



1
2 APPROVED Minutes of the Regular Meeting of the Brown's Creek Watershed District Board of
3 Managers, Wednesday September 12, 2018 at 6:30 PM

4
5 Family Means, 1875 Northwestern Avenue south
6 Stillwater, MN 55082

7
8 **ROLL CALL**

Managers Present:	Others Present:
Craig Leiser, President	Karen Kill, Administrator
Sharon Schwarze, Vice President	Carmen Simonet, Recorder
Gerald Johnson, Treasurer	Michael Welch, Smith Partners, BCWD counsel
	Camilla Correll, EOR, BCWD engineer (arrived 7pm)
Managers Absent:	Cameron Blake, BCWD staff
Connie Taillon	Ryan Fleming, EOR, BCWD engineer
Anne Maule Miller, Secretary	Stu Grubb, EOR, BCWD engineer (arrived 7:45pm)
	Mary Peterson, CMC
	Kirk Schultz, Madison Hospitality Group, LLC
	Richard Schubert, BCWD Resident
	Suzanna DeMoss, BCWD resident

9
10 **1) Call Regular Meeting to Order @ 6:30 PM**
11 President Leiser called the Regular Meeting to order at 6:30PM.

12
13 **2) Approve Regular Meeting Agenda and Discussion Agenda**
14 The following items were removed from the agenda: consent agenda item 4a) Approve
15 Board Meeting Minutes of the August 15, 2018 Special and Regular Meeting, 6b) BCWD
16 Permit #18-08 Holiday Inn Express – schedule special meeting.
17 **Manager Schwarze moved, seconded by Manager Johnson, to approve the Regular**
18 **Meeting agenda and discussion agenda as amended. Motion carried, vote 3/0.**

19
20 **3) Public Comments**
21 Kirk Schultz, Madison Hospitality Group, LLC said that he represents the Holiday Inn
22 Express project currently seeking a BCWD permit and is here to express his frustration
23 with the BCWD permit application process and particularly over communications with
24 the District engineer. He stated that a lack of clarity about requirements has cost him
25 considerable time and money, as his engineer has been required to produce redesigns and
26 resubmittals. He also asserted that the process has held up construction until next year.

The managers acknowledged Mr. Schultz’s frustration, noting that while BCWD has established water-quality standards to fulfill its mandate to protect water resources, it is not BCWD’s intent to delay his project. President Leiser offered to hold a special meeting at no cost to hear the permit request. Mr. Schultz responded that it will take his engineer longer than that to redesign the plan and he will resubmit for the October meeting.

4) **Consent Agenda**

Manager Johnson moved, seconded by Manager Schwarze, to approve the consent agenda:

- **Accept the permit fee statement as presented.**

Motion carried, vote 3/0.

5) **Treasurer’s Report**

a) **Review Authorized Funds Spreadsheet**

Administrator Kill presented the authorized funds spreadsheet.

Manager Schwarze moved, seconded by Manager Johnson, to approve the authorized funds spreadsheet as presented. Motion carried, vote 3/0.

b) **Current Items Payable – Board Action**

Manager Johnson moved, seconded by Manager Schwarze, to approve payment of bills as presented in the amount of \$62,698.62.

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
<u>Manager Johnson</u>	<u>X</u>			
<u>Manager Leiser</u>	<u>X</u>			
<u>Manager Maule Miller</u>				<u>X</u>
<u>Manager Schwarze</u>	<u>X</u>			
<u>Manager Taillon</u>				<u>X</u>

Motion carried 3/0.

Treasurer Johnson reported a total balance of \$851,915.94 after payables.

6) **Permits**

a) **BCWD Permit 13-19 Stillwater National Guard Maintenance agreement – Board Action**

Michael Welch, Smith Partners reviewed the maintenance agreement between BCWD and the Minnesota Department of Military Affairs, noting that the National Guard’s commitment to stormwater facility maintenance is subject to the mandates of its role in national security – a position the managers may find reasonable. He stated that the agreement represents the firmest commitment BCWD is likely to get.

Manager Schwarze moved, seconded by Manager Johnson, to approve the maintenance agreement between the Brown’s Creek Watershed District and the Minnesota Department of Military Affairs for permit 13-19 Stillwater National

Guard, and to authorize the Administrator to sign on behalf of BCWD. Motion carried, vote 3/0.

7) 2019 Budget

a) Public Hearing 2019 Budget

President Leiser recessed the regular meeting at 6:55pm and opened the public hearing for the proposed 2019 budget and noted the public hearing will be recorded.

