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**Minutes of the Annual & Regular Meeting of the Brown's Creek Watershed District Board of Managers, December 10, 2007.**

**WCD Offices, 1380 W. Frontage Road, Hwy. 36  
Stillwater, MN**

**APPROVED**

**ROLL CALL**

Present:	Others Present:
Craig Leiser, President	Karen Kill, Administrator
Rick Vanzwol, Vice President	Paula Guetter, Recording Secretary
Connie Taillon, Treasurer	Camilla Correll, EOR
Gerald Johnson	Louis Smith, Smith Partners
Gail Pundsack <i>arrived 6:37 p.m.</i>	Pat Conrad, EOR <i>arrives 6:42 p.m.</i>
	Lisa Tilman, EOR
	Amanda Goebel
	Tim Freeman
	Curt Neft
	Robert Brackey

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1. **Call Annual Meeting to order @ 6:32 PM**  
 President Leiser called the Annual Meeting to order at 6:32 P.M.
  - a) **Approve Annual Meeting Agenda**  
 Manager Vanzwol requested public comment be included as item 1c.  
Manager Vanzwol, seconded by Manager Johnson, moved to approve the Annual Meeting Agenda as amended. Vote 4/0. Manager Pundsack absent.
  - b) **Review of 2007 Activities**  
 Manager Leiser listed the Brown's Creek Watershed District (BCWD) 2007 Accomplishments.
  - c) **Public Comment**

*Manager Pundsack arrived 6:37 PM*
2. **Adjourn Annual Meeting**  
Manager Vanzwol, seconded by Manager Taillon, moved to close the Annual Meeting at 6:41 p.m. Vote 5/0
3. **Call Regular Meeting to order @ 6:42 PM**  
 President Leiser called the Regular Meeting to order at 6:42 P.M.

1 **4. Approve Regular Meeting Agenda and Discussion Agenda**

2 Manager Leiser requested the Stillwater Courier article be added as item 12e.

3 **Manager Johnson, seconded by Manager Vanzwol, moved to approved the meeting**  
4 **agenda and discussion agenda as amended. Vote 5/0.**

5  
6 **5. Public Comment - No public comment.**

7  
8 **6. Approve Minutes – Board Action**

9 **b.) November 12, 2007 Regular Board Meeting**

10 **Manager Vanzwol, seconded by Manager Taillon, moved to approve the minutes of**  
11 **the November 12, 2007 Regular Board Meeting Minutes as amended. Vote 4/0/1.**

12 *Manager Pundsack abstained because she was absent from the meeting.*

13  
14 **a.) August 13, 2007 & August 15, 2007 Regular Board Meeting**

15 Louis Smith, Smith Partners, requested the Board not to approve the minutes at this  
16 meeting because legal counsel had not yet had a chance to review the minutes.

17 **Manager Leiser, seconded by Manager Johnson, moved to table the minutes of the**  
18 **August 13, 2007 & August 15, 2007 Regular Board Meeting Minutes and to make**  
19 **the draft of the minutes available in hard copy upon request. Vote 5/0.**

20  
21 **7. Treasurer's Report**

22 **a.) Review Authorized Funds Spreadsheet - Administrator Kill reviewed.**

23  
24 **b.) Current Items Payable – Board Action**

25 Manager Taillon reported that the amount payable was \$81,898.59 and the total balance  
26 was \$312,193.83 that includes the levy.

