



1
2 APPROVED Minutes of the Regular Meeting of the Brown's Creek Watershed District Board of
3 Managers, Wednesday, October 11, 2017 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
Connie Taillon, Treasurer	Michael Welch, Smith Partners, BCWD counsel
Gerald Johnson, Secretary	Camilla Correll, EOR, BCWD engineer
Anne Maule Miller, Vice President	Jared Fabian, EOR, BCWD engineer
	Paula Kalinosky, EOR, BCWD engineer
	Ryan Fleming, EOR, BCWD engineer
	Matt Collins, Fabyanske Westra Hart & Thomson
	Mary L. Peterson, CM Construction Company
	Dave Parenteau, Wenck Associates
	Elise Radaj, Fabyanske Westra Hart & Thomson
	Chuck Peterson, CM Construction Company
	Colonel Sol Sukut, Minnesota Army National Guard
	Doug Wild, BWBR
	Stan Thom, CM Construction Company
	Justin Skoglund, Minnesota Army National Guard
	Ross Warner, Minnesota Army National Guard
	Mark Lambert

- 9
- 10 **1) Call Regular Meeting to Order**
- 11 President Leiser called the Regular Meeting to order at 6:30PM.
- 12
- 13 **2) Approve Regular Meeting Agenda and Discussion Agenda**
- 14 Administrator Kill added "MAWD Meeting Attendance" under 7) Projects.
- 15 **Manager Johnson moved, seconded by Manager Taillon, to approve the Regular**
- 16 **Meeting agenda and discussion agenda as amended. Motion carried, vote 5/0.**
- 17
- 18 **3) Public Comments**
- 19 There were no public comments

1 **4) BCWD Permit 13-19 Stillwater Readiness Center – Enforcement Hearing**

2 President Leiser recessed the regular meeting at 6:33pm and opened the enforcement
3 hearing for permit 13-19, Stillwater Readiness Center. The hearing was recorded.
4

5 Administrator Kill presented BCWD's findings in the matter. BCWD inspectors have
6 observed the failure of an infiltration basin known as Pond 1 on the grounds of the
7 Stillwater Readiness Center. The Minnesota Army National Guard (MNG) is the property
8 owner and CM Construction is the project contractor. Pond 1 was designed to meet
9 BCWD regulatory requirements by infiltrating stormwater runoff from the site, but the
10 owner and contractor have caused and allowed Pond 1 to become inundated with
11 sediment, sediment-laden runoff and stormwater. As a result, there is standing water in
12 Pond 1. This presents a risk of damage to a downgradient onsite wetland, known as
13 Wetland A, from excessive runoff and pollutants.
14

15 Camilla Correll, EOR summarized the facts leading to the enforcement hearing. BCWD
16 conditionally approved permit 13-19 on April 9, 2014. MNG satisfied all conditions of
17 permit approval except the condition to provide an enforceable maintenance instrument
18 covering the stormwater facility. Ms. Correll presented the location and history of the
19 project using aerial photos, construction-plan drawings and inspection reports, along with
20 recent photos of conditions at the site.
21

22 BCWD rules and permit 13-19 required MNG to manage stormwater runoff from its site
23 to limit bounce and inundation in Wetland A. Since December 2015 inspectors have
24 observed problems with wetland bounce and inundation compliance, caused by failure to
25 establish Pond 1's infiltration capacity and resulting in discharge to Wetland A. Two
26 notices of probable violation were issued, December 31, 2015, and again May 26, 2016.
27

28 MNG developed a plan to establish the infiltration capacity Pond 1 and began
29 implementing the plan in fall 2016. In August 2017 vegetation was beginning to establish
30 in the basin as required for infiltration. Between August 29 and September 20, 2017,
31 BCWD inspectors observed a lack of proper erosion and sediment control at the site.
32 Discharge of stored water from a temporary basin was sediment laden and was dewatered
33 into Pond 1 in amounts that impaired Pond 1's capacity to function properly. A third
34 notice of probable violation, requesting immediate action to correct the problem, was
35 issued on September 28, 2017.
36

37 President Leiser asked the managers if they had questions for Ms. Correll or Ms. Kill.
38

39 In response to a question from Manager Taillon, Administrator Kill confirmed that the
40 site is presently stable.
41

42 Colonel Sol Sukut, representing MNG, addressed the managers and acknowledged
43 receiving the most recent notice of probable violation and said MNG wants to work with
44 BCWD to bring the site into compliance. MNG plans to be at this location for a long
45 time, so not only does it want to protect its investment, MNG also wants to be a good

1 neighbor. He visited the site prior to the hearing and observed the situation and plans to
2 continue monitoring the site.
3

4 Michael Welch, Smith Partners, reported late today the BCWD administrator sent out a
5 draft order, summarizing the facts presented this evening and asked the MNG
6 representatives present at the meeting if they agree or have any corrections they want
7 made. Colonel Sukut acknowledged having received the draft order, and noted that
8 though he had not had a lot of time to analyze it, he concurred in its findings.
9

