

MINNESOTA ENVIRONMENTAL QUALITY BOARD MEETING MINUTES

**Thursday, February 18, 2010
MPCA Board Room, 520 Lafayette Road, St. Paul**

EQB Members Present: Gene Hugoson, Susan McCarville, Jonathon Bloomberg, Julie Goehring, Eric Tomlinson, Kristen Weeks Duncanson, Dan McElroy, Randy Kramer, Paul Eger, Sheila Reger, Sanne Magnan

EQB Members Absent: Glenn Wilson, Mark Holsten, Tom Sorel

EQB Staff Present: Robert Roche, Bob Patton, Augusta Paye, John Wells, Gregg Downing, Jon Larsen

The meeting was called to order at 9:03 a.m. by Chair Hugoson.

I. Adoption of Consent Agenda and Minutes

Jonathan Bloomberg moved and Randy Kramer seconded approval of the consent agenda and minutes of the September 28, 2009 EQB meeting. The motion was approved.

II. Chair's Report

The chair welcomed the two new citizen members, Kristen Weeks Duncanson and Eric Tomlinson. Ms. Duncanson and Mr. Tomlinson introduced themselves and gave brief statements on their backgrounds and interest in the work of the EQB.

Chair Hugoson noted that the citizen members represent continuity moving into the next administration. He requested the citizen members to participate, under the leadership of Mr. Bloomberg, in developing a paper on ideas for where the EQB might go in the future. This effort would build upon the work of the Board's subcommittee on future directions for EQB. He requested that work on this task be postponed until the time of the next scheduled Board meeting in May, when the Legislative session would be over, in order for the Technical Representatives and others to participate.

Chair Hugoson noted that the Governor had mentioned regulatory streamlining in his State of the State speech. He indicated that the Governor has directed the EQB to develop customized Environmental Assessment Worksheet forms for various types of industries and projects as part of the streamlining effort. He indicated that the member agencies that issue permits along with DEED should be involved. He noted that more would be said on this topic under later items on the agenda.

III. Legal Counsel Report

Mr. Roche informed the Board about the status of a three-part lawsuit in which the EQB is involved. The Minnesota Center for Environmental Advocacy has filed suit against the Board in three counties over a past decision to approve the pipeline routing rules as an alternative form of review. The case has been dismissed in Ramsey County district court. In St. Louis County district court, briefs have been filed and oral arguments will be heard in March. In Clearwater County district court the case will be decided based on filed briefs only. Mr. Roche stated that he has asked the courts to dismiss the EQB from the lawsuits on the basis that districts courts have no jurisdiction over the EQB and that the action should have been taken in the Court of Appeals. Mr. Roche stated he expects that rulings from the two remaining district courts will be issued by June.

Commissioner McElroy asked whether the Ramsey County case had been dismissed in its entirety or only as it applied to EQB. Mr. Roche responded that the case had been entirely dismissed.

IV. Executive Director's Report

Mr. Patton presented a handout outlining planned EQB staff activities. He noted that the information was based on discussions with the EQB Work Group which has been meeting since June. He indicated that the memorandum from him covered "non-project" work of the staff, such as meetings and ongoing administrative functions that the staff is routinely involved in. Mr. Patton then proceeded through the projects' description document page-by-page. On pages one and two are activities related to the Environmental Review program flowing out of the recent rule amendments involving updating several guidance documents. He noted that these do not include the streamlining ideas already mentioned, and that the topic will be addressed later in the meeting under the item on the streamlining report.

Beginning on page two are the two land and water projects that the EQB has agreed to take up following-up on the work of MEI, as endorsed by the Board at its September 2009 meeting. The first project has the goal of aligning the timeframes for planning requirements in the metro area to improve efficiency. The second project is described on page 4 and has to do with improving the coordinated delivery of state assistance to local units on land and water issues. State Water Plan projects are discussed beginning on page 5. Mr. Patton noted that this section of the document did not have the same level of detail as the other sections because the staff wanted to discuss those details with the water planning partner organizations before finalizing the descriptions. Mr. Patton described how the various water planning activities flowed together into the development of the 10-year state water plan, and how the time frames related to the University of Minnesota's preparation of the framework study. He noted that the graphic included in the handout showed the relationships of the various water reports mandated for the EQB under the statutes and framework process.