27 **Manager Taillon, seconded by Manager Johnson, moved to pay bills as presented.**  
28 **Roll call vote 5/0.**

29  
30 **c.) Permit Fee Statements Review**

31 Administrator Kill noted there were still many outstanding fees. Millbrook had sent in a  
32 check. There is \$138,716 owed to the District to date and the District is holding  
33 \$19,339.62 in sureties. Manager Vanzwol noted both numbers went up since last month.  
34 Manager Pundsack asked about Associated Eye Care and Bradshaw. Manager Johnson  
35 asked what the current status was on Fairway Villas. Administrator Kill noted no permit  
36 had been issued. In addition, Administrator Kill said they have been continually noticed  
37 on their bill. Manager Johnson asked if applicants could legally walk away and say the  
38 funds ran out. Mr. Smith said yes they could walk away and the District could not force  
39 them to move forward with the permit; however, the District can go after fees owed to  
40 them regardless of whether they receive their permit. Manager Johnson said he and the  
41 rest of the Board are anxious to see how the permit plays out. Manager Vanzwol said he  
42 hoped the discussion of agenda item 8e will help alleviate the excessive amount of fees  
43 owed to the District in the future. Mr. Smith noted the Board can, at the end of 12  
44 months, add conditions requesting payment upon request for extension from Fairway  
45 Villas. Manager Vanzwol asked Administrator Kill and legal counsel to move forward  
46 with continuous aggressive collection of fees.

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1 **8. Permit/Rules**

2 a.) **Permit #07-38 North Country Homes**

3 Administrator Kill noted Permit #07-38 had come into compliance.

4  
5 **b.) Permit #07-33 Best Buy – Board Action**

6 Lisa Tilman, EOR, reviewed the permit for the Board. The proposed project is the  
7 construction of a commercial building and associated parking totaling 4.6 acres of  
8 impervious surface on a 5.7-acre lot. The site drains to a wet detention pond, the  
9 Menard's Pond, located on this property and previously constructed as a regional rate  
10 control and water quality treatment facility.

11  
12 The proposed project satisfies the rate control requirement under the Rules from 2000.  
13 Onsite control of the difference in rate between the standards from the 2000 and 2007  
14 Rules will not necessarily change the rate of flow from the Menard's Pond because of the  
15 large drainage area and the control provided by the pond outlet. However, the project  
16 provides a rate reduction exceeding the difference between the pre-settlement condition  
17 (2007 Rules) and the pre-development condition (2000 Rules).

18  
19 Volume control was met for the 2000 rules through the TSMP agreement and the  
20 applicant will need to meet the difference between the 2000 rules and the 2007 rules for  
21 volume control. Ms. Tilman reviewed the volume control devices proposed for the  
22 project including the Stormtech chambers. The project does not incorporate a specific  
23 pretreatment facility designed for 50% sediment removal, but is not necessary because  
24 the facility will receive only roof runoff. The applicant has incorporated an "isolator  
25 row" into the design of the underground infiltration facility to ensure that any sediment  
26 that enters the system is contained in this one portion of the system and to ease inspection  
27 and cleanout of the system.

28  
29 The Menard's Pond was shown in the Long Lake Management Study to provide 36%  
30 phosphorous removal. The project proposes an onsite infiltration system and an  
31 EcoStorm hydrodynamic stormwater treatment system thus satisfying the water quality  
32 requirement and result in a reduction in phosphorous transport downstream.

33  
34 Ms. Tilman reviewed the additional detail required for erosion control regarding  
35 protection of the infiltration facility during construction. In addition, Ms. Tilman noted  
36 the plans should be changed to reflect a consistent lowest floor elevation. Manager  
37 Taillon requested a silt fence detail be included in the revised plan.

38  
39 Ms. Tilman reviewed the eight recommended conditions of the permit. Manager Leiser  
40 asked for comments from the developer. Curt Neft reviewed the impervious surface area  
41 for the project. Manager Leiser noted the EcoStorm was being used at the Herberger's  
42 Pond and he would like to see some sort of monitoring of the device. Manager Leiser  
43 noted he cannot require Best Buy to make monitoring a condition of the permit. Ms.  
44 Tilman noted the EcoStorm product proposed for this project does not take out dissolved  
45 phosphorous. However, the sediment removed by the product could have phosphorous  
46 attached. Manager Pundsack asked if the system would be cleaned out at the end of  
47 construction. Mr. Neft said it should be and he would make sure it was included.  
48

