

NORTHERN COUNTIES LAND USE COORDINATING BOARD

Minutes

Thursday, May 6, 2010

IRR Mining Reclamation Classroom

Chisholm, Minnesota

Call to Order: The meeting was called to order at 9:30 a.m. by Chairman Dennis Fink with the following in attendance. (All actions of the Board were supported unanimously unless otherwise indicated.)

All Member Counties Present:

Commissioner Brian Napstad, Aitkin
Commissioner Bob Fenwick, Cook
Commissioner Jim Johnson, Cook
Commissioner Charles Lepper, Koochiching
Commissioner Wade Pavleck, Koochiching
Commissioner Rich Sve, Lake
Commissioner Todd Beckel, Lake of the Woods
Commissioner Jack Swanson, Roseau
Commissioner Dennis Fink, St. Louis
Commissioner Mike Forsman, St. Louis
Commissioner Steve Raukar St. Louis

Others Present:

Bob Lessard, St. Paul
Bob Austin, New Prague
Mike Carroll, Department of Natural Resources, Bemidji
Dave Grafstran, Northland College, Roseau
Elanne Palcich, citizen
Douglas Skrief, NCLUCB Staff

Administrative Actions

1. Approval of Agenda with the following additions:
 - 1) Bovine TB pilot project in Roseau County (Local)
 - 2) BWSR update (State)
m. Napstad s. Beckel
2. Approval of Minutes: April 1, 2010 meeting
m. J. Swanson s. Lepper

3-4. Financial Report and Bills:

The Vice Chair, after expressing concern over the absence of the Treasurer from recent meetings and learning of familial obligations, reported a general account balance of \$98,759.10 and a Land Use Conflict Management balance of \$15,005.28. Total accounts balance, after payment of approved expenses of \$976.60 was \$113,764.38.

The Executive Director submitted an invoice for \$822.74 for one month of professional services and expense reimbursement.

m. Napstad s. Beckel

Correspondence

Discussion Issues

LOCAL

1. Lake Vermillion State Park Initiatives: A proposed bill to double the Payment in Lieu of Taxes (PILT) to local government units for the Soudan Underground mine State Park and the new Lake Vermillion State Park was approved by the Minnesota Senate. This would deviate from more usual PILT percentages of 90 percent to the county and 10 percent to be divided among townships. Comm. Johnson

suggested that this will complicate matters for some governmental units as well as among counties. The Chair recommended reading the PILT section of the Legislative Auditor's Report on management of public land, noting that acquired natural resource lands are funded disproportionately – 1.4 million acres receiving \$15 million in funds while the remaining 7 million acres receive the remaining \$6 million. Comm. Beckel inquired after writing a letter to encourage discussion of PILT because other forums are considering addressing the issue. Comm. Napstad mentioned concern about complexity of property tax codes; special deals need to be fully considered because of long-term repercussions. The Chair suggested that, as in the past, PILT may be cut for a period of time during economic hardship and later restored.

2. Minnesota Parks & Trails Legacy Public Workshop Schedule: The public workshop meetings are to provide citizens a chance to influence the legacy plan. The first meeting was to be held in St. Cloud, Mr. Carroll pointed out, and would focus on regional concerns. Additional language may be needed for out-state parks – those not considered metro or part of the state park system. Out-state representation is lacking, suggested the Chair; Mr. Carroll recalled invitations having gone out to participate and that the current scheduled meetings would, again, allow for and need regional input. Citizens are encouraged to attend as the initiative is designed to be citizen-led. Comm. Johnson noted that two openings exist on the Parks & Trails Legacy committee, which is appointed differently from the Lessard-Sams Council. Comm. Fenwick asked if a local-units-of-government formula for appointees from the Metro area exists and if it is different from out-state appointments where “local units” are lumped under the term “regional”, with the concern that “regional” input might take precedent over input from local governmental units; governmental units cannot be ignored in land planning; citizen input can take precedence over what land planners in local units have decided to do. Question arose as to legislative intent in setting up committees. There has been movement at MRCC to set up a rural parks group, seeking to divide funding among federal, DNR and rural pots. The Chair concluded that input is important. There are Legislative Plan-related websites available, noted Mr. Carroll: www.patl.intergov.mn.gov and www.citizing.org.

