

LOWER WISCONSIN STATE RIVERWAY BOARD

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MINUTES OF THE OCTOBER 11, 2012, RIVERWAY BOARD MEETING

The Lower Wisconsin State Riverway Board (LWSRB) met on Thursday, October 11, 2012, at the Wauzeka Village Hall to conduct a regular monthly business meeting. The meeting was called to order at 5:00 p.m. by Chairman Bill Lundberg. All members were present with the exceptions of Gerald Dorscheid and Greg Greenheck. Acknowledgment that the meeting was properly noticed was provided by Mark E. Cupp, Executive Director. A motion to approve the agenda was made by Fred Madison, seconded by Melody Moore. **MOTION CARRIED.** The minutes of the September 13, 2012, meeting were considered. A motion to approve the minutes was made by Ron Leys, seconded by Don Greenwood. **MOTION CARRIED.**

The Executive Committee report was presented by Chairman Lundberg. Lundberg introduced George Arimond of LaCrosse who will join the LWSRB as a recreational user representative upon Lundberg's departure from the board following the November meeting. Arimond has been appointed by Governor Scott Walker pending Senate confirmation. Arimond said he was a retired professor from UW-LaCrosse. He specialized in recreational management and is an avid paddler, including many trips on the Wisconsin River.

Personnel Committee Chair Moore said the committee will function as the Nominating Committee for new officers with elections to be held in December. She is not seeking re-election to the Vice-Chair role and a vacancy will be created by Lundberg's resignation. She asked board members interested in either office to contact her or Cupp.

Lundberg noted Ritchie Brown had been re-appointed by Governor Walker pending Senate confirmation. During the time Brown's position was considered vacant, he had been removed from his slot on the Operations Committee. Lundberg suggested Brown be re-appointed to the Operations Committee. A motion to seat Brown on the Operations Committee and return Lundberg to *ex officio* committee member status was made by Greenwood, seconded by Nick Nice. **MOTION CARRIED.**

A presentation on the Managed Forest Law program was given by Nick Morehouse, DNR Riverway Forester. Morehouse described the beneficial tax implications for persons enrolled in the program and described the mechanics of the popular initiative. He noted the lands may be open to be public access, depending on which aspect of the program a landowner enrolls in (open or closed). He noted the MFL plan stays with the property if sold and said there is a penalty if a landowner chooses to withdraw from the program.

The Operations Committee report was presented by Acting Chairman Leys who said four applications for non-metallic mining (frac sand mining) in the Town of Bridgeport, Crawford County, had been received. The co-applicant is Kyle Pattison of Pattison Sand Company of Iowa. The landowners are Lee Pulda, Earl Pulda, Rod Marfilius and Alan Flansburgh. Leys said the Operations Committee had conducted a field inspection on the Pulda property earlier in the day.

Cupp gave a PowerPoint presentation describing the applicable regulations and the board's regulatory purview and responsibilities. Aerial photographs, mining phase maps and digital images of the vicinity as seen from the river were included in the presentation. Cupp said state law requires the board to approve issuance of a permit for an activity if the applicable performance standards are met. For non-metallic mining, the performance standard requires the excavation and any stockpiled material or structures to not be visible from the river during leaf-on conditions. He said the applications submitted by the co-applicants indicate compliance with the "not visible" standard will be achieved.

Kyle Pattison and Beth Regan of Pattison Mining Company then spoke. Regan said the mining site will cover 191 acres and will be active for 20-60 years depending on market demand. She said the reclamation calls for lands to be reclaimed as the mining operations moves forward. The company has obtained a driveway permit from the

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Department of Transportation and has accumulated data on soil borings, endangered resources, archeology, wetlands and air quality, which are components of the draft reclamation plan. Baseline data on groundwater also will be obtained. There will be no high capacity well at the site. Some water will be used for dust control.

Pattison iterated the mine site will be operational for decades depending on market conditions. He said the material will be sorted using a “grizzly”, which is a screen that separates material by size. There will be no other onsite processing. The material will be trucked to another location for processing. He said the company will ask for an exemption to the air quality permit issued by the Department of Natural Resources (DNR) due to the type of operation. He then responded to questions from the board.

Greenwood asked about the maximum depth of the mine. Pattison said about 65 feet below current surface level. He said the site would be restored to farmland and slopes would be designed to allow for farming. Depending on the site, the surface will be 8 feet to 50 feet lower than today. Greenwood asked about drainage. Pattison said stormwater will be kept onsite with an internal drainage pattern. Pattison said the plan is to open 5-10 acres at a time and reclaim behind the open area as the operations moves forward. There could be more than one site opened at a time if a landowner had special needs for income. Leys asked if it would be accurate to describe the operations as a moving mine. Pattison replied in the affirmative. Leys asked if Pattison had purchased the mineral rights but not the land. Pattison replied in the affirmative.