1 **Manager Johnson, seconded by Manager Leiser, moved to approve the permit**  
2 **application for BCWD permit #07-33 Best Buy with the eight conditions as**  
3 **presented in the District Engineer's memo. Vote 5/0.**  
4

5 Administrator Kill asked if the Board would like to add a 9<sup>th</sup> condition requesting the  
6 applicant replenish the permit fee escrow.  
7

8 **Manager Leiser, seconded by Manager Vanzwol, moved to amend the motion to**  
9 **include a 9<sup>th</sup> condition requiring the applicant replenish the permit fee deposit**  
10 **account. Vote 5/0.**  
11

12 The Board discussed with Mr. Neft and Mr. Brackey (property owner) the details of the  
13 infiltration system.  
14

15 **c.) Permit #06-04 Brown's Creek Reserve Conditional Approval Extension**  
16 **Request – Board Action**

17 A written request has been received from the property owner, Rick Carlson, requesting a  
18 one-year extension of the conditional approval. Administrator Kill presented the history  
19 of the Brown's Creek Reserve and current outstanding conditions of the permit. The  
20 conditional approval would expire on December 11, 2007. Without an extension the  
21 applicant would need to resubmit under the rules approved in 2007. The stormwater  
22 ponding would not be allowed in the buffer under the 2007 rules. Rick Carlson owns the  
23 property until January 1, 2008 at which time the Lake Elmo bank will own the property  
24 unless the property is sold prior to January 1, 2008.  
25

26 Tim Freeman, Folz, Freeman, Erickson, has a lien on the property and noted the property  
27 has been foreclosed on but Mr. Carlson is looking for a new developer. Mr. Freeman  
28 said he explained to Lake Elmo Bank that the BCWD fees need to be paid and they  
29 should have a check coming.  
30

31 **Manager Leiser, seconded by Manager Johnson, moved to approve an extension of**  
32 **permit #06-04 Brown's Creek Reserve under the current conditions for 6 months**  
33 **upon receipt of \$4,436.62 no later than Noon on December 31, 2007 and if the**  
34 **permit has not been issued by June 9, 2008 the project will need to resubmit under**  
35 **the new rules. Vote 4/0/1. Manager Pundsack abstained.**

36 Manager Pundsack said she was hesitant because they are charged with protecting  
37 Brown's Creek and they have an opportunity to protect the Creek more with this project.  
38 Manager Vanzwol said the reason he can support it is because under the old rules they  
39 had approved the project with the thought that they were protecting the Creek. Ms.  
40 Correll noted the one deficiency in the old rules was allowing stormwater ponding in the  
41 buffer. There is a thermal protection aspect to the new rules. Manager Taillon asked if  
42 they could add some small modification to the pond such as trees to shade the pond.  
43 Administrator Kill clarified the pond is designed as an infiltration pond and should not  
44 discharge every time it rains. Administrator Kill added the proposed design included a  
45 pervious trail and no averaging of the buffer. Manager Pundsack asked if they could add  
46 conditions to the permit at this point. Mr. Smith said yes the Board had some ability to  
47 add conditions. Mr. Freeman said no one has money right now for this project. They are  
48 hoping someone will buy the property. Mr. Freeman said everyone involved in this

1 project realizes the project may not work and they may end up starting at square one  
2 regardless of what the Board does tonight.

3  
4 *Recess 7:54 p.m. – 8:00 p.m.*

5  
6 **d.) Resolution #07-11 Permit Fee Schedule – Board Action**

7 Administrator Kill presented a revised permit fee schedule. The current schedule has  
8 not proven adequate when the reviews involve extensive stormwater management. Under  
9 the current resolution #03-03 there is a provision noting the Board can review the current  
10 plan on an annual or as need basis. The Board requested “or more” be removed from  
11 behind “Land Development Subdivision of 4”.

12 **Manager Leiser, seconded by Manager Johnson moved to accept Resolution 07-11**  
13 **for the permit fee schedule as amended. Roll call vote 5/0.**

14  
15 **e.) Policy Options for minimizing outstanding permit fees**

16 The Board directed legal counsel to determine if the District could establish a policy to  
17 charge interest on past due bills and if so, to determine after how many days interest  
18 would be chargeable.

