

**Prior Lake-Spring Lake Watershed District
Monthly Meeting
February 12, 2002
Public Hearing for Curlyleaf Pondweed Control Project**

Members Present: Craig Gontarek, William Kallberg, Larry Mueller, Roger Wahl

Member Absent: David Moran

Staff Present: Bryce Huemoeller, District Attorney
Ed Matthiesen, Montgomery Watson Harza
Paul Nelson, District Administrator
Jim Eggen, District Technician

Others Present: Richard and Delores McKenna, Greg Halling

1. CALL TO ORDER: Meeting called to order by President Gontarek at 7:00 PM. President recessed regular meeting and opened the Public Hearing regarding a resolution to establish a project for Aquatic Plant Management for Spring Lake.
2. PUBLIC HEARING:

Paul Nelson explained the public hearing was to consider comments on a Primary Resolution to establish a project for an Aquatic Plant Management Program for Spring Lake. He stated notices had been published in the Prior Lake American and posted in the Prior Lake Public Library, the District Office and at the meeting with the Spring Lake Residents. He said the project is allowed under Minnesota State Statute 103D.601, which allows establishment of a project by a majority of managers, provided certain criteria is met;

1) The project is financed primarily by grant totaling at least 50% of the project cost, 2) that the project be less than \$750,000.00, 3) it cannot have drainage as it's essential nature. The project being considered meets these requirements. The statute also requires a preliminary report and information for the project, which is the report from Blue Water Science. The report finds that the project is feasible due to; technologies used for plant control have been used in other areas, and the number of residents who have signed up for cost sharing participation. He stated that he wants to make it part of the record that there are over 100 residents or shoreline owners participating in the project, as well as the Spring Lake Association.

Mr. Nelson explained the problems caused by Curlyleaf Pondweed, that it is an exotic (non-native) plant and infests about 180 acres of the lake. It affects water quality as it starts growing in the fall and in the spring it grows to the extent it prohibits growth of native plants and then by dying during the end of June it leaves the lake void of aquatic plants. As it decomposes it releases a nutrient and contributes to the growth of the algae then seen in the lake. The recreational part of the problem is the thickness of the growth.

The DNR will allow about 45 acres of herbicide treatment in Spring Lake. About 5 acres will be held back for owners who obtain their own permits, leaving availability to treat about 40 acres. Mr. Nelson said the areas treated will consist of about 26 acres near shore, and 13 acres offshore treatment with herbicide. There will also be about 40 to 50 acres done with a harvester. He pointed out the areas on a map that will be treated and that all participants' properties are identified. The District has set up a database of the participants and assigned a unique identifying number to each. He also reviewed the financing budget as outlined in the proposed Resolution 02-178.

President Gontarek asked if there were any questions or comments from the public or staff. Hearing none he closed the Public Hearing on the Project.

3. ROUTINE BUSINESS:

A) Approve Monthly Meeting Minutes.

Motion to approve the January 2002 monthly meeting minutes by William Kallberg. Second by Larry Mueller. Motion passed 4 ayes.

4. ATTORNEY'S REPORT:

Bryce Huemoeller stated he had talked with Jim Terwedo who had received the draft agreement that had been sent to him on the Klingberg dirt pile. He has not heard back from them as of yet so there is no agreement on the dirtpile. Mr. Huemoeller said the Managers should decide which direction to take; 1) wait longer for or if a response is received, 2) move forward with an action to enforce the rules. The District's legal position is that absent proving the grandfather status, the dirtpiles are subject to the rules. A permit must be applied for and the project must comply with the rules. The District's enforcement would be to bring an action to require removal of the dirt piles and limit activity at the site unless there is a proper permit application and approval. Larry Mueller asked if there has been any response at all. Mr. Huemoeller said they had called several times for status and ultimately was advised there was no contract. Mr. Kallberg asked Mr. Huemoeller to repeat the two choices. Mr. Huemoeller did so and explained what the District would have to do to force compliance with the rules. He stated that the District could start an action and obtain a restraining order if irreparable harm can be proven. Then there would be a motion on a temporary restraining order, which would prevent certain activities and prevent expansion of the dirtpile. That could be obtained in a couple of weeks. This would leave time to come to a decision if grandfather rights apply. If grandfather rights apply it is a matter of how they apply in regards to the rules, and if they don't apply then it is pretty much the end of the case. Mr. Huemoeller feels this could probably be done by the end of March, and permit application could be processed in April. Mr. Mueller asked if there is any kind of protection at the site. Mr. Nelson replied that he had not been on the site for awhile, but driving by it is apparent there is some new silt around part of the site. Mr. Mueller then asked that if in the interim they could enforce placement of some more silt fences. Mr. Huemoeller said that maybe some action could be taken by the PCA, or under the Wetland Conservation Act or by BWSR for some minimal erosion controls. Mr. Huemoeller explained that irreparable harm is that which cannot be fixed or compensated for monetarily. He said a history project could be done with aerial photos, information usually from governmental sources, etc. A history tied into the ordinances, particularly zone ordinances, to determine the actual allowable usage at that time and verify that it was in fact illegal.