Administrator Kill reported the proposed 2019 budget is a 0.9% increase over the current budget. One change to the budget since the August 15, 2018 meeting is the removal of \$5,000 from the Woodpile Lake Management Plan Implementation project.

President Leiser asked for public comment and there was none. President Leiser closed the public hearing at 7:00pm and called the regular meeting back to order.

b) Resolutions to Approve Budget and Levy – Board Action

Manager Schwarze moved, seconded by Manager Johnson, to adopt resolution 18-05 Brown’s Creek Watershed District Board of Managers 2019 Budget Resolution with an Operating and Capital Budget totaling \$1,488,030, including \$1,295,530 for Management Plan Implementation and \$192,500 for Operations.

	Yea	Nay	Abstain	Absent
<u>Manager Johnson</u>	<u>X</u>			
<u>Manager Leiser</u>	<u>X</u>			
<u>Manager Maule Miller</u>				<u>X</u>
<u>Manager Schwarze</u>	<u>X</u>			
<u>Manager Taillon</u>				<u>X</u>

Motion carried 3/0.

President Leiser moved, seconded by Manager Johnson to appoint Manager Schwarze secretary pro tem. Motion carried. 3/0.

Manager Johnson moved, seconded by Manager Schwarze, to adopt resolution 18-06 Brown’s Creek Watershed District Board of Managers Certified 2019 Tax Levy Resolution: All Funds totaling \$1,102,630, including \$167,500 for the General Fund as provided by MN Statute 103D.905 and \$935,130 for the Management Planning Fund as provided by the MN Statute 103B.241.

	Yea	Nay	Abstain	Absent
<u>Manager Johnson</u>	<u>X</u>			
<u>Manager Leiser</u>	<u>X</u>			
<u>Manager Maule Miller</u>				<u>X</u>
<u>Manager Schwarze</u>	<u>X</u>			
<u>Manager Taillon</u>				<u>X</u>

Motion carried 3/0.

1 President Leiser noted the public will have a final opportunity to comment on the
2 2019 budget and levy at the December regular meeting.
3

4 **8) Projects**

5 **a) Riparian Shading Project**

6 Administrator Kill reported the riparian shading study has found two ideal project
7 sites to reduce thermal impacts on Brown’s Creek. Both project sites are in the
8 Millbrook Development and would involve adding native vegetation to increase the
9 shade over the creek. The estimated cost of the project is \$87,140 and 90% of it will
10 be funded by a Clean Water Fund grant.
11

12 **i. Public Hearing**

13 President Leiser recessed the regular meeting at 7:09pm and opened the public
14 hearing for the Riparian Shading Project and noted that the public hearing will
15 be recorded.
16

17 President Leiser summarized the issue BCWD is addressing with this project.
18 Brown’s Creek is home to trout which require cool water. Throughout the
19 watershed runoff flows into the creek and warms the stream temperature
20 which degrades the water quality. Adding vegetation to shade the creek will
21 help keep the water cool and create better aquatic habitat.
22

23 President Leiser asked for public comment.
24

25 Richard Schubert asked where the project sites are located. Administrator Kill
26 said in the Millbrook Development near Highway 96 and Manning Avenue
27 North and showed the locations on a map.
28

29 Suzzana DeMoss, Millbrook HOA Board member, spoke in favor in of the
30 project.
31

32 Hearing no further comments, President Leiser closed the public hearing at
33 7:15pm and called the regular meeting back to order.
34

35 **ii. Resolution to Order Project – Board Action**

36 **Manager Johnson moved, seconded by Manager Schwarze, to adopt**
37 **resolution 18-07 Brown’s Creek Watershed District Board of Managers**
38 **Ordering the Riparian Shading Project with the understanding that**
39 **funds for implementation will be taken from account 947-0022 (Brown’s**
40 **Creek Buffer and Stream Restoration).**

	Yea	Nay	Abstain	Absent
<u>Manager Johnson</u>	<u>X</u>			
<u>Manager Leiser</u>	<u>X</u>			
<u>Manager Maule Miller</u>				<u>X</u>
<u>Manager Schwarze</u>	<u>X</u>			
<u>Manager Taillon</u>				<u>X</u>

Motion carried 3/0.

b) McKusick Wetland Outlet Assessment Results

President Leiser moved, seconded by Manager Johnson, to table the McKusick Wetland Outlet Assessment Results. Motion carried 3/0.

c) BWSR Watershed Based Funding Agreement – Board Action

Administrator Kill gave an overview of the watershed funding agreement and noted the total grant awarded is \$78,760. Michael Welch, Smith Partners pointed out a term of the agreement providing for a penalty of up to 150 percent of the grant amount in the event of default by BCWD. He said the risk is low that BCWD will default and does not advise the managers to decline to authorize execution of the agreement, but the managers should be aware that the provision is against public policy and likely is unenforceable.

