



Meeting Minutes

Vermillion River Watershed Joint Powers Board Meeting

June 8, 2023, 1 p.m., In-person and Teleconference using Microsoft Teams

Board Members in Attendance

Dakota County Commissioner Mike Slavik

Dakota County Commissioner Mary Hamann-Roland

Scott County Commissioner Tom Wolf

Others in Attendance

John Powell, City of Farmington, Public Works Director

Georg Fischer, Dakota County, Physical Development Director

Nikki Stewart, Dakota County, Environmental Resources Department Director (virtual)

Brian Watson, Dakota County SWCD, Manager

Zachary Johnson, City of Lakeville, Engineer (virtual)

Mackenzie Cafferty, City of Lakeville, Environmental Resources (virtual)

Jane Byron, City of Rosemount, Stormwater Specialist (virtual)

Marcey Westrick, Minnesota Board of Water and Soil Resources, Central Region Manager (virtual)

Curt Coudron, Dakota County SWCD, Project Mgmt. Supervisor (virtual)

Kevin Bigalke, Dakota County resident (virtual)

Jennifer Wolf, Assistant Dakota County Attorney, VRWJPO Counsel

Travis Thiel, Dakota County, VRWJPO Senior Watershed Specialist

Brita Moore-Kutz, Dakota County, VRWJPO Communications and Outreach Specialist

Paula Liepold, Dakota County, Water Resources Educator (virtual)

Vanessa Strong, Scott County, Water Resources Supervisor (virtual)

Melissa Bokman-Ermer, Scott County, VRWJPO Co-administrator

Mark Zabel, Dakota County, VRWJPO Administrator

1. Call to Order

Meeting was called to order at 1 p.m.

2. Roll Call

Commissioners Slavik, Hamann-Roland, and Wolf were in attendance.

3. Approval of Agenda

The 6/8/23 Special Meeting of the Vermillion River Watershed has one agenda item:

Hiring of the next Vermillion River Watershed Joint Powers Organization (VRWJPO) Administrator, including a potential discussion of the VRWJPO structure.

Res. No. VRW 23-14: Motion by Commissioner Wolf, Second by Commissioner Hamann-Roland and passed on a 3-0 vote to approve the agenda of the 6/8/23 Special Meeting.

4. Hiring of the next Vermillion River Watershed Joint Powers Organization (VRWJPO) Administrator, including a potential discussion of the VRWJPO structure.

Commissioner Slavik asked if there were copies of the relevant documents, by-laws and the empowering Joint Powers Agreement. Staff proceeded to make copies and distributed them a few minutes later in the meeting. Commissioner Slavik introduced the item and commented that the operations of the VRWJPO look very different now compared to when he started as Commissioner eleven years ago. Commissioner Slavik commented that he had never questioned the arrangement of the organization during his tenure and how the staff are provided as employees of the Counties and yet, as elected officials serving a Joint Powers Organization, we would expect to have a little more say in the organization. Things, overall, have been working well, but it doesn't quite function as compared to the way other joint powers that we serve on operate. As policy makers, if things don't go in the right direction we are the ones who get the phone calls. We were able to have conversations with Dakota County staff regarding hiring the Administrator. Commissioner Hamann-Roland asked for clarification on who was involved in these conversations. Commissioner Slavik asked if the hiring manager for this position had talked with her individually about the position. Commissioner Hamann-Roland acknowledged that she had some discussion with the hiring manager. Commissioner Slavik noted that the process conveyed to him was the normal hiring process used by Dakota County in hiring employees. Commissioner Slavik had suggested that the Chair of the Watershed Planning Commission or one of the members of the Joint Powers Board be allowed to sit in the interview process, whether or not involved in the final decision, at least to have involvement in the process. Commissioner Slavik indicated that the suggestion about WPC or Board member involvement was not considered as things were reported to him as going well. Commissioner Slavik suggested that in this transition there should be an opportunity for the Board to review, evaluate, and decide if what is proposed as a process is good, if it should be adjusted, and possibly review for any structural changes. Commissioner Slavik referred to possible by-law changes (WPC by-laws) with requirements set out in the empowering Joint Powers Agreement that we might want to consider cleaning up. This doesn't have to happen in today's conversation, but it should be noted, as the Board members may not have reviewed the content of the empowering Joint Powers Agreement. Commissioner Slavik commented that the current serving members (Slavik, Hamann-Roland, Wolf, Droste, Beer, and recently serving and potentially returning Holberg) have not reviewed the organizational structure and had a discussion about what the right organization should be, we know we are required by statute to have an organization, for that reason the question is: what is the right model? The Joint Powers

Agreement may have been structured like most WMOs in the metro area which operate under contracts where the Boards don't do staff management but contract through others. Commissioner Slavik asked; "what authority does the Board have over the organization that can be exercised?" Commissioner Slavik described a hypothetical situation of staff of the organization determining that an action was appropriate for the organization but the Board did not support the action. Commissioner Slavik was asking what authority does the Board have if staff were doing something that the Board opposed, but staff were doing it anyway?