Mr. Mueller asked how far back do you have to go to be considered grandfathered? Mr. Huemoeller said you go back to when the current dirtpile was first established. He said that if the use was legal at the time zoning ordinances were established, it is grandfathered for land use considerations, and the question is whether it is legal, or applies under environmental laws.

President Gontarek said the issue is not to drive the property owner out of business, but just to enforce the rules of the Watershed District. Mr. Huemoeller said the purpose of action would be to determine if the site is grandfathered, and if so just what are his current rights. It was decided to send a letter stating that if response is not received within 10 days, legal enforcement action will be started.

5. TECHNICIAN'S REPORT:

A) Permits

Jim Eggen presented the Application No. 01.24 Shepherd's Path Permit and Request for Variance at the NW corner of Co. Rd. 42 and McKenna Rd. and pointed out the location on a map. He explained that what is being proposed in the first phase, is the Church and related facilities. He said that in

future phases there would be expansion to the east and to the west. He said there has been some discussion with Greg Halling, the applicant's engineer, Ed Matthiesen, engineer for the District, and himself about how to meet infiltration requirements. They are proposing an infiltration area and a NURP pond be built west of the DNR wetland. He said that he also spoke with a representative of the DNR who was comfortable with the extent to which the wetland would be protected. After review of the application and requests for variances, Mr. Eggen asked if there were any comments and he felt there should be some discussion.

Paul Nelson, District Administrator referred to the statement that Phase 1 of the project does not require an EAW, and had concerns if the District could issue a permit. Mr. Halling replied that the City of Prior Lake would be responsible for an EAW. With the master concept of the church, elderly housing, commercial sites, etc., and the changes that are ongoing, the City of Prior Lake checked with the EQB and it was decided they could continue Phase 1 without an EAW, but would have to do the EAW before proceeding to future phases. Jim Eggen said he spoke with Jane Kansier of the City of Prior Lake and she confirmed that the EAW was not required for Phase 1. She also stated that future phases may or may not require an EAW.

Paul Nelson asked Mr. Halling if he understood the application only covers Phase 1 and if he knew of any problem. Mr. Halling said the only problem was the infiltration area. Mr. Nelson said he acknowledges the facilities are oversized for the current phase, but cannot say that allows for the second or future phases. A second permit would be required for the second phase. Mr. Huemoeller stated that the second permit would show existing conditions and an EAW may be required. He also stated the permit should only cover the first page of the application; the church, educational facility, parking lot and the conditions listed in staff recommendation. Mr. Nelson stated the rules do allow for development of a stormwater plan for an entire subdivision, and then future phases, or individual lots, built in conformance with the approved plan do not require additional approvals.

Mr. Halling reviewed the project to date, explaining the infiltration pond, and what will be done in this first phase. Mr. Halling also requested Board consideration of this project under the provisions just described by Mr. Nelson where the current stormwater plan considers the future phases and is approved for them as well as Phase 1.

Manager Kallberg asked questions and voiced concerns regarding what lands and areas will be draining into the pond and infiltration area. Mr. Huemoeller was asked for guidance. His recommendation is that the Managers could direct District Staff, Engineer and Mr. Halling meet and draft a new application for the permit, which will define what part of the property is covered by the permit. They should also indicate how future permits will tie into this permit. The permit should define area covered and the conditions that meet the objectives of the Board for submittal at the March 2002 meeting of the Board.

Mr. Nelson asked Mr. Halling if the delay would be agreeable. Mr. Halling replied he did not know how the City of Prior Lake will react as they are pursuing site approval, which they need to have before environmental review.

