



# BROWN'S CREEK WATERSHED DISTRICT

2 **Minutes of the Regular Meeting of the Brown's Creek Watershed District Board of**  
3 **Managers, May 9, 2005.**

4  
5 **1380 W. Frontage Road, Hwy 36**  
6 **Stillwater, MN 55082**

**APPROVED**

7  
8  
9 **ROLL CALL**

10 Present: Craig Leiser, President  
11 Gail Pundsack, Vice President  
12 Connie Taillon, Treasurer  
13 Rick Vanzwol

Others Present: Karen Kill, WCD, Administrator  
Chuck Holtman, Smith Parker  
Cecilio Oliver, EOR  
Camilla Correll, EOR  
Ryan Fleming, EOR  
Peter Young, WCD  
Jay Liberacki, Orrin Thompson  
Doug Long, Stillwater High School  
Teacher  
Angela Burton, Stillwater High  
School Student  
Ryan Studdard, Stillwater High  
School Student

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16 Absent: Gerald Johnson, Secretary  
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24 **1) Call to Order**

25 President Leiser called the Regular Meeting to order at 6:32 p.m.  
26

27 **2) Approve Agenda and Discussion Agenda**

28 President Leiser tabled the approval of the November 8th, 2004 Regular Meeting minutes  
29 due to the absence of Manager Johnson, who would be necessary for a quorum to  
30 approve. Administrator Kill requested the Kern Center Pond Update be moved just after  
31 the Volunteer Stream Monitoring presentation, and table 6b the Permit Info Sheet.  
32 Manager Vanzwol added Stormwater fencing as item d under New business. **Manager**  
33 **Vanzwol, seconded by Manager Taillon, moved to approve the Agenda as amended.**  
34 **Vote: 4/0.**  
35  
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2  
3) **Volunteer Stream Monitoring- Presentation by Stillwater High School Representatives:  
4 Doug Long, Angela Burton and Ryan Studdard.**

5 Doug Long, Stillwater High School Biology and Wildlife Biology teacher, has  
6 participated in the volunteer stream-monitoring program for three years. His group  
7 monitors Browns Creek at Neal Avenue, near the intersection McKusick. Mr. Long and  
8 his students gave a presentation to the Board describing the monitoring methods, results  
9 and what the students gain from the experience. The students conduct the actual  
10 fieldwork, which includes sampling the macroinvertebrates, and collecting data for a  
11 stream habitat assessment. The students do the initial sorting of the macroinvertebrates  
12 and the Washington Conservation District does a quality control check on the sorting.  
13 The Stillwater High School students learn that science has real world applications and  
14 that they are contributing to data that the Board Managers use to make decisions.  
15

16 Discussion: President Leiser stated that he was greatly impressed with the Stillwater High  
17 School Water Monitoring Program, and how effectively it excited the students to study  
18 environmental issues while yielding useful information for the County and Watershed  
19 District. He also commented that the student sighting of a trout in the study-area was  
20 exciting because when BCWD was founded, the lower part of Brown's Creek was only  
21 able sustain a planted trout population. This sighting may be an indication of a natural  
22 reproduction in the stream.  
23

24 **7a) (moved up in the agenda) Kern Center Pond**

25 **Additional Engineering Charges – Update from Subcommittee-Board Action**

26 Chuck Holtman discussed the memorandum of the ad hoc committee, which met on May  
27 5, 2005 to discuss the City of Oak Park Height's (OPH) request that BCWD help defray  
28 construction-engineering cost overruns for the Kern Center Pond project. The committee  
29 reviewed the relevant terms of the cooperative agreement executed by the District and  
30 OPH for the work.  
31

32 The committee also reviewed Mr. Dennis Postler's methodology for calculating the  
33 requested amount of \$23,386.66 and determine that even if the district were responsible  
34 for the cost of all listed work items, the figure should be reduced to \$15,886.66 due to  
35 \$7,500 for future construction services that were not identified.  
36

37 The committee reviewed each claim and concluded that the added work by the OPH  
38 engineer did not fall within the District's responsibility for one or more of the following  
39 reasons:

- 40 ○ No claim made by OPH either suggested or proved that EOR departed  
41 from standard accepted practice in the completeness of the plan set, or that  
42 the District had any financial responsibility under the terms of the

1 cooperative agreement. He also stated that in most cases he didn't see a  
2 case where an error of omission was substantiated, and believed that in  
3 some cases it was contradicted.

