

LEGISLATIVE-CITIZEN COMMISSION ON MINNESOTA RESOURCES

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Susan Thornton, Director

MINUTES

Thursday, February 18, 2016

9:00 a.m. – 12:30 p.m.

State Office Building, Room 200

St. Paul, MN 55155

Members Present: Nancy Gibson, Rep. Tom Hackbarth, Bonnie Harper-Lore, Sen. John Hoffman, Norman Moody, Rep. John Persell, Sen. David Tomassoni, Rep. Paul Torkelson, Rep. Jean Wagenius

Staff Present: S. Thornton, M. McDonough, M. Banker, D. Griffith

Members Excused: Jeff Broberg, Sen. Gary Dahms, Sen. Kari Dziedzic, William Faber, Gary Lamppa, Rep. Denny McNamara, Sen. Torrey Westrom, Della Young

Co-Chair: Nancy Gibson

1. [00:00:41] Approve the minutes for December 10, 2015

Co-Chair Gibson started the meeting at 9:15 a.m.

MOTION: Commissioner Torkelson moved to approve the minutes for December 10, 2015 – motion prevailed.

Commissioner Torkelson withdrew his motion because a quorum was not present. The approval of the minutes will be considered at the next LCCMR meeting.

2. [00:01:00] Members report potential conflicts of interest regarding today's business

MS 116P.09 Subd 6 Conflict of interest. A commission member, technical advisory committee member, a peer review panelist, or an employee of the commission may not participate in or vote on a decision of the commission, technical advisory committee, or peer review panel relating to an organization in which the member, panelist, or employee has either a direct or indirect personal financial interest. While serving on the commission, technical advisory committee, or peer review panel, or being an employee of the commission, a person shall avoid any potential conflict of interest.

Members reported no conflict of interest for today's meeting.

3. [00:01:11] Request for time extensions and additional adjustments in the Environment and Natural Resources Trust Fund Appropriations Bill for the 2016 MN Legislative Session Funding Recommendations from the Environment and Natural Resources Trust Fund (ENRTF) – LCCMR Staff

Susan Thornton reviewed the time extensions and additional adjustments requested for the Environment and Natural Resources Trust Fund Appropriations Bill for the 2016 MN Legislative Session.

MOTION: Commissioner Wagenius moved the recommendation by the members present to incorporate the staff recommendations on time extensions and adjustments be included in the Environment and Natural Resources Trust Fund Appropriations Bill for the 2016 MN Legislative Session – motion prevailed (8 members present).

4. [00:14:00] Peer Review process update for M.L. 2016 ENRTF Recommendations

Michael McDonough explained there are 35 M.L. 2016 recommendations that are being peer reviewed.

Jeff Broberg, Sen. Gary Dahms, Sen. Kari Dziedzic, William Faber, Nancy Gibson, Rep. Tom Hackbarth, Bonnie Harper-Lore, John Hoffman, Gary Lamppa, Rep. Denny McNamara, Norman Moody, Rep. John Persell, Sen. David Tomassoni, Rep. Paul Torkelson, Rep. Jean Wagenius, Sen. Torrey Westrom, Della Young

5. [00:19:14] Withdrawal – M.L. 2015, Chp. 76, Sec. 2, Subd. 08i “Flood Recovery on Sargent Creek Duluth Habitat Restoration”, \$300,000, City of Duluth

Susan Thornton explained that the City of Duluth requested to withdraw their appropriation M.L. 2015, Chp. 76, Sec. 2, Subd. 08i “Flood Recovery on Sargent Creek Duluth Habitat Restoration” because they received other state dollars to do the work.

Members asked if the dollars could be transferred to the Emerging Issues Account or if the dollars could be appropriated to another project. Susan Thornton explained that the appropriation could stay as is and cancel, could be transferred to another appropriation or be transferred to a new project.

Members agreed they do not want to see the dollars returned to the corpus and would like to see the dollars transferred.

MOTION: Commissioner Persell moved that it was the recommendation by the members present to recommend to the legislature to transfer the \$300,000 from M.L. 2015, Chp. 76, Sec. 2, Subd. 08i “Flood Recovery on Sargent Creek Duluth Habitat Restoration” to M.L. 2015, Chp. 76, Sec. 2, Subd. 10 “Emerging Issues Account” – motion prevailed (8 members present).

6. [00:36:19] Overview of the Office of Legislative Auditor (OLA) audit report for the Environment and Natural Resources Trust Fund and the Legacy Parks and Trails Fund – Cecile Ferkul, OLA

Cecile Ferkul (Deputy Legislative Auditor) and Carmen Marg-Patton (Auditor) from OLA provided an overview of the audit report titled “Environment and Natural Resources Trust Fund - Internal Controls and Compliance Audit - July 2012 through February 2015” for the Environment and Natural Resources Trust Fund (ENRTF). See Attachment #1 – OLA Audit report titled “Environment and Natural Resources Trust Fund - Internal Controls and Compliance Audit - July 2012 through February 2015” for the Environment and Natural Resources Trust Fund (ENRTF).