10 Chuck Peterson, vice president of CM Construction, appeared before the managers and
11 stated that CM would like counsel to present some information to the managers. Matthew
12 Collins, an attorney representing CM Construction, and Dave Parenteau, a geotechnical
13 specialist from Wenck Associates were introduced. Mr. Collins distributed a an October
14 9, 2017, email from Chris Stokke from Greenscape Companies, Inc., the subcontractor
15 that provided plants for Pond 1, stating that the plants were planted from July 5 to July 12
16 and that the grower said the plants would be fully rooted and actively growing within
17 three to four weeks; an October 9, 2017, Northern Technologies LLC report on results
18 and analysis of soil samples taken October 4, 2017, from the bottom of Pond 1, which
19 Mr. Parenteau stated showed that sediment had not entered Pond 1 in quantities such as
20 would effectively seal the bottom and prevent infiltration; a June 3, 2016, Wenck report,
21 which Mr. Parenteau offered to support his assertion that a layer of clay soil under Pond 1
22 significantly inhibits infiltration. Mr. Collins offered that the materials and opinion of Mr.
23 Parenteau showed that the plants had become sufficiently established prior to CM
24 Construction's discharging water into Pond 1 on August 18 and that the water was not
25 sediment laden. He also argued that there was no support for the assertion that excessive
26 stormwater had been allowed to fill Pond 1.
27

28 Paula Kalinosky and Jared Fabian from EOR, who have been inspecting the site in recent
29 months for BCWD, confirmed that the findings in the engineer's summary of conditions
30 at the site and in Pond 1 were based on their observations during inspections in August
31 and September. Ms. Kalinosky stated that a series of rain events preceding an inspection
32 on August 29th caused runoff to Pond 1 that was visibly sediment-laden and that degraded
33 the effectiveness of erosion control measures and that she alerted onsite CM Construction
34 personnel that if not corrected, this condition would cause sediment to be discharged with
35 runoff into Pond 1 and could cause loss of infiltration capacity in Pond 1. Mr. Fabian
36 confirmed that he observed scour and excessive erosion contributing sediment to Pond 1
37 in late August, when runoff stored in that temporary basin on the site was discharged to
38 Pond 1. With regard to the amount of stormwater discharged to Pond 1, Mr. Fabian noted
39 that water was still standing in Pond 1 after 48 hours. Ms. Correll explained that these
40 observations show that Pond 1 is not cycling wet to dry over 48-hour periods, as
41 identified as necessary for infiltration basins to function properly in the Minnesota
42 Stormwater Manual. She added that Pond 1 was not designed to receive the volume of
43 stormwater that CM discharged to it from the temporary basin, on top of whatever rain
44 occurred in late August. She said such discharge to Pond 1 would create an anoxic
45 condition that would prevent infiltration. Ms. Kill noted that the information provided by

1 CM Construction may be useful in preparing plans to establish infiltration capacity in
2 Pond 1.

3
4 Manager Maule Miller asked what the solution is to correct the problem. Administrator
5 Kill directed the managers to the proposed order that requires MNG to submit a plan that
6 demonstrates compliance with permit 13-19 and BCWD rules by November 1, 2017, and
7 take immediate steps to entirely dewater Pond 1 and reduce the water elevation in
8 Wetland A to the normal water level and prevent discharge of stormwater from the site at
9 rates exceeding the BCWD standards.

10
11 In response to inquiries from Manager Leiser and Mr. Welch, Col. Sukut stated that he
12 believes MNG can provide the corrective action plan described in the draft order by
13 November 1, and generally is concerned about costs but can complete the required items
14 in the draft order in the timeframe provided, noting that MNG is keen to learn whether
15 the basin is in fact infiltrating. Ms. Kill stated that BCWD could assist by providing an
16 elevation gauge for the infiltration basin to help MNG determine whether and at what rate
17 the basin is infiltrating, but that it will remain MNG's responsibility to complete tasks
18 ordered by the Board of Managers.

19 Colonel Sukut accepted the offer of the gauge and said he will have it installed right
20 away. Mr. Peterson noted he appreciates the help received from BCWD during a time
21 when the site has received 150 percent of normal rainfall. Manager Taillon asked if the
22 wetland will need dewatering. The administrator noted it will depend on what level is
23 found when the gauges are installed.

24
25 **Manager Maule Miller moved, seconded by Manager Schwarze, to adopt the**
26 **findings of fact and conclusions of law and order the corrective actions as detailed**
27 **by the engineer.**

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

34 **Motion carried 5/0.**

35
36 President Leiser closed the hearing called the regular meeting back to order at 7:29 pm.

