

# LOWER WISCONSIN STATE RIVERWAY BOARD

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## MINUTES OF THE JANUARY 10, 2013, RIVERWAY BOARD MEETING

The Lower Wisconsin State Riverway Board (LWSRB) met on Thursday, January 10, 2013, at the Muscodia village hall to conduct a regular monthly business meeting. The meeting was called to order at 5:00 p.m. by Chairman Donald Greenwood. All members were present. (NOTE: One vacancy exists.) Acknowledgment that the meeting was properly noticed was provided by Mark E. Cupp, Executive Director. A motion to approve the agenda was made by Jerry Dorscheid, seconded by Fred Madison. **MOTION CARRIED.** The minutes of the December 13, 2012, meeting were considered. A motion to approve the minutes was made by Ron Leys, seconded by Melody Moore. **MOTION CARRIED.**

The Executive Committee report was presented by Greenwood who noted that a vacancy exists in the Grant County slot due to the resignation of Lloyd B. "Nick" Nice. Cupp said he had been in contact with Governor Scott Walker's appointments staff as well as the Grant County Clerk and Grant County Board Chair. He reviewed the qualifications for the county representatives to the board and said interested parties should contact the county board chair. Cupp noted Nice's resignation also created a vacancy in the Executive Committee; specifically, in the Secretary position.

Personnel Committee Chair Moore said the committee had met again to serve as the Nominating Committee for the purpose of filling the vacant Secretary position. LWSRB members previously were asked to contact Moore or Cupp if interested in the slot. Moore said Leys had expressed interest. Moore then nominated Leys as Secretary and thrice called for nominations from the floor. Hearing none, Madison called for nominations to be closed. The motion was seconded by Ritchie Brown. **MOTION CARRIED.** Moore then made a motion to seat Leys as Secretary by acclamation, seconded by George Arimond. **MOTION CARRIED.**

Interim committee appointments were then considered. Cupp said the assignments would be effective through June 30, 2013. Greenwood said the Executive Committee offered the following committee structure for consideration.

**EXECUTIVE COMMITTEE:** Donald Greenwood (Chair)  
Fred Madison (Vice-Chair)  
Ron Leys (Secretary)

**OPERATIONS COMMITTEE:** Gerald Dorscheid (Chair)  
Ritchie Brown  
Ron Leys

**PERSONNEL COMMITTEE:** Melody Moore (Chair)  
Ritchie Brown  
George Arimond

**BUDGET & OFFICE COMMITTEE:** Greg Greenheck (Chair)  
Fred Madison  
George Arimond

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A vote to approve the committees was made by Madison, seconded by Brown. **MOTION CARRIED.**

Cupp said Assistant Attorney General F. Mark Bromley from the Department of Justice (DOJ) had been assigned to the LWSRB pursuant to the board's request for independent counsel from DOJ. Cupp then led the board in a grid exercise to determine a date, time and location to meet with Bromley. January 29<sup>th</sup> at 5:00 at the Muscoda village hall was the outcome. Cupp noted Bromley had recommended the board meet with him in closed session for the purpose of discussing legal options. Leys said the board should not meet in closed session. Cupp said the closed session meeting was the recommendation of the attorney. Leys noted it was a "recommendation" and said the board should hold discussions in open session. Greenwood said he was sympathetic to the open meetings requirements for governmental decision making.

A motion to hold discussions with the attorney in closed session during the January 29<sup>th</sup> special board meeting was made by Dorscheid, seconded by Greg Greenheck. Madison said the board should retain flexibility to go into closed session. Moore agreed but noted the board should listen to the advice of the attorney. A roll call vote was requested by Leys. The vote was taken.

Greenheck – aye

Brown – nay

Greenwood – nay

Dorscheid – aye

Madison – nay

Moore – aye

Leys – nay

Arimond – nay

The **motion failed** on a vote of 3 "ayes" to 5 "nays" with one vacancy.

A vote to hold the special meeting in Muscoda on January 29<sup>th</sup> to confer with the Asst. Attorney General Bromley with the option of convening in closed session was made by Madison, seconded by Moore. A roll call vote was taken.

Arimond – aye

Leys – aye

Moore – aye

Madison – aye

Dorscheid – aye

Greenwood – aye

Brown – aye

Greenheck – aye

The **MOTION CARRIED** on a vote of 8 "ayes" to 0 "nays" with one vacancy.

