



Long Creek Watershed Management District Board of Directors

Minutes from December 7, 2017 Meeting

Location: Maine Turnpike Authority Administration & Public Safety Building, Conference Room E,
Portland, Maine

- 1. Call to Order:** Mr. Bacon called the meeting to order at 9:04 a.m.
- 2. Roll Call:**
 - a. Attendance: Dan Bacon (Mr. Bacon left the meeting at 10:55a.m., but was present for all votes), John Branscom, Arthur Colvin, Fred Dillon, Brian Goldberg, Peter Newkirk, Ed Palmer (Mr. Palmer arrived at 9:19a.m., but was present for all votes), Michael Vail
 - b. Absent: Tom Blake, Curtis Bohlen, Craig Gorris, Adam Pitcher, Doug Roncarati
 - c. Staff/Guests: Peter Carney, Executive Director, Long Creek Watershed Management District ("LCWMD"); Aubrey Strause and Scott Reynolds, Cumberland County Soil & Water Conservation District ("CCSWCD"); Jim Katsiaficas, Esq., Perkins-Thompson.
- 3. Review of Board Meeting Minutes:**
 - a. The Board reviewed the minutes from the October 27, 2016 meeting. Mr. Vail made a motion to accept the October 27, 2016 meeting minutes. Mr. Branscom seconded the motion. Mr. Dillon offered a point of clarification, specifically, on Page 4 of the minutes, in the final sentence of section 5(e)(v), with respect to Mr. Newkirk's statement that "DEP is not concerned about habitat in the South Branch." Mr. Dillon offered that the statement was not with respect to the South Branch generally, but only that portion of the South Branch above John Roberts Road; that the statement was not that DEP is not concerned about habitat in this portion of the South Branch but it is less concerned with habitat in this portion of the South Branch respective to other areas in the watershed; and that DEP is concerned about habitat in the lower the South Branch. The motion carried unanimously with the clarifications offered by Mr. Dillon.
- 4. Treasurer's Report:**
 - a. October Financial Report: Mr. Bohlen, the Treasurer, being absent from today's meeting, was unable to provide the Treasurer's report.
 - b. Ms. Strause addressed certain questions that Mr. Bohlen and asked via email concerning the October Financial report.
 - c. Ms. Strause addressed page 24 of the Board packet, the last page of financial report, with respect to the budget for maintenance for the fiscal year already exceeding the allocated budget for the fiscal year. Ms. Strause advised that this is primarily the result of approximately \$35,000 in "repairs" – as opposed to "maintenance" – being charged against the maintenance account in this fiscal year's the budget. In other words, of the \$73,000 budgeted for maintenance this fiscal year, \$35,000 was for repairs charged to this account as the result of change orders to the maintenance contract. Ms. Strause queried whether these "repairs" should have been authorized in the form of change orders to the maintenance contract and whether the accounting system should be changed to reflect that the \$35,000 in repairs should not have been charged against the maintenance account.

- d. Ms. Strause provided several examples of percent of budget spent, versus percent of work completed, for the current fiscal year. Ms. Strause inquired as to whether it would be helpful to the Board if future financial reports provided for each account the percent of budget spent, versus the percent of work completed, for the respective fiscal year. Ms. Strause advised that CCSWCD already calculates these percentages for active LCWMD contracts and that it would not take significant effort to include this information in the monthly financial reports. The Board indicated that it would be helpful to have such information provided in future monthly financial reports and that Ms. Strause should work with Mr. Carney to format this information into the financial reports.
- e. Ms. Strause advised that in addition to the narrative of work completed by CCSWCD that CCSWCD provides with its monthly invoices, CCSWCD will also be providing a narrative for the work that CCSWCD anticipates performing in the upcoming month.