- 4 o Where there was a deviation the cost and work involved was trivial and  
5 required only minor alteration of the plan set.
- 6 o If a given item wasn't in the plan set, nor was part of the package with the  
7 design, it was consistent with accepted practices, and BCWD cannot be  
8 held responsible for MNDOT requests for additional materials.
- 9 o OPH engineer reviewed and concurred in the plan set before execution of  
10 the cooperative agreement, the only omissions for which EOR would be  
11 responsible would be those not apparent on the face of the plans; none of  
12 the asserted omissions were of that sort.

13  
14 Manager Vanzwol and Manager Taillon agreed with Mr. Holtman's summary of the  
15 committee's review and findings. Manager Vanzwol also stated his belief that BCWD is  
16 not legally obligated to pay for any of the items which OPH identified, and that any  
17 questions BRAA came up with could have been easily answered through better  
18 communication. Cecilio Oliver, EOR stated that he concurred with the findings of the  
19 working committee. **Manager Leiser, seconded by Manager Vanzwol, moved that**  
20 **the Board accept the report of the working committee. Vote: 4/0.**

21  
22 Discussion: The Board discussed the history of the Kern Center Pond Expansion project.  
23 Manager Pundsack questioned whether OPH should get stuck in the battle between  
24 engineering concepts, and based on that stated that BCWD could contribute some of the  
25 requested money. Manager Taillon stated that BCWD should consider how they want to  
26 contribute the money, as a lump sum toward the project, or toward a specific aspect such  
27 as construction. Manager Pundsack stated that the BCWD position is that BCWD did not  
28 make any errors, but that there was a lack of communication in the permitting process,  
29 and that she agrees BCWD should take the high road and help. President Leiser stated  
30 that a modest contribution to alleviate the error, and resolve the funding shortfall on the  
31 project would be reasonable, however, BCWD should not take any responsibility for  
32 BRAA taking on extra work, which is the responsibility of OPH and BRAA. Mr.  
33 Holtman stated that any payment that board should agree to, for the particular set of  
34 requests, would best be done after the watershed management plan is amended because it  
35 relates specifically to construction. Manager Taillon pointed out that the non-degradation  
36 rule being enforced was unforeseen by both parties, and would be a good place for  
37 BCWD to contribute. Manager Vanzwol stated that OPH gains value from the project,  
38 and the Watershed District gains value from the project, and that the situation is not black  
39 and white. President Leiser stated that BCWD needs to go back to Eric and let him know  
40 that the Board has discussed the issue, and that on the advice of legal counsel cannot  
41 commit to a dollar amount until the plan amendment is returned. Manager Taillon stated  
42 that BCWD should not pay separately for engineering fees, but to give a lump sum to

1 OPH. President Leiser stated that the board still owes a response to the OPH request for  
2 funding on their budget overrun. President Leiser suggested in the response in the form  
3 of “we have reviewed the request objectively and have come to conclusions” contained in  
4 the memo. And that “on the advice of legal counsel, the board will not make any  
5 financial commitment in any amount until the plan amendment is successfully processed.  
6 Manager Pundsack stated that BCWD should state that it does plan to contribute.  
7 Manager Vanzwol stated that it would be better to state the board will consider  
8 contributing. **Manager Vanzwol moved BCWD instruct Administrator Kill to notice**  
9 **OPH that based on the content of the subcommittee evaluation, and ongoing**  
10 **discussions, BCWD intends to consider supporting the Kern Center Pond Project**  
11 **when and if the BCWD amendment is approved.**  
12

