



# BROWN'S CREEK WATERSHED DISTRICT

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## Minutes of the Regular Meeting of the Brown's Creek Watershed District Board of Managers, September 9, 2002

Washington WCD Offices 1825 Curve Crest Boulevard  
Stillwater, MN 55082

APPROVED

### ROLL CALL

Present: Craig Leiser, President  
Karen Kilberg, Vice President  
Ned Gordon, Treasurer  
Tim Freeman, Secretary  
Barbara Medinger

Others Present: Mark Doneux, WCD,  
Administrator  
Chuck Holtman, Legal Counsel,  
Smith Parker, P.L.L.P.  
Mitch Johnson, EOR  
Pat Conrad, EOR  
Camilla Correll, EOR  
Konrad Koosmann, WCD  
Jim Bradshaw, Bradshaw Hauge  
Mrs. Gordon, Citizen

### Call to Order:

The meeting was called to order at 6:35P.M.

### Approval of Agenda:

Manager Leiser asked that the following subjects be changed in the Agenda: Move New Business, h) to follow the Treasurer's Report; Add possible permitting for Cory Arkell to THPP; add to New Business, Liberty on Lake Wetland, Wetland Replacement Act; and a Discussion by Manager Gordon, Transition of Treasurer's Duties. Manager Gordon moved to approve these changes, seconded by Manager Leiser. Vote: 5/0

### Reading of Minutes and Approval:

Manager Kilberg moved to accept the amended August 12, 2002 minutes, seconded by Manager Gordon. Vote: 5/0

### Treasurer's Report –Manager Gordon

Manager Gordon circulated a list of bills to be paid in the amount of \$57,344.81 and moved to pay them, seconded by Manager Freeman. Manager Leiser requested that we consider tabling this motion until after the discussion of the Kismet Project. Manager Gordon moved to table motion until THPP discussion. Manager Kilberg asked at the last meeting about the maintenance budget for THPP. She asked what EOR had done in the past month on this project. Pat Conrad

responded that a wetland inventory was done for BWSR credits. If we can get wetland credits for the downstream infiltration basin, the wetland credits should be close to the predicted credit. Manager Kilberg asked if Mark Doneux would be able to go back and look for the policy on maintenance. Pat Conrad stated that EOR only goes out to the THPP project if one of the Managers asks them to. Manager Kilberg asked if the BCWD could have a policy as to who can ask EOR to go out and check on Goggins or other things. In the past, we have had this discussion - there should be consensus of the BCWD, not necessarily vote. Manager Leiser has asked EOR to follow up on the construction at Kismet and checking Goggins Lake. Manager Kilberg asked Pat Conrad to remind BCWD to bring up questions at a Board meeting. Manager Medinger asked about one charge. Manager Freeman asked what EOR did on the Wolf Marina problem? Pat Conrad explained.

Manager Gordon distributed copies of the audit for 2001. He gave out copies to the BCWD and asked the members to return their copies if they did not want to keep them. There were no serious discrepancies. The BCWD is in legal compliance and the only criticism - internal control - we do not have internal division of items, which is because of our small size. Manager Gordon will send a copy of this report to the County Commissioners.

Manager Leiser asked Mark to finish the annual report.

Brief recess for printing 2003 proposed budget and setting up projector.

Manager Leiser moved to recess the BCWD meeting, seconded by Manager Freeman. Vote: 5/0. Meeting recessed at 7:02P.M.

