information for what activities the invoices covered, specifically for the WCD invoices, in order to give them more meaning for the board. Administrator Downing explained that he tracked the different activities in the budget tracker (administration, technical services). Technical services mostly involved permit review fees and other TA time. Administrator Downing said he could begin providing the invoice packets if that was wanted. Manager Fellego did not confirm that this was his request.

Manager Fellego motioned to approve the January 2021 treasurer's report and Manager Runk seconded the motion. The motion passed on a roll call vote. Manager Zeller motioned to pay the February 11th bills and Manager Fellego seconded this motion. The motion passed on a roll call vote.

Public Comment

There was no public comment. Christopher Smith was attending for a permit review later on the agenda.

Old Business

There was no old business.

RFQ for Legal and Engineering Services

Administrator Downing reminded the board that it was time to select the next two year contracts for the MSCWMO's legal and engineering services. They received two letters of interest each for legal and engineering.

For legal services, they received a letter of interest form their current provider, Kennedy and Graven. They also received one from Mendota Consultants PLLC. Manager Zeller led the discussion. Manager Fellegly commented that the rate/fee structure was comparable between the two and asked if there had been any issues with the current provider. Administrator Downing said he had not experienced issues, and had good experiences working with them from the staff level. He felt that Kennedy and Graven had more specific water resource experience. Manager Olfelt-Nelson commented that she would have concerns switching to a sole proprietor shop with a wider range of activity. Administrator Downing agreed with that concern- noting that he had never gone more than 4 or 8 hours for a response with their current provider.

Manager Olfelt-Nelson motioned to continue using Kennedy and Graven for the MSCWMO's legal services. Manager Perkins seconded this and the motion passed on a roll call vote.

For engineering services they received letters of interest from current provider EOR, and WENCK (now part of Stantec). Administrator Downing commented that both proposals were well thought out and written, and noted that Jay Michaels from EOR was present in the meeting. Manager Zeller asked what the annual cost was for engineering. Administrator Downing explained that it varied based on how many grants were received and CIP projects in the works, as the amount of the grant dictated what was spent. He would estimate in the \$30-50,000 range. Manager Zeller asked if everything was going smoothly with their current provider and Administrator Downing confirmed this. Manager Fellegly and Perkins both expressed their interest in staying with their current provider if the MSCWMO is still happy with the work being done and the costs are comparable (if it isn't broke, don't fix it).

Manager Fellegly motioned to continue using EOR for the MSCWMO's engineering services and Manager Perkins seconded this.

Manager Zeller asked if there were other thoughts. Manager Olfelt-Nelson asked Administrator Downing if he had experience with the other provider. Administrator Downing explained that he had experience with WENCK on internal load studying, but that EOR has also done study aspects like this, and had great experience with getting projects on the ground completed. Manager Zeller confirmed that MSCWMO would not be confined by an exclusive agreement with EOR; if the board felt that a specific task could be done by another company they could use them if they wanted. Manager Olfelt-Nelson asked about the merger/acquisition of WENCK by Stantec and the group discussed this. Administrator Downing explained that WENCK said they had a Woodbury office that was potentially closing, but that they wouldn't charge for travel time regardless. Administrator Downing concluded the discussion saying that

EOR was providing good services in many aspects, such as Stu Grubb attending the state PFAS meetings on behalf of the MSCWMO, and he felt comfortable continuing that relationship.

The board had a roll call vote for the motion on the table and the motion passed.

2020 Permit Fee Overage Invoicing

The 2020 MSCWMO Budget and Receivables ended the year at 136% spent. In light of this, the MSCWMO Managers directed Administrator Downing to assess overages and provide a recommendation for recouping losses pursuant to the Joint Powers Agreement. 18 permits had time spent providing comments or guidance in 2020. Upon review of the hours spent, it is Administrator Downing's recommendation that any review that was more than \$500 over the fee collected be invoiced to the respective community. If the board approves this approach, 4 commercial and two single lot reviews will be invoiced. This would result in the recovery of \$5,665 of time not covered by review fees. The \$500 threshold was chosen as it which seems feels justifiable while covering the administrative costs to generate invoices etc.

Manager Fellegy asked who the MSCWMO would be charging and Administrator Downing clarified that it would be charged back to the communities the permits were associated with as they are the permitting authority. It would be up to the communities to charge back to the permit applicants. Administrator Downing explained that the permitting program was over budget by about \$5,000 in 2020. The MSCWMO doesn't charge public entities a review fee. There were a higher than usual amount of pre-application meetings and permit questions going back to 2015, and those costs can't be recouped in the current system.