19  
20 Manager Vanzwol said the City of Grant prior to setting a fee for permit review sends the  
21 proposed project to their engineering and legal counsel to determine approximately how  
22 much time each will need to spend reviewing the project. Manager Vanzwol said he  
23 believes \$100 a lot is a light fee. Administrator Kill said in her calculations \$100 per lot  
24 would cover the typical permit review.

25  
26 The Board directed the administrator and legal counsel to draft a resolution for the  
27 January 2008 Board meeting to establish a policy requiring reimbursement of the permit  
28 fee deposit within a specified time frame from the date of Board action as a contingency  
29 to any permit application approval or the permit automatically becomes denied. Mr.  
30 Smith said yes the Board could do this so long as the District established a policy and  
31 added language to that effect in each set of conditions. In addition, Mr. Smith said it  
32 would be a good idea to include the language in the next revision of the Rules. Manager  
33 Pundsack asked if the permit would be withdrawn after 30 days. Mr. Smith said the  
34 permit applicant would understand that their permit would not be issued until the District  
35 had received payment. Administrator Kill said if payment were not received the  
36 applicant would need to start over. Administrator Kill said the permit applicant would  
37 want to know what they owed at that point and it would be difficult to use 30 days as a  
38 time frame. Administrator Kill noted 45 days would be a more realistic time frame.

39  
40 The Board discussed the benefits of filing a 1099 for written off fees versus  
41 unforeseeable collection of the fees at a later date when the applicant may apply for  
42 another permit.

43 **Manager Vanzwol, seconded by Manager Leiser moved to file a 1099 for the**  
44 **Montanari project. Vote 4/1. Manager Johnson voted in opposition.**

45  
46 Manager Pundsack said if the Board does this tonight they would need to do it for all the  
47 future situations. Manager Pundsack noted the Board should establish a policy for  
48 dealing with writing off permits and/or issuing a 1099.

1 **Manager Leiser, seconded by Manager Vanzwol, moved to reconsider the vote of**  
2 **the managers on the motion for permit #06-04. Vote 5/0.**

3  
4 **Manager Leiser, seconded by Manager Johnson, moved to approve an extension of**  
5 **permit #06-04 Brown's Creek Reserve under the current conditions for 6 months**  
6 **upon receipt of \$4,436.62 no later than Noon on December 31, 2007 and if the**  
7 **permit has not been issued by June 9, 2008 the project will need to resubmit under**  
8 **the new rules. Vote 4/1.** *Manager Pundsack voted in opposition.*

9  
10 **9. Projects/Programs**

11 **a.) Groundwater Dependent Natural Resource Management Plan Grant**  
12 **Agreement – Board Action**

13 Mr. Smith reviewed the agreement and noted it seemed straightforward. The agreement  
14 requires the District to have an agreement with EOR noting EOR as the contractor of  
15 record with indemnification and insurance.

16 **Manager Leiser, seconded by Manager Vanzwol, moved to accept the Groundwater**  
17 **Dependent Natural Resource Management Plan Grant Agreement noting EOR as**  
18 **the contractor of record and for EOR to provide proof of indemnification and**  
19 **insurance. Vote 5/0.**

20  
21 Manager Leiser thanked Amanda Goebel for attending. Ms. Goebel thanked the Board  
22 for moving forward with the groundwater dependent natural resource management plan.

23  
24 **b.) East-Metro Water Resource Education Program – reimbursement vs.**  
25 **material budget – Board Action**

26 Administrator Kill said there may be additional partners to the program. In the  
27 agreement it notes if there were excess funds they were to be returned to BCWD. The  
28 East-Metro Water Resource Education Program (EMWREP) advisory board requested  
29 the partners to leave the excess funds in the program to provide for materials. Manager  
30 Vanzwol said he would like to see the funds reinvested in materials.