Ms. Ferkul stated the audit for the Environment and Natural Resources Trust Fund was done in partnership with the audit for the Parks and Trails Fund and the audit team was consistent between the two audits and the audit work was primarily on the Department of Natural Resources (DNR), the Metropolitan Council and for the ENRTF they also looked at expenditures at the University of Minnesota (U of MN) in partnership with the U of MN Internal Audit Office.

Ms. Ferkul said the conclusions of the audit were that the U of MN complied with the requirements of the ENRTF and have the controls but there is an issue related to the U of MN but it doesn't deal with noncompliance or controls but more of a statutory question. Ms. Ferkul said their conclusion with the Metropolitan Council was that their controls were not adequate and had some instances with noncompliance.

Ms. Ferkul explained that there conclusions are in three levels: (1) controls are adequate; (2) generally adequate; and (3) internal controls are not adequate or there was noncompliance. Ms. Ferkul explained the Metropolitan Council was considered a level three and DNR was considered a level two.

Ms. Ferkul reviewed the background, audit objective, scope, methodology and audit criteria as stated in the report.

[00:43:24] Finding 1:

The Metropolitan Council did not have adequate internal controls and did not sufficiently monitor whether grant recipients used Environment and Natural Resources Trust Fund money in compliance with state laws.

Members asked if Metropolitan Council has significantly different procedures than State Agencies when it comes to monitoring the ENRTF appropriations. Ms. Ferkul explained the Metropolitan Council does not have to follow the State Agencies policies so they recommend Metropolitan Council look at what is required at the state level.

[00:49:13] Finding 2:

Land purchased by a Metropolitan Council grant recipient did not comply with legal requirements prohibiting the use of Environment and Natural Resources Trust Fund money for the purchase of residential structures.

Members asked what entity was involved with this finding. Ms. Ferkul said it was Three Rivers Park District.

[00:50:18] Finding 3:

The Metropolitan Council did not ensure its grant recipients complied with a statute requiring entities to record a notice of funding restrictions when purchasing land with money from the Environment and Natural Resources Trust Fund.

[00:51:54] Finding 4:

The Department of Natural Resources could not show how administrative costs allocated to the Environment and Natural Resources Trust Fund complied with the requirement that all costs must be "directly related to and necessary for" specific projects or activities listed in the appropriation law.

Members discussed direct and necessary costs. Ms. Ferkul explained all state agencies struggle with the issue of direct and necessary costs.

[01:00:50] Finding 5:

The statute governing how the state pays money appropriated from the Environment and Natural Resources Trust Fund to the University of Minnesota is in conflict with the statute governing the investment of trust fund money.

Ms. Ferkul said when the legislature makes an appropriation to the U of MN there is a statute that says that money gets delivered to them in 12 equal monthly payments over the year that the money was appropriated but many of the projects are more long term than a year so the U of MN invests the money. The investment earnings then goes to the U of MN general operations. Ms. Ferkul says it's a problem that has grown in recent years because the appropriations to the U of MN have increased and when the auditor reviewed the account in February 2015 the U of MN had about \$17.7 million (this is in conflict with the ENRTF statute) on hand in their investments that they were earning investment money from. Ms. Ferkul said that the money should be staying in the ENRTF so that the ENRTF could be earning the investment income and can be used for trust fund appropriations. OLA's staff recommendation is for the LCCMR review this and make modifications to the statutory language to allow for a different kind of payment schedule to the U of MN to alleviate this issue. In response to the report, the U of MN concurs to have that discussion to resolve this issue. Ms. Ferkul also noted, if you look at the statute that directs how the money goes to the U of MN there is already a consideration in there related to money that comes from general obligation bonds so that they receive that money in a different way than 12 equal monthly payments and OLA staff suggests that the LCCMR review that language as a way to provide the money to the U of MN.

Members agreed to have staff work on language to correct Finding 5 in the audit report for the Environment and Natural Resources Trust Fund. Susan Thornton said she will work with the appropriate House and Senate staff, U of MN staff, and MN Management and Budget staff. Ms. Ferkul stated that state agencies and pass-thru project dollars stay in the ENRTF fund until expended and only the U of MN receives the dollars in advance.

Commissioner Hoffman stated he would author a bill this legislative session to address the OLA findings at the University of Minnesota.

Cecile Ferkul and Carmen Marg-Patton from OLA provided an overview of the audit report for the Legacy Parks and Trails Fund. Members discussed.

7. [01:33:01] Responses to audit findings, if requested

- Koryn Zewers – U of MN

Ms. Zewers said they are more than willing to work with everyone to change the statutes in order to make them work.