13 After further discussion, **Manager Pundsack, seconded by Manager Vanzwol,**  
14 **modified the motion to read, “financially support.” Vote: 4/0.**  
15

#### 16 4) Approve Minutes

- 17 ○ November 8, 2004 Regular Meeting – Tabled
- 18 ○ January 10<sup>th</sup>, 2005 Regular Board Meeting  
19 President Leiser made electronic comments to the minutes, which have already been  
20 included. **President Leiser, seconded by Manager Taillon, moved to accept the**  
21 **minutes of the January 10, 2005 Regular Board Meeting with grammatical**  
22 **corrections on 6c. Vote: 3/0/1. Manager Vanzwol abstained due to his absence from**  
23 **the January 10, 2005 Meeting.**
- 24 ○ March 14, 2005 Regular Meeting  
25 **Manager Vanzwol, seconded by Manager Taillon, moved to accept the March 14,**  
26 **2005 minutes as presented. Vote: 4/0.**
- 27 ○ April 11, 2005 Regular Meeting  
28 The April 11, 2005 minutes were revised to include the electronic comments and  
29 corrections submitted by President Leiser. Mr. Holtman added two grammatical  
30 corrections. **President Leiser, seconded by Manager Pundsack, moved to accept the**  
31 **April 11, 2005 minutes as amended. Vote: 3/0/1. Manager Taillon abstained due to**  
32 **her absence from the April 11, 2005 Meeting.**  
33

#### 34 5) Treasurer’s Report

- 35 a) Manager Taillon reported that the current items payable are in the amount of \$6,432.82.  
36 **President Leiser, seconded by Manager Pundsack, moved to authorize payment of**  
37 **items payable as presented. Roll call vote taken: 4/0.**  
38

#### 39 6) Permits/Rules

- 40 a) **BCWD Permit #05-05 Settler’s Glen 8<sup>th</sup> Addition – Board Action**  
41 A detailed description of the 8<sup>th</sup> Addition was given by Ryan Fleming of EOR. He stated  
42 that the addition consists of 25 single family homes developed on two cul-de-sacs off of

1 Atwood Lane to the east and west, and the associated stormwater infrastructure, which were  
2 reviewed under the 6<sup>th</sup> addition grading permit. Mr. Fleming proved the following  
3 recommended conditions:  
4

- 5 1) Submit revised 8<sup>th</sup> Addition plan set with the following:  
6 a. Provide inlet protection  
7 • Provide illustration on the grading plan for inlet protection for all  
8 proposed backyard catch basins and roadway catch basins.  
9 • Provide construction notes on the grading plan specifying inlet  
10 protection to be installed prior to the installation of curb and gutter.  
11 • Include language that catch basin inlet protection will also be in place  
12 during house construction and remain in place until all contributing  
13 drainage areas are completely restored.  
14 b. Provide construction notes on the grading plan ensuring that all existing and  
15 proposed silt fence is in proper working condition before, during, and after (until  
16 vegetation has established) all grading activities.  
17 c. Revise grading plan for the 8<sup>th</sup> Addition indicating the lowest floor elevations on  
18 the houses.  
19 2) File buffers shown in plan set for recordation with the County in accordance with District  
20 Rule 4.2.2 and provide proof of filing provided to the District Administrator.  
21 3) Provide the District with As-built information on the outlet structure and EOF elevation  
22 for ponds 1 and 2.