Counsel Wolf mentioned that currently the Board does not have authority to hire staff. One of the things that is shown in a later slide is making contract management more formal if you want to keep the structure. Georg Fischer indicated that the current Joint Powers Organization basically contracts with the Counties to provide staff to meet the needs of the JPO. In the current arrangement the Environmental Resources Department Director, would select the staff required to meet the needs of the VRWJPO. The VRWJPB sets its budget in fulfillment of the Watershed Management Plan and the Counties then determine the staffing needs and fill those positions. Within the County system, with very few exceptions, only the County Manager position has elected officials directly involved in the selection. Everything below that does not have elected official involvement.

Mark Zabel added that in this arrangement there is a small complement of staff that are directly assigned to the VRWJPO, but the arrangement also allows the VRWJPO to access other County staff if certain services are required. As an example, Mark referenced that if there was a need for survey work the VRWJPO could request those services from the County and a County survey crew could be dispatched to complete the work and their work hours would then be charged to the VRWJPO. Mark commented that he believes the same type of staff availability is also provided on the Scott County side. Mark commented that he agrees that the operation of the VRWJPO has transformed over time. Mark mentioned that when he and Travis came on the VRWJPO in 2008 the organization had completed their Watershed Plan (2005) and local governmental units were in the process of incorporating the VRWJPO standards into ordinances. Mark mentioned that he was involved with several public meetings in that process and at the time there was some mistrust of the organization. Since that time relationships have developed and there seems to more trust. Also, since the advent of the Watershed-Based Implementation Funding there is also more direct grant funding available to the watershed area allowing more projects to be completed outside of using only VRWJPO funding.

Commissioner Hamann-Roland asked what advantage there is to have the VRWJPO as opposed to the Counties independently managing the portions of the watershed in their County jurisdiction. Mark commented that the VRWJPO does not own assets and so maintains a very low risk exposure for the organization. All of the work done by the VRWJPO is in partnership and collaboration with others. Commissioner Slavik commented that does not directly answer Commissioner Hamann-Roland's question. The question was regarding having each County manage their portion of the watershed. Mark responded that having the Counties manage the watershed areas separately is the fallback position provided in statute. If a Joint Powers Organization or a Watershed District is not implementing through the planning process they

would be declared as non-implementing by the Minnesota Board of Water and Soil Resources and those entities within that organization (Cities, Townships, etc.) would have to choose what they are going to do. The previous iteration of this joint powers was a joint powers of cities and townships. That organization was declared as non-implementing when one of the townships would not agree to the next version of the watershed plan. When that happened, the management would have reverted to the two Counties. The two Counties chose to form a new joint powers organization between the two Counties for watershed management as opposed to having the two pieces separated. Even though the Scott County portion is a small part of the whole watershed, practical management of the overall watershed makes sense as Dakota County in partnership can assist in projects occurring in Scott County in the upstream area of the watershed.

Georg Fischer suggested moving to the slide presentation as the contents of the presentation may answer many of the questions Board members have. Commissioner Hamann-Roland commented that her understanding is that the statute authorizes the Counties to form a Joint Powers Organization, but it does not mandate that it exists. Georg Fischer indicated that some type of structure must exist to fulfill the requirements for watershed management, it could be the Counties, it could be a JPO, it could be a watershed district. All those options will be discussed.

Mark Zabel provided the presentation covering the existing structure under the Joint Powers Agreement, the roles of the Joint Powers Board, the essential services provided through the VRWJPO. Mark presented the current structure and organizational chart of the organization. Mark covered the assignment of staff complement and how those services are tracked and billed to the VRWJPO. Mark then covered additional services provided to the VRWJPO from the Counties, such as technology, employee relations, procurement and contracting, facilities, fiscal agency, legal, administration, insurance, and fleet services. Mark reported on the organizational review completed through the BWSR Performance Review and Assistance Program and the positive response in the review.