Manager Schwarze moved, seconded by Manager Johnson, to authorize President Leiser to execute the grant agreement with the Minnesota Board of Water and Soil Resources and Brown’s Creek Watershed District and to direct Michael Welch, Smith Partner to contact BWSR to discuss the penalty language in the agreement. Motion carried 3/0.

9) New Business

a) Oak Park Heights Local Surface Water Management Plan – Board Action

Administrator Kill reported on the review of Oak Park Heights local surface water management plan.

President Leiser moved, seconded by Manager Schwarze, to adopt resolution 18-08 Brown’s Creek Watershed District Board of Managers conditionally approving City of Oak Park Heights Local Surface Water Management Plan and direct President Leiser to execute the cover letter.

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
<u>Manager Johnson</u>	<u>X</u>			
<u>Manager Leiser</u>	<u>X</u>			
<u>Manager Maule Miller</u>				<u>X</u>
<u>Manager Schwarze</u>	<u>X</u>			
<u>Manager Taillon</u>				<u>X</u>

Motion carried 3/0.

b) BCWD Rules –alternative volume-compliance discussion

Administrator Kill summarized some the challenges that cities and the development community have had to meet the BCWD volume-control requirement since amendment of the rules in January. The new Construction Stormwater general permit prohibits infiltration in areas of D soils (scattered throughout the watershed) and in the Emergency Response Area of the Drinking Water Supply Management Area (located in Oak Park Heights in the area around the redeveloping Highway 36 corridor and Norrell Avenue).

1 The Board discussed the potential steps outlined in the memo to take in developing a
2 route to alternative compliance with BCWD's volume-control requirement.

3
4 Mr. Schultz indicated he supported the approach the Board was considering by
5 hosting a facilitated discussion and inviting all parties to the table.

6
7 President Leiser directed the administrator to move forward with developing an
8 independently facilitated discussion to review the challenges and constraints on
9 providing volume control, to invite the stakeholders, and to make it a public meeting.

10
11 President Leiser noted that he will provide contact information for potential
12 facilitators with technical background in water resources. It was also noted that the
13 facilitator needs to be unbiased.

14
15 **c) MAWD Resolutions**

16 Administrator Kill reported the deadline for submitting resolutions to the Minnesota
17 Association of Watershed Districts is October 1st. BCWD has no resolutions to
18 submit.

19
20 **d) Family Means Liability Waiver 2019 – Board Action**

21 Mr. Welch noted he does not recommend executing the Family Means waiver as
22 presented because it contains unenforceable provisions, such as making
23 BCWD liable for Family Means' negligence. He said the managers may decide
24 however that the risk low enough that execution of the waiver is acceptable. President
25 Leiser noted Family Means is not willing to alter the waiver.

26 **Manager Leiser moved, seconded by Manager Johnson, to authorize the**
27 **Administrator to sign on the BCWD's behalf. Motion carried 3/0.**

28
29 Recess at 8:10 - 8:13pm.

30
31 **10) Discussion Agenda – No Action Required**

32 **a) Administrator Updates**

33 Administrator Kill reported on current BCWD activities.

34
35 Cameron Blake, BCWD staff provided an overview of the upcoming BCWD
36 Community Celebration planned for September 29th from 10 to 1pm.

37
38 **b) Communications & Manager Reports**

39 President Leiser reported on MAWD items including his retirement from the MAWD
40 board and his involvement in the establishment of the Local Government Water
41 Roundtable and One Watershed One Plan.

- 42 i. Lower St. Croix One Watershed One Plan Policy Committee Meeting Update
43 ii. Local Government Water Roundtable Meeting Update

44
45 **c) October 2018 Regular BCWD Board Agenda**

- 46 i. Training – Setting up a Stormwater Utility

- 1 **11) Adjournment**
2 **Manager Johnson moved, seconded by Manager Schwarze, to adjourn the Regular**
3 **Meeting at 8:34PM. Motion carried, vote 3/0.**

4
5 Respectfully Submitted by
6 Carmen Simonet, Recorder and Anne Maule Miller, Recording Secretary