23 After Discussion, **President Leiser, seconded by Manager Taillon, moved that the**  
24 **Board approve Permit #05-05 Settler's Glen 8<sup>th</sup> Addition with the inclusion of the**  
25 **recommended conditions as presented. Vote 4/0.**  
26

27 Discussion: Mr. Liberacki asked for clarification on the seed mix recommended by  
28 BCWD for the bottom of infiltration basins. Camilla Correll, EOR explained that the  
29 seed recommended will be more tolerant of wet/dry exposure, and will better survive wet  
30 periods.  
31

32 **b) Permit Inspection & Data Collection/Digital Tracking Process – Presentation by**  
33 **Pete Young, Washington Conservation District (WCD)**

34 Pete Young and Karen Kill gave a short presentation on the benefits of digital data  
35 collection and how it would improve the efficiencies of the BCWD permit inspection  
36 program. The WCD is developing a database and digital inspection form, and it would  
37 be simple to adapt it for BCWD's use. Overall, using digital data collection and a  
38 database will result in less time spent on the administration of the permits and provide a  
39 tool for tracking compliance rates. The Board will act on this measure at the next  
40 meeting when specific costs are presented.  
41

42 **c) BCWD Rule 3.0 Erosion Control Rule Revision**

1 Administrator Kill reviewed the current erosion control rule and its intent. The Board  
2 reviewed the following potential rule revisions.

- 3 1) Rule 3.2—Additional rule trigger for disturbance on slopes greater than 12 %.

4 The necessity of such an addition would require further research. A map of  
5 all the areas in the district >12 % slope will be present at the meeting. The  
6 majority of the areas are adjacent to Brown’s Creek and other waterbodies.

7 Discussion: The Board requested further analysis and directed the Administrator  
8 to work with the District engineers and legal counsel to develop draft language.

9 President Leiser stated that the Board may want to consider looking to the State of  
10 Washington, which has similar legislation regarding slopes adjacent to trout  
11 streams, and also suggested that a map be developed of the areas within the  
12 district where a slope of more than 12 percent occurs.

- 13  
14 2) Include language that states “erosion and sediment control measures must be  
15 installed prior to disturbance.”

16 Discussion: Add the language.

- 17  
18 3) Include language regarding inspection standards such as, “Will notify District  
19 three days prior to grading to schedule inspection.”

20 Discussion: Add the language.

- 21  
22 4) Include language regarding vegetative stabilization such as, “Disturbed areas  
23 shall be seeded and mulched within 14 days of final grade.” “If not to be  
24 developed immediately (or within \_\_\_\_ time frame), then the disturbed areas  
25 shall be seeded and mulched within 14 days of last disturbance.”

26 Discussion: Develop draft language.

- 27  
28 5) Include winter condition regulations, such as limiting amount of open  
29 disturbance during the winter months.

30 Discussion: More information regarding other similar regulations. Not at this  
31 time.

- 32  
33 6) Delete Rule 3.2.5 “Sites with high erosion potential characterized by steep slopes or  
34 erodible soils may require the permit applicant to post a surety pursuant to Rule 9.0.”

35 Discussion: Delete from rule because surety already required for all permits.  
36

37 **d) BCWD Rule 7.0 Floodplain Management Rule Revision**

38 Administrator Kill reviewed the current floodplain rule and its intent. The Board  
39 reviewed the following potential rule revisions.

- 40 1) Land locked basin (LLB) rule defining LLB, establishing methodology for  
41 calculating the 100 HWL, and addressing outletting LLB and semi-LLB.

1 Discussion: Camilla Correll presented a scope to develop the language. The Board  
2 requested that the Administrator ask the County if this is something that will be  
3 developed by the new Public Health and Environment employee.

4 2) Rule 7.3.1:

- 5 a) Separate out 7.3.1 into filling/no net decrease of floodplain and lowest  
6 basement floor standards.  
7 b) Include language clearly requiring “1:1 mitigation of floodplain fill within  
8 the same floodplain”.  
9 c) Allow negligible floodplain fill if this standard applied: “if everyone in the  
10 floodplain filled to the proposed fill extent would impact still be  
11 negligible?” Use MCWD language as model.  
12 d) Include language/definitions that would make 7.3.1 apply to manmade  
13 basins as well as natural basins.)  
14 e) Include language that would require applicant to determine that by creating  
15 a manmade basin or elevating natural basins that the lowest basement floor  
16 standard will still be maintained for existing buildings as well as new  
17 buildings).  
18 3) Rule 7.3.2 Include language stating “no altering existing surface flows”  
19 4) Definition of “alter”—would recommend developing a definition similar to the  
20 FEMA definition.  
21 5) Definition of “100 year high flood elevation” –100-year flood elevation and 100-year  
22 floodplain are synonymous.

