



Long Creek Watershed Management District Board of Directors

Minutes from April 3, 2019 Meeting

Location: South Portland Water Pollution Control Facility,
111 Waterman Drive, South Portland, Maine

- 1. Call to Order:** Mr. Dillon called the meeting to order at 9:04a.m.

Mr. Dillon noted that today's Board meeting will be Mr. Newkirk's last meeting as Maine DOT's representative to the Long Creek Watershed Management District's ("LCWMD") Board of Directors. Mr. Dillon provided the Board with a summary of Mr. Newkirk's service to the Board and thanked him for his long-standing participation and support.

- 2. Roll Call:**

- Attendance: Angela Blanchette, Curtis Bohlen, Fred Dillon, Sean Donohue, Susan Henderson, Peter Newkirk, Doug Roncarati, Michael Vail
- Absent: Arthur Colvin, Eric Dudley, Brian Goldberg, Craig Gorris, Will Haskell, Ed Palmer
- Staff/Guests: Peter Carney (LCWMD), Chris Brewer (Cumberland County Soil & Water Conservation District), Jim Katsiaficas, Esq. (Perkins-Thompson); Taylor LaBrecque (Maine DOT)

- 3. Review of Board Meeting Minutes:**

- The Board reviewed the minutes from the February 27, 2019 meeting.
- Mr. Newkirk made a motion to accept the minutes from the February 27, 2019 meeting. Ms. Henderson seconded the motion. The motion carried unanimously.**

- 4. Treasurer's Report:**

- Mr. Bohlen reviewed the February Financial Report.
- Mr. Bohlen noted the significant cash reserve balance, some of which will be spent down for the Long Creek main stem restoration project.
- Mr. Bohlen also noted limited expenditures this month because February is a quiet time of year for services expenditures due to the limited opportunity to do field work during the winter.
- Mr. Brewer reminded the Board that we will need to set a meeting with the Finance Committee to finalize the FY2020 budget.

- 5. Change Order: GZA GeoEnvironmental, Inc.**

- Mr. Carney noted that the Long Creek Monitoring Plan requires an annual update of the chloride-specific conductance regression analysis that was developed by LCWMD to estimate chloride concentrations from specific conductance data collected from continuous monitors.
- Mr. Carney explained that there are two ways that LCWMD develops chloride data. One way is through collection of grab samples from the stream which are sent to a lab for analysis of the level of chlorides in the samples. A limited number of grab samples are collected each year during spring-melt, base-flow, and storm-flow conditions. The other way of developing chloride data is through measuring specific conductance, which is measured nearly continuously using in-stream data loggers. Specific conductance measurements are used as a surrogate for chloride because there is a strong correlation between specific conductance

- levels and chloride levels. The chloride-specific conductance statistical model and regression analysis identified in the monitoring plan is used to estimate chloride concentrations from specific conductance data using a chloride-specific conductance regression equation.
- c. Mr. Carney noted that because of quality assurance/quality control concerns pertaining to the chloride and specific conductance data in LCWMD's monitoring database, the last time the chloride-specific conductance regression analysis was fully updated was in 2014. A partial update was performed in 2016. In early 2019, the data issues were resolved under a stand-alone contract with GZA GeoEnvironmental, Inc. which performed a broad-based quality assurance/quality control analysis of data in LCWMD's monitoring database.
 - d. Mr. Carney referred the Board to the change order request included in today's Board packet which would authorize the executive director to enter into a change order with GZA GeoEnvironmental, Inc. The proposed change order would amend the current water quality monitoring services agreement between LCWMD and GZA GeoEnvironmental, Inc. to add performing a chloride-specific conductance regression analysis using the full chloride and specific conductance data sets in LCWMD's monitoring database. The proposed change order has a not to exceed amount of \$4,750.
 - e. Mr. Carney noted that procedurally LCWMD's financial controls permit the executive director to enter into change orders up to the amount of \$5,000. However, Mr. Carney noted that typically some element of judgment must be applied to whether a change order is related to the scope of the original contract or is new and separate work. Therefore, Mr. Carney advised that he felt more comfortable bringing this change order to the Board rather than unilaterally authorizing the change order.
 - f. Mr. Roncarati noted that chloride data is a useful tool for Long Creek, but suggested we need to think about the long-term implications of chlorides and what LCWMD has the ability to do to affect chloride levels in Long Creek. Mr. Roncarati suggested that LCWMD should work with municipalities and/or the state to implement measures that will reduce chloride applications.
 - g. Mr. Donohue asked, what is the current annual amount of the monitoring contract with GZA GeoEnvironmental, Inc.?
 - h. Mr. Carney responded that the annual value of the contract with GZA GeoEnvironmental, Inc. is approximately \$57,000.
 - i. Mr. Bohlen noted that he has been impressed with GZA GeoEnvironmental, Inc.'s prior work for LCWMD, particularly the quality assurance/quality control review that GZA GeoEnvironmental, Inc. recently performed.
 - j. A brief discussion ensued the result of which being that the Board believed that the scope of work in the change order was closely enough related to the work under GZA GeoEnvironmental, Inc.'s water quality monitoring services agreement that it was warranted to authorize the proposed scope of work to perform the chloride-specific conductance regression analysis as a change order to GZA GeoEnvironmental, Inc.'s existing contract.
 - a. **Mr. Roncarati made a motion to authorize LCWMD's Executive Director to enter into a Change Order with GZA GeoEnvironmental, Inc. in an amount not to exceed \$4,750 to perform an update of the chloride-specific conductance statistical model and regression analysis required by the Long Creek Monitoring Plan. Ms. Henderson seconded the motion. The motion carried unanimously.**

