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2 APPROVED Minutes of the Special Meeting of the Brown’s Creek Watershed District Board of  
3 Managers, Monday, November 18, 2019 at 7:00 PM

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5 Washington Conservation District, 455 Hayward Ave N, Oakdale, MN 55128

6  
7 **ROLL CALL**

Managers Present:	Others Present:
Craig Leiser, President	Karen Kill, Administrator
Sharon Schwarze, Vice President	Michael Welch, Smith Partners, BCWD counsel
Anne Maule Miller, Secretary	Camilla Correll, EOR, BCWD engineer
Klayton Eckles, 2nd Vice President	Paul Fritton, EOR, BCWD engineer
	Cameron Blake, BCWD staff
Absent:	Mark Lambert, Summit Management
Gerald Johnson	Dan Parks, Westwood Professional Services
	Irene Lambert, Summit Management

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10 **1) Call Special Meeting to order @ 7:00 P.M**  
11 President Leiser called the Special Meeting to order at 7:04PM.

12  
13 **2) Approve Special Meeting Agenda**  
14 **Manager Schwarze moved, seconded by Manager Maule Miller to approve the**  
15 **Special Meeting agenda. Motion Carried, vote 4/0.**

16  
17 President Leiser noted that the special meeting was being held at the Washington  
18 Conservation Center because neither Family Means nor another suitable facility within  
19 the watershed was available.

20  
21 **3) Permits**  
22 **a) BCWD Permit 19-05 Central Commons**

23  
24 President Leiser gave an overview of the permit discussion that occurred at the Regular  
25 Board Meeting on November 13, 2019. He noted that the managers received a lot of  
26 material shortly before the board meeting. Camilla Correll, EOR, presented an updated  
27 report on permit 19-05. She identified issues in the revised engineer’s report that still  
28 needed to be addressed, including clarification on the buffer and water-quality variance  
29 requests, and questions from the Managers on the operations and maintenance of the

1 storage shed. President Leiser said he wanted to leave space for the managers to ask  
2 questions, and to hear from permit applicant Mark Lambert, Summit Management.

3  
4 Camilla Correll and Paul Fritton, EOR, presented the revised engineer's report focusing  
5 on the updated variances and recommended conditions of approval. The first variance  
6 discussed was the Water Quality variance. Originally the applicant proposed to discharge  
7 one pound of phosphorus to the north under developed conditions. By amending the  
8 media in the filtration basin near the proposed gas station with iron, the revised proposal  
9 increases phosphorus by 0.4 pounds. Manager Schwarze asked if there would be any  
10 potential issues regarding the iron-enhanced filter and any runoff of chemicals from the  
11 gas station. Dan Parks, Westwood Professional Services, explained that it is standard for  
12 gas stations such as Hy-Vee (the company that intends to occupy a significant portion of  
13 the property) to treat runoff from their site with structures to capture petroleum products.  
14 These structures consist of oil/water separators and are typically located in the last  
15 manhole. Manager Eckles asked if this is mandated by the Minnesota Pollution Control  
16 Agency (MPCA). Dan Parks said he didn't believe so but that it was a common practice.  
17 President Leiser requested this language be added to the document. Camilla Correll asked  
18 if the gas station would have a spill prevention plan. Dan Parks confirmed that gas  
19 stations have an operating plan for spills. Manager Schwartz asked to clarify if the gas  
20 station would have an active maintenance plan for cleaning out the petroleum-capturing  
21 structures. Dan Parks confirmed that gas stations must have spill-response plans. Michael  
22 Welch, Smith Partners, stated that spills of 5 gallons or more must be reported to MPCA.  
23 He said that gas-station operation is a tightly regulated area and not typically regulated by  
24 watershed districts. President Leiser asked for language to be added to the document to  
25 reflect this discussion. The group confirmed that this is already in the plan.

26  
27 Manager Maule Miller asked how the site would be producing phosphorus given the lack  
28 of green space. Dan Parks said there was a calculator used which took into account things  
29 like car drippings and atmospheric deposition on the impervious surfaces. Manager  
30 Eckles asked about the expected lifespan of the IESF and when the media would need  
31 replacement. Karen Kill, BCWD explained that there is a straightforward calculation  
32 based in part on the size of the drainage area to the practice. There is also a simple test  
33 that determines the remaining capacity of IESF media that could be used. Manager  
34 Eckles said he is concerned with maintenance needs from practices like the IESF, and  
35 could see the testing falling back to the watershed district's responsibility. Ms. Correll  
36 noted that this would be addressed in the Operations and Maintenance agreement. Dan  
37 Parks noted that these surface practices are easier to maintain than underground  
38 stormwater structures. Mr. Fritton asked the applicant to update the plan with the design  
39 specifications for the 18-inch IESF media. Paul Fritton concluded the conversation by  
40 explaining that the additional cost for the IESF was included in the agreed upon financial-  
41 assurance amount, as so this condition has been removed.