3. Ojibwe Bands Testing Treaty Rights: The Leech Lake and White Earth Ojibwe Indian bands are attempting to reassert hunting and fishing rights they say are guaranteed by 19th century treaties. This is based on a treaty signed with the federal government in 1855. The Chair recalled that previous agreements have not included local units of government. Comm. Napstad noted that repercussions of decisions made without local governmental input are being felt, as for example with Mahnomon County, now near bankruptcy, where the 35 percent of the land not in tribal trust cannot support county operations. The Chair outlined tribal history affected by the Dawes Act of 1883 which eliminated tribal governments for those who signed; the Indian Reorganization Act of 1934 reestablished tribal governments. Treaties from intervening years do not pertain. Mr. Carroll presented to the Board a booklet entitled “A Guide to Understanding Chippewa Treaty Rights,” a 1992 publication of the Great Lakes Indian Fish & Wildlife Commission. He went on to describe the expectations of the DNR for some civil disobedience activities prior to the Minnesota Fishing Opener to express Native American interest in the 1855 Treaty. If tickets are issued they will be given to counties. This is now an “indigenous network” issue. Public safety is up to County Sheriffs. The DNR will respectfully and equitably enforce the game and fish laws of the state.

4. Bovine TB in Roseau County: Comm. Swanson informed the Board that Roseau County has been dealing with Bovine Tuberculosis for about six years first discovered in cattle and then in the wild deer herd. Consequently, the USDA has required the DNR to provide 1800 samples. Hunter harvest was inadequate to provide the samples. Sharp shooters were used, which was controversial in the county. The issues with cattle have been addressed. Deer hunters are under the impression that their land has been devalued because there are no more deer. A pilot project in Roseau County was signed onto by Beltrami County. Dave Grafstran of Northland College is the task force coordinator. Legislation has been introduced to support the project. Mr. Grafstran pointed to cooperation among the USDA, the DNR, and others after hard feelings grew from, for example, sharp shooters firing from helicopters. The last cattle herd was affected in 2009; twelve herds were depopulated; only one deer in the last year was discovered with the disease; a core zone around Sky, Minnesota, was identified. A county board resolution is asking for 1) a scientific determination of number of deer that should be tested 2) to partner with deer hunters and land owners to get sufficient harvest numbers 3) to reduce the interaction of deer and cattle. A “Permit Zone 101” was established as a disease management zone to contain the disease. It is now time to turn deer habitat zones back into wildlife habitat improvement zones with the cooperation of landowners - all while getting stakeholders to sit down and talk. Questions include how to take a comprehensive geographic look and how to determine optimal numbers of deer. Board questions included transference to humans, which, said Mr. Carroll, would be rare. Mr. Carroll went on to comment that the DNR has shifted personnel to best deal with the issues, one of which is that dispersed feeding of cattle attracts deer. National standards pertain to the cattle-certifying agency. Comm. Swanson said that the broad picture is that the county is asking the

DNR to manage deer populations similarly to how they manage fish populations, with an aim to making the deer hunting habitat more attractive and a bigger economic driver. Mr. Carroll suggested that the habitat is good now and there may be measures to improve the population. He added that progress has been made despite the complexity of the issue. Mr. Grafstran concurred, noting a positive change in attitude among parties since beginning the pilot program. Comm. Swanson suggested funding from Lessard-Sams might be appropriate.

STATE

1. Former Sen. Bob Lessard presentation on Background of Lessard-Sams Outdoor Heritage Council: The Chair introduced Sen. Lessard by recalling that the Board has expressed concern about the lack of representation of northern Minnesota on the Council and that he had testified to Mary Murphy's committee on related topics, including the position that since so much of the land in northern Minnesota is public that funds might best be used to improve habitat rather than the purchase of more land. Sen. Lessard introduced Bob Austin, active in Sportsmen for Change, noting that expected guest Garry Leaf was busy at the legislature and could not attend. Comm. Pavleck added recognition of the senator's long-time advocacy for northern Minnesota and sports interests.