23 Deletions to the Rule:

- 24 1) Rule 7.2—“or from the appropriate local government unit in accordance with a state-  
25 approved floodplain management ordinance”  
26 2) Rule 7.3.1—“or by a qualified hydrologist”  
27

28 Discussion: The Board would like to pursue revisions to this rule.  
29

30 **7) Project Review and Updates**

31 **a) Kern Center Pond Construction Monitoring Update**

32 Ryan Fleming of EOR gave an update on the Kern Center Pond. The final grading and  
33 planting has been completed, and the seeding that was planned has not been completed,  
34 but is planned for the future.  
35

36 **b) THPP Monitoring Well Abandonment**

37 Administrator Kill gave an update on the attempts to locate the abandoned monitoring  
38 well. A drilling company was sent to the site and after 2 ½ hours could not locate the  
39 well. Keith DeWolf then used a scraper to find the well and was also unsuccessful. The  
40 entire steel casing has been removed and the PVC has snapped off approximated five feet  
41 below ground. The monitoring well is in an actively farmed field; therefore, the area  
42 soils have been significantly disturbed. The Board suggested that Administrator Kill  
43 contact the Department of Health and get their input and suggestions.  
44

45 **c) Kismet basin-manure pile removal – Board Action**

1 Administrator Kill met with Mr. McKenzie, who expressed concern that the area above  
2 the 600 ft of underground piping for the Kismet Basin outlet had sunk. There is an  
3 obvious depression in the area. There is a horse farm on the neighboring Sterner property  
4 as well as a large manure area that is adjacent to the pipe. Mr. McKenzie is concerned  
5 that there is flowage from the Sterner property manure pile into the depression on the  
6 McKenzie property. Administrator Kill visited the property and stated that it is unlikely  
7 that flowage from the manure pile is entering the McKenzie property; due to a higher  
8 area that divides the two properties. The manure pile on the Sterner's property was cut  
9 off for a long period of time during the project, and the district agreed to remove their  
10 manure pile. The Sterner's will only have a few horses after next year, and will not  
11 continue to store manure in the area. They would like the District to spread the manure  
12 on their fields for them. Discussion followed.

13  
14 Mr. McKenzie was also concerned that the sinking of the pipe may be caused by  
15 improperly backfilling the area with manure. However, a site visit revealed that the pipe  
16 had not experienced sinking and the ruts near the area of the pipe are vehicle tracks from  
17 trespassers onto the Sterner property. The Sterner's have installed fencing to keep  
18 vehicles out of the area. The District Engineer also stated that the construction of the  
19 pipeline was monitored and the manure was not used for the backfill. President Leiser  
20 suggested the District could offer to have the McKenzie well tested for fecal coliform  
21 and/or nitrates levels. Discussion followed regarding where to find a manure spreader to  
22 remove the manure pile.

23  
24 The Board requested Administrator Kill to get an estimate for the removal of the manure  
25 pile on the Sterner property.

26  
27 **8) Old Business**

28 **a) Craig and Marcia DeWolf Drainage from Cty Rd 15-analysis of drainage &**  
29 **recommendations.** Administrator Kill reported that Craig and Marcia DeWolf gave her  
30 an update at the April 21, 2005 community meeting regarding the drainage from Cty Rd  
31 15 onto their land. The DeWolf's stated that the County did offer them a \$5,000 payment  
32 for flowage easement; however, the DeWolf's are more interested in a water management  
33 solution. Ryan Fleming reviewed the history of the site and the changes made during the  
34 2002 County 15 Construction Project that have affected the drainage on the DeWolf  
35 property. He proposed several solutions to the problem. The board indicated that it  
36 would like to look deeper into Option 1, to divert water along the western ditch to contain  
37 the flow south of the property and discharge to the same area. The District Engineer will  
38 prepare a rough estimate for Option 1 for the June Board meeting.

