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2 FINAL Minutes of the regular meeting of the Brown's Creek Watershed District Board of  
3 Managers, Wednesday September 13, 2023  
4

5 ROLL CALL

Managers Present:	Others Present:
Klayton Eckles, President	Karen Kill, BCWD administrator
Celia Wirth, Vice President	Camilla Correll, EOR, BCWD engineer
Charles LeRoux, Secretary	Michael Welch, Smith Partners, BCWD counsel
Gerald Johnson, Treasurer	Cameron Blake, BCWD staff
	Ryan Fleming, EOR, BCWD engineer (attended remotely)
	John Sarafolean, EOR, BCWD engineer
	Jason Palmby, Stillwater Oaks
	Scott Dahlke, Civil Engineering Site Design
	Gary Kriesel, Washington County
	Ron & Mary Kargel, resident
	Joel & Judy Rice, resident
	Bob Bielenberg, resident
	Jake Harvey, resident
	Bill Mahrnon, resident
	Barbara Medinger resident
	Dan Pohl, Loggers Trail Golf Course

- 6  
7 **1) Call Regular Meeting to Order @ 6:30 p.m.**  
8 Manager Eckles called the regular meeting to order at 6:30 p.m.  
9  
10 **2) Approve Agenda**  
11 Karen Kill recommend removing approval of the August 16, 2023, minutes from the  
12 consent agenda and adding Manager Klayton Eckles' oath of office.  
13 **Manager Johnson moved, seconded by Manager LeRoux, to approve the agenda as**  
14 **amended. Motion carried, vote 4/0.**  
15  
16 **3) Public Comments**  
17 None.  
18  
19  
20

1 4) **Consent Agenda**

2 **Manager Johnson moved, seconded by Manager LeRoux, to approve the consent**  
3 **agenda:**

4 **a) Accept permit fee statement as presented**

5 **b) Authorize reimbursement of expenses for administrator and managers, as**  
6 **well as per diem for managers, for the Minnesota Watersheds annual conference**  
7 **in Alexandria November 28-December 1, 2023.**

8 **Motion carried 4/0.**

9  
10 5) **Treasurer’s Report**

11 a) **Review Authorized Funds Spreadsheet**

12 **Manager Johnson moved, seconded by Manager Wirth, to accept the authorized**  
13 **funds spreadsheet as presented. Motion carried 4/0.**

14  
15 b) **Current Items Payable**

16 **Manager Johnson moved, seconded by Manager Wirth, to approve payment of**  
17 **bills as presented in the amount of \$75,371.23.**

	<b>Yea</b>	<b>Nav</b>	<b>Abstain</b>	<b>Absent</b>
<b><u>Manager Eckles</u></b>	<b><u>X</u></b>			
<b><u>Manager Johnson</u></b>	<b><u>X</u></b>			
<b><u>Manager LeRoux</u></b>	<b><u>X</u></b>			
<b><u>Manager Wirth</u></b>	<b><u>X</u></b>			

22 **Motion carried 4/0.**

23  
24  
25 Ms. Kill said she is completing steps toward setting up the 4M fund. She added that  
26 funds held in certificates of deposit at Royal Credit Union will be moved into the 4M  
27 account after they reach their next maturity date in November.  
28

29 6) **Permitting – BCWD Permit 22-18 Stillwater Oaks**

30 Camilla Correll presented the engineers’ review of the application for a BCWD  
31 permit for a 15-lot residential subdivision on 148 acres in Grant.  
32

33 Ms. Correll explained there would not be an increased rate or volume of discharge  
34 from the development compared to existing conditions, however BCWD requires  
35 runoff rate and volume to be managed to pre-settlement conditions. She notes that no  
36 new discharge points will be created, and while there will not be an increase in pre-  
37 settlement volume for the site as a whole, there are locations from which the rate is  
38 proposed to increase. She noted that these discharges will be attenuated by  
39 downgradient wetland areas and other catchments, and will not result in any off-site  
40 impacts.

41 In response to stated concerns from residents, Ms. Kill noted that BCWD does not  
42 require ongoing post-construction monitoring of stormwater-management  
43 performance, the applicant is required to maintain facilities in accordance with a  
44 declaration recorded on the property which requires inspection and maintenance of  
45 the stormwater facilities to ensure function.

1 In response to expressed concerns regarding use of pesticides and other  
2 chemicals, President Eckles explained that the district does not have jurisdiction over  
3 chemical use. The developer, Jason Palmby, said he would look into what could be  
4 done by the homeowners association to address pesticide use.

5 In response to a stated resident concern, Mr. Palmby indicated that he is aware of  
6 existing wells on the property and that they will be sealed in accordance with state  
7 law. He stated that each lot will have its own private well.

