

LOWER WISCONSIN STATE RIVERWAY BOARD

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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 fundamentally disagreed with the definition and did not commit to acceptance of the maps presented by Cupp showing areas of visual concern. 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 as recommended by Cupp. The following comments were made by board members (transcribed from meeting tape).

Dave Martin "I think there is a very specific problem. One of the arguments from specific people are making is the problem with fugitive dust and lighting. And those are visual things that can be seen. Now I realize our responsibility doesn't go into hearing; the noise..so this goes into the narrow approach that we have to take to our approving or disapproving; even the health considerations; even the birds, the bees and muskrats and so on that we all want enjoy and want to preserve. We know that these are not the responsibility of this board. But we do have a responsibility and it has been stated very amply that are opposed to this bill. One of the things the performance standards is required that they have to be met is one and two; the second one is the excavation of the non-metallic mining activity may not be visible from the river when leaves are on deciduous trees. Activity is a key word. Fugitive dust is activity. Lighting in respect to the operation, excavation and so on is activity. This could go on very well and would go on during the peak time that people are using the river in those times. There is another minor...but I guess you can argue it..when is the leaves on? Are they this...this...this...or that (making size motions with hands) These are nit-picky somewhat, but when you are dealing with the resources we have as described by both people that we have both for and against with a river and area of this nature, we have to consider these things. It is important that this board consider these things. The last thing I want to say in respect to this as I have heard and listened to throughout the night is that ...there are options for these applicants. They don't...they aren't going to use all of this land that they are seeking that we would give them permission to go ahead on. They have other lands as I understand it that they could frac mind and probably will if we turn this down. So there isn't as if we are denying these applicants; all four of them, a livelihood. They have a good one now and they have expressed this. But we cannot just go ahead and approve this without those considerations in my opinion. Enough said"

Don Greenwood "Thank you Dave. Ron Leys"

Ron Leys "I want to add to what Dave said. A lot of years ago I was a construction worker in my younger days. And one summer I worked for an excavating company. We were grading, filling, leveling a site for a factory to be built. We worked in a cloud of dust all summer long. The company worked very hard to control the dust. They had water trucks and what not. Nevertheless...the cloud of dust was always present and I think in an operation of this kind and of this size, I agree with Dave. The board's authority I would agree extends only to what can be seen from the river. It doesn't extend to water pollution. It doesn't extend to noise, birds, snakes and mammals, but it does extend to aesthetics and that does include what can be seen."

Don Greenwood "Okay, thank you. Do you have something to say Jerry? No?" "Melody?"

Melody Moore "I really appreciate that everybody on both sides is here tonight and I think it is a great thing to see so many people interested in this topic no matter what happens tonight. I have had a lot of mixed feeling about this through time because I strongly believe in the rule of law and that we need to follow the law. On the other hand, I also believe that I am here to speak for the river because it can't speak. I feel like my mission is take care of the river first and foremost. I believe the intent of the Riverway law was to keep major industry out of the Riverway. I know because of a variety of changes in the law, that right now, to follow it to the letter would mean approval, but I think that this industry did not exist when the Riverway law was written. I think that if it had of, it would have been excluded. I think that the article today in the Capital Times from Spencer Black and the DNR person that they strongly hoped that we would turn this down tells me that undoubtedly that was the case. So even though I have the outmost respect for Mark, and what he recommends, and I know how difficult this has been for him, as for all of us, I think it is our responsibility as Mark read, to bring to the attention of legislators that we believe the law needs to be revised. And, I think there is no stronger way to do that than to vote no. I think we can't really ask people to paint their house brown instead of pink or bright blue and to plant trees and other things if we sit here and approve this regardless of the letter of the law. The intent as expressed by Spencer Black today is that the intent is not to have this kind of mine. It has already been approved in the Town of Bridgeport. This is a very small portion of the mine. I think that we should err on the side of preserving the river. So I guess I have already said how I am going to vote.

Don Greenwood "Okay. I think I am going to look over here." "George do you have anything to say?"

George Arimond "This also is very difficult for me firsthand. I really appreciate what the landowners are feeling. I owned 120 acres with my father on the St. Croix River and it was condemned and we had to take the price of what the federal government decided. That is part of the reason that the State of Wisconsin decided to do what we have here. That was not easy for me. That was not easy for my father. That land was to pay for my college because I planted pine trees on it. So I really feel for you. And we are talking smaller acreage here than what I lost and that was my college education. So I had to earn money other ways. I can appreciate that and I can also appreciate the other side of this and that is..what is this area in relationship to the bigger area..the state? And in the case of the Namekagon and St. Croix rivers it was two states: Minnesota and Wisconsin. And what they were arguing was that this is a relatively small area of the entire two states and that we want to preserve it and when they did that, just about everybody there was upset especially about the condemnation type of thing. But there was also something that I did not realize at the time, was that, what was that area going to be like. Well I had an opportunity to see it as this all occurred in the (19)60's. That area is more wild, more scenic and more primitive than it was while I was growing up. It is the only area up there that is like that. All of the other rivers up there have pretty significant development on them. Some of them have a casino on them. Some of them have resorts on them and some of them have mining. Wisconsin right now only has one area. And it is only part of one river; the Wisconsin River and it is only 92 miles of it. So I look at this 92 miles as a diamond, because it is so unique in Wisconsin. We are talking about 55 acres here and the Driftless area covers a huge, huge region. So there are so many other areas to mine this frac sand