31  
32 Manager Vanzwol asked if additional partners were anticipated would the Board like to  
33 consider reducing the amount they add to the EMWREP. Manager Taillon said they  
34 would probably need the additional funds to cover the larger area if there were two  
35 additional partners. Manager Johnson said they should encourage the other partners to  
36 keep their initial amounts as well.

37 **Manager Vanzwol, seconded by Manager Taillon, moved to reply to the memo from**  
38 **the EMWREP indicating the excess funds should be used to further the program**  
39 **and should not be returned to BCWD. Vote 5/0.**

40  
41 Manager Pundsack asked if a lower rate should be included in the next agreement to  
42 allow smaller budgeted watershed districts to participate. Manager Taillon noted the new  
43 contract for 2009 could address the other watershed districts. Manager Taillon said the  
44 next meeting was proposed to be in May 2008.

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1 c.) **BMP Cost-Share Program – Rain Garden Manual Purchase/Lakescaping for**  
2 **Wildlife & Water Quality – Board Action**  
3 **Manager Taillon, seconded by Manager Vanzwol, moved to purchase 50 copies of**  
4 **the Blue Thumb Guide to Raingardens and 20 copies of the Lakescaping for**  
5 **Wildlife & Water Quality to come from account 914-0000 in 2007 and to provide the**  
6 **publications at no charge to the cost-share participants.**  
7

8 d.) **Long Lake Management Plan Implementation – Next Steps – Board Action**  
9 Pat Conrad, EOR, presented on the Long Lake Drawdown. The Long Lake Management  
10 Plan prepared in 2006 included a Lake Restoration Feasibility Study in 2008 and doing  
11 the restoration in 2009. The cost estimates at that time were \$75,000 and \$200,000  
12 respectively.  
13

14 Mr. Conrad noted the lake drawdown science. Shallow lake systems naturally draw  
15 down in summer and into fall. The natural draw down helps maintain a healthy  
16 ecosystem. This natural process is destroyed when outlet structures are added. Some of  
17 the potential benefits of a lake drawdown for Long Lake are fisheries restoration, bottom  
18 sediment consolidation, plant community manipulation and other ancillary benefits.  
19 Long Lake is currently infested with non-native koi and has a significant Black Bullhead  
20 population. The lake drawn down would facilitate a winterkill of the lake's fishery. Mr.  
21 Conrad noted the two ways to eliminate the fish population plus a possible third measure  
22 that may need to be taken. The WCD determined that the majority of Long Lake has 6  
23 feet of sediment above hard bottom. Drying the material consolidates the sediment; the  
24 material does not fully expand when water appears thus creating a harder bottom.  
25 Currently there is a lack of diversity within the submerged plant community and a lack of  
26 emergent vegetation within Long Lake. The seeds of some emergent plants need to be  
27 dried out to allow for colonization. Some of the other benefits of a lake drawdown could  
28 be removal of sediment deltas, dock repair, trash removal and placement of fish habitat  
29 structures.  
30

31 Mr. Conrad reviewed the first step in the process, which would be to determine the  
32 feasibility of drawing Long Lake down. An environmental assessment would be  
33 conducted after determining if it is possible to lower the lake to a level necessary to  
34 accomplish the stated goals. Mr. Conrad said one of the things that will need to be done  
35 is to work on educating residents that live around the lake. Administrator Kill said the  
36 DNR is trying to change the rule that requires all residences along a lake must agree to a  
37 draw down; the revision would require a majority of the residence along a lake must  
38 agree to a draw down. Mr. Smith noted there is a similar project in Nine Mile Creek WD.  
39 Joe Bischoff's presentation and BCWD have both said this is something that needs to be  
40 done to improve water quality. Manager Johnson noted in order for McKusick Lake to  
41 maintain good quality the quality of Long Lake needs to improve. Mr. Conrad had talked  
42 to the DNR and to Joe Bischoff when putting this memo together. Mr. Conrad said it will  
43 be important to have partners in the project before proposing the project to the residents  
44 along Long Lake.