8 The managers discussed how the district could ensure that builders and  
9 homebuyers maintain functioning irrigation systems, given that compliance with  
10 BCWD requirements turns on ongoing reuse of stormwater. Michael Welch stated the  
11 maintenance requirements of the features on site must be conveyed to the individual  
12 residents. The managers suggested requiring the applicant to submit documentation of  
13 reuse and maintenance requirements and the need to preserve and manage  
14 conservation areas will be conveyed to builders and homebuyers. Mr. Palmby agreed  
15 that an additional condition to this effect was reasonable.

16  
17 **Manager LeRoux moved, seconded by Manager Wirth, to approve the requested**  
18 **variances and Permit 22-18 Stillwater Oaks with conditions and the stipulations in**  
19 **the engineer's report and a further condition of the applicant's submitting**  
20 **documentation of conveyance of reuse, maintenance and conservation=area**  
21 **requirements to the property buyers. Motion carried 4/0.**  
22

23 **7) Projects – Brown's Creek Restoration Project**

24 **(1) Public Hearing**

25 Ms. Kill reviewed the scope of the project, calling for restoration of Brown's Creek  
26 from McKusick Road through the Brown's Creek Park to the Brown's Creek State  
27 Trail. The project will be funded in part by \$320,000 in federal 319 grant funds and  
28 matched by watershed-levy funding.

29  
30 President Eckles opened the public hearing. Barbara Medinger, a resident, expressed  
31 doubt that past expenditures by and projects of the district had improved the condition  
32 of the creek, and asked for clarification on the biological surveys completed and their  
33 findings. She expressed concerns about construction oversight and impacts on the  
34 resource during project construction. She stated that the proposed project would be  
35 wasteful and pointless, and does not see the benefit. She also noted that doesn't  
36 understand why there would be tree removal as part of the proposed project. Ms. Kill  
37 explained that tree removal will remove invasive species and allow understory native  
38 species and groundcover to stabilize the banks of and upland along the stream. The  
39 project will reconnect the stream to its floodplain, allowing for reestablishment of  
40 native riparian species that will provide adequate shade for the trout stream while still  
41 providing erosion control. Ms. Medinger expressed concern about the short-term  
42 effects of soil disturbance during construction. Ms. Kill explained that the in-stream  
43 work will be required conducted during months that minimize impact on fish  
44 spawning, but she acknowledged the challenges of working during high-water  
45 periods. The district will oversee the construction work and ensure that negative  
46 impacts to the stream are minimized.

1 Commissioner Gary Kriesel asked when the project was conceived of, and Ms.  
2 Kill explained that the project is in BCWD’s 10-year improvements project in its  
3 management plan.

4 Manger Eckles closed the public hearing.  
5

6 **(2) Resolution 23-04: Order Brown’s Creek Restoration Project**

7 Manager Eckles recommended the district separately solicit bids for tree removal as  
8 this may result in better prices. Mr. Welch asked the board for direction on how they  
9 wished to proceed with the application of district regulatory standards and the manner of  
10 documentation. Ms. Kill suggested that final presentation of the design and plans for bids  
11 could include analysis of compliance with applicable criteria. The managers concurrent  
12 with this approach.  
13

14 **Manager Johnson moved, seconded by Manager Wirth, to adopt resolution 23-**  
15 **04, ordering the Brown’s Creek Restoration Project, authorizing preparation of**  
16 **land-use agreements for presentation to and approval of the board, authorizing**  
17 **completion by the engineer of designs, plans and other construction documents**  
18 **and construction oversight at not-to-exceed \$75,338, and directing the**  
19 **administrator to utilize the construction documents to solicit bids for the**  
20 **construction of the project.**

	Yea	Nay	Abstain	Absent
21 <b><u>Manager Eckles</u></b>	X			
22 <b><u>Manager Johnson</u></b>	X			
23 <b><u>Manager LeRoux</u></b>	X			
24 <b><u>Manager Wirth</u></b>	X			
25 <b><u>Motion carried 4/0.</u></b>				

26  
27  
28 **8) 2024 Budget**

29 **a) Public Hearing**

30 Ms. Kill explained that staff proposes a budget with a levy increase of 2.6 percent,  
31 which is below the management plan’s proposed increase of 3 percent annually. Ms.  
32 Kill explained that the 2024 budget includes activities for preparation of the next 10-  
33 year management plan such as enhanced stakeholder engagement, an hydraulics and  
34 hydrology model update, and diversity, equity and inclusion activities. Manager  
35 Eckles opened the public hearing for discussion.