Scott County recently completed a Watershed Management Study. Vanessa Strong from Scott County presented on the Watershed Management Study and the Report from that Study. The Study was to evaluate governance toward efficient, effective, and collaborative delivery of water resource solutions for residents. Phase I of the Study looked at similar studies done within the metro area and the existing services from the Scott WMO, Scott SWCD, and Prior Lake – Spring Lake Watershed District. This phase also explored all potential governance options and sought input from a Steering Committee and Technical Committee with broad representation. The outcome of the Study determined to leave the structure as is as that would provide the best service delivery.

Mark Zabel continued the slide presentation with the five potential governance options. The first is to leave things as is. Georg Fischer described the staffing procedures applied over the last ten years including input on organizational performance. The Environmental Resources Department Director would reach out to the VRWJPO Board Chair to determine if the JPO was

receiving the services required. Commissioner Hamann-Roland asked Commissioner Slavik if that process has worked well or are improvements needed. Commissioner Slavik responded that there were some points in the last decade with some frustrations in where this organization was going. There was a time after the current plan was completed when this Board seemed at odds with staff on some things, and it took some sausage making to get it figured out. I think we've landed on a very good side. Watershed-Based Implementation Funding that has come in and that has helped with funding projects in the watershed. Commissioner Slavik noted some communication issues over the years with our elected stakeholders, but that hasn't been the case in communication with staff level partners. Commissioner Slavik mentioned some past issues where policy of the VRWJPO didn't quite fit with what some cities wanted to do. Commissioner Slavik suggested the same question go to Commissioner Wolf who has been here longer. Commissioner Slavik stated he thinks the VRWJPO has gotten to a very good spot.

Mark Zabel continued with presenting the second option which is to continue with a *status quo* approach with some modifications. The empowering Joint Powers Agreement would be retained and a service agreement between the VRWJPO and Dakota County would be developed to establish clear expectations for the Administrator in interaction with the Board. Jennifer Wolf provided that under this option a service agreement would be developed between the VRWJPO, Dakota, and Scott County so that the expectations between staff and the Board are established so that the potential policy concerns can be addressed and further delineate liaison activity and how that would work. While the Counties would still retain employment of staff, the Board members would have more input on the how and the why through the Administrator and whoever fills that role would have written expectations to be fulfilled.

Mark Zabel continued with the third option which would amend the empowering Joint powers Agreement to create employment policies and procedures. Jennifer Wolf commented that this option opens the empowering Joint Powers Agreement to amendment, which would mean taking the agreement to both County Boards for review. There would be some additional opportunities to address other changes desired in the agreement. One area might address the Watershed Planning Commission to allow more flexibility to the format of their meetings by clearly identifying the advisory nature of the Commission. Commissioner Hamann-Roland asked if the Watershed Planning Commission is not currently advisory. Jennifer responded that it is advisory, but that the empowering Joint Powers Agreement stipulates that the Commission must meet requirements of Minnesota Open Meeting Law (M.S. 13D). The inclusion of that reference limits flexibility for meeting format even though the function of the Commission is purely advisory to the Vermillion River Watershed Joint Powers Board. The Commission has no direct decision-making authority.

Commissioner Slavik noted that the Vermillion River Watershed Joint Powers Board, as the decision-making authority, must meet Minnesota Open Meeting Law requirements, but a small change within the empowering Joint Powers Agreement would allow the Commission, with only advisory and no decision-making authority, to have more meeting flexibility. Commissioner

Hamann-Roland asked if most Planning Commissions need to meet Minnesota Open Meeting Law. Mark Zabel commented that most Citizen Advisory Committees for Watershed Management Organization are completely advisory in their function. Jennifer clarified that a Committee that is not comprised of a quorum of elected officials and is advisory in nature is not a committee under Minnesota Open Meeting Law. Brian Watson noted that other Watershed Management Organizations in Dakota County generally maintain a technical advisory group which does not have decision making authority and don't have to meet requirements of Minnesota Open Meeting Law. Those groups are not made up of elected officials but generally are attended by staff level personnel.