President Gontarek did instruct Staff to draft a new permit as directed above for the March 2002 meeting.

Jim Eggen reviewed the Wensmann 1st Addition Permit 00-06 drainage questions. He indicated the development areas for Wensmann and Regal Crest Additions on the map and the flow of the drainage. He submitted a faxed letter from Kelly Murray indicating that Wensmann is purchasing an additional approximate ½ acre from Mr. Kuper and Mr. Kuper is granting an easement across the wetland. The letter recalled that they had waived the 60-day requirement of their current request at the January meeting and are now asking to waive the 60-day requirement again. Paul Nelson stated that draft copies of the easement and the purchase agreements are completed, but Mr. Kuper has not signed them yet. However, Mr. Nelson feels progress is being made. There will need to be a further

amendment to the permit to include the additional ½ acre. The Board agreed to waive the 60-day requirement again, as they cannot approve the permit at this time.

Jim Eggen said there are several other permits that have been applied for or are about to be applied for, and those that have been applied for are being processed. He said the most interesting one is the Living Hope Lutheran Church and School. Paul Nelson explained that at last month's meeting it had been noted that this project was operating without a permit. A cease and desist order was issued. The site was inspected and found that with frozen conditions there was little risk of offsite sedimentation, there was some risk of sedimentation for some of the wetlands. A request was made for some erosion control practices to be put in place within ten days and that a permit application would be submitted within ten days. Both were complied with and the cease and desist order was lifted for the building but remains in effect for the site work. The project will be on the agenda for the next Board meeting.

Jim Eggen said another application is for Crystal Bay Development and pointed out the location. Paul Nelson said there was a question for the Board regarding buffer rules. He referred to rules for buffers adjacent to wetlands and watercourses. He quoted the definition of wetlands is consistent with Minnesota Statute 103G. He said that under that Statute definition of wetlands specifically excludes public water wetlands, and thus, the District Rules do not require buffers adjacent to public water wetlands. They are the big wetlands and President Gontarek stated that is not what the Managers intended under the rules, and directed staff to include revisions addressing this to be considered in the next rules revisions.

6. ENGINEER'S REPORT:

A) Outlet Channel Project.

Ed Matthiesen reported that there had been a TAC meeting, and they are in the process of completing cost estimates for the hard construction and Kestrel is completing their portion. Paul Nelson has set up two meetings with property owners, and Tuesday night February 19th with the City Council to present the draft concepts. Paul Nelson said the TAC meeting went very well and the committee liked the concepts for the outlet channel.

B) South Spring Lake Wetland Project.

Ed Matthiesen traced the drainage route on maps and explained the purpose is to keep sediment from draining out into Spring Lake. He explained that he and Mr. Nelson went to the Spring Lake Township meeting in January and the Township Chair has some concerns. We did not resolve the concerns at the meeting. Mr. Matthiesen stated that his analysis shows that the berm has no affect, and his modeling showed that the berm creates 0.01 ft difference. This difference is not within the range of the model. Mr. Nelson suggested a possible resolution was the offer to pay for the Township engineer to complete an independent review. Mr. Nelson thought this would cost about \$1,000.00. The Board directed staff to retain Halling Engineering to survey the culverts under Hwy 13, and the Spring Lake outlet sill; and to complete an independent review of the project.

C) MCES Interceptor.

Ed Matthiesen reviewed the design for the Board. He said the design concept had been seen by WSB, the Engineer for Shakopee, and the MCES. Paul Nelson said the cost share still needs to be discussed with the City of Shakopee.

D) Cates Lake.

Paul Nelson referred to the letter the City of Savage had sent to the Board of Water and Soil Resources and the Department of Natural Resources. He said he is trying to set up a meeting with all the parties.

7. OTHER OLD/NEW BUSINESS:

- A) Consider Preliminary Resolution for Establishing a Project for an Aquatic Plant Management Program for Spring Lake.

Paul Nelson reviewed the proposed resolution.

Motion by Craig Gontarek to adopt Prior Lake-Spring Lake Watershed District Resolution 02-178 Establishing a Project for an Aquatic Plant Management Program for Spring Lake, Scott County. Second by William Kallberg. Roll call votes; William Kallberg; Aye, Roger Wahl; Aye, Larry Mueller; Aye, Craig Gontarek; Aye. Motion passed.

- B) Project NEMO.