Mr. Patton noted that the final project, described on page 6, is the Minnesota Basin Integrated Watershed Management project. For this project, the EQB is under contract to the Corps of Engineers to coordinate the state participation in this 5-year, \$8 million Corps project. The goal is to develop tools to improve planning and implementation of water projects in the Minnesota River basin. He noted that the DNR's LIDAR project is an important piece of the necessary \$4 million state in-kind match for the project.

Chair Hugoson stated that the staff and member agencies were now working on updating the regular EAW form and that the schedule for this is what is listed in the document presented by Mr. Patton. He said that the creation of customized EAW forms would follow upon the updating of the regular form. Commissioner Eger asked that Mr. Patton clarify the relationship of the updating of the EAW form resulting from the recent rule amendments and the idea of customized EAW forms later in the meeting under the item on the MPCA streamlining report. Mr. Patton said he would be happy to address the matter at that time.

V. MPCA Presentation on its Report “Groundwater Protection Spending Proposal”

Shannon Lotthammer, MPCA staff, made a PowerPoint presentation on this report which was prepared at the direction of the legislature. The report was prepared in consultation with an interagency work group and outlines the proposed uses of a \$5 million appropriation to the MPCA for groundwater protection as part of a total \$13.6 million Clean Water Fund appropriation for drinking water protection for the FY2010-2011 biennium. The Legislature must approve the spending plan before the appropriated funds can be spent.

Ms. Lotthammer stated that while groundwater is a very important resource for Minnesota for a variety of reasons, its protection is more of a challenge than for surface waters partly because groundwater is not a resource that most people frequently see such as a lake or stream. She noted that 73% of Minnesotans rely on groundwater for drinking water. She also noted that there are already many governmental programs and activities in place that play a role in groundwater protection.

Ms. Lotthammer indicated that there were three overall goals used in developing the spending plan: reflect the State's interagency approach to groundwater management; recognize and build on existing activities; and promote activities to shape long-term groundwater protection. This included trying to position the state to take advantage of additional information that would be coming in the future, including the water reports noted by Mr. Patton in his earlier remarks.

Ms. Lotthammer stated that many existing documents were examined in identifying needs, and that the information generally fell into four common themes: long-term

monitoring; access to existing data and information; support for state and local planning; and implementation activities. She explained that about 75% of the funding in the spending plan is directed to implementation activities, 15% is for enhancing support for groundwater protection aspects of local water planning, and 10% is for enhanced data access and data sharing. She gave some specific examples of activities funded in each sector.

Ms. Lotthammer described that the plan identifies some needs that would not be funded under this appropriation because they did not fit this type of funding but which the work group felt were important to note. One example given was the need to increase the State's analytical laboratory capabilities to measure new types of pollutants that are becoming of concern. In closing, Ms. Lotthammer summarized the status of the review of the spending plan in the Legislature.

VI. Citizens League Presentation on its Report *"To the Source: Moving Minnesota's Water Governance Upstream"*

The report was presented by Annie Levenson-Falk, project manager, and Diane Krizen (sp?), co-chair of the Citizens League Water Policy Study Committee. Ms. Krizen began by describing the mission and history of the Citizens League. She indicated that former legislator and DNR Commissioner Gene Merriam was the co-chair of the water policy study committee. The committee looked at water management broadly, meaning how water is managed for the common good, by units of government but also by private organizations and citizens. The study looked at non-point source water pollution as a case study in governance of water. The study found a lack of data and limited communication of the data that do exist; that the governance system we have could be better coordinated; that government will never be able on its own to deal with water pollution; that it is hard for the public to see its role, and the existing public processes are not adequate; and that we need to change the way our water governance works in order to face today's challenges.