39  
40 **b) Marketplace scope-Update and Board Action**

41 Administrator Kill reported that the City of Stillwater is working with Lakeview Hospital  
42 to expand the pond beyond what the Watershed District required. At the last meeting the

1 Board approved tasks 1 & 2 for the Marketplace study. Administrator Kill stated that  
2 timing is now of the essence since the City is currently reviewing another set of plans,  
3 and the board could determine what modifications may be necessary to get the Market  
4 Place to meet BCWD standards. Administrator Kill asked the Board to review the  
5 approvals from the last meeting.

6 Discussion: President Leiser stated that the Board's original concern was with all the  
7 ponds in the area, and how well they are functioning, and questioned whether with  
8 additional funds authorization of \$8,500 would allow the District to require the City of  
9 Stillwater to make stormwater improvements in the event that the ponds do not meet the  
10 BCWD Rules. Administrator Kill stated in that case, the District would then have an  
11 opportunity to work with the City to find alternative urban retrofits and provide  
12 additional treatment and storage. This may be a good example of projects that could be  
13 completed with a District incentive based program. **President Leiser, seconded by**  
14 **Manager Pundsack, moved that BCWD authorize the expenditure of \$8,500 to**  
15 **accomplish tasks 3 &4 and the miscellaneous expense. Vote: 3/0/1. Manager**  
16 **Vanzwol abstained from the vote, as he still new to this issue.**

17  
18 **c) Contract Review Resolution – Board Action**

19 **Manager Vanzwol, seconded by President Leiser, moved to approve resolution from**  
20 **the previous meeting. Vote: 4/0.** Manager Johnson will sign the resolution at a later  
21 date.  
22

23 **d) Stillwater Township Conservancy Comprehensive Plan Amendment.**

24 Camilla Correll, EOR discussed her letter regarding the plan amendment which will change  
25 the land use designation in the Township Comprehensive plan affecting 12 residential  
26 properties in the BCWD. During discussion it was realized that further clarification was  
27 needed on the process of the subdivision. It is the understanding of the board that only Lots  
28 2 and 19 can subdivide. Manager Pundsack questioned whether only 2 houses would have a  
29 significant impact, and suggested sending a letter to find out the correct statement. **Manager**  
30 **Vanzwol, seconded by Manager Taillon, authorized Ms. Correll to submit her letter**  
31 **after verifying the lot size requirement in section B/1. Vote: 4/0.**  
32

33 **e) Guidance Document-Stormwater Management Rule for Bounce/Duration of**  
34 **Inundation – Board Action – Tabled**

35 **f) Community Meeting – Comments Outcomes – no discussion**  
36

37 **9) New Business**

38 **a) Draft BCWD Baseline Monitoring Report – Request for comments by Monday, May**  
39 **23<sup>rd</sup>**

40 **b) June 2005 BCWD Board Agenda – no discussion**

41 **c) Stormwater Fencing – Tabled until stormwater rule revision discussion**

1 d) **Middle St. Croix Draft Watershed Plan Review** – Request for comments by June 10,  
2 2005.

3 **President Leiser, seconded by Manager Vanzwol, moved that the board authorize \$400**  
4 **to review the Middle St. Croix Draft Watershed Plan. Vote: 4/0.**

5  
6 **10) Discussion Agenda-No Action Required:** No Discussion Held

7 a) **Permit Review – Current Inspection Update**

8 b) **Communications & Reports – MAWD Annual Tour**

9 c) **Watershed District Tour Update**

10 d) **Long Lake Management Plan Update**

11  
12 **11) Adjournment**

13 **Manager Pundsack, seconded by Manager Vanzwol, moved to adjourn at 10:38**  
14 **p.m. Vote 4/0.**