#### PUBLIC HEARING – PROPOSED 2003 BUDGET AND LEVY

Manager Gordon gave a presentation on the proposed budget. The consolidated 4703 accounts for permitting have been changed to 4701, 4702 and 4703, to separate the costs of permit processing, and engineering and legal review. The costs for legal and engineering reviews have changed significantly. The total budget for operations, General Fund and Management Plan, is \$265,600. We have begun to use a number system for accounting per the suggestion of our audit company. The total BCWD budget is \$533,850. We can lower this budget in December but cannot raise it. A question was asked as to why the O & M monitoring budget is higher on THPP than on Kismet? Manager Gordon replied it is because we have to repair pipe and replace plantings. There is some money included here for control of reed canary grass. Manager Gordon stated he has made a practice of contingency funds for our ordered projects. In the past we have absorbed our contingency funds. Manager Kilberg asked Manager Gordon to prepare a list of the contingencies before he leaves in November. The 2003 Budget revenues include a \$78,000 undesignated 2002 funds balance – somewhat higher than typical. In part this is a result of the early repayment of our last loan to the County, and the fact that the Kismet Basin Project had no major cost over-runs. The tax levy will be \$404,830. Manager Gordon will ask for approval of this budget by resolution. Manager Gordon stated that one of his internal tests in formulating the budget is to analyze changes in operating budgets. The District's General Fund has remained fairly constant, as has its Management Plan Fund. We have maintained a relatively constant level in our budgets. Manager Leiser stated that after the BCWD presentation of budget to the Washington County Commissioners, the Commissioners complimented the BCWD on their clear and understandable presentation.

Chuck Holtman asked if the fund balance of \$78,000 included in this budget is intended so there is a balance remaining next year? Manager Gordon replied the amount would be the same or less. Chuck asked if Manager Gordon had done a cash flow analysis? Manager Gordon responded, "No, I have not."

Manager Leiser asked the audience if they had any questions? There were none, and Manager Gordon recommended adoption of the 2003 Budget and Levy as presented. Legal counsel advised that actions accepting or changing the budget must be done within the regular meeting of the Board.

Manager Leiser closed the public hearing at 7:30P.M.

The regular meeting was reopened at 7:30P.M.

Manager Gordon placed before the BCWD a Resolution to adopt a budget for the year 2003 totaling \$533,850 and certifying a tax levy of \$404,830. Manager Gordon moved to adopt the Resolution, seconded by Manager Leiser.

Discussion: Manager Gordon stated that he felt Paragraph 2 of the Resolution 02-3 needed additional detail with respect to Management Plan and Project totals, and recommended changing this portion of the Resolution.

He moved to table his own motion in order to develop more precise wording; seconded by Manager Leiser. Vote: 5/0.

Manager Gordon made a motion to accept and approve the 2003 budget, seconded by Manager Leiser.

Konrad Koosmann, WCD stated that after his last appearance before the BCWD, he felt he should make another appearance to answer any questions. The WCD went through the full costing process this year, per the County's request. This is how we came up with our new rates for 2003. The county took the administrative hours Mark Doneux gave BCWD, and deducted the difference between full costing and the actual charges. The total difference was \$16,000 and the County decided to deduct this amount from the WCD budget. The BCWD decided at the last meeting to not pay this additional amount because they have a signed contract with the SWCD for services. In 2003, the County will sever the WCD from computer support and telephone system. This adds up to \$60,000. We have asked the County Board to reconsider and they will make a final decision tomorrow. Manager Kilberg asked if it would do any good for a manager to appear before the Board and show them the contract we have with WCD. Manager Kilberg asked Konrad Koosmann to prepare some information on what other WCD's charge, and Manager Freeman asked him to ask his Board what could BCWD do to help. Manager Leiser stated the BCWD has sent a letter to Konrad Koosmann with a copy to Jim Schug.

### **Rules and Permits**

Bradshaw Site #02-12

Mark Doneux - Permit Lot 1, Block 1 of the Bradshaw Development. Mr. Bradshaw attended the meeting. Mark Doneux discussed the former permit and now Mr. Bradshaw is asking for a permit for his own building. This property is within the AUAR and does not require volume

control. The overall property has a drainfield for runoff. Mark Doneux asked that the property be modeled without the drainfield working to see the worst-case scenario. The site does have rate control and meets the rules. Mitch Johnson- if we do turn on the drainfield we will be extracting more water from some of the project. Water quality - standards are met. Mitch Johnson- the system is working well now that Lot 1 is being built. Manager Kilberg asked if the ponding systems would be considered wetlands in the future. Pat Conrad said no. These are not designated as jurisdictional wetlands but as man-made water bodies filling of which would likely be prohibited. Konrad Koosmann stated that Mr. Bradshaw asked for the WCD to go to BWSR for cost sharing. Manager Kilberg asked if we could use one of these ponds as a demonstration pond. Mr. Bradshaw stated he would like to see the whole development be a demonstration site. He is even using geothermal heat and air conditioning. Mark Doneux is recommending approval of this permit.