Ms. Levenson-Falk presented the recommendations of the report. She stated the report finds that we need to restructure the resources that we have to address current problems and to tap into under-utilized resources. To use the public as resources we need a different method than what we normally think of as public participation today. The report has three specific recommendations concerning this:

- (1) establish a collaborative model of water governance that engages the public;
- (2) redesign government roles in a fashion that promotes the collaborative model; there are four parts to this recommendations:
 - determining long-term priorities for water policy in Minnesota;

- assigning accountability and establishing benchmarks for measuring performance;
- coordinating among the various government bodies working on the priorities; and
- supporting local governments by supplying data and tools and highlighting examples of good performance as models.

(3) The third recommendation of the study is to create a single online water resource information hub that is accessible and useful to the public.

Ms. Levenson-Falk described how the report presents an example of how a collaborative effort that harnessed the self-interests of the participants has already successfully been used in Minnesota. The example is the Forest Resources Council's development of best management practices for forestry and a certification process for the implementation of those practices on government and private lands. She stated that this is a model that the Citizens League is looking at that might be applied to agricultural non-point sources.

Ms. Levenson-Falk stated that the League was now attempting to work with government, business and other groups to move the recommendations of the report forward.

Chair Hugoson noted that many of the recommendations of this report are timely in view of issues that the agencies and the legislature are looking at today, and he encouraged the Board members and their staffs to keep these recommendations in mind as they deal with the water issues facing the state.

Commissioner Magnan asked if the League had found any examples of where the government has done a good job of presenting data for citizens that could serve as a model. Ms. Levenson-Falk responded that several websites they examined had some common features that they would recommend be used. One example would be a local entrance point so that citizens can access information about water bodies in their area. No one existing website would be a model, in her opinion. Chair Hugoson stated that developing a perfect model would be difficult since there are so many different kinds of information sought for many different reasons, but that we should continue to work to improve access.

Commissioner Eger noted that the MPCA has put a lot of effort into providing data and making it meaningful. He said the context of the data is important, and that simply presenting raw data is often not useful. He encouraged the League to share any further insights with the agencies in the future.

Mr. Bloomberg said that a lot of the themes in the report seemed consistent with what the Board's subcommittee on future directions has been considering. He believes that the State has not done a very good job of telling a coherent story regarding water and other areas. This leads

to confusion and hinders evaluation of efficiency and identification of overlaps and gaps. He noted that the Board can have a unique role in coordination due to its make-up.

Ms. McCarville noted that the MPCA spending plan discussed earlier seems to be consistent with the recommendations in the Citizens League report, for instance with regard to local involvement and assistance for it and regarding coordination. Commissioner Eger said he agreed with Ms. McCarville's point, and also noted that the report is consistent with an important principle of the Clean Water Legacy Act regarding the need for civic engagement. He mentioned how important local leadership has been in the development of TMDL plans for impaired waters, as an example.

Commissioner Magnan asked how the Citizens League saw its role going forward and what its leadership saw as its next steps as we try to build a collaborative model. Ms. Levenson-Falk responded that the first actions would be talking to various organizations to spread the word about the findings. Then they hope to find some situations in various settings where they can test the collaborative model, find out what works and does not, and scale up from there. She described several projects they were looking at doing in an urban setting. The League is also looking for a project in an agricultural setting, and is talking to various groups about that. The third step is to move forward with the recommendation about better information sharing. She noted that there are several bills now in the Legislature that may contribute to that.

VII. Update on University of Minnesota Water Sustainability Framework Project

Professor Deb Swackhamer, project leader, made a presentation to update the Board on developments in this process. She stated that the effort is a 25-year detailed strategic approach to how to manage the state's water to result in sustainable management. She said that three terms are important descriptors of this project: sustainable, comprehensive and integrated. The framework will be presented to the Legislature next January. The approach is highly collaborative, currently involving about 170 individuals. She described the various groups that have been established and their roles in the process, including the Headwaters Council, and the several teams, organized around types of water uses, that will produce "white papers." Each team has from 20 to 40 people on it. She noted that the "synthesis team" that will draft the framework from the input of the other teams and advice of the Headwaters Council has not been named yet, and that many persons are interested in serving on that team; the team will be named in March and begin work in April.