5. Committee Reports:

- a. Mr. Bacon and Mr. Carney provided a general discussion about doing more of the Board's work through committees so that meetings of the full Board would be more efficient. Mr. Carney proposed a general structure for committees under which each committee would have clearly identified members, an identified chair, and a staff person or persons from LCWMD or CCSWCD to assist the committee.
- b. Mr. Goldberg added that if more use of committees were pursued spending authority to a committee needs to be within budget and consistent with Board priorities.
- c. Mr. Katsiaticas offered that spending authority should remain with Board, as opposed to committees, and several Board members concurred.
- d. There then ensued a brief discussion of the consequences of "formally" or "informally" designating committees with respect to the public proceeding and public notice requirements of Maine's Freedom of Access Act.
- e. There was a discussion that making more use of committees would help to spread the burden of the Board's work among more Board members.
- f. Mr. Bacon made a motion to formally establish the Finance Committee with Curtis Bohlen, Treasurer, as the Chair; with Craig Gorris, Brian Goldberg, and Ed Palmer as members; and with Mr. Carney and Chris Brewer of CCSWCD serving as staff to the committee. Mr. Dillon seconded the motion. The motion carried unanimously.
- g. With respect to the Technical Advisory Committee, a decision was made to not formally establish this committee, but to maintain the committee as an informal ad hoc committee. The members of the committee were identified as Curtis Bohlen, Fred Dillon, Jeff Dennis (DEP), Aimee Mountain (GZA), Will Savage (Acorn), with Mr. Carney and Robyn Saunders of CCSWCD acting as staff to the committee. It was suggested that the South Branch Committee members select a chairperson at their next meeting.
- h. Other proposed committees include the Main Stem Committee; Long Creek Watershed Management Plan Committee; and Policy, Guidance, and Standard Operating Procedure Committee.
- i. In the interest of time, it was suggested that Mr. Carney prepare a slate of established and proposed committees with identified or proposed members and bring that slate to the next Board meeting for discussion.
- j. Before moving off the subject, Mr. Carney asked for clarification on the status of the ad hoc "Main Stem Committee" whose composition was indicated as Mr. Dillon, Mr. Newkirk, Mr.

Bohlen, Mr. Roncarati, and Mr. Goldberg as members, with Mr. Carney and Ms. Strause serving as staff.

6. Executive Director Update:

- a. Mr. Carney advised the Board that he recently had a “Data and Database Assessment” consultation with Tech Impact which is the consulting wing of Tech Soup, the organization that manages Microsoft’s nonprofit product donation program. The assessment was focused on options for potentially moving LCMWD’s electronic records to a “cloud-based” system.
- b. Mr. Carney also advised the Board that, as a nonprofit, LCWMD can, and does, receive discounts on Microsoft products. Mr. Carney offered to research pricing for licensing Microsoft Office 365 for Board member use while conducting work related to their membership on the Board. The Board expressed Interest in having access to Microsoft Office 365 for Board-related work. Mr. Carney will conduct this research and report to the Board at its next meeting.

7. Approve Revisions to Financial Controls Document:

- a. Mr. Carney summarized the status of the proposed revisions to the Documentation of Internal Financial Control Structure, as follows. The document was on the Board’s October 27, 2016 agenda for consideration and potential approval. At that meeting, Mr. Bohlen indicated that he had previously reviewed the document and supported the revisions as reflected in the draft presented at the October 27, 2016 meeting. At the October 27, 2016 meeting, Mr. Goldberg asked for additional time to review and comment on the revisions given their extensive scope. The Board agreed to table further action on the revisions until the next Board meeting.
- b. In the interim, Mr. Goldberg offered revisions to Mr. Carney which were incorporated into the draft previously presented at the October 27, 2016 Board meeting. Mr. Carney advised the he had provided Mr. Bohlen with a draft of the document reflecting Mr. Goldberg’s comments and that Mr. Bohlen had replied via email that he was fine with the changes based on Mr. Goldberg’s comments.
- c. One of Mr. Goldberg’s comments was a question with respect to the Board of Director’s named on Page 7 of the document and whether Tom Blake is still a member of the LCWMD Board. Mr. Blake had previously sent an email explaining his inability to attend LCWMD Board meetings due to a regular scheduling conflict. Mr. Goldberg wondered whether Mr. Blake’s email constituted resignation from the Board. Mr. Katsiaficas advised that he did not believe Mr. Blake’s email constituted the resignation of his membership on the Board and that Mr. Blake should still be considered a Board member.
- d. With the question of Mr. Blake’s status answered, the Board considered the remainder of Mr. Goldberg’s comments. A “redline” of revisions based on Mr. Goldberg’s comments was not available for the meeting, but the changes were brief enough that Mr. Carney read them to the Board members. The revisions were based on Mr. Goldberg’s comments: (1) that the text under “Methods of Assigning Authority and Responsibility” was awkward in that that Board does not “execute” contracts and that the statement, which should be of a general nature, was limited to “contracts for administrative and fiscal services”; (2) that the Treasurer’s authority to approve travel expenses appeared to have no limit; and (3) whether the “Controls Over Offsite Backup” were consistent with current practices and that the backup requirements may be too narrowly drafted to take advantage of newer technologies.
- e. Based on Mr. Goldberg’s comments, the following provisions were revised and read to the Board members in attendance.