Jennifer continued by noting that if this third option were pursued there would be a great deal of involvement in setting policies for employments, developing job descriptions, Employer Identification Number establishment, disciplinary actions, etc. Commissioner Hamann-Roland asked if Commissioner Slavik saw a financial advantage to this third approach. Commissioner Slavik asked Jennifer for a response. Jennifer Wolf commented that it depends and looking at what the Counties are charging back it could be a wash. Jennifer commented that in her experience smaller organizations sometimes struggle with this. It's great if things are going well, but will struggle if there are challenges to be dealt with and that would require more direct Board involvement. Jennifer Wolf noted that the organization could get an equivalent service depending upon how it is structured; there would just be more steps to achieve that. Commissioner Hamann-Roland commented that there is potentially additional work to developing an appropriate structure under this third option and was wondering if that structure would then provide a financial advantage offsetting the investment of time and effort to create a new structure.

Commissioner Slavik asked Georg Fischer to add to the conversation regarding costs. Georg Fischer commented that staff costs may be a wash but wanted to note that there are other costs involved outside side of staff costs, such as facility and other support costs.

Mark Zabel continued with the fourth option which would be to form as a watershed district. Mark Zabel indicated that there are watershed districts that address watershed management issues within the seven-county metropolitan area. Watershed districts are formed under Minnesota Statute 103D. Watershed districts are managed by a Board of Managers. Managers are appointed by County Boards. Watershed districts operate autonomously under the management of their Board and have taxing authority.

Mark Zabel continued with the last option, option 5, which was mentioned earlier. This is the fallback option as required under Minnesota Statute 103B, where, if the Counties were to dissolve the joint powers or failed to develop a Watershed Plan they would be declared as non-implementing and the responsibility for watershed management would revert to the individual Counties to manage water resources independently within their own boundaries.

Commissioner Wolf asked if that meant that the VRWJPO could allow the Plan to expire. Mark answered that would be possible, although the Counties would still need to do the associated

work independently. Commissioner Wolf asked if there would be savings or losses in that scenario. Commissioner Slavik asked staff for a response of what would be the pros and cons of dissolution of the joint powers and have the Counties independently address the needs of the watershed. Melissa Bokman-Ermer commented that the current organization works pretty efficiently and provides opportunities for work in the headwaters with benefit to downstream areas. Commissioner Slavik commented that a great deal of work could be done in the downstream areas but if issues occurring in the upstream areas weren't being addressed appropriately it could diminish those other efforts. Brian Watson commented that this option really doesn't meet the needs and concept of watershed-based management. When considering back to 1998 and the organization that existed for watershed management for the Vermillion River at that time and their dissolution and why that happened. Under this option there would no longer be an entity where residents or others could come in to talk about watershed management and their individual needs or concerns. They would go to the respective Counties rather than an entity specifically organized to address the watershed related issues.

Commissioner Slavik asked Commissioner Wolf if he had further questions on this option. Commissioner Hamann-Roland asked if Commissioner Wolf thought the organization and its management is broken. Commissioner Wolf said no, it's not. Commissioner Slavik stated that it's not broken but it could be better. He went on to indicate that option 2 is his preferred option.

Commissioner Slavik commented that there were some points in the past where he felt previous Board colleagues were very frustrated in the direction this organization was going. Commissioner Hamann-Roland asked when that was. Commissioner Slavik said he couldn't be specific. Some of this had to do with some issues that were raised in strategic planning that occurred some years ago at Camp Sacajawea. Commissioner Slavik commented that this was before Commissioner Hamann-Roland was on the VRWJPB and that during her time of service the situation has been very positive. Commissioner Slavik commented about a subcommittee that was developed to address issues associated with amendments to the VRWJPO standards. It got resolved and the process worked well but was concerned when some township officers raised questions that was causing some concerns. Commissioner Slavik has met with Georg every year and for the past five years or so has agreed that VRWJPO staff have been doing great work. In the last five years or so, the VRWJPO seems to be more responsive and they understand some of the dynamics the elected officials have.

Commissioner Slavik continued that he really believes that the Board should have a say in how the Administrator is expected to manage the organization and interact with the Board. Commissioner Slavik asked Brian Watson if the SWCD has a contract with North Cannon River Watershed for administrative services. Brian said the Dakota SWCD does have a Joint Powers Agreement (contract) to provide administrative services for the North Cannon WMO. Commissioner Slavik said he was interested in something similar, not getting into an annual work plan, but providing an avenue for resolving concerns. Commissioner Slavik commented that when conflicts arose in the past he would talk to Georg and it got better. So it worked how

it was supposed to work. Commissioner Slavik continued that, at the strategic planning meeting at Camp Sacajawea, Commissioner Wolf and Commissioner Holberg had expressed some frustration so we went to Georg and it was addressed. Commissioner Slavik stated that he would like to avoid this happening again.