Greenwood then introduced the guest speaker, Julie de la Terre, who was appearing at the request of the Crawford Stewardship Project to give a presentation regarding concerns with frac sand mining in regard to human health and environmental issues. She gave a PowerPoint presentation and highlighted concerns about fine silica dust and adverse impacts on groundwater, surface water, air quality, noise, wildlife and other natural resources. De la Terre expressed suspicion about reclamation efforts returning the land to productivity and said the karst topography of the area presents challenges. She reviewed her list of concerns including private well contamination, drainage, groundwater, surface water, filtration, air and water quality monitoring, LWSRB liability, archeology, protection of the

Riverway's natural character, lack of limits/conditions on the operation, precedent setting nature of the board's action and potential for more frac sand mining in the Riverway. She said the LWSRB should address all concerns before proceeding with action on the permit requests.

Moore asked about a question about particle size and monitoring. De la Terre responded that very fine particles can cause human health problems and that better monitoring should be done. Arimond asked if the litany of federal and state regulations related to mining safety and reclamation were sufficient to address the concerns raised in the presentation. De la Terre said frac sand mining is new to Wisconsin and the adequacy of current regulations should be reviewed before new mines are opened. She said it would be prudent to slow down the process of permit approval to allow for adequate regulations to be put in place to assure public health and environmental protections are in place.

The Operations Committee report was presented by Chairman Dorscheid. No action regarding the frac sand mining permit applications submitted by Pattison Sand Company and four landowners from the Town of Bridgeport, Crawford County, was taken by the board due to the upcoming meeting with legal counsel.

Dorscheid then discussed the permit application of Matt Gibson with Vivid Inc. in the Town of Wyoming, Iowa County. He noted a field inspection was conducted by Cupp, Gibson, Mark Berg (consultant), Nick Morehouse, DNR Riverway Forester, and LWSRB Operations Committee members on December 13, 2012. Plans call for removal of trees and brush for building maintenance and fire protection purposes. In addition, a small remnant prairie will be restored through cutting of small trees, brush and removal of invasive species. Due to the high visibility of the structure, the specific trees to be removed and to remain have been identified. Vegetation to be removed in conjunction with the prairie restoration effort will be discussed prior to initiation of the activity. After the vegetation is removed, the area will be seeded and maintained as prairie. The activity has been reviewed by Morehouse and determined to be appropriate for the site. The project will be completed by June of 2013. A PowerPoint presentation was shown. Leys noted the structure if very large.

Dorscheid made a motion, seconded by Brown, to approve issuance of a permit with the following conditions:

- No existing structure(s) shall become visible from the river as a result of the activity;
- The prairie restoration area shall be delineated prior to removal of vegetation;
- The LWSRB shall approve of any modification to the plans, as submitted; and,
- The landowner or his/her agent shall notify the LWSRB upon initiation and completion of the activity.

**MOTION CARRIED.**

Cupp reported he and Morehouse had met with JC Gates (consultant) to review the proposed timber harvest on the Larry Sawyer property in the Town of Roxbury, Dane County. A small portion of the harvest area is visible from the river during leaf-on conditions. The marking of trees slated for harvest is consistent with the Riverway regulations and no new roads will be constructed. Cupp said a potential structure violation identified by the Iowa County Planning & Development Department for a site in the Town of Arena, Iowa County, had been resolved. The property is under dual ownership of a mother/daughter and there was confusion with a name. The screened porch modification was previously approved by the LWSRB. Cupp said he and Morehouse had conducted a field inspection at the Steve Williamson property in the Town of Eagle, Richland County, regarding a timber harvest and management plan. The Operations Committee will conduct a review of the site in February. Cupp said he issued a general permit to Pete Pomerening for a timber harvest on lands not visible from the river during leaf-on conditions in the Town of Wauzeka, Crawford County. Clay Bunders is the consultant/logger.

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

The Personnel Committee report was given by Chairman Moore who said the annual performance evaluation for the Executive Director had been completed. Cupp received an "excellent" rating from board members. He has served as LWSRB Executive Director since inception of the agency in 1989. Moore said the committee recommended Cupp receive a Discretionary Merit Compensation award (DMC) and concurred with Cupp's recommendation that Marsha Nachtigal, LWSRB Office Associate, also receive a DMC. Moore said Cupp can receive an increase to the hourly base and Nachtigal is eligible for a lump sum award. The committee will discuss the proposal with Department of Administration officials and report back to the board. Moore also noted the committee is reviewing options for reclassification of the Office Associate position. Additional research and discussion is required before a recommendation is made to the full board.