Dave Troester, Crawford County Conservationist, then spoke and described the moratorium on non-metallic mining permit issuance adopted by the county board. Troester said the moratorium will expire October 19th. He said a special committee was appointed to study frac sand mining in Wisconsin and to consider methods for regulating the activity. The committee developed a model ordinance that is being shared with Crawford County, towns and villages. He said there is no county wide zoning so regulation is up to local governmental units. Some towns are considering adopting a moratorium to give the town board time to study the model ordinance and other options. Troester said the Town of Bridgeport adopted a reclamation ordinance on October 10th. Greenwood noted any local reclamation ordinance must meet the state minimum standards detailed in Chapter NR 135, Wisconsin Administrative Code.

Cupp then detailed his recommendations for board action on the permit requests. Cupp recommended issuance of permits with the following conditions:

- The excavation and any structure, equipment or stockpiled material may not be visible from the Wisconsin River during leaf-on conditions;
- The initial permit shall be for a period of 5 years with an annual review of the activity by the LWSRB;
- The landowner or his/her agent shall provide a written report and map or aerial photograph showing active mining areas and reclaimed areas;
- 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 of the project; and,
- The activity shall comply with all other federal, state and local regulations.

Lundberg then asked for public comment. Speakers were asked to limit comments to 3 minutes or less and were asked to complete a registration form.

Ethel Drenberg-Wauzeka said there should be no exemption to the air permit, the reclamation plan is insufficient, expressed concern about blasting, wanted to see financial assurance for road damages, wondered what happens if the company goes bankrupt.

Ellen Brooks-Gays Mills read a letter from an Iowa resident that expressed concern over the potential for environmental damage and noted the unique qualities of the Riverway. Brooks said the board is entrusted with protecting the Riverway and should take actions to assure it is done.

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Barb Schiffer-Steuben expressed concern about adverse impacts on tourism. She expressed gratitude for the persons involved in creation of the Riverway. She expressed concern about noise, air quality, human health, surface and ground water and wildlife impacts from the mining activity. She said there also is a moral issue in that frac sand from Wisconsin is used in hydraulic fracking in other parts of the country with devastating environmental damages.

Kathy Byrne-Ferryville noted the tremendous scenic beauty of the region as evidenced by the designation of STH 60 and USH 35 as scenic byways. She said frac sand mining will be detrimental to the quality of life for local residents and will have adverse impacts on wildlife.

Edie Ehlert-Ferryville said “aesthetics” is more than just scenery. She said the blasting and other noise, dust/air quality, and disruption of 200 acres of landscape will forever change the area. She said the board is looking at the situation too narrowly. As an avid kayaker, she will no longer paddle that stretch of the Wisconsin River. She expressed concern about an increase in heavy traffic and safety. She said the fertility of the land will be comprised even after the reclamation plan is implemented.

Scott Teuber-Boscobel, owner of Wisconsin River Outings, a canoe/kayak rental business, expressed concern about dust/air quality, noise and a proliferation of frac sand mines destroying the Riverway experience. He said the board should visit reclaimed mine sites. He asked if the operation would be year round. Pattison said plans are for the operation to be 24/7/365.

Rob Horwich-Gays Mills said the board can't ignore the fact that frac sand mining is a dirty industry. He said there is a huge amount of pollution from frac sand mining and hydraulic fracking. He expressed concern about air quality and the lack of adequate monitoring.

Renee Randall-Wauzeka said the board should delay action on permit issuance/denial. She said there are tax implications for the landowners and neighbors based on property values and land use. She said activities along these lines have been banned in Vermont and France. She suggested the board view a movie entitled “Promised Land.”

Timm Zumm-Spring Green, co-Chair of the Friends of the Lower Wisconsin State Riverway (FLOW), agreed with multitude of concerns expressed by the previous speakers and urged the board to delay action.

Roger Reynolds-Lone Rock asked if there would be chemical use on site. Pattison replied in the negative. He asked about depth of sand/sandstone deposits. Pattison said approximately 20 feet to 50 feet depending on the site. Reynolds asked for a description of a “grizzly.” Pattison said is a large mesh/screen that separates material by size after blasting. Reynolds asked about water usage. Pattison said some water will be used for dust control on roads and stockpiled material. Reynolds asked the board to consider the definition of aesthetics to include more than just scenic beauty.

Roger Knoble-Boscobel asked Pattison if there were concerns voiced by neighbors of the Marion frac sand quarry in Grant County (near Boscobel). Pattison said similar concerns were expressed. Knoble asked if there were complaints about heavy truck traffic. Pattison said he did not recall any complaints. Regan noted air quality monitoring and testing demonstrated compliance with the state standards.

Bill Howe-Prairie du Chien said people could consider it fortunate or unfortunate that we have frac sands here. He noted the rail line is underutilized. He expressed concern about highway safety due to an increase in heavy truck traffic.

Mark Setzke-Sauk City expressed concern about light pollution from night time mining activity.

Cupp noted he finds the proposed frac sand mining activity to be incompatible with the goals and objectives of the Riverway. He said his position has been made clear to Kyle Pattison and the involved landowners since the start of the permit process. Cupp said his job as Executive Director is to advise the board on the regulations and try to work with the applicants to assure compliance with the law. In this case, Cupp said the proposed activity is not visible from the river and complies with that aspect of the applicable performance standards. Cupp said a legislative solution or adoption

of ordinances by local governmental units is the comprehensive action needed. He said, in his opinion, the board has no choice but to issue the permits.