Commissioner Slavik continued he has sometimes wondered, and felt this personally, why the Board is even here as staff kind of just do the things they want to, why don't we just let them do their part, but, Commissioner Slavik added in the last five years has not been the case. Commissioner Slavik said that he feels staff truly listen to and value the input he gives. So everything has gone very smoothly and without issues except there have been some historical concerns and so it would be nice to not run into that situation again. Commissioner Hamann-Roland asked if there was a pattern. Commissioner Slavik responded that it was significant and the three elected officials were not being listened to. Commissioner Slavik asked for Commissioner Wolf to add. Commissioner Wolf asked of going forward, what do we want. Of the five options shown, what do we want? Commissioners Wolf and Hamann-Roland suggested option 2. Commissioner Slavik stated that he thinks there should be something more formalized with Dakota County with a contract so the expectations are clear that addresses some of the things that are, Dakota County makes the hire they do the stuff in here, but we have something more formalized in how that is done. Jennifer asked if they want Counsel to work on the agreement if the Board would also take up if they would waive any conflict since Counsel represents both parties. Commissioners all consented to waive any conflict. Commissioner Hamann-Roland asked if option 2 provides an improvement in best practice. Jennifer responded that yes, providing an agreement that specifies expectations could improve practices.

Brian Watson commented that the SWCD agreements with three watersheds in Dakota County (North Cannon, Lower Mississippi, Eagan-Inver Grove) are strictly a contract for services on an annual basis. If they don't like what we're doing, we don't get a contract the next year. It doesn't address personnel management, so he, as Manager, is responsible for assigning a staff person to carry out administrative duties for the watershed they are assigned to. Georg Fischer commented that the empowering Joint Powers Agreement is basically that, it says the County is going to provide those services. Option 2 will codify some of the discussions that have occurred around expectations for the Administrator and organization including details of what the County is expected to provide. It is really taking existing practices and codifying them. Georg Fischer noted that as Commissioner Slavik has said, the existing practices are working very well and the organization is performing extremely well.

Commissioner Slavik asked Board members regarding the hiring of the Administrator and what role they might want to have and if conversations with the hiring manager suffice. Commissioner Slavik stated that he supports this approach but wants a public discussion before going ahead with the hiring process. Georg Fischer commented that since the Administrator is a County employee, the County conducts the hiring. Continuing with best practices, Nikki Stewart has requested Board input before posting of the position. As part of the County hiring process, Board members would not participate in the interviews. But we can definitely have a lot of

feedback or provide a lot of information and guidance on what type of individual you are looking to recruit, what skill sets we're looking for, and the questions can help us get to the sense of your input and guidance. In the current process it would be Nikki Stewart's decision on who to bring in, but that decision would be guided by whatever information the Board provides. Commissioner Slavik commented that he is comfortable with that.

Commissioner Slavik asked if information on the County hiring process and position description would be ready for the next Joint Powers Board meeting. Nikki Stewart committed to having the information ready. She has had the position information ready to go and was just waiting for the feedback from the Board members. Commissioner Slavik indicated that having discussion in a public meeting on this is appropriate and after will follow the process to fill the position.

Mark Zabel closed the discussion commenting that ultimately the responsibility of the VRWJPO staff is the implementation of the Watershed Plan. In the context of this whole conversation the responsibility of implementing the Watershed Plan needs to be acknowledged. Georg noted that the Board formally adopts the Watershed Plan. Commissioner Slavik responded that he has some concerns with some of the content of the current Watershed Management Plan so as the VRWJPO develops its next Watershed Management Plan the Board members pay attention to the development.

Adjourn

Motion by Commissioner Wolf, Second by Commissioner Hamann-Roland and passed on a 3-0 vote to adjourn the meeting at 2:09 p.m.


Next Meeting Date: Thursday, June 22, 2023, at 1:00 p.m. in Conference Room A at the Dakota County Extension and Conservation Center, 4100 220th Street West, Farmington, MN.

Respectfully submitted by

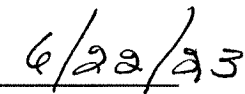
Mark Zabel

Administrator for the Vermillion River Watershed Joint Powers Organization

Attest



Commissioner Secretary/ Treasurer



Date