6. Annual Assessment Credits for Capital Repair and Replacement Costs of Existing Private Stormwater Best Management Practice Projects for Which Credits Were Provided for Original Construction Costs:

- a. Mr. Carney brought to the attention of the Board a looming policy issue that does not need to be resolved today but may need to be addressed in the near future.
- b. Mr. Carney noted that under Participating Landowner Agreements, landowners are entitled to receive credits against payment of future annual assessments if a landowner constructs a structural best management practice (“BMP”) project identified in the Long Creek Watershed Management Plan as a project that was to be funded and constructed by LCWMD.
- c. Mr. Carney noted that when LCWMD was formed, the Maine Department of Transportation (“Maine DOT”) was in the process of completing the Maine Mall Road porous pavement project and that the Participating Landowner Agreements acknowledge that the project would be eligible for credit against future annual assessments. Maine DOT was, therefore, provided with a credit which was applied against subsequent assessments until the credit was retired.
- d. Mr. Carney noted that the Maine Mall Road porous pavement is in need of repair and that the surface layer of pavement will need to be replaced sometime within the next several years.
- e. This example raises the questions of how to distinguish routine maintenance from capital repair or replacement of a project and whether future capital repair or replacement costs will be eligible for credit against payment of assessments.
- f. Mr. Newkirk provided the Board with a comparison of the cost of repaving the subject section of Maine Mall Road with regular pavement versus porous pavement. The comparison reflects that the difference is about \$120,000 additional cost to use porous pavement.
- g. Mr. Roncarati asked, does Maine DOT receive a continuous credit?
- h. Mr. Carney responded that, no, Maine DOT is not receiving a continuous “treatment” credit, but rather is receiving a credit for the provision of the BMP in lieu of payment which expires upon the credit being exhausted. Under the Participating Landowner Agreements, credit for provision of BMPs in lieu of payment is only applicable in situations where a landowner constructs a BMP that was identified as to be funded and constructed by LCWMD. If a landowner constructs a private BMP, *i.e.* not identified as to be funded and constructed by LCWMD, that landowner may receive an ongoing “treatment” credit.
- i. Mr. Katsiaficas noted that under the municipal/Maine DOT “urban compact” agreements capital repair or replacement projects are those having a ten-year or greater life expectancy.
- j. Mr. Bohlen suggested that LCWMD develop guidance on what should be considered routine maintenance and what should be considered capital repair or replacement.
- k. Mr. Katsiaficas offered to compile a memo based on the discussion to provide options to consider. The Board can then use information to develop a policy to use when this type of credit is requested.

7. Long Creek Watershed Management Plan Discussion: Upcoming Meeting with Maine DEP and U.S. Environmental Protection Agency for Next Permit Cycle and Revisions to Long Creek Watershed Management Plan

- a. Mr. Carney reminded the Board that the current five-year permit cycle, which is the second five-year cycle, of the Long Creek General Permit expires in June 2020. The Long Creek Watershed Management Plan contemplated a ten-year implementation schedule, therefore, there needs to be a discussion between LCWMD, the Maine Department of Environmental Protection (“Maine DEP”), and the U.S. Environmental Protection Agency (“U.S. EPA”) of whether, or how and when, the Watershed Management Plan will be revised or supplemented for a third five-year permit cycle.