Manager Freeman made a motion to approve Permit 02-12 with the single remaining condition, seconded by Manager Medinger. The fees and surety are \$22,500.00. Chuck Holtman asked that fees be separate from sureties in the future. The motion was amended to include the \$22,500. Vote: 5/0

Break at 8:15P.M.

Reconvened at 8:31P.M.

Manager Gordon moved to untable his motion to adopt Resolution 02-3; seconded by Manager Leiser. Vote: 5/0. Manager Gordon presented the revised language for Paragraph 2 of the Resolution, and recommended inclusion of the changes in the Resolution as an amendment to his original motion. The question was moved by Manager Gordon; seconded by Manager Freeman. Vote: 5/0.

Century Power Bldg. and Parking Lot Expansion - #02-08

Mark Doneux reported Roger Tucknor is no longer interested in a demonstration site. An Erosion Control Permit was given at the last meeting so the BCWD should not have any more involvement in this project.

#### **Permit Review Update – Mitch Johnson**

**Century Power** - broke ground and then the rain came. Silt fence will be reinstalled.

**Stillwater Motors** – The culvert that goes under #36 is filled with silt. MnDOT will not give Stillwater Motors a permit until the pipe is cleaned out. Manager Leiser asked Mitch Johnson to contact MnDOT about the filled pipe.

Manager Medinger asked what could we do with people who do not follow the rules. Manager Leiser stated that we do not have the authority to levy fines. Chuck Holtman - If someone does break the rules or builds without permits, the BCWD could hold a hearing and direct them to fix the problem. If they do not obey, then you have to go to court to order them to do so. Chuck Holtman suggested the BCWD might want to talk to MnDOT about how this pipe is cleaned out. Manager Medinger asked if there was any way to force contractors to sign a statement agreeing to follow the BCWD rules. Chuck Holtman explained that the owner has the surety and signs all the permits and his contractors are responsible to him.

Manager Leiser suggested the BCWD write a letter to the County indicating that 4-wheelers have done a lot of damage in several areas of the County.

Manager Freeman - how are permits looked at as far as runoff. Can there be more runoff in one area and still pass the BCWD rules? Camilla Correll responded to his question. The engineers look at the site and break it into subwatersheds. Looking at flow and volume, we are matching predevelopment peak flow rates, to post development rates. Mark Doneux - 1.5, 10- and 100-year storm events are used for rate control. Manager Gordon stated that you have to take a pragmatic view. Pat Conrad stated rules are written so that rate control cannot increase for a sub watershed. Manager Gordon – our job as managers is to solve or make these decisions. Manager Leiser stated the BCWD has changed the buffer rules to require a minimum but allow developers to average the buffers.

Chuck Holtman – Rate control applies to the site as a whole, but peak flow changes in a drainage area are subject to the bounce limitation and the provision that downstream features must be able to handle the flow.

### **Watershed Management Plan – Implementation Activities**

a) H & H Update.

Camilla Correll presented the information from modeling the Long Lake area. She passed out graphs showing the XP-SWMM lake elevations, measured water levels for 2001 and 2002. She stated that Lee Miller’s readings were very good. We are looking at why Long Lake is flooding. After we get calibrations closer, we will look at impacts of several improvements. The question was asked about who is reading staff gauge at #12. Mark Doneux replied the WCD is. Camilla Correll continued, at the next meeting we will demonstrate what impacts each change makes in the flooding levels.