Greenwood said, at this point, he is neither supportive nor opposed to issuance of permits for the frac sand mine but noted this is the first frac sand mining application received by the board and will set a major precedent. He said the board should take more time to study the issue. He said the viewshed protection duties are not the only board responsibilities. He said he would like to see the endangered species and archeology reports, blasting frequency, truck traffic, noise and air quality data. Brown said he would like to meet the landowners. Lundberg said a site visit for a mine and/or reclaimed site may be in order. Moore concurred that she would like to see the reports that have been compiled to date.

Greenwood then made a motion to delay action on the permit requests. **MOTION CARRIED.**

Morehouse then presented the board with requests for extension to two timber harvest permits and one application for a new timber harvest. All three sites are not visible from the river during leaf-on conditions. A PowerPoint presentation was shown. Morehouse said the extensions are for two sites in the Town of Spring Green, Sauk County. One site is on Leone Road and the other site is in the bottomlands west of Spring Green. The site for which a new permit is required is located near Semrad Slough in the Town of Woodman, Grant County, and involves a pine thinning.

A motion to approve a two year extension to the permit for the Leone Road harvest was made by Leys, seconded by Greenwood. **MOTION CARRIED.**

A motion to approve a two year extension to the permit for the Monument Road harvest was made by Leys, seconded by Madison. **MOTION CARRIED.**

A motion to approve issuance of a general permit for the timber harvest at Semrad Slough was made by Leys, seconded by Greenwood. **MOTION CARRIED.**

A violation of the Riverway law in regard to a timber harvest at the Eugene and Jeff Neuheisel property in the Town of Spring Green, Sauk County, was discussed. Cupp said a small regeneration had been conducted under the auspices of a Managed Forest Law plan for the property. The activity was approved by Rick Livingston, Sauk County Riverway Forester. The timber buyer was Mark Berg of Nelson Hardwoods. A permit for the harvest was issued by the board in 2006 but the permit had expired in 2007. Therefore, a violation exists for not having a valid LWSRB issued permit. Cupp said a field inspection was conducted by Morehouse and him on October 3rd. Jeff Neuheisel was present for a portion of the field inspection. A distant and minor viewshed from the river near the USH 14 bridge was identified. A PowerPoint presentation was shown. Leys said the Operations Committee had discussed the matter and felt a stern letter should be sent to Mr. Berg for failure to have an updated permit. A motion to that effect was made by Leys, seconded by Madison. **MOTION CARRIED.** Cupp said he also had asked the DNR Forestry Supervisors for the region to encourage county foresters to contact Cupp or Morehouse to check on Riverway boundary and permit status issues when working in the valley.

Cupp reported on one permit that had been issued by the Executive Director since the last meeting. Cupp said a general permit was issued to Terence Neisuis for a timber harvest in the Town of Wyalusing, Grant County. Cupp said the activity is being conducted under a Managed Forest Law plan. The harvest areas are not visible from the Wisconsin River during leaf-on conditions.

The Budget Committee report was presented by Chairman Nice who reviewed the status of the FY 13 budget.

There was no report from the Personnel Committee report.

The Executive Director's report was given by Cupp who reviewed the materials in the board members' packets. He said record low flows at Muscoda had been experienced in the days prior to the board meeting. He commented on the Lower Wisconsin River Road Steering Committee held in Sauk City on October 10th and said work continues on the scenic byway project.

Under board members' business, Leys said he would like to see the Crawford County model ordinance for frac sand mining and the Town of Bridgeport reclamation ordinance. He said the board should not exceed the authority provided in the law when acting on the permit requests. Leys noted natural gas prices are low because of the supply and said efforts to reduce coal usage are better for the environment from an emissions standpoint.

Greenwood said he is very concerned about the future of the Riverway if frac sand mining comes to the valley. He said it would be unwise to make a snap decision on an issue of this magnitude. He said part of the board's mission is to protect the "natural character" of the Riverway.

Arimond suggested the board's legal purview may be limited but it would be appropriate to share the board concerns with the Legislature and other decision makers.

Under DNR report, Brian Hefty, DNR Riverway Manager, said seasonal closure of some facilities is underway. He noted Matt Zine, DNR State Natural Areas Manager for the Riverway, had received a promotion. Hefty said the recreational management specialist position, formerly held by Ryder Will, has been opened for lateral transfer and an open recruitment process has been initiated. He hopes the position will be filled by January. Greenwood asked about bi/multilingual signage at boat landings. Hefty said language is being reviewed by specialists.

During the public comment session, Roger Reynolds-Lone Rock thanked the board for their work to protect the Riverway and for their decision to delay action on the frac sand mining permit applications. He said FLOW and DNR are co-sponsoring a non-hunter safety/education day on October 20th at Spring Green.

Timm Zumm-Spring Green also thanked the board for the delay in action on the mining applications.

A motion to adjourn until November 8th when the meeting will be held at the Spring Green Public Library was made by Madison, seconded by Nice. **MOTION CARRIED.**

END

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