Paul Nelson said he had put a pamphlet regarding NEMO in the packets. Craig Gontarek said he has a meeting February 13, 2002 with the Mayor and said he would convey that the District thought the City Workshop was a good idea.

- C) Water Quality Rules Review Workshop with U of M.

Paul Nelson said a workshop has been scheduled to meet and talk about what the District wants the rules to accomplish and what the criteria would be for measuring whether they would be successful. He said the meeting is scheduled for March 12, 2002 in the morning.

- D) Carp Harvesting Update.

Paul Nelson presented some pictures. He said there was a lot of press coverage and he met with the Sportsmen's Club. He said there was about 25,000 lbs. harvested. Larry Mueller asked if the harvesters had felt it was successful. Paul said it seemed to be and they had gotten some good-sized fish. He explained there seemed to be two age groups of fish; old fish in the 20 to 30 lb. range and a younger group of about 12 to 16 inches that should be about 2 year old fish. Paul said the DNR speculated that this might mean that the carp are not spawning on a regular basis. He said the older fish are about at the end of their life span.

Paul Nelson said that Mr. Geyer would watch the lake and if another school seems to be forming they will harvest them again and will not charge a mobilization fee again.

William Kallberg asked where the harvesting had taken place. Paul Nelson explained it was on the west end and pointed the area out on the map. He pointed out the area where there is potential to put a trap this spring. The DNR had said they would be willing to issue a permit to the District or Don Geyer for the trap. Paul Nelson said he had also put some information in the packets regarding some information on introducing pheromones into the traps to lure the fish into them.

- E) Curlyleaf Pondweed Control Update.

Paul Nelson said he is preparing bid specs to be advertised and will hold a bid opening before the next meeting. He said he had submitted to the DNR for the permit and would need to add the fee of \$200.00 to the Claims list. He said the contracts would be done within a couple of weeks after bid selection and treatment done in April to early May.

- F) Grants.

Paul Nelson reported that nothing has been received yet regarding the Clean Water Partnership, which is the only one not heard from yet. He did make an inquiry to the McKnight Foundation.

G) County Land Management.

Paul Nelson said he attended a meeting at the County. There were representatives from the Trust for Public Land, the County Parks, the Three Rivers Parks, Hennepin Parks District and representatives from Townships and Cities. The discussions were about open space, land acquisition programs etc. He said the Met Council is working on a new blueprint for metro growth. The blueprint will identify location of critical areas. They are contemplating doing away with the Urban Service Area and instead have corridors for growth. They are also contemplating starting a purchase and development agreement program in order to preserve agriculture land and open space basically by purchasing development rights. There will be meetings coming up and Paul Nelson said he would keep the Board informed.

H) West Spring Lake Wetland Project.

Paul Nelson said they have surveys and appraisals to inform property owners that it would be approximately \$10,000.00 per property for easements. He said he is waiting to hear from the Clean Water Partnership to determine if there will be money for the construction. He said the Board needs to discuss if they want to acquire the property rights for the easements not knowing how long it might be before or if there are construction dollars.

I) Easements Lot 13, Block 2, Titus 2nd Addition.

Paul Nelson said someone had applied to the City for a permit to put a house on Jackson Trail where it comes off Pike Lake Trail by the Channel. He said it is a developer who has bought the lot and is going to move another house onto the site. Mr. Nelson said it might be an appropriate time to speak to the developer about the addition easements the district would like to acquire.

J) Planning Workshop Summary.

Paul Nelson referred to the memorandum in the packets summarizing the results of the workshop. He said he wants to discuss scheduling. He referred to the biennial review of capital improvement projects. He said it should be done by July, as it would feed into the budget. He also said a decision is needed on the West Spring Lake Wetland project, but could probably wait for a little while. The plan amendment to clarify the land management program should be made this year. The plan for the Outlet Channel Project should be done by July with the review of capital improvement projects. The Outlet Box plan should be concurrent with the Outlet Channel Project. The County Ditch 13 amendment has been postponed for two years, but would need to be done by July to be included in the budget.

He said the Board might want to have an amendment for an Engineers Report on the feasibility of flood proofing or buying out of low homes. He said there are some questions as to whether flood proofing or buyouts really provide a local benefit to the community. He said it provides a benefit to the Federal Government in that those homes don't get flooded out and then require flood insurance payments. Financially there are other community benefits when these homes are not flooded on a regular basis. He said the Board might want to consider the feasibility of this amendment with the other amendments in July.