42  
43 The next variance discussed was the buffer variance. Camilla Correll presented the buffer  
44 language from the revised engineer's report which specified a 20' average buffer, with  
45 the smallest point being ten feet near the existing structure and then returning to 20 feet.  
46 Manager Schwarze explained her concern about potential pollutants produced from the

1 maintenance of equipment in the shed due to its proximity to the 10 foot wetland buffer.  
2 She would like to know there will be plans in place to address this potential. President  
3 Leiser asked what kind of activities were expected to occur in the shed. Mark Lambert  
4 asked if the board could complete its review of the engineer report, and then allow him to  
5 speak after the managers have time for their questions.  
6

7 Manager Eckles asked if more information was available about the City of Stillwater's  
8 buffer rule. Karen Kill said Stillwater's wetland buffer rule specifies 50', but that Mark  
9 Lambert was in close communication with the city and could address this in his  
10 comments. Michael Welch stated that Stillwater's buffer rule does not affect BCWD's  
11 authority to implement its own buffer requirements.  
12

13 Camilla Correll said another condition identified by the engineer's report was to provide  
14 monumentation for the buffer on the DNR Public Waterbody on the western edge of the  
15 property on the edge of the road. Karen Kill said she doesn't recommend the managers  
16 consider this condition for the final permit as it is not reasonable in this situation. Michael  
17 Welch agreed that if the property on the west side of the road is not owned by the  
18 applicant, it would not be within the applicant's legal rights to post signs there.  
19

20 Michael Welch informed the board that since the last board meeting Stillwater Township  
21 had completed its WCA determination.  
22

23 President Leiser invited Mark Lambert to share his comments. Mark Lambert provided  
24 his written response and a photo of the wetland taken from his property, which showed  
25 piling of snow on the adjacent property. Mark Lambert thanked the board and began his  
26 comments. He said he heard the board's request for additional information, noting that  
27 Hy-Vee wanted permit approval at the board meeting last week. He acknowledged the  
28 staff work that occurred between November 13<sup>th</sup> and the meeting tonight. He said he  
29 received the edits late again today at 3:00PM, and that Karen Kill apologized for the  
30 lateness. Mark Lambert said he felt he should have received advanced notice about the  
31 additional comments from the managers about chloride and pollution management plans  
32 in order to discuss them at a staff level before the materials went out to the board  
33 managers. He said part of what the BCWD was working to address along with the district  
34 rules was issues with the permit process like this one. The BCWD also said they would  
35 consider the balance between the burden on the developer and benefit to the resource. He  
36 said the photo helps to indicate that the wetland in question is not a pristine resource. His  
37 comments include adjusting the buffer variance to specify a 10 foot buffer in order to  
38 access the back of the shed. He heard the board's concern about maintenance. He said  
39 there are many laws regarding illegal dumping and that he has done a lot of cleaning of  
40 the property including many dumped vehicles. He said he doesn't appreciate that he  
41 would need special maintenance agreement because he is not going not be a poor  
42 steward. He doesn't know where the new language about salt and pollution plans came  
43 from and he wanted to work this out at a staff level instead of taking up the managers'  
44 time. He concluded by saying the Stillwater buffer law of 50 feet simply requires that no  
45 fertilizing or gardening can occur so he will meet that requirement.  
46

1 Manager Eckles said the board is here to work together with the applicant. President  
2 Leiser said he read through the material and believes the watershed district has done its  
3 part in allowing for working together with the developer on this permit. He believes the  
4 watershed staff has done everything they can to make a project that will work. The  
5 managers last week presented an option to push the 60 day period back 3 more days in  
6 order to address the permit at the December board meeting. This option was not selected  
7 by the applicant and so the 3 days since this special meeting and the November board  
8 meeting was used to work through the identified issues. President Leiser acknowledged  
9 the photo as something the board will also need to address.

10  
11 Michael Welch said the compressed timeline resulted from the applicant's press for a  
12 decision on his timeline. He explained the draft board-action document was produced to  
13 reflect manager comments on the late-arriving report last week, and it was drafted to  
14 facilitate discussion for the meeting. He drafted conditions related to chloride and  
15 pollution plans to give the managers options to inform their discussion.