The Executive Director's report was given by Cupp who reviewed the materials in the board members' packets. He said the voyageur canoes may be housed in the Riverway from May to July if details with DNR can be worked out. The new arrangement would require the LWSRB office to responsible from scheduling use by DNR and LWSRB officials. Dorscheid noted the voyageur canoe trips offered the by the board are very popular with the public. Greenwood said the new arrangement would allow Cupp to spread the trips over a longer period of time. Cupp requested approval by the board to have the office take over the scheduling responsibilities while the canoes are housed in the area. A motion to do so was made by Madison, seconded by Dorscheid. **MOTION CARRIED.** Cupp said he attended a winter solstice observance at Frank's Hill and said a volunteer work day to move soil samples from the Gottschall Rock Shelter project would be held later in the month.

Under board members' business, Moore asked if area legislators had been contacted about the nonmetallic mining issue. Cupp said he had sent e-mail messages to all area legislators offering to provide a briefing on the Pattison Sand Company applications but had not been contacted for additional information. Cupp said the board had not yet formally directed him to contact legislators for specific action on changing the law and suggested the board have discussion on the type of regulatory changes to be sought through legislative action. Greenwood said the board needs more time to discuss the changes and develop a strategy.

Greenwood then played his guitar and sang the song "Paradise" by John Prine. He said he thought the words were relevant to topics under consideration by the board.

The DNR report was given by Brian Hefty, DNR Riverway Manager, who said his job duties have changed and a new person has been hired to handle many of the Riverway related functions. He said Matt Seguin will assume his new duties shortly. Seguin most recently worked at Governor Dodge State Park.

During the public comment session, the following persons spoke.

Rob Horwich of Gays Mills said the strongest conservation is achieved by partnerships between government, communities and non-governmental organizations. He said Wisconsin used to be known as an environmental state but no longer is known as such. He urged the board to avoid being a rubber stamp and to do the right thing by denying the Pattison mining permit application.

Arnie Steele of Bridgeport presented 202 signatures on petitions against the Pattison mining proposal for the Town of Bridgeport, Crawford County. He said human health concerns and environmental degradation will result from the mining activity. He said the regulations are not adequate. He said the mining company should not just adhere to minimum standards but should seek to exceed standards to protect public health and the environment.

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Roger Reynolds of Lone Rock challenged the assertion made by Pattison Sand Company at the December 13<sup>th</sup> LWSRB meeting that the company is focused on safety and operates within the law. Reynolds provided figures on the number of citations and fines accrued by the Pattison Sand Company in recent years. He encouraged the LWSRB to think of its duty to protect the scenic beauty and natural character of the Riverway. Reynolds challenged Pattison Sand Company to develop a contract with the LWSRB or another entity that would require payment for violations and a voluntary agreement to shut down mining activity until problems have been resolved.

Edie Ehlert of the Crawford Stewardship Project said the proposed mining activity is contrary the board's mission and represents industrial development, which was not intended for the Riverway. She said there are other sites in Bridgeport also being studied and said the bad idea of a frac sand mine in the Riverway could be spreading. She urged the board to deny the Pattison permit applications.

Renee Randall of Wauzeka read from a recent letter to the editor opposed to frac sand mining and also read a quote from Margaret Mead. She said more should be done to protect habitat and said the federal and state endangered species acts don't do enough to protect the environment. She said money can't buy paradise and said there is no business to be done on a dead planet. She urged the board to deny the Pattison permit applications.

Al Felch of Soldiers Grove said, as an artist, he appreciates the concept of aesthetics and a governmental agency devoted to scenic protection. He said the board needs to act now to stop this and future mines in order to protect the integrity of this special place.

Kathy Byrne of Ferryville said the State of Wisconsin has invested millions of dollars in the Riverway and said the project is vulnerable to negative impacts from frac sand mining. She said Pattison has portrayed the mining activity as benign but asked rhetorically "how can that be?" She reported on comments from citizens living near mines in Clayton, MacGregor and Prairie du Chien. She read a quote from Aldo Leopold and urged the board to deny the mining permits.

William Keane of Madison said he concerned about unintended consequences and said, once it is done, it is done and is irreversible. He stated his opposition to the mining proposal and urged the board to deny the permit.

Timm Zumm of Spring Green said the Friends of the Lower Wisconsin State Riverway (FLOW) will hold its annual Winter Fun Day on January 26<sup>th</sup> near Spring Green.

A motion to adjourn was made by Brown, seconded by Madison. **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:

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