Dr. Swackhamer stated that the Headwaters Council has adopted guiding principles for the project, and summarized them for the Board. There are guiding principles both for the process and the content of the framework. She also described the role of the advisory group that was created to help provide input from stakeholders and the public as well as disseminate information to the public about the effort. She reported that they were in the process of finishing a series of listening sessions around the state, which were jointly held with BWSR. She indicated that there is an online survey and that the project has a goal of getting 10,000 responses by June.

Dr. Swackhamer reported on the status of the white papers from the various teams and the schedule for their completion. When completed, the papers will be posted on the project website for all to view. There are also three papers being prepared for the use of all teams, on water use (completed), water supply (in progress), and water quality (in progress). She noted that these were being compiled from various sources to provide as comprehensive and definite information as possible. However, she noted that there are gaps in what we know about water supply.

Mr. Kramer asked if the listening sessions had resulted in any conclusions or sense of direction or total surprises. Dr. Swackhamer responded that the listening sessions are organized around the survey, with participants responding by “clickers” and the results being analyzed and displayed as they are generated. This allows for group discussion of the responses as they occur. They had found a wide variety of opinions expressed. Jean Coleman, project coordinator, added a description of what had happened at one session that illustrated the wide variety of opinions being expressed. Dr. Swackhamer noted that a comparison of surveys completed by citizens at the State Fair with those completed by a group of water professionals did not match up at all regarding what the issues are or what the priorities should be. Mr. Kramer asked if the project has a way to prevent the same person from answering the survey more than once. Dr. Swackhamer responded that the software did not allow for that, and that it is just something that they must live with, but that they feel that with a goal of 10,000 responses they should be able to minimize any adverse effects from that.

Commissioner Magnan referenced a graphic shown earlier in the meeting by Mr. Patton on the relationship of the EQB reports and the sustainability framework and asked what Dr. Swackhamer’s perspective is on the interaction between them. Dr. Swackhamer responded that there is a lot to gain from the synergy that exists in the overlap, noted that the EQB staff is involved in a number of teams, and will be involved in the synthesis team. The reports should inform one another, and a lot to be gained by working together on the science under both. The reports fill two different needs.

Commissioner McElroy asked if any members on the Headwaters Council represented business or agricultural communities. Dr. Swackhamer went over the membership on the Council that has a background relating to business or agriculture. Commissioner McElroy asked why there was not a guiding principle relating to practicality or affordability and also expressed a concern about not looking beyond the state’s borders in doing the study. Dr. Swackhamer responded that the Council had held a lengthy discussion about a possible principle involving affordability or practicality but had not been able to reach a consensus about one. She also identified several members who come from out of state or otherwise have a regional perspective.

Chair Hugoson asked Dr. Swackhamer to comment on the relationship of public opinion as shown in the survey responses versus that of more scientific information in the formulation of the framework. Dr. Swackhamer responded that the scientific input would come through the white papers prepared by the technical teams. The synthesis team will include policy experts to help turn the technical information into policy recommendations. She stated that the public’s

opinion would not be treated in any sort of statistical way. That information will inform the framework in a qualitative way, but not drive the framework.

At this point a 5-minute break was ordered by the Chair. The meeting resumed at 10:54 a.m.

VII. Presentation on MPCA's December 2009 Report to the Legislature on Environmental Review Streamlining

Beth Lockwood, Manager of the MPCA Environmental Review program, made the presentation on this report prepared for the Legislature with options for streamlining the environmental review process while maintaining or improving the environment. Ms. Lockwood outlined the process by which the report was prepared, including consultation with the EQB staff and staffs of other agencies, and opportunity for comment by the general public. She presented several graphics depicting information from the report about the numbers of EAWs prepared, which units of government prepared them, and the timelines for the reviews. She summarized the report's history of past efforts to reform the environmental review process. She indicated that MPCA had received 70 comment letters following the public input meeting held in September. She stated that the report includes 14 ideas for streamlining the process, but that public opinion is very divided on the advisability of these options.