45 **Manager Leiser, seconded by Manager Johnson, moved to authorize EOR to**  
46 **develop a feasibility work plan for Board review at the January 2008 Board Meeting.**  
47 **Vote 5/0.**  
48

1 **10. Old Business**

2 **a.) Resolution #07-13 Board Agenda Item Submittal Policy – Board Action**

3 Manager Vanzwol said he would like to see an addition to the policy indicating the  
4 administrator may make an exception to deadline. Mr. Smith said he believes the Board  
5 should consider having both the Board of Managers and the Administrator as parties able  
6 to make an exception to the deadline.

7 **Manager Johnson, seconded by Manager Vanzwol, moved to approve Resolution**  
8 **#07-13 Submittal Deadlines for Board of Managers Meetings as amended. Roll call**  
9 **vote 5/0.**

10  
11 **11. New Business**

12 **a.) Resolution #07-12 Final Levy Certification – Board Action**

13 **Manager Vanzwol, seconded by Manager Taillon, moved to approve Resolution**  
14 **#07-12 Final Levy Certification as presented. Roll call vote 5/0.**

15  
16 **b.) Washington Conservation District Service Agreement 2008-09 – Board**  
17 **Action**

18 Manager Leiser noted the agreement includes coverage for the unavailability of the  
19 Administrator Kill during a period of maternity leave.

20 **Manager Vanzwol, seconded by Manager Johnson, moved to approve the**  
21 **Washington Conservation District Service Agreement as distributed at the meeting.**  
22 **Vote 5/0.**

23  
24 **12. Discussion Agenda – No Action Required**

25 **a.) Permit Review – Current Inspection Update**

26 Administrator Kill and Paula Guetter gave a brief update on permits.  
27

28 **b.) Project Review and Updates**

29 Manager Leiser said the Board said they would look into the Willow Street over-flow  
30 problem. Administrator Kill clarified there were two areas of concern. The first area was  
31 the Kane Residence in which a downstream stormwater pond was impacted; the City is  
32 pursuing the issue. The second area was the ravine Mayor Harycki showed. The City of  
33 Stillwater said the overflow is not from overflow from the streets or poor design. The  
34 City's investigation showed an adjacent landowner with a significant erosion control  
35 problem. Administrator Kill said she had informed the City that BCWD was willing to  
36 help as necessary. Manager Leiser said he would like a close to the issue through a  
37 resolution to assuage the concerns of the citizens. Manager Leiser said the citizens  
38 should be invited by email or other appropriate invitation to the meeting to hear the  
39 resolution to the issues.

40  
41 **c.) Subcommittee updates – MAWD Meeting Update**

42 Manager Leiser said he was the voting representative for BCWD. Six resolutions, two  
43 added during the meeting, came out of the MAWD meeting. One of resolutions was in  
44 regards to Minnesota Statute 103d, providing watershed districts the ability to enter  
45 private property if immediate action is needed. One of the other resolutions was  
46 regarding the majority versus needing all of the residence around a lake to agree to draw  
47 downs. Mr. Smith said the first resolution Manager Leiser mentioned had a component  
48 regarding unpaid fees.

1           **d.)     January 2008 BCWD Board Agenda – Reminder Holiday Gathering Monday,**  
2           **December 17<sup>th</sup> at 6:30 P.M.**

3           Manager Leiser said the gathering was to be held at Sal's Black Angus from 6:30 p.m. to  
4           9:00 p.m. and all managers and supporting service provider's were invited to attend.

5  
6           **e.)     Newspaper Article**

7           Manager Leiser noted the Courier and the Gazette had an article resulting from the joint  
8           meeting with the City of Stillwater.

9  
10       **13.    Adjournment**

11       **Manager Johnson, seconded by Manager Vanzwol, moved to adjourn at 9:45 p.m.**

12       **Vote 5/0.**

13  
14  
15       Respectfully Submitted by

16       Paula Guetter, Recording Secretary