37
38 Recess 7:29pm – 7:34pm

39
40 **Manager Schwarze moved, seconded by Manager Maule Miller, to appoint**
41 **Manager Johnson as treasurer. Motion approved, vote, 5/0.**

42
43 **Manager Johnson moved, seconded by Manager Schwarze, to appoint Manager**
44 **Maule Miller as secretary. Motion approved, vote, 5/0.**

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1 **5) Treasurer's Report**

2 **a) Review Authorized Funds Spreadsheet**

3 Administrator Kill presented the authorized funds spreadsheet.

4 **Manager Schwarze moved, seconded by Manager Maule Miller, to approve the**
5 **authorized funds spreadsheet as presented. Motion carried, vote 5/0.**

6
7 **b) Current Items Payable – Board Action**

8 **Manager Taillon moved, seconded by Manager Schwarze, to approve payment**
9 **of bills as presented in the amount of \$103,049.69.**

10
11

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
12 <u>Manager Johnson</u>	<u>x</u>			
13 <u>Manager Leiser</u>	<u>x</u>			
14 <u>Manager Maule Miller</u>	<u>x</u>			
15 <u>Manager Schwarze</u>	<u>x</u>			
16 <u>Manager Taillon</u>	<u>x</u>			

17 **Motion carried 5/0.**

18
19 Manager Johnson reported a total balance of \$381,620.03 after payables.

20 **Manager Schwarze moved, seconded by Manager Maule Miller to accept the**
21 **treasurer's report. Motion carried, vote 5/0.**

22
23 **6) Consent Agenda**

24 **Manager Maule Miller moved, seconded by Manager Johnson, to approve the**
25 **consent agenda, consisting of:**

- 26 • **Approval of the minutes of the September 13, 2017, Regular Meeting as**
27 **presented.**
- 28 • **Acceptance of the permit fee statement as presented.**

29 **Motion carried, vote 5/0.**

30
31 **7) Projects**

32 **a) Rule Revision & SONAR – Board Action**

33 Administrator Kill reviewed the proposed timeline to review and the draft rules
34 revisions and statement of needs and reasonableness (SONAR). Michael Welch,
35 Smith Partners, noted that with proposed changes to thresholds in the rules that
36 will mean more, smaller properties need permits from BCWD, the managers may
37 wish to consider an outreach program to inform the community on the new rules.

38
39 Mark Lambert appeared before the managers and noted that he is an owner of a
40 commercial property on Highway 5 and is considering redeveloping the site. He
41 asked the managers to be reasonable in what they may be asking of small property
42 owners and asked them to consider an option for small sites to contribute to a
43 stormwater fund in lieu of retrofitting a site to treat stormwater runoff.

44

1 The managers discussed the definition scope of the floodplain freeboard
2 requirement as applicable to properties adjacent to applicants' properties and
3 decided the requirement should apply to "permanent" buildings.

4 **Manager Leiser moved, seconded by Manager Schwarze to direct staff to**
5 **make the discussed change in the draft rules. Motion carried, vote 5/0.**

6 **Manager Taillon moved, seconded by Manager Maule Miller, to distribute**
7 **the rules and SONAR for review October 18, 2017 and that managers submit**
8 **comments on the SONAR to the Administrator by noon on October 16, 2017.**
9 **Motion carried, vote 5/0.**

10
11 **b) Wolf Marina Update**

12 Ryan Fleming, EOR provided a verbal update on the next steps he will be taking
13 on the Wolf Marina project, including: contacting Metropolitan Council on
14 WOMP station and the position of the rain gauge, and taking soil samples of what
15 will be dredged at the marina to get a handle on how much phosphorus could be
16 prevented from entering the St. Croix River. Administrator Kill reported the
17 dredging is probably happening late October early November. Staff will contact
18 Ken Wolf to coordinate timing of soil samples before the dredging happens.

19
20 **c) MAWD Meeting Attendance – Board Action**

21 Minnesota Association of Watershed Districts annual meeting will be November
22 30 – December 2, 2017 in Alexandria, MN. All the managers are interested in
23 attending.

24 **Manager Schwarze moved, seconded by Manager Johnson, to authorize**
25 **payment of expenses and registration for the administrator and managers**
26 **who attend, as well as per diems for manager's attendance. Motion carried,**
27 **vote 5/0.**

28
29 **8) Managers Service Recognition**

30 President Leiser on behalf of the BCWD board of managers, presented manager Taillon
31 with a painting of the Brown's Creek stone arch bridge, in recognition of her years of
32 service (2004-2017) as a manager.

33
34 **9) Discussion Agenda – No Action Required.**

35 **a) Administrator Updates**

36 Administrator Kill reported on current BCWD activities.

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

39 President Leiser reported the Minnesota Association of Watershed Districts has made
40 an offer to an individual to serve as the new executive director.

41
42 **c) November 2017 BCWD Board Agenda**

43 No items were suggested.
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1 **10) Adjournment**
2 **Manager Taillon moved, seconded by Manager Johnson, to adjourn the Regular**
3 **Meeting at 9:25PM. Motion carried, vote 5/0.**

4
5 Respectfully Submitted by
6 Carmen Simonet, Recorder and Anne Maule Miller, Secretary
7