Mr. Patton made several remarks to the Board regarding the issue of environmental review streamlining. He referenced the directive from the Governor about developing customized EAW forms that was discussed earlier in the meeting. He stated that it was known that there is interest among legislators about streamlining, that some top priority ideas were being discussed by the business and environmental communities, and that there was likely to be a legislative bill introduced containing those top ideas.

Commissioner Eger brought up his earlier question regarding the relationship of the ongoing revision of the regular EAW form and the development of customized forms. Mr. Patton indicated that the staff is in the process of making various updates resulting from the recent rule amendments, including revision of the EAW form. He noted that a draft revised form has been sent to the agencies' Technical Representatives and that comments are due in mid-March. He explained that the revisions to the regular form need to be completed before that form can be customized for specific industries. Mr. Patton also noted that another subject to be decided regarding customization of the EAW form is for which industries will a customized form be developed and what is the order of priority for them. Commissioner Eger asked if the Technical Committee would be the forum for discussion of the questions about the customized forms or if a different process would be followed. Chair Hugoson responded that he envisions pulling together appropriate staff from the agencies to plan a strategy for proceeding with the customization effort, and that the planning can begin relatively soon so that work can begin shortly after the regular form is approved.

Mr. Bloomberg noted that the fact that the mean and median timelines for reviews as noted in the MPCA report are quite different implies that there are significant “outlier” cases in the data. He asked Ms. Lockwood if the study had examined those outliers for common themes that might give insights about streamlining possibilities. Ms. Lockwood acknowledged that there were outlier cases in the data. She indicated that the MPCA has tried to learn from outlier situations and used that information to improve its processes. Mr. Bloomberg stated that in his opinion the 6-month median timelines indicated in the report are reasonable timelines, and that the focus should be on the outliers in terms of finding ways to streamline.

Commissioner McElroy noted that what he hears from businesses is that the total time of the whole regulatory process is what is of concern to them, not just the time for any one component, such as the environmental review process. Thus, he advocates that as policy leaders the Board look at the time for the entire regulatory process. He also noted that for some types of projects the Minnesota is in competition with surrounding states, which have different regulatory processes and in some cases less state-level process.

Ms. McCarville asked Mr. Roche whether the timelines being discussed reflect any delays caused by lawsuits that might be filed to try to stop a project. Mr. Roche responded that as he understands the report, the timeframes being reported relate only to the administrative processes, and thus do not include the times for any court actions. He also noted that the filing of a lawsuit usually does not stop the project from moving forward with permitting and construction, unless the plaintiff gets an injunction from the court, which is rare. However, sometimes when a lawsuit is filed the project’s developer makes a business decision to not proceed while the litigation is still pending. Chair Hugoson agreed that some developers will not proceed until the suit is resolved.

Commissioner Reger stated that streamlining and reform are topics of interest to her, and then asked if the MPCA study had looked at benchmarking against other state processes. Ms. Lockwood responded that this particular study did not involve benchmarking, however several earlier efforts at benchmarking have been done and are reported in the 2007 Technical Representatives report to EQB referenced in the streamlining report. Commissioner Reger inquired about the use of process improvement tools such as the “six sigma” process. Ms. Lockwood responded that the MPCA has used six sigma techniques recently to improve its review processes, although not specifically in connection with this study.

Commissioner Eger followed up on the questions about benchmarking. He reiterated that the report presented today focused only on options for streamlining environmental review. The MPCA has employed six sigma and other process improvement techniques in recent years and has had very positive outcomes in improving its regulatory process. He noted that benchmarking is often brought up and it is something that he asks stakeholders for help with, because it turns out that benchmarking information between states is not easy to obtain. He noted that EPA, which he would have thought would have such information, is not of much help regarding state-to-state benchmarking. Also, it is difficult to get comparable information from other states so it is difficult to make apples-to-apples comparisons.

Chair Hugoson asked if any legislative hearings have been scheduled on the report. Commissioner Eger responded that none have been as yet, although the report was submitted in December.

The meeting was adjourned by the Chair.

DRAFT