mine. I recognize that one of the problems that Pattison's attorney; you pointed out, that we have to follow those laws, and I understand that, and I worked for Minnesota DNR and I had to follow those laws always didn't agree with them type of thing. The problem with this section in the law when looking at it is that it was designed for small mines and mines that are not going to be mined as frequently as what we have been told this mine will be mined. And I would rather compare it to the impact on a diamond like this Wisconsin River of a road going in. We are talking about two different kinds of roads here in my mind. The original legislation for the frac mining thing, I see that similar to putting in a two lane single highway with primarily local traffic. Now what we are talking about with the frac sand mining; the frequency of it, the 24 7, that kind of thing; this is more like an interstate; 4-lane interstate traffic 24 7 on it. And if you look at the statutes we have for single lane highways with primarily local traffic and the statutes that we have for interstates as it pertains to primitive wildlife areas you will see their significant difference in those statutes. I think we are kind of caught in this catch-22 because the legislation has not caught up with what is happening with the frac sand mining more than just the visual thing that we are talking about here but also many other things. So because of the uniqueness of this small area, I am going to vote against this. Thank you."

Don Greenwood "Thank you George." "Bob would you like to speak?"

Bob Cary "Well I am not very good at this. You know the way the law is written right now, I was involved when it was changed. I wish I had that vote back. But I guess I feel the law is the law. It has to be changed in the future. I guess I am obligated I feel to uphold the law. I respect everybody here tonight. All that I can say is that I am very sorry."

Don Greenwood "Thank you Bob." "Ritchie?"

Ritchie Brown "First I want to apologize for getting here a little late, but I got an older model GPS. Last week I was in Chicago trying to find a place I never did find. I am glad that you all came tonight. This has been ongoing for a year or more. We have heard and learned a lot about frac sand mining. Today I put in to have a couple of hours off and my boss asked me, she wanted to give me administrative leave and I said no I am not there representing the Nation, I am here representing the public, so I guess you know the way I feel I am obligated to vote. Thank you."

Don Greenwood "Thank you." "I guess I will say a couple of things. I think first off I do want to say, I have no doubts about our Executive Director's integrity, nor do I have any doubts about the integrity of any of our board members regardless of which way you feel compelled to vote. I think you are on the board because you have a background and an appreciation for the river and you have sound judgment. None of this is personal between the board members or between Mark or any of us. I guess I want to thank the public that has been very good about articulating issues not all of which that are in our venue or jurisdiction, but we have learned a lot about this. I would like to thank the mining company because I think all of the people from Ryland to Dorothy to Peter and Beth and Kyle. You all and the landowners also, you have all dealt with us on a straightforward manner and you have been responsive to our requests. That being said, I do take seriously the letter of the law I also take seriously the intent of the law. The way the thing is now is a mistake. It's an oversight. We will work to correct that. I also take seriously the spirit of the law, the intent, and also what it means to be a representative. And to me, to be a representative, I am empowered to exercise my judgment on behalf of the people I represent, and in this case, under people in the Riverway in general, people of the state of Wisconsin, and people in my native Sauk County. I will say that is has been striking to me that of the literally thousands of the communications received about this issue that the only ones that we have received that have been in favor of us issues these permits have been from the people that are involved; either the landowners or people who work for or are associated with the mine company. That is striking to me. Now we did receive one phone call from a guy today..so there was one person in Crawford County who called to say

they were in favor. We have all received letters, cards, emails, phone calls for a variety of reasons that you have heard here today why people are opposed to this. I am going to vote against it and the reason is not all of those things, but I believe this mine will be visible from the river. I believe it will be visible during leaf on conditions during the daytime and I also believe if the lighting plan goes through and the 24 7 thing goes through, it will be visible at night. The lights will shine up and they will expose the edge of the excavation through the trees which are not a solid wall. That is what I believe, now I may be wrong, but that is what I believe and I have to vote with that. "Is there any further discussion?"

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:

Mark E. Cupp, Executive Director
Lower Wisconsin State Riverway Board