Sen. Lessard rehearsed the background to the Legacy Amendment, recalling that it started out statutorily when he chaired the Natural Resource Committee. Funding for game and fish was slight in relation to budget targets and licensing was down. Increasing responsibilities of the DNR were underfunded. Related sales taxing options were weighed so as to create a fund in the Department of Revenue. Sporting generated \$800 million in direct sales and \$3 - 4 billion in spin-offs. Protecting the sources of the sporting revenue, he argued, would ensure future economic impact. The movement drifted toward writing a constitutional amendment. "Restore, enhance and protect for fish game and wildlife" were terms used from the beginning. Parks and Trails as well as arts interests joined in support of the amendment. The notion of a council representing sportspeople was paramount. The Governor, the Speaker of the House, the Legislature and citizens would appoint to the council.

Sen. Lessard continued by recalling his initial efforts to get northern Minnesota representation on the Council as well as a sportsman with a passion for the intentions of the Council. Importantly, the new Governor will appoint four Council members. A council was not built into the Clean Water section of the amendment. House language inserted last year has found its way into and out of the current Senate bill and is not supported by constituent groups. This language would give the Legislative Auditor increased authority over the funds. Sen. Lessard is asking that no bill be passed if it contains this language.

The last thing the Council wishes to do, suggested Sen. Lessard, is spend money in northern Minnesota as there are other priority areas. However, publicly accessible land will decrease dramatically as timber interests sell land. There may be parcels that will be of interest to sportsmen who wish to retain access, and these purchases might dovetail with land and trails planning. Overall, there will never be the intention for the funds to be used as a land grab.

The Chair recalled that a Council member who visited Northern Counties said that northern Minnesota would be a good candidate for purchases because of the ability to purchase more relatively more land at a lower cost. This has caused concern that, should acquisition occur, northern Minnesota will be targeted. Sen. Lessard said this is not the intent. He offered an example of a local group being able to purchase quickly, with Council funds, farmland that might be set aside as a wildlife management area with public access.

Comm. Swanson asked if northern Minnesota has not advocated enough for projects. Sen. Lessard responded that the process is still new and the remote counties of the north will soon learn how to access funds, which could amount to \$130 million annually. The Chair inquired about "restore, enhance and protect" as Rep. Hanson had inquired of those testifying in hearings if "protection" and "acquisition" were the same thing. Sen. Lessard, speaking for himself, assured the Board that acquisition is a very small part of the Council goals. Concern will be abated if representatives from the north are added to the Council. Members of the Legislature are using proposed language changes to provide access to the funds, which would be a backdoor to supplanting existing funding. Another concern revolves around the potential creation of constituencies of small groups that might erode legislative authority. The Chair proposed the situation where a public agency and a citizen group approached the Council with a similar request. Sen. Lessard responded that each would compete in front of the Council like any other group. The DNR is concerned about the proposed language.

Comm. Napstad noted the difference between agricultural easements that result in no public access and the Council easement policies that do allow access. Sen. Lessard, expressing his own opinion, is that access is highly desirable in an easement situation. He reiterated that the amendment is not a jobs- or

land-grab program but a legacy enhancer for future generations. In response to a question from Comm. Napstad, he noted that the potential for commingling funds would depend on whether they were being used for fish, game and wildlife, as under Council limitations, or for Clean Water funding which is without limits. He predicted that monies will eventually be used for cross-purposes and the amendment will end up being reviewed by the Supreme Court. In conclusion he hoped that northern counties will have more input, become more knowledgeable, and utilize available funding.

The Chair thanked Sen. Lessard and invited him, Mr. Austin and Mr. Leaf to the next meeting. Sen. Lessard recommended a presentation by Mr. Leaf that takes about two hours. This might be held in conjunction with MRCC, suggested Comm. Pavleck. The Chair reiterated concern over acquisition of land, to which Sen. Lessard responded that there may be time when strategic acquisitions may be desirable.