Manager Fellegy asked if it felt fair to the communities to be charged back to just because the MSCWMO didn't charge enough initially for permitting reviews. Manager Zeller said this was how the agreement is written and it is also stated on the application that overages can be charged back. Manager Olfelt-Nelson said St. Mary's point was having this conversation as well regarding the fee structure and that they used asterisks to mark this point. She said St., Mary's point was trying to do better at viewing the MSCWMO as their staff time, and that this time can change based on the amount of permitting occurring. Administrator Downing echoed that this was how the program was intended to work. Manager Zeller clarified that the \$500 threshold made sense with the MSCWMO absorbing minor overages.

Manager St. Ores asked if there was a breakdown of these 6 permit overages by community which showed which communities would be receiving these invoices. Administrator Downing said there was one that he didn't have on the screen, but that Bayport had one of the projects. The group clarified to her that the communities would receive the invoices if the project being collected on was in their community. The MSCWMO's relationship is with the city, not the permit applicant. The city does not have to absorb the costs unless they choose not to bill it back to the applicant, unless there was a surety which has occurred a few times.

Manager Zeller motioned to approve Staff to send fee overage reimbursement requests for all reviews exceeding \$500 in overage for 2020. Manager Fellegy seconded this motion and the motion passed on a roll call vote. Administrator Downing asked for clarification on if the motion meant to adopt this as a policy and follow up by sending the invoices out, or if the board wished to see the breakdown by community first. Manager's Zeller and Fellegy confirmed their motion meant to adopt this policy and send the invoices out.

The board decided to re-visit this topic next year to determine if the \$500 threshold was working as intended.

Lake St. Croix Direct South Phase II CWF Award

Administrator Downing is asking the board to give him authorization to sign the grant agreement which the MSCWMO received.

Manager Perkins motioned to authorize Administrator Downing to sign the grant agreement and Manager Olfelt-Nelson seconded this motion. The motion passed on a roll call vote.

Hills of Spring Creek

Materials were received for a proposed 195 acre single family residential development in Baytown Township on December 17, 2020. Revised materials were received between January 8, 2021 and February 7, 2021. Stormwater is proposed to be managed utilizing infiltration basins/re-use ponds for irrigation meeting MSCWMO performance criteria. MSCWMO staff recommend approval with eight conditions.

Manager Fellegly said Baytown had taken interest in this project and had contacted him earlier this afternoon on this permit review. He asked if the construction site would be monitoring and if there would be follow up inspections. Administrator Downing clarified the role of the MSCWMO in this process. The MSCWMO does not conduct as-built reviews of the construction or follow up inspections for permitted projects. It is the community's responsibility to do those if they wish. The MSCWMO offers some support in the area of erosion and sediment control inspections for active construction sites but does not delegate enough funding in the budget to perform all that are needed at this scale (those are also the responsibility of the community). Essentially the MSCWMO gives guidance on these topics but it is up to the community to follow through.

ACA engineer Matt Heib is the developer's representative and said the Baytown engineer does inspections during construction. Manager Zeller re-stated that the MSCWMO is not involved with permitted projects after the review process.

Manager Fellegly motioned to approve the project with 8 conditions and Manager Zeller seconded this. The motion passed on a roll call vote.

1175 Quinlan Ave

Incomplete materials were received for a proposed shoreline stabilization project at 1175 Quinlan Ave South in Lakeland on December 21, 2020. A variance from the City of Lakeland for construction within the bluff line will likely be required for the project. MSCWMO staff are awaiting receipt of a complete application package to review the project for conformance with MSCMWO standards.

Administrator Downing explained that the submitted materials were not clear enough to understand the project but appeared to show grading and riprap along the entire bluffline. Manager Zeller said he believed the builder sketched it out rather than the applicant and wanted to make sure there wasn't a miscommunication which could be making the process more difficult and making it seem as though a variance would be needed. He said if the project is just riprap the variance wouldn't be needed but he wanted to make sure this was clearly communicated to the builder. Manager Paiement said the city had not received a variance request yet and that he would reach out to the city engineer.

Manager Perkins suggested the plan be very clear because in Afton there was an issue with the slope being estimated by the landowner and now there is a lawsuit. Manager Zeller noted that

Lakeland was short on staff right now with a new clerk and that could be adding to the challenge. He asked Administrator Downing and Manager Paiement to get the builder and applicant on the right track.

Erosion and Sediment Control Inspection Reports

There are no inspection reports. Manager Zeller said he had noticed some chatter online regarding ice and street salting/sanding. He recalled a street sweeping article and wondered if some more material could be distributed to educate residents on the issue and communicate that more salt wasn't the answer. Administrator Downing said EMWREP produced material and had brochures like this such as SMART salting. The managers discussed their communities and whether the salting/sand application was contracted out, in which case public works are not involved and best practices may not be accounted for. Manager Olfelt-Nelson agreed that the conversation among residents recently has not contained environmental consciousness, rather a desire for increased salting of the roads and tree clearing projects etc. Manager Zeller recalled a SCRA pamphlet being distributed to the communities at one point in time. Manager Perkins recalled a conversation with the Afton council who considered requiring realtors to provide this sort of material to new homeowners. She wondered how this material distribution could be most effective.