16  
17 Manager Eckles said he believes chloride pollution is a larger issue than what would be  
18 addressed with this single property and that he does not think the board should spend a lot  
19 of energy on this in this permit application. He said the MPCA is moving in the direction  
20 to encourage salt management. He asked what the latest direction from the MPCA was on  
21 chloride management. Camilla Correll said the latest salt plan is not finalized. Michael  
22 Welch said the state has an education-based certification in chloride management and  
23 smart salting. The draft language in the plan asked for one person to have this  
24 certification and for the applicant to have a general management plan. Manager Maule  
25 Miller said that as Long Lake is not currently impaired for chlorides she is willing to back  
26 off of that as a requirement, but noted that it would be nice to know that someone on  
27 property management staff would be certified. Karen Kill noted that BCWD is also part  
28 of the East Metro Water Resource education Program and that in 2017 the BCWD board  
29 chose education as how to address chloride pollution.

30  
31 Mark Lambert said he reads what he signs. The plan requirements go into a declaration  
32 which would tie him to BCWD and allow his property to be inspected by EOR and Smith  
33 Partners. It would also allow for him to be sued, and to pay for their review and  
34 enforcement of these plans. He said he is not objecting to having plans in place but rather  
35 the enforcement mechanism. Manager Eckles said it is not difficult for the applicant to  
36 meet the request of having a trained staff member and a chloride-management plan. But  
37 he reiterated that this is a big picture problem and he doesn't think the problem should be  
38 addressed with this applicant tonight. Manager Maule Miller agreed, saying the Long  
39 Lake chloride data support this decision.

40  
41 Michael Welch said the managers have options, they can take the language out, do  
42 something else, or require the plans. President Leiser said the watershed district has the  
43 right to inspect, and that they try to inform ahead of time whenever possible. But  
44 sometimes inspections will happen without notice and the finding will be that the  
45 contractor is actively addressing any observed noncompliance. The board discussed how

1 to word the motions to approve the variances and recommended conditions based on the  
2 discussion.

3 The Brown's Creek Watershed District Board of Managers makes the following findings  
4 and determinations in the above-referenced matter:

5 **Variances 1-4**

6 With regard to variances 1-4 from the stormwater-management requirements of BCWD  
7 Rule 2.0 – Stormwater Management as detailed in the updated November 18, 2019,  
8 engineer's report for permit 19-05 (Engineer's Report), the BCWD Board of Managers  
9 finds that the engineer's findings in the report show some undue hardship on the applicant.  
10 In addition, the subject property is situated in the Diversion Structure subwatershed. The  
11 BCWD engineer has determined, in an independent analysis on record with BCWD and  
12 with which the BCWD managers are very familiar, that stormwater management in the  
13 subwatershed in accordance with the state Minimal Impact Design Standards will provide  
14 resource protection equivalent to or better than the BCWD standards. The managers  
15 conclude that these findings and analysis support allowing the applicant to meet the MIDS  
16 in lieu of the relevant BCWD standards.

17 **Manager Eckles moved and Manager Maule Miller seconded approval of variances**  
18 **1- 4 in the Engineer's Report. Motion carried 4/0.**  
19

20 **Variance 5**

21 Manager Schwarze commented regarding variance 5. She said she just wanted to hear  
22 from the applicant that some kind of plan would be in place. It was not her desire to have  
23 a recorded management plan, she just wanted to know there was thought about pollution  
24 and salt management from the shed. Manager Schwarze and Manager Maule Miller  
25 wondered if a trench drain could be installed to address pollution concerns. Dan Parks  
26 said the floor of the shed has already been poured. Manager Eckles said that kind of  
27 drainage solution can be complicated and there is existing guidance around catch basins.  
28 Mark Lambert said he would work with BCWD staff on a salt and pollution-management  
29 plan. Manager Eckles noted that encroachment into buffer areas is a common issue. He  
30 suggested working a fence or signage into the plan to ensure the laborers do not  
31 mistakenly cause pollution issues in the buffer near the maintenance shed. Mark Lambert  
32 agreed. President Leiser indicated that he is willing to work on a voluntary basin with the  
33 applicant.

34 With regard to variance 5 from the buffer requirements of BCWD Rule 4.0 – Lake, Stream  
35 and Wetland Buffer Requirements as detailed in the Engineer's Report, the BCWD Board  
36 of Managers concludes that the findings and analysis in the Engineer's Report, especially  
37 the unique configuration of the proposed infiltration basin, resulting in protection sufficient  
38 to support the noncompliant width of the proposed buffer on the adjacent Manage 1  
39 wetland, provide sufficient support for approving the variance.