2. BWSR Update: Comm. Napstad brought up the issue of how all counties have Soil and Water Conservation District offices. Counties manage according to political boundaries while in some areas of the state SWCDs also work on a water basin basis. Related issues were brought to light at a public hearing of a northern water planning committee held the night before. The Buffalo Red River Water District borders Becker, Clay and Ottertail Counties and encompasses many small towns. The City of Holly's attorney summarized issues to come to the BWSR board should county boundaries be replaced by watershed boundaries. One of the issues brought up was the concern that the watershed plan included the statement that the watershed could have taxing authority and that the watershed district managers would be appointed, not elected, for four year terms. They are not only unelected but may not be representing the whole district evenly. In addition, an expansion of mission is a concern as, for example, a generic soil preservation program might expand into projects that would be funded not by grants but by district taxpayers. Plans could become self-fulfilling in terms of taxation. This could become a divisive issue, especially on the taxation front. A bill might be introduced.

Mr. Carroll related that he is on a flood-reduction working group that has revealed the opinion of some that a taxing authority be instituted to stop repeated flood payments until a solution to the problem is found. Another issue in the valley is the potential introduction of federal oversight for Minnesota and North Dakota, which would add another level of administration to the situation.

FEDERAL

1. Clean Water Act: The Chair distributed copies of the Federal House Bill to amend the Federal Water Pollution Control Act to reaffirm the jurisdiction of the United States over waters of the United States. He called attention to page 7 line 4, referring to the definition of waters: "all other water, including ...the use, degradation, or destruction of which does or would affect interstate or foreign commerce, the obligations of the United States under a treaty, or the territory or other property belonging to the United States..." This definition seems more comprehensive than earlier versions. Definitions of waste treatment systems might also be examined. The Chair also distributed an article he wrote for the Duluth News Tribune. A response to his letter came from Rep. Oberstar, copied to local officials other than the Chair, which included the comment that Comm. Fink's criticism "is based on flawed reasoning and fundamental factual errors." The response also states the bill "simply restores the original jurisdiction of the law" which the Chair holds not to be the case. Responses to the letter were encouraged.

Comm. Napstad suggested this might be brought to the attention of larger lake associations who might be concerned.

A motion was made by Comm. Fenwick for the Chair to draft a letter to the State of Minnesota, the DNR, BWSR, MPCA, northern legislators, and the Governor's office and ask what their position is on the federal Clean Water Act. The letter is to be signed by both the Chair and the Vice Chair.

m. Fenwick s. Lepper

The Chair noted that he has the same concern voiced by Rep. Oberstar that because Minnesota has more stringent policies than the act specifies why is there a concern? Comm. Fenwick is struck by the silence of the state, especially when the bill takes away what the state's Attorney General fought for, i.e., control over water. Is silence agreement? The Chair asked if what Minnesota now has in place will become null and void under the bill. Comm. Napstad has brought the issue to BWSR and suggested that there is a fear on the part of the agencies. Comm. Fenwick encouraged all in the state affected by the issue to engage in open conversation with Rep. Oberstar. If all the agencies stand together there may be less concern about potential loss of other federal funding. Comm. Pavleck suggested that a minimum standard might be established which states would be able to exceed if desired. The Chair noted that he had sat on a NACo committee proposing just such a standard and that a formulation was rejected outright to define state waters, which would have taken into consideration variable definitions. One state that meets the "no stricter than" requirements is Ohio; an Ohio representative said that five states look to the federal government to

enforce standards; among these is Arizona which has little rainfall and little surface water. There is a disconnect between the states that are and are not affected. NACo recommended support of “navigable waters” remaining in the Clean Water Act rather than opposing taking it out. Comm. Fenwick asked what would trigger national involvement. He recalled an inventory of waters in Minnesota that, as in other states, resulted in Rep. Oberstar’s objectives; this should not be changed to national control to all waters because it will result in a loss of local involvement, which made the act work in the first place. To update the language to 2010, added the Chair, might take up to 10 years.

Adjournment by the Chair at 12 p.m.

Next meeting: June 3, 2010, 9:30 a.m. IRR Classroom, Chisholm, MN

Respectfully submitted by Douglas Skrief, Administrator