- b. Mr. Carney noted that there have been preliminary meetings with Maine DEP to discuss these issues, however, LCWMD is now in discussions with Maine DEP to arrange a meeting with U.S. EPA to discuss the next permit cycle.
- c. Mr. Carney suggested that the Board should consider how to proceed in developing a plan for the third permit cycle. Mr. Carney noted that there are varying positions on this issue, which range from a “monitor and maintain” regime to identifying and constructing new structural BMPs and implementing new riparian restoration projects.
- d. Mr. Carney noted that a preliminary review of water quality data suggests that water quality is not improving which raises the question of what benefits are being provided by previously constructed structural BMP projects and riparian restoration projects.
- e. Mr. Roncarati suggested that we need to be very cautious when discussing whether previously constructed project have been effective. It may be difficult to see improvements based on the land use changes we have been seeing in the watershed (*i.e.* increased development). Furthermore, there may be influences due to the variability of the weather and climate change issues. Because there is a dynamic situation in the watershed, there is not an even baseline to compare data from year to year. Therefore, it is difficult to determine whether a lack of improvement in water quality is because previously constructed projects are ineffective.
- f. Mr. Bohlen noted that we have learned a lot about the watershed since the inception of the restoration program, such as realizing just how big of a problem salt is.
- g. Ms. Henderson offered that the stream is a living system and the work LCWMD is doing is similar to trying to heal a patient, but can we heal the patient if the system in which it is trying to survive is not conducive to its survival? We need to address the larger issues impairing the ecosystem, such as land use, rather than continuing to just try to heal the patient. We cannot just keep adding more pavement and reasonably expect to see improvements in the health of the stream.
- h. Mr. Bohlen noted that LCWMD has already invested around \$10 million dollars in water quality improvements in a 3.5 square mile watershed. At what point do we say the next step is to invest \$60 million or \$80 million?
- i. Mr. Dillon suggested that we need to concentrate on smart growth and whether land use regulations should focus development in already developed and impaired areas, or limit development in impaired areas which may have the result of pushing development into previously undeveloped areas.
- j. Mr. Donohue suggested that the bottom line is land use.
- k. Mr. Dillon noted that Mr. Katsiaficas has previously suggested that LCWMD could work to develop a model overlay ordinance for impaired watersheds.
- l. Mr. Katsiaficas noted that all municipalities have stormwater review ordinances, but these could be made stronger. Growth is occurring, we are dealing with a dynamic situation and development pressure is only going to increase.
- m. Mr. Roncarati suggested that it is hard to tell people that they cannot develop or redevelop.
- n. Mr. Donohue suggested that the opportunity to have an impact during redevelopment needs to happen at the municipal level.
- o. Mr. Bohlen noted that limits on development mean increasing costs, which means it may be cheaper to develop a new site.

- p. Ms. Blanchette suggested that that reviewers of development and redevelopment at the municipal level are bound by existing ordinances, if proposals meets the requirements of the ordinances they are approved. Municipalities tend to rely on Maine DEP's Chapter 500 stormwater standards, we need to follow what happens with Chapter 500.
- q. Mr. Roncarati suggested that Maine DEP needs to take a look at the redevelopment provisions in Chapter 500.
- r. Mr. Newkirk noted that the Long Creek project is essentially a test-trial, we need to do more analysis of the data and go to the meeting with Maine DEP and U.S. EPA with as much detailed information as possible.
- s. Mr. Carney noted that a Request for Proposals ("RFP") is being developed to analyze LCWMD's monitoring data, which will provide this detailed analysis.
- t. Mr. Bohlen explained that the data will be used to build models that correlate the variables that have been identified. How is climate change effecting the temperature and dissolved oxygen levels? Have the BMPs been effective? Is secondary development working against the BMPs that have been installed? The RFP also requests that the contractor suggest ways in which the monitoring plan and QAPP could be updated such as with different sampling methods.
- u. Mr. Carney noted that the timing of the work-product from the data analysis RFP will not be available in time for an initial meeting with U.S. EPA, but that Mr. Carney foresees a series of future meetings which will provide the opportunity to present the detailed data analysis.

8. Date for Annual Long Creek Participating Landowner Meeting:

- a. Mr. Carney noted that the May Board meeting has for the past several years been held along with the annual Participating Landowner meeting.
- b. Mr. Carney further noted that the Marriott at Sable Oaks has typically hosted the meeting at a reduced rate.
- c. Mr. Carney noted that the Participating Landowner meeting is typically scheduled for late afternoon to encourage attendance and that last year the Board conducted its regular business meeting just prior to the Participating Landowner meeting.
- d. Mr. Carney asked the Board to consider a potential date for the next Board meeting and annual Participating Landowner meeting, noting that some flexibility will be needed to work with the Marriott at Sable Oaks's schedule.
- e. A brief discussion ensued and the week of May 20, 2019, was identified as the preferred approximate meeting date.
- f. Mr. Carney said he would contact the Marriot at Sable Oaks to schedule a suitable date and time during the week of May 20, 2019.

9. Public Comments: None.

10. Next Meeting: The next meeting will be held in association with the annual Participating Landowner meeting. After a date and time are worked out with the Marriott at Sable Oaks, Mr. Carney will send a meeting notice to the Board.

11. Adjourn: The meeting adjourned at 11:03a.m.