- i. On page 8, the section entitled “Methods of Assigning Authority and Responsibility” was revised as follows:

The District’s Bylaws authorize the Board of Directors to acquire goods and enter into contracts for services. The authorization for expenditures of any funds to purchase goods or services must be given by the Board of Directors either through budget approval, contract approval, grant agreement approval, or specific approval as provided for in the District’s Rules and Regulations.

- ii. On page 14, subparagraph (2)(e) of the section entitled “Controls over Charge Accounts and Credit,” was revised as follows:

Travel expenses (e.g. airfare, hotel rooms, conference registrations) for conferences and related travel expenses must be approved in accordance with the Controls Over Purchases provided for herein.

- iii. On page 18 and 19, the section “Controls over Purchases,” was revised as follows:

Purchases for non-contract expenses (such as office supplies) \$500 or under may be made by the Executive Director. No purchase order is required for expenses \$500 or under.

Purchase orders are required for any non-contract expenses over \$500.

Purchase orders for non-contract expenses over \$500 and up to \$2,500 may be initiated by the Fiscal Agent or Executive Director and must be printed and submitted to the Treasurer for approval.

Purchase orders for non-contract expenses greater than \$2,500 are subject to the District’s procurement policy.

- iv. On page 19, the section “Controls over Offsite Backup,” was revised as follows:

It is the policy of the District to make regular backups of the District’s electronic accounting information. At least one electronic copy of the District’s electronic accounting information must be maintained in a location separate from the location where the District’s primary electronic accounting information is stored. The electronic copy must be updated at least once per business day. The Fiscal Agent is responsible for ensuring that the electronic accounting information is backed up in accordance with this policy.

- v. Mr. Goldberg offered one additional comment, questioning whether paragraph 4 of the section entitled “Controls over Charge Accounts and Credit,” which read “termination of employment or prosecution” should read “termination of employment and/or prosecution.” Mr. Katsiaticas offered that to be complete the provision should read “and/or.”
- vi. Mr. Goldberg made a motion to adopt the revisions to the Documentation of Internal Financial Control Structure document as presented on October 27, 2016, with the addition of revising the provisions read at today’s meeting and including the “and/or”

change discussed with Mr. Katsiaticas. Mr. Bacon seconded the motion. The motion carried unanimously.