Staff Report

Administrator Downing presented the staff report. He noted that the Lily Lake project was quickly changing but thinks it should still be out for spring bid. They are currently working with an apartment complex to address recent activity as well as finding out there was a lot more runoff than originally modeled for the project. The PFAS meetings are ongoing and the 2020 water monitoring report for MSCWMO should be available in March or April.

1W1P Updates: WBIF Workplan Approval

Administrator Downing took the lead in explaining this agenda item. The 1W1P implementation workplan was included in the board packet for review. This would be the workplan for the first 2 year funding cycle and it was already approved by the Policy Committee who recommend approval. Some notable items included: funding for personnel such as an agronomist and shared educator position which would expand EMWREP into the northern part of the LSC basin, structural projects, and non-structural urban projects which may help with MSCWMO with some of their goals. Manager Fellegly explained that it was basically a new funding distribution system for state funding. Administrator Downing explained that the goal was to replace the competitive grant process with a basin-wide plan. Because the 1W1P group decided on a JPC (collaboration) instead of a JPE (entity) structure, each member community had to approve the workplan. The board would need 2/3rds approval and if it was not approved the plan would go back again. Manager Zeller motioned to approve the WBIF workplan and Manager Fellegly seconded this motion. Manager St. Ores asked to abstain from the vote as she was not familiar with this topic. The motion passed on a roll call vote with one abstention.

Other

Administrator Downing was informed of a question between Oak Park Heights and Baytown Township. He is requesting approval from the board to ask legal to assist in identifying the

MSCWMO'S role and responsibility with the situation. He wants to confirm if there is a statutory obligation to engage in the situation due to the situation regarding a cross community drainage question. Manager Zeller said he thought WMO's just served as an advisory role and asked why MSCWMO would get their legal team involved if the communities could just work it out between the two of them. Manager Fellegly explained that he was approached by a Baytown resident who had talked to the mayor but not the council yet. Manager Zeller said he felt nervous about engaging in the issue without a formal request being made to the board.

Administrator Downing explained the issue involved Oak Park Heights property draining onto a Baytown resident's private property and Manager Zeller said this sounded like a civil matter. Administrator Downing said he reviewed 103B and just wants to clarify with legal on if the MSCWMO has any responsibility.

Manager Runk explained that he was talking with Manager Fellegly on this question. The situation involves a property to the south of OPH's and a drainage pipe which has been draining non to the property since 1993. The current landowner is having issues with their property and drainage. OPH has not formally discussed the issue with Baytown yet. The OPH engineer evaluated the system and said the flow is contributing but not dominant and so it was the landowner's responsibility to come up with a project. OPH is willing to contribute to the landowner if a project was needed. The engineer said there has since 1993 there has been new development in the areas which has effected the drainage conditions. The OPH attorney has weighed in and considers the 1993 drainage pipe as grandfathered in; he believes a lot of the drainage issues on the property is related to work and redesigning the landowner did.

Administrator Downing said he may not concur with the drainage analysis by the OPH engineer as it only takes into account peak flows rather than volume. It would be difficult to come to a conclusion of what percentage of drainage it contributes based on that analysis.

Manager Zeller asked what statute would bring the MSCWMO into play on this issue as he sees this as a civil issue. He sees the WMO's role as meant to review and advise but the community is meant to implement. Administrator Downing named 103B and 103E and said the WMO may be the water management authority and there could be involvement with public drainage law. Because there may be some question on the MSCWMO's role he wants to confirm this with legal.

Manager St. Ores asked if there was a clear ask of the WMO because if there was a clear ask there would be a clear question to bring to legal.

Manager Olfelt-Nelson agreed that the ask was not clear or formal. She noted that the municipality engineer could be speaking in their own interest and the resident may see the WMO as a way to get an impartial assessment. But this would need to be clearly asked.

Manager Zeller asked if Manager Fellegly had discussed this with the Baytown board or chair. Manager Fellegly said it was on next month's agenda and that he had just had the resident come to him asking if the OPH's analysis was correct. He explained that the topic had just been raised at the OPH meeting on Tuesday so it was all fresh information. Manager Zeller said Baytown has engineers and legal as well and they could also offer the resident some guidance.

The board decided to wait until there was more information and clarify on what request was being made.

Manager Olfelt-Nelson said St. Mary's point was going to start some roadwork and she wondered if there was potential for stormwater BMP's and possible funding assistance or

technical support from the MSCWMO. Administrator Downing said there may be if it was in a priority location for projects and welcomed the inquiry. She said she sent John Parotti his way.

Adjourn

Manager Zeller motioned to adjourn and Manager Felleggy seconded this. The meeting adjourned at 7:21pm.