

# LOWER WISCONSIN STATE RIVERWAY BOARD

202 N. Wisconsin Avenue  
P.O. Box 187  
Muscodia, WI 53573  
(608) 739-3188 or 1-800-221-3792

## MINUTES OF THE AUGUST 22, 2013, RIVERWAY BOARD MEETING

The Lower Wisconsin State Riverway Board (LWSRB) met on Thursday, August 22, 2013, at the Crawford County Administration Building in Prairie du Chien to conduct a special business meeting regarding the nonmetallic mining applications of landowners Earl and Amber Pulda, Lee and Joan Pulda, Rod and Sandy Marfilus and Alan and Kathy Flansburgh and co-applicant Pattison Sand Company (PSC). The applications were for a proposed frac sand mine in the Town of Bridgeport, Crawford County. A portion of the proposed mine site would fall within the Riverway boundary. The meeting was called to order at 5:00 p.m. by Chair Donald Greenwood. All members were present with the exception of Fred Madison. (LWSRB members present included Don Greenwood, Melody Moore, Dave Martin, Ron Leys, Jerry Dorscheid, Bob Cary, George Arimond and Ritchie Brown.) Also in attendance were LWSRB Executive Director Mark Cupp, LWSRB Office Associate Marsha Nachtigal, Assistant Attorney General F. Mark Bromley, and AJ Wortley of the Wisconsin Cartographer's Office at UW-Madison. Greenwood noted there were forms for the public to complete to speak for/against or to register for/against the nonmetallic mining applications. Acknowledgment that the meeting was properly noticed was provided by Cupp. A motion to approve the agenda was made by Jerry Dorscheid, seconded by Ron Leys. **MOTION CARRIED.** Cupp then introduced the board members, staff and advisors at the front table. He gave a PowerPoint presentation with aerial photographs, maps and digital images of the mine site and view from the river. Cupp gave a brief history of the Riverway project.

Public comment was taken from 51 speakers. (NOTE: A list of speakers and registrants is available as Appendix A to the minutes.)

Following public comment, a presentation from Crawford Stewardship Project (CSP), Bridgeport Concerned Citizens (BCC) and Friends of the Lower Wisconsin State Riverway (FLOW) was heard. Edie Ehlert (CSP) said the group is opposed to issuance of the permits and cited concerns with dust and human health as well as visual impacts. She said the applicants have not given adequate proof that the proposed mining activity will comply with the law. Arnie Steele (BCC) said the Riverway is a treasure and a gift and asked the board to protect the natural resources and deny the permits. Timm Zumm (FLOW) said there is enough of a gray area in the law to allow LWSRB members to vote to deny the permits and encouraged the board to do so to protect the Riverway.

Presentations were then heard from the landowners and PSC representatives. Lee Pulda said the decision to proceed with mining was tough but, in the end, he would gain 50 acres of tillable land. He said the decision was made with the best interests of his family in mind. Alan Flansburgh said he will have more productive acres with less erosion and less steepness following implementation of the reclamation plan. He said he is looking to continue farming at the property in the future and the frac sand mining opportunity is one way to assure that the farm will continue. Earl Pulda said everyone needs raw materials obtained from mining. He said he wants to assure the land is kept in the family and the mining and associated gain in tillable acres is one way to do that. He noted there will be a continued need for fossil fuels. He said there have been compromises throughout the application process to address scenic concerns. Rod Marilius said his farm has been in the family since 1928 and he hopes to see it remain in the family. He said he will gain more tillable acres and less steep land. The mining operation will benefit his family and provide financial stability and additional opportunities for his children. He said the applicants have followed the rules and encouraged the board to approve the permits. Peter Conrad, PSC attorney, then reviewed the legal requirements of the law pertaining to the LWSRB duties and powers and the regulations associated with nonmetallic mining activities. Conrad said

his applicants have met the legal requirements and that the board must issue the permits. Beth Regan of PSC reviewed the activities associated with the mine and said compliance with the applicable regulations would be achieved.

Cupp then offered remarks detailing his history of involvement with the Riverway project. (NOTE: Cupp's prepared remarks are included as Appendix B.) Cupp then reviewed the law and made his recommendation that the board approve the permits with conditions and requests for voluntary actions by the applicants. (NOTE: Cupp's full presentation is included as Appendix C.) The conditions of the permits and voluntary actions requested are detailed below.