### **Project Review and Updates**

#### **Kismet Basin – Update**

There is a Pay Request for Jay Brothers in the packet. Manager Leiser reported on how the neighbors of this project feel about the project. Sterner’s are very happy. Bill Johnson wants to meet with Manager Leiser to discuss unfulfilled items. Manager Leiser stated the BCWD could hire someone else to finish up and use retainage to pay for this. Manager Gordon stated the BCWD should send a letter to Jay Brothers stating that if work is not completed we will hire someone else. Manager Gordon asked how long can the BCWD hold onto Jay Bros. Bond? Chuck Holtman replied as long as you need to. Manager Gordon stated we should go after their Performance Bond if the contractor does not perform to the terms of the contract. Manager Leiser stated the BCWD plan is to write a legal letter giving them 30 days to complete the job. Chuck Holtman will use his discretion after looking at the Performance Bond. Manager Gordon moved to remove his motion. Manager Gordon moved to pay the accounts payable, seconded by Manager Leiser. Vote: 5/0.

#### **THPP – Update**

Pat Conrad - If water levels drop, we can repair the pipe this fall. The gate on this project has been open since the day after the last meeting.

Cory Arkell permits - Mark Doneux received a letter from May Township Engineer. Mr. Arkell is constructing a road and a basement. May Township has stopped his work until he gets some

plans and permits. We had no exemptions for permitting when we sold him this property. Manager Kilberg stated that if he is crossing the BCWD easements and causes problems with the water movement, we should talk to him.

### **Old Business**

#### **TSMP/Long Lake Status Report**

There is a copy of a letter from the City of Stillwater to Oak Park Heights about the AUAR.

### **Kern Center**

#### 1) Joint Workshop September 11th 5:30 P.M. – Update

Managers Freeman and Leiser are available to attend this meeting.

#### 2) Potential Demonstration Project - Action

Because Century Power is not interested in having a demonstration site, the Kern Center Pond came to mind as a visible site. We may be able to use grant funds. Manager Freeman stated the Kern Center Pond could be used to demonstrate that infiltration can work. Manager Leiser asked if the grant money would have to be used on a site demonstrating more than one technique. No. The BCWD has committed to spend a limited amount of funds to design infiltration for the Kern Center Pond. Manager Kilberg asked how the BCWD can be sure this is a good demonstration site? Manager Gordon stated our Second Generation Plan has scheduled one demonstration site for this year and another one for next year. At this time we have no alternative - our year is running out. Manager Leiser moved to consider Kern Center Pond as a demonstration site for expenditure of BWSR funds in 2002, seconded by Manager Gordon. Vote: 5/0

#### 3) Design Update

Camilla Correll passed out technical data for the Kern Center Pond. There is some sediment on the bottom of the pond so it is not infiltrating as well as it could. Camilla Correll suggested digging out 3 to 5 feet from the bottom of the pond. Another modification would be to expand into the parcel owned by MnDOT. Also, she suggested planting vegetation around the top of the pond. The total project cost is approximately \$70 - \$85,000. This would be half the cost of the original Oak Park Heights plan. Manager Freeman asked if one of the engineers could attend the joint meeting on Wednesday.

Mitch Johnson and Manager Freeman will get together tomorrow to prepare for the Oak Park Heights meeting. The 20,000 yards of material to be removed from the pond could help defray costs if it can be used. Manager Freeman will ask Attorney Vierling, Attorney for the City of Oak Park Heights, to start working on an agreement.

### **VBWD/BCWD Joint Boundary Change – Update**

Mark Doneux asked what should the BCWD do with developments already in progress that are within the BCWD jurisdiction? The BCWD felt if a project is in and constructed the BCWD should leave it alone. Chuck questioned if the BCWD had any authority to issue permits if property is not within the BCWD boundaries. Manager Leiser asked Mark Doneux to talk to John Hanson to see how many projects are in progress.