The other amendment is to complete the Lake Management Plans. Paul Nelson said the District has done a lot of studies and the City has done a comprehensive lake management plan. He said they have not had the community develop anything that sets out roles. He said something needs to be developed for the community to agree to some long-term commitment to some of the plans. He said maybe a plan amendment could be done to take some of the alum treatment money and reallocate it to do this with the idea that it would relieve some of the uncertainty about community commitment to long term management, and the effectiveness of the alum treatment long term.

Paul Nelson said that in addition to the rules revisions to be considered, one more should be added. That would be the buffer situation discussed earlier in this meeting. He asked the Board when they wanted to consider alternate language. He suggested starting reviewing some of the language in the April meeting and discuss in a couple meetings and then go to hearings and comments later in the summer. The Board agreed with Mr. Nelson.

K) MEP Homeowner/Business Audit Project.

Paul Nelson said he has advertised for a summer intern and he has the work plans done and submitted to the MET Council. Potential dates for interviewing candidates will be either the 8th or 11th of March. He asked if any of the Managers would like to attend and said some one from the Extension will come and he has invited someone from the Prior Lake Association to be involved.

He said that on March 19th work would begin on the audit material. He said it would be mostly a technical discussion with the Extension people and he has invited the Prior Lake Association to have a representative present. A representative from BWSR will also attend.

L) Land Management Program.

Paul Nelson said the Scott Soil and Water Conservation District has received another \$100,000.00 for filter strips from the Met Council.

Paul Nelson reviewed the memo in the packets regarding the repayment amount for the 1999 Challenge Grant for the Natural Stormwater Conveyance and Storage Protection Project. The amount to be repaid is \$7,963.80.

Paul Nelson said that on March 14th there will be a workshop on watershed districts' abilities to develop and implement stormwater utilities and he would like to attend.

8. ADMINISTRATIVE:

A) Review and Approve Claims.

Paul Nelson added two items to be considered: 1) The DNR permit fee for Aquatic Plants of \$200.00 using claim number 02-034 and, 2) the PEIP payment (claim 02-031) listed as \$552.31 should be \$663.69. New rates were just received, but are effective with payment due in February. He said he has not yet had the chance to calculate the amount of employee and employer amounts.

Motion by William Kallberg to approve claims 02-001 through 02-034 as amended and explained, and the change to claim 02-031 resulting from the open enrollment and undefined changes in the premium. Second by Larry Mueller. President Gontarek abstained. Motion passed 3 ayes.

B) Financial Report.

Paul Nelson explained that he changed the layout of the report for this year; set up by the major funds and then within the 509 Implementation Funds listing projects.

The Income Budget items are what had been approved, with the exception of the items in red. Under the 509 implementation the CL Pondweed Treatment of \$11,328.00, which is the landowners and Lake Association contribution, which had not been known when budget was finalized in December. The Homeowner/Business Audit Project of \$20,000.00 was the grant award received that had not been in the budget. The Interest Income of \$35,000.00 was in budget, but he highlighted in red, as it is not necessarily a separate item but will be divided up into the other funds as the accountant allocates on a percentage basis. On the Expense side; the CL Pondweed Treatment is a little higher than approved in the budget. This is due to additional income from residents cost share

contributions, and the higher income will allow for more treatment. The Homeowner/Business Audit Project had not been fully defined when the budget was approved. The Grants have come in since and gives a different total than the December budget.

Paul Nelson further explained changes; 1) adding a District Labor category under 509 Implementation to track staff costs that are not charged to a specific project under another category. 2) Addition of MEP Rules Grant under Administrative General so that it can be tracked separately as income and expenses to the District this year.

Paul Nelson said he added another box for Other to track; 1) Accounts Receivable; Grants Reimbursements due, 2) Accounts Payable (Land Program Cooperators), 3) Pondweed Project Cost Share Payments actually received too date.

Items made this year for last year's business have been subtracted out and will be adjusted back to last year by the accountant.

Paul Nelson said there is a CD maturing 2/13/02 and a decision needs to be made as to the disposition. He has a list of CD rates if the decision is made to put back into a CD.

9. ADJOURN:

Motion to adjourn by William Kallberg. Second by Larry Mueller. Motion passed 4 ayes.

Craig Gontarek, President

William Kallberg, Secretary