Commissioner Hoffman's Question #1 - Where is that money that you received residual income from sitting right now and what was the intentions of the U of MN to utilize that money that belongs to the ENRTF? Ms. Zewers said the investment earnings from the ENRTF were distributed based on the 1/12th disbursement that is in state statute and are a part of the U of MN investment earnings and as Ms. Ferkul discussed earlier those investments earnings are pooled with other investment earnings. Ms. Zewers said she will go back and do an analysis related to \$17 ½ million to look at how much investment earnings the U of MN had related to that time period. Ms. Zewers said she does not have that information here today.

Commissioner Tomassoni asked if the U of MN is not spending the money on the project that it was allocated for? Ms. Zewers said based on the projects the funds were being spent based on the research that was being done or the work that was being done so it depends on the appropriation and how that work was actually being done so if the appropriation was for one fiscal year and the work was spread across five fiscal years then the dollars would have been distributed in the first fiscal year but the work would have continued across those 5 years so it is not necessarily that the work was not being done in the way it was presented it is just that the appropriation didn't necessarily match up with the timing of the work.

Commissioner Hoffman said based on that answer there should be a record of how different various departments either did or did not spend that money because it is his understanding that there is a budget and a timeline that is established within these appropriations.

Hoffman's Question #2 – Provide detailed explanation of those timelines and that money either not being spent or being spent. Chart it out to better understand it. Ms. Zewers responded that information would be spread across the various departments but they could gather that information.

Commissioner Hoffman's Question #3 - What kind of timeline estimate could you give us this information? Ms. Zewers said she would need to go back and check with the various people at the university and is not quite sure how long it would take especially in terms of the investments earnings and since the dollars are spread across various departments she would have to look into that but could get back with an answer very quickly. Commissioner Hoffman said that session is very short and he would like to create a bill to explain or change how this is done so he would like a response before March 8th and some actionable items after that.

Susan Thornton said that the LCCMR receives expenditure reports from the U of MN every six months from each appropriation at the U of MN and these were provided to the auditor.

When an appropriation has been completed the remaining balance is returned to the ENRTF for deposit back to corpus of the ENRTF.

- **Barb Juelich, MN DNR**

Barb Juelich from the MN DNR explained all the changes made at the MN DNR regarding direct and necessary expenditures from the ENRTF. Members discussed.

- **Mary Bogie and Emmett Mullin, Metropolitan Council**

Mary Bogie and Emmett Mullin from the Metropolitan Council reviewed the letter they sent in response to the audit. Members asked about the corrections to the deed. Ms. Bogie said they are reviewing all deeds to assure they are in compliance.

Commissioner Wagenius suggested creating a checklist when final reports are submitted to the LCCMR. Ms. Thornton agreed to add to the LCCMR checklist for final reports evidence of the deed restriction. Metropolitan Council is also correcting their procedures and LCCMR will require proof before a final report is approved.

Ms. Bogie said Metropolitan Council and Three Rivers Park District staff reached agreement to return the \$382,744 dollars from M.L. 2009, Chp. 143, Sec. 2, Subd. 04c titled "Metropolitan Regional Park System Acquisition", Metropolitan Council, \$1,290,000.

8. **[02:08:44] Emerging Issues Account - Update on the request to transfer from the FY 2016 appropriation M.L. 2015, Chapter 76, Section 2, Subd. 10, Emerging Issues Account appropriated to the LCCMR a total of \$93,000 to the Science Museum of Minnesota, St. Croix Watershed Research Station and \$71,000 to the University of Minnesota St. Anthony Falls Laboratory – Governor approved January 26, 2016**

Susan Thornton reviewed the dollars allocated from M.L. 2015, Chp. 76, Sec. 2, Subd. 10 "Emerging Issues Account".

Members already approved the work plan portion for these dollar amounts at the LCCMR meeting on December 2, 2016 contingent on the approval by the Governor.

Members affirmed the work plan approval for "Tracking and Preventing Harmful Algal Blooms", \$93,000, Science Museum of Minnesota, St. Croix Watershed Research Station and "Assessing the Increasing Harmful Algal Blooms in Minnesota Lakes", \$71,000, University of Minnesota St. Anthony Falls Laboratory (9 members present) as approved by the Governor.

LCCMR Work Plan Approval for:

- **"Tracking and Preventing Harmful Algal Blooms", \$93,000, Science Museum of Minnesota, St. Croix Watershed Research Station**
- **"Assessing the Increasing Harmful Algal Blooms in Minnesota Lakes", \$71,000, University of Minnesota St. Anthony Falls Laboratory**

9. **[02:17:48] Update on LCCMR 2017 ENRTF Request for Proposal (RFP) – Beginning FY2018**

Susan Thornton reminded members the draft submissions are due by March 11 and all proposals are due by March 21, 2016.

10. **[02:20:28] Other business (as needed)**

- **Next steps in the process**
- **Next meeting Tuesday, June 7, 2016**

Members reviewed the adopted LCCMR calendar and additional informational items in today's meeting packet.

11. **Adjourn**

The meeting adjourned at 11:40 a.m.