### **Marketplace Stormwater Management Plan – Update**

Mark Doneux stated the BCWD talked to Klayton Eckles at the last meeting about re-evaluating the Market Place plan or study. The city was going to do some remedial ponding. We asked for a map to explain what areas are not developed, what projects are done and pending projects. Would the city cooperate with BCWD to make sure our rules are met? Manager Leiser thought it would be interesting to see where the water flows.

### **Craig and Marcia DeWolf – Update & Discussion**

Mark Doneux negotiated a letter with Chuck Holtman to send out to the DeWolfs. The letter basically asks them to tell the BCWD what it is that they want? Manager Kilberg stated that the letter should include an easement statement.

### **Rules Update – Discussion**

Tabled.

### **Draft Washington County Groundwater Plan – Update**

Manager Leiser reported on the last Washington County Commissioner's meeting. The Groundwater Plan was accepted by the commissioners. The Plan will now be sent out for comments.

The neighborhood meetings start September 17. National Geographic has three articles on water and managing and controlling the world's water. All of the counties are required to have a water plan and Washington County will be way ahead of the others.

### **Indian Hills Golf Course Update**

The owner has given up on building the golf course and is going to just divide the land and develop as many 10-acre parcels as possible. The BCWD is concerned that this leaves the fen without any protection.

### **New Business**

#### **Boutwell South Area Plan – City of Stillwater – Update**

Mark Doneux - in last couple of weeks we have received information from the City on expansion of Boutwell. Mark Doneux will have more information in the near future.

#### **“Kern Center West” Annexation – Update**

Mark Doneux - landowners in Lake Elmo have petitioned Oak Park Heights to annex. There is a meeting on September 17 and the cities have asked a member of BCWD to attend.

### **October 14th BCWD Board Agenda**

Rules Revision

#### **Liberty on the Lake**

Liberty wants to use banked credits for their wetland replacement. Grant turned them down for an area across the road. The question was asked if there is any rule that wetland credits have to be in this watershed? We can comment but ultimately the city of Stillwater is the LGU for this area.

**Sunnybrook Lake** – Manager Leiser stated the Valley Branch Watershed is going to go back to buying out the flooded homes because with the loss of the free land, the cost of the infiltration will be too high.

#### **Treasurer's Transition – Manager Gordon**

Manager Gordon stated that there are a number of issues. The next meeting will be my last. One of the things the BCWD will need to do is have another signature on the bank signature card. I am willing to continue handling accounting functions of the watershed through end of the year or until 2002 data is presented to the accountants. I will do this free of charge. Manager Leiser suggested that Manager Freeman as Secretary be the third signer. The suggestion was made to hire a local bookkeeper to do the accounting in the future. Manager Leiser stated he would be pleased to have Manager Gordon continue to do the accounting until the end of the year. He would also like to have Manager Gordon remain on stipend of managers until end of year. Chuck Holtman brought up that someone should serve as Treasurer even if it is a temporary arrangement. Manager Leiser moved that Manager Medinger be appointed Treasurer until the BCWD is fully staffed and then has an election, seconded by Manager Freeman. Vote: 4/0/1. Manager Gordon abstained.

#### **Communications & Reports**

Washington County Board of Commissioners – Manager Leiser reported on the Budget & Work Plan Presentation and stated that the Board of Commissioners sent a letter thanking Manager Gordon for his service on the BCWD.

#### **City of Stillwater Meeting - Update**

Mark Doneux reported on the meeting with Klayton Eckles, the City Administrator, Manager Leiser and himself. Klayton Eckles agreed to review Marketplace. Manager Leiser offered to present to the city an explanation of watershed/city working on water.

MAWD Resolutions – Manager Leiser has the forms from MAWD if the BCWD would like to submit any resolutions by October 11.

#### **Adjournment**

Manager Gordon moved to adjourn, seconded by Manager Freeman. Vote: 5/0.  
Meeting adjourned at 11:00P.M.

Respectfully Submitted,

Dawn Hilde, Recording Secretary