8. Sole Source Approval Requests:

- a. Mr. Carney presented background on several issues related to the inconsistent application of contract provisions related to contract performance dates, contract termination dates, payment of invoices, change orders, insurance provisions, certificates of insurance, and additional insureds.
- b. Mr. Carney advised that a contract database (spreadsheet) is being developed to track contracts, and that a standard operating procedure, template, and checklist are being developed to ensure consistent application of contract provisions.
- c. BMP Maintenance LLC (retroactive)
 - i. BMP Maintenance, LLC performed pavement sweeping services in 2016 as part of an Agreement dated October 1, 2013 with the Long Creek Watershed Management District.
 - ii. Their most recent work was performed October 10 through October 24, 2016. On November 2, 2016, as part of a routine contract review, CCSWCD staff observed that the Sweeping Services Agreement had expired on October 1, 2016.
 - iii. Upon discovery of the expired contract BMP Maintenance LLC was asked to stop work and the contractor complied with the request.
 - iv. The contractor submitted an invoice in the amount of \$6,727.75 for work performed after the expiration date of the contract on October 1, 2016, but before the contractor was asked to stop work on November 2, 2016.
 - v. CCSWCD staff confirmed that the work shown on the invoice was performed and is acceptable.
 - vi. Since the work included on Invoice #1355 was performed after the expiration date of the Sweeping Services Agreement, and because of the value of the invoice, the Executive Director does not have authority to pay this invoice.
 - vii. Invoice #1355 was presented to the Board with a request to compensate the contractor for the sweeping services provided.
 - viii. Mr. Colvin made motion to authorize the Executive Director to pay the invoice. Mr. Bacon seconded the motion. The motion carried unanimously.
- d. Sterling Stormwater Maintenance Services, LLC
 - i. At the request of Mr. Carney, this matter was taken up by the Board as an addition to the Board agenda.
 - ii. At the October 27, 2016 Board meeting, the Board approved a sole source contract with Sterling Stormwater Maintenance Services, LLC ("Sterling") in the amount of \$6,700 for inspection of proprietary, and confined space, BMPs. Following that authorization, a contract was drafted that included the general commercial liability insurance and automobile liability insurance limits required by the Participating Landowner Agreements (i.e. \$2 million in general commercial liability insurance and \$2 million in automobile liability insurance).
 - iii. Sterling signed the contract, thereby, agreeing to those limits.
 - iv. Sterling does not presently have insurance that meets these requirements.
 - v. Sterling can acquire the necessary insurance by increasing its umbrella limit, but at an increased premium.

- vi. Although Sterling should have identified this issue before signing the contract, they did not have the benefit of having seen a request for proposal or sample contract with the insurance requirements up front. The contract arrangements were made in a simple email exchange that resulted in a sole source request to the Board. Sterling would not have known the insurance requirements until they received the contract following the Board's authorization.
- vii. Sterling has an amendment to the BMP Inspection Services Agreement to "share" the cost of the increased premium, by increasing the contract amount by \$700.
- viii. Mr. Colvin made a motion to increase the BMP Inspection Service Agreement by the requested amount of \$700. Mr. Bacon seconded the motion. The motion carried unanimously.

Mr. Bacon left the meeting at 10:55; Mr. Dillon took over as chair for the remainder of the meeting.

9. Legal Update:

- a. In the interest of time, the update on non-profit board member duties and records retention and Freedom of Access Act ("FOAA") obligations was tabled until the next meeting.
- b. Mr. Katsiaficas did make one brief point to the Board with respect to the earlier discussion concerning committees. Mr. Katsiaficas advised that when the Board establishes a committee of three or more members a meeting of a quorum of that committee is considered a public proceeding under FOAA for which public notice is required.

10. CCSWCD Long Creek Team Update:

- a. Ms. Strause provided the Board with a summary of a file review and Participating Landowner parcel inspection conducted by Alison Moody of the Maine Department of Environmental Protection ("Maine DEP") on November 14, 2016.
- b. Ms. Moody first conducted a limited file review of Participating Landowner files at CCSWCD's office in Windham.
- c. Mr. Reynolds advised that DEP had been interested in joining an inspection, reviewing how LCWMD is tracking inspections, and determining how LCWMD is following up on requested corrective actions.
- d. Ms. Moody visited three Participating Landowner parcels with CCSWCD staff.
- e. CCSWCD's full memo concerning the file review and parcel inspection is available to the Board.
- f. The Board inquired whether further actions were anticipated. Ms. Strause advised that she was not sure, however, it does appear that this was the extent of Maine DEP's file and parcel review.

Prior to the close of the meeting, Mr. Goldberg indicated his desire to see that rates secured by LCWMD with contractors for inspection and maintenance services be made available to Participating Landowners so that Participating Landowners can take advantage of such rates for work for which they are responsible.

11. Public Comments: None.

12. Next Meeting: The next meeting will be held on January 18, 2017 at 9:00am. Location TBA.

13. Adjourn: Because there was no quorum at the end of the meeting, the meeting adjourned without a motion or vote.