36 Commissioner Gary Kriesel asked how diversity, equity and inclusion applies to  
37 the district. Ms. Kill explained that the district must consider additional benefits to a  
38 variety of stakeholders in the watershed while seeking to achieve water-management  
39 goals.; for example, a recent effort to explore stormwater management in the  
40 Marketplace area in Stillwater involved considering adding tree trenches along  
41 roadways, which would address treatment goals while also providing shade to create  
42 a more favorable walkway for people who access the area on foot. Mr. Kriesel asked  
43 the district’s policy on seeking requests for proposals for services. Ms. Kill said the  
44 district follows state statute, which requires solicitation of letters of interest every two  
45 years.

Ms. Medinger expressed her concern with watershed districts overall without public oversight for the levy, and the amount of money expended for this size of this district. Manager Eckles noted this concern, and stated his background of working with different watershed management organizations and the purpose of their creation which is cohesive management of the water resources across political boundaries. He noted watershed districts are empowered through state statute to make decisions on issues and this work costs money. Manager Eckles closed the public hearing.

**b) Resolution 23-05: 2024 Budget and Levy**

Ms. Kill noted that there will be another opportunity for public comment at the December board meeting.

**Manager LeRoux moved, seconded by Manager Wirth, to adopt resolution 23-05, adopting an operating and capital budget totaling \$2,577,086, including \$2,363,311 for management plan implementation and \$213,775 for operations; with 2023 carryover and certain non-levy revenues totaling \$1,396,283, resulting in a levy of \$1,180,803 including \$159,775 for the general fund as provided by Minnesota Statutes section 103D.905 and \$1,021,028 for the management planning fund as provided by the Minnesota Statutes section 103B.241.**

	Yea	Nay	Abstain	Absent
<b>Manager Eckles</b>	X			
<b>Manager Johnson</b>	X			
<b>Manager LeRoux</b>	X			
<b>Manager Wirth</b>	X			
<b><u>Motion carried 4/0.</u></b>				

**9) Discussion Agenda**

**a) Updates**

**(1) Administrator**

Ms. Kill noted the workgroup she is serving on regarding diversity, equity and inclusion in watershed work has submitted an abstract for the Minnesota Watersheds annual conference. The Washington County budget workshop is November 7. Manager Johnson said he could attend.

**(2) Legal**

Mr. Welch updated the board that there is progress being made in working with the City of Stillwater on potentially addressing some of the outstanding items from the Heifort Estates permit. The next step is for staff to work on a plan, reaching agreement with the city, then present the plan to the homeowners' association. Ms. Kill reminded the managers that one of the issues raised was the enhancement of the buffer. Enhancement was not part of the original permit requirements and the homeowners' association does not have the physical or financial means to accomplish such work or to maintain it. Ms. Kill asked the managers if they are agreeable to using the BCWD stewardship grant program to purchase bulk

1 native species and plant them in the buffer through a volunteer event. The  
2 managers agreed that the approach would accomplish some of the  
3 district's goals and extend some good will to the homeowners'  
4 association. Manager Eckles said it needed to be clear that the district was  
5 not taking on the maintenance obligation and Mr. Welch said ongoing  
6 obligations will be spelled out in an agreement among the parties.

7 Mr. Welch reported no response to his communications with John  
8 Sharkey's attorney on the failure of his company, GreenHalo Builds, to  
9 reimburse BCWD regulatory. The next step the board can consider is  
10 noticing an enforcement hearing to order the recordation of a lien on the  
11 GreenHalo property, then seeking court enforcement in the event that  
12 there is no response from Mr. Sharkey. He estimated that the process  
13 could take three months. The managers indicated the cost of such efforts  
14 would not be worth the remaining permit fee and directed a stop to legal  
15 efforts on the matter.

16  
17 **(3) Engineers**

18 Ryan Fleming explained the performance study for BCWD's iron-  
19 enhanced sand filter was delayed this year while waiting for test results  
20 from media samples, which will inform the life expectancy of the project.  
21 He also updated that there was a beaver dam forming at the exit of the  
22 harvest pond. The dam is being monitored, and presently is increasing the  
23 function of the project. If the dam were to divert the stream channel, it will  
24 need to be addressed.

25  
26 The managers thanked Manger Eckles on his performance as chair during  
27 the meeting.

28  
29 **b) October 11, 2023 Regular Meeting BCWD Board Agenda and Location**

30 **c) Manager Eckles – Oath of office**

31 Mr. Welch administered the oath of office for Manager Klayton Eckles.  
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33

34 **10) Adjournment**

35 **Manager Johnson moved, seconded by Manager LeRoux, to adjourn the regular meeting at**  
36 **9:30 p.m. Motion carried 4/0.**

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38 Respectfully submitted by  
39 Cameron Blake, BCWD Staff and Charles LeRoux, Recording Secretary  
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