40 **Manager Leiser moved and Manager Eckles seconded approval of variance 5 from**  
41 **the requirements of BCWD Rule 4.0 Lake, Stream and Wetland Buffer Requirements**  
42 **based on the relevant technical findings and analysis in the Engineer's Report,**

1 **conditioned on the applicant's extending the 20-foot buffer across the entire length of**  
2 **the property adjacent to the downgradient-southeast Manage 1 wetland, except**  
3 **where the buffer will be 10-feet wide as shown in Exhibit A: Post-Construction**  
4 **Ground Cover Plan. Motion carried 4/0.**

5 **Variance 6**

6 With regard to variance 6 from the flood-storage replacement requirement of BCWD Rule  
7 7.0 – Floodplain Storage and Drainage Alterations as detailed in the Engineer's Report, the  
8 BCWD Board of Managers finds that the engineer's findings and analysis in the report  
9 regarding downgradient flood-storage capacity provide sufficient support for approving the  
10 variance.

11 **Manager Maule Miller moved and Manager Leiser seconded approval of variance 6**  
12 **in the Engineer's Report for permit 19-05. Motion carried 4/0.**

13 **Manager Eckles moved and Manager Schwarze seconded approval of permit**  
14 **application 19-05, conditioned on the applicant:**

- 15 1. **Demonstrating that the plan has received preliminary plat approval (BCWD Rule**  
16 **1.3a).**
- 17 2. **Demonstrating that approval from adjacent property owner in place for the**  
18 **grading activity on land outside of applicant's ownership (BCWD Rule 2.7.2).**
- 19 3. **Addressing stormwater-management conditions 2-1 to 2-4.**
- 20 4. **Addressing erosion control conditions 3-1 to 3-3.**
- 21 5. **Addressing buffer condition 4-3.**
- 22 6. **Addressing all floodplain requirements (Condition 7-1).**
- 23 7. **Replenishing the Permit fee deposit to \$4,600 (BCWD Rule 8.0). If the permit fee**  
24 **deposit is not replenished within 60 days of receiving notice that such deposit is**  
25 **due, the permit application or permit shall be deemed abandoned and all prior**  
26 **approvals shall be revoked and collection proceedings shall begin on unpaid**  
27 **balances.**
- 28 8. **Providing the required financial assurances (BCWD Rule 9.0):**
  - 29 a. **Total grading or alteration financial assurance 31.4 acres (\$62,800).**
  - 30 b. **Stormwater management facilities financial assurance (\$1,168,890).**

31 **By accepting the permit, when issued, the applicant agrees to the following**  
32 **stipulations, compliance with which will be required for close out of the permit and**  
33 **release of the associated financial assurance:**

- 34 1. **Note that the permit, if issued, will require that the applicant notify BCWD in**  
35 **writing at least three business days prior to commencing land disturbance.**  
36 **(BCWD Rule 3.3.1)**
- 37 2. **To ensure that construction is carried out according to the approved plan, provide**  
38 **verification that construction standards have been met for the infiltration basin.**  
39 **This includes but is not limited to confirmation that infiltration basin sub-cut**  
40 **reaches soil material reflected in the geotechnical report and that the vegetation**  
41 **establishment procedures have been followed per the landscaping/restoration**  
42 **plan. This can be achieved by scheduling a BCWD inspection during the**

1 **excavation of the basin, independent geotechnical engineer observation and note**  
2 **of confirmation, or well-documented photographic evidence by the onsite engineer**  
3 **along with collected survey elevations of the basins.**

4 3. **Provide BCWD with demonstration, such as photographic documentation, of de-**  
5 **compaction and incorporation of compost for all disturbed soils.**

6 4. **Provide BCWD with as-built record drawings showing that the completed grading**  
7 **and stormwater facilities conform to the grading plan.**

8 **Motion carried 4/0.**

9 4) President Leiser noted that this was a challenging permit and commended staff for their  
10 work. Manager Schwarze explained that the managers have to approach project approvals  
11 with the understanding that the permit could be transferred and the board needs to enforce  
12 the project's plan under such circumstances. **Adjournment**  
13 **Manager Schwarze moved, seconded by Manager Maule Miller, to adjourn the**  
14 **Special Meeting at 8:25PM. Motion carried, vote 4/0.**  
15

16 Respectfully Submitted by  
17 Cameron Blake, staff, and Anne Maule Miller, Recording Secretary