- The excavation and any structure, equipment or stockpiled material shall not be visible from the Wisconsin River during leaf-on conditions;
- The mining activity shall not occur on lands identified as aesthetically sensitive (visible from the river during leaf-on conditions) in Appendix A (memorandum) and Appendix B (map);
- Commercial timber harvesting in the Resource Management Zone shall not be initiated until the appropriate permit has been obtained from the LWSRB;
- The initial permit shall be for a period of 2 years with a minimum quarterly review of the activity by the LWSRB;
- The LWSRB shall have access to the site for the purpose of monitoring viewshed protection upon giving the landowner or his/her agent 24 hour notice;
- The landowner or his/her agent shall provide the LWSRB with a written report and map or aerial photograph showing active mining areas and reclaimed areas within 5 working days of the first of each month;
- The LWSRB shall review any modifications to the plans, as submitted, for compliance with the applicable performance standards;
- The landowner shall notify the LWSRB upon initiation and cessation of nonmetallic mining activities in the Riverway, including reclamation related activities;
- The permit is not transferable to another landowner or corporation; and,
- The activity shall comply with all other federal, state and local regulations.

In the event a violation of the permit (and conditions) is discovered, the LWSRB shall notify the landowner and his/her agent as soon as possible after discovery. The LWSRB shall order a remedy to be implemented within a reasonable length of time. If the remedy is not implemented to the satisfaction of the LWSRB, a cease and desist order may be issued. All nonmetallic mining activities within the Riverway boundary shall cease until the violation is corrected.

The LWSRB should request the following voluntary actions be taken by the applicants.

- 1) There shall be no nonmetallic mining activity (excavation, stockpiled materials, equipment or structures) on lands visible from the river during leaf-on conditions, including those lands that are visible from the river but are outside the formal Riverway boundary.
- 2) The applicants shall minimize noise disturbances to the greatest extent possible, including use of the new style low tone alarm in accordance with MSHA requirements.
- 3) Lighting should be "Dark Sky Complaint" with elimination or minimization of any lighting effects from the nonmetallic mining activity to be seen from the river during leaf-on conditions.
- 4) Fugitive dust control plans shall be implemented to prevent dust clouds from being visible from the river during leaf-on conditions.
- 5) All mining trucks leaving the properties shall be tarped or otherwise covered.
- 6) Hours of operation shall be limited to Monday through Friday, 6:00 a.m. to 6:00 p.m.

- 7) Mining truck traffic should avoid entering or exiting the site during school bus hours.
- 8) Air quality and monitoring shall comply with the most recent DNR standards and data collected should include a minimum of one site by the river.
- 9) For the reclamation process, the "A" horizon and "B" horizon shall be kept separate.
- 10) Blasting shall not occur on Saturday or Sunday or before 6:00 a.m. or after 6:00 p.m. on weekdays.
- 11) Archeological and historic sites shall be protected.
- 12) There shall be no adverse impacts on endangered, threatened or special concern species.

Cary asked if the notification time for a site visit in case of a suspected violation of a permit condition could be decreased from 24 hours to 8 hours. Bromley said the notification time would be up to the board. Greenwood noted PSC has disputed the LWSRB interpretation of "land" including the trees on the land. He asked Conrad if PSC still maintains the position that trees are not included in the definition of land. Conrad said PSC will accept the definition at the present time. Bromley said land includes the trees on the land.

Greenwood asked Cupp if he had received any political pressure to formulate his position or offer his recommendation for approval. Cupp said he has received no political pressure from the Governor's office or the Wisconsin Legislature. Moore asked if Cupp had been told there would be repercussions for denial of the permits. Cupp said there have been no overt statements to that effect.

Greenwood noted the permits have remained on the table since the October 11, 2012, board meeting. He asked if there was a motion to remove the permits from the table. Dorscheid made a motion, seconded by Moore, to remove the permits applications of E. Pulda/PSC, L. Pulda/PSC, Marfilius/PSC and Flansburgh/PSC from the table. **MOTION CARRIED.**

Dorscheid then made a motion, seconded by Cary, to approve issuance of a permit with conditions for Marfilius as recommended by Cupp. Martin stated he has listened to all the arguments pro/con before arriving at his position. Martin said the fugitive dust and lighting represent a visual impact. He said he understood that the noise and impacts to wildlife are outside the board's purview. Martin said, in reading the law, the key word is "activity" in that the nonmetallic mining "activity" may not be visible from the river. He said "leaf-on conditions" also is up to interpretation and said it could mean tiny leaf buds on trees or it could mean full leaf development, which affects the amount of land visible from the river. He noted there is substantial acreage for each landowner outside the Riverway boundary upon which nonmetallic mining occur so the landowners are not being denied a livelihood.

Leys said the board's mission is to protect the scenic beauty and natural character of the river. He said the natural aesthetics of the landscape as viewed from the river should be protected.

Moore said she appreciated all the public comment that had been received on the topic. Moore said she believes in the rule of law but added that her position on the board is to speak for the river first and foremost. She said the intent of the law was not to allow industrial sand mining and was intended to keep the Riverway in a natural state. Moore said the applications are attempting to exploit a loophole in the law and noted recent comments from former State Representative Spencer Black indicate the large scale mining was never intended to be allowed. She noted that it doesn't make sense that the board would regulate the visual impact of a house but then allow for an industrial sand mine to be located within the Riverway. She said the Wisconsin Legislature should be contacted to close the loophole. Moore said she would vote to deny the permit.

Arimond noted his experience with the St. Croix Scenic Riverway when he was a young man and land he had planted trees on was taken for the project. He said the Lower Wisconsin State Riverway truly is a diamond and that only a small acreage of the overall mine site will be affected if the permits are denied. He said

legislative intent was to allow small town-operated quarries, not industrial mining. Arimond used the analogy to describe legislative intent as the difference between allowing a small rural road versus an Interstate highway. He noted state regulations have not caught up with the burgeoning frac sand mining industry in Wisconsin.

Cary said the law is the law and he must vote to uphold the law.

Brown said he has learned a great deal about frac sand mining in the last year. He said he will vote to deny the permits.

Greenwood said the integrity of the Riverway law is at stake and said individual board members must use their judgment in deciding the merits of the matter. He thanked the public and the applicants for the comments and decorum throughout the permit process. Greenwood said there is the letter of the law and there is the intent of the law. He said he takes his position as Sauk County representative to the board very seriously and has carefully considered his decision. Greenwood said he believed the mine would be visible from the river during leaf-on conditions.

A vote on the motion was taken. Written ballots were distributed and members were asked to sign the ballot after voting. The **MOTION** to approve **FAILED** on a vote of 2 “ayes” and 6 “nays” with 1 member absent. Voting to approve were Cary and Dorscheid. Vote to deny were Greenwood, Moore, Leys, Martin, Arimond and Brown. Madison was absent.

A motion to approve the Lee Pulda/PSC permit request was made by Dorscheid, seconded by Arimond. Written ballots were distributed and members were asked to sign the ballot after voting. The **MOTION** to approve **FAILED** on a vote of 2 “ayes” and 6 “nays” with 1 member absent. Voting to approve were Cary and Dorscheid. Vote to deny were Greenwood, Moore, Leys, Martin, Arimond and Brown. Madison was absent.

A motion to approve the Earl Pulda/PSC permit request was made by Dorscheid, seconded by Cary. Written ballots were distributed and members were asked to sign the ballot after voting. The **MOTION** to approve **FAILED** on a vote of 2 “ayes” and 6 “nays” with 1 member absent. Voting to approve were Cary and Dorscheid. Vote to deny were Greenwood, Moore, Leys, Martin, Arimond and Brown. Madison was absent.

A motion to approve the Flansburgh/PSC permit request was made by Dorscheid, seconded by Cary. Written ballots were distributed and members were asked to sign the ballot after voting. The **MOTION** to approve **FAILED** on a vote of 2 “ayes” and 6 “nays” with 1 member absent. Voting to approve were Cary and Dorscheid. Vote to deny were Greenwood, Moore, Leys, Martin, Arimond and Brown. Madison was absent.

A motion to adjourn was made by Moore, seconded by Arimond. **MOTION CARRIED.**

For further information, corrections, additions or deletions to the minutes, contact Mark Cupp, Executive Director, at (608) 739-3188 or 1-800-221-3792.

Minutes submitted by: