Approved Minutes

CALL TO ORDER
President Patricia Preiner called the meeting to order, a quorum being present, at 9:00 a.m.

ROLL CALL
Present: President Patricia Preiner, 2nd Vice-Pres. John Waller, and Secretary Michael Bradley, and Treasurer Steven Wagamon

Absent: 1st Vice-Pres. Barbara Haake (with prior notice).

Staff Present: District Administrator Nick Tomczik, Permit Coordinator/Wetland Specialist Patrick Hughes, District Technician Lauren Sampedro, and Office Manager Theresa Stasica.

Consultants: District Engineer Chris Otterness from Houston Engineering, Inc. (HEI); District Attorney Louis Smith from Smith Partners

Visitors: Marcie Weinandt

SETTING OF THE AGENDA
District Administrator Tomczik asked to pull Permit No. 17-091 from the Consent Agenda.

Motion by Manager Bradley, seconded by Manager Waller, to approve the agenda as revised. Motion carried 4-0.

READING OF THE MINUTES AND THEIR APPROVAL
Minutes of the December 9, 2019 Board Workshop. Motion by Manager Bradley, seconded by Manager Wagamon, to approve the minutes as presented.

Manager Wagamon asked if it was allowed for him to second a motion if he was not in attendance at the meeting.
District Attorney Smith stated that the motion to approve the minutes is a statement that you believe it is an accurate representation of the meeting. He noted that if you are present, you are in a better position to speak to that fact, but it is appropriate to express support of and approve the minutes if you have reason to believe they are accurate.

Motion carried 3-0-1 (Wagamon abstained).

Minutes of the December 11, 2019 Board of Managers Meeting. Motion by Manager Bradley, seconded by Manager Waller, to approve the minutes as presented. Motion carried 3-0-1 (Wagamon abstained).

CONSENT AGENDA
The following items will be acted upon without discussion in accordance with the staff recommendation and associated documentation unless a Manager or another interested person requests opportunity for discussion:

Table of Contents-Permit Applications Requiring Board Action

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<td>19-072</td>
<td>White Bear Township</td>
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<td>Final Site Drainage Plan</td>
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It was moved by Manager Wagamon, seconded by Manager Waller, to approve the Consent Agenda item for permits 19-072 as outlined in the above Table of Contents in accordance with RCWD District Engineer’s Findings and Recommendations dated December 31, 2019. Motion carried 4-0.

PERMIT APPLICATIONS REQUIRING BOARD ACTION

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<td>18-075</td>
<td>Secure Mini Storage, LP</td>
<td>Spring Lake Park</td>
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Permit Coordinator/Wetland Specialist Patrick Hughes explained that this application was originally given conditional approve in August of 2018 and received a permit later that same year. He stated that since that time they have found some issues and have requested a variance and asked District Engineer Otterness to give a project summary.

District Engineer Otterness stated: the project is located within the City of Spring Lake Park, MN on a 6.58 Acre parcel owned by Secure Mini Storage LP. The project includes the demolition (now completed) of an existing single-story building and replacing it with a multi-story building. The existing storage garages will remain despite the localized flooding. He stated that this project has been completed and this is an after-the-fact request because of a condition that was noted that the applicant was not aware of in the previous permit which is why this is being brought forward. The project, as described within the permit documents, has disturbed approximately 3.41 acres of land and is reconstructing approximately 2.33 acres of impervious surface. It will result in no net change in impervious area. Drainage from the site is routed to...
an existing stormwater pond which is being reconstructed to NURP standards. The existing pond receives drainage from the proposed site as well as the adjacent properties. The construction maintains this drainage pattern. Drainage from the pond is routed to an existing 12-inch stormwater pipe that eventually drains to Locke Lake, the resource of concern.

District Engineer Otterness stated: the project originally proposed 2 feet of freeboard by constructing the building at elevation 903.33. However, during construction it was discovered that drainage area to the pond was incorrectly determined by the applicant’s consultant due to the surrounding area being relatively flat grade, with hard-to-distinguish drainage boundaries, and a culvert draining to the pond that was not found during the initial survey. As a result, more runoff from offsite area drains to the proposed pond than anticipated. Due to this unforeseen condition, the recalculated 100-year elevation of the pond changed from 901.33 to 901.81. Since the construction had already started and substantially proceeded on the storage unit building, the lowest floor elevation could not be adjusted. Thus, the building only has 1.52 feet of freeboard for the 100-year flood elevation. District Rule C.9(g), requires 2 feet of freeboard above the 100-year flood elevation. The applicant has requested a variance from RCWD Rule C.9(g) for the lack of freeboard.

District Engineer Otterness stated that in addition, the applicant had previously provided a runoff reduction to 80% of the existing condition. However, due to the change in the anticipated offsite drainage area, runoff is now only reduced to 88.3% of the existing flow for the 100-year storm event. Although this doesn’t meet the requirement that runoff be reduced to 80% of existing, it is a reduction that benefits the local and downstream areas. Both the 2-year and 10-year storm events still meet District rate control requirements. In the event that the runoff area and volume would have been correctly analyzed there would have been no substantial change to the design as the pond’s live storage has been maximized and, according to the applicant’s representation, any reduction in the project building footprint would have resulted in the project to no longer be feasible. District Rule C.7(c), requires the peak runoff for the 2, 10, and 100 year 24-hour rainfall to be reduced to 80% of the existing condition. The applicant has requested a variance from RCWD Rule C.7(c). The proposed application is compliant with all other RCWD Rules.

Manager Wagamon asked how the error was brought to the District’s attention.

District Engineer Otterness stated that he is not entirely sure, but believes it was found by the applicant.

Permit Coordinator/Wetland Specialist Hughes stated that the applicant found the error and reported it to the District.

Manager Bradley stated that this really troubles him and if it were in a different stage the answer would clearly be to go back and redesign the building. He stated that this is a business that should be providing safe and secure storage to its customers. He stated that this is an area where there
has been flooding and asked how serious a half a foot is in an area that is distressed. He asked if
the District was overly cautious when it made the original rule.

District Engineer Otterness stated that he would suggest that the Board proceed with the
information with the hope that it will answer or clarify these questions and if not, he will
elaborate after the presentation.

Manager Wagamon stated that he wasn’t sure that Manager Bradley’s concerns about the
business are within the Boards purview.

Permit Coordinator/Wetland Specialist Hughes stated the District Engineer evaluated the
variance request by applying the “practical difficulties” test set forth in the District’s variance
rule. This standard is applied through the Board of Managers’ consideration and weighing of the
following criteria:

(a) How substantial the variation is in relation to District Rule requirement(s);
(b) the effect the variance would have on government services;
(c) whether the variance will affect a substantial change in the character of the watershed
resources or will be a substantial detriment to neighboring properties;
(d) whether the practical difficulty can be alleviated by a feasible method other than a
variance (economic considerations play a role in the analysis under this factor);
(e) how the practical difficulty occurred, including whether the landowner created the need
for the variance; and
(f) whether in light of all of the above factors, allowing the variance will serve the interests
of justice.

Permit Coordinator/Wetland Specialist Hughes stated ultimately, the Board determines whether
consideration of the above criteria supports approval of a variance. The text below reviews the
technical aspects of the proposal as they relate to the above criteria. The Board may exercise
discretion in analyzing the applicant’s compliance with the variance criteria – both generally and
with regard to application of the individual variance (and other rule) criteria. The Board also may
require input from legal counsel. Nothing herein should be construed as rendering a legal
opinion.

Permit Coordinator/Wetland Specialist Hughes informed the Board that he would reiterate the
above criteria and District Engineer Otterness would reply with the District Engineer’s response.

Permit Coordinator/Wetland Specialist Hughes asked per practical difficulties criterion (a), how
substantial the variation is in relation to the RCWD Rule requirement(s).

District Engineer Otterness replied: the applicant has constructed the building at elevation
903.33, which is only 1.52 feet above the 100-year flood elevation. District Rule C.9(g), requires
2 feet of freeboard above the 100-year flood elevation. In addition, the applicant is proposing to reduce the runoff rate to 88.3% of the existing flow, which does not achieve a reduction to 80% of the existing condition as required by District Rule C.7(c).

District Engineer Otterness noted that to address how substantial this variation is with regard to the 80% rule, they are exceeding the standard for the District, however, they still have reduced the flow in comparison to pre-project conditions so they are actually making things better, not worse. He stated that with regard to the 100-year flood elevation, one thing to be aware of is that the District freeboard requirement is actually higher than typical FEMA or municipality requirements for storm water and floodplain management rules. He explained that typically it would be one foot of freeboard above the 100-year flood elevation, so the District requires double that amount. He noted that he is unsure of the rationale behind the excess amount of freeboard, however he does see value in having 2 feet of freeboard higher. He stated that believes one of the reasons would be the notion that there is development and additional volume occurring within the District that, particularly in areas that are lower lying in the District, are being subjected to greater volumes which could potentially be raising the 100-year flood elevations. He noted that there have also been greater rainfall amounts and the additional requirements could add a bit of additional protection and buffer.

District Administrator Tomczik noted change in the engineering such as going from TP40 to Atlas 14 standard. He stated that these fluctuations in understanding lends itself to the comfort of having the 2 feet of freeboard. He stated that flooding is flooding, but this is not in a FEMA regulated area under the City’s obligation and not in the District’s floodplain.

President Preiner stated that even if the District approves the variance, it would still be far above the FEMA standard.

Manager Waller asked District Engineer Otterness to quantify his earlier statement that this was “making things better, not worse”.

District Engineer Otterness stated that for a 100-year flood event there would be a 12% reduction in flow from the pre-project condition.

District Administrator Tomczik stated that it is good to review the purpose of the 20% reduction, and in this case, the 12% reduction. He stated that it was put into place to look at downstream landowners associated with Long Lake and the cumulative effects of the 20% reduction across the multitude of future permits that may take place. He stated that the idea was that this would alleviate the peak flooding condition and, at the very least, not advance the peak during flooding conditions.

District Engineer Otterness noted that this rule is only over a certain portion of the District and is specific to Long Lake and Lower Rice Creek and recognizing that there are specific flood concerns
that can be alleviated by having some storage retainage in areas that hadn’t been designed and
developed with storage as there would be modern District rules.

Permit Coordinator/Wetland Specialist Hughes asked per practical difficulties criterion (b) the
effect the variance would have on government services.

District Engineer Otterness replied: issuance of a variance for the Spring Lake Park Public Storage
project is not expected to increase the cost or difficulty of providing governmental services.

Permit Coordinator/Wetland Specialist Hughes asked per criterion (c1 & c2), which sets the
criteria for consideration of whether the variance will effect a substantial change in the character
of resources within the watershed.

District Engineer Otterness replied: the District Engineer used three criteria to assess substantial
change: 1) water quality, defined the quantity of pollutants such as phosphorus and suspended
sediment leaving the site and the potential for degrading water quality downstream; 2) the
presence of and potential impact to special and impaired waterbodies as defined by various laws
including the Minnesota Pollution Control Agency stormwater program, whether a water body is
impaired and related designations including Wild and Scenic or Outstanding Natural Resource
Value designations; and 3) flooding, the potential for flood damages or other adverse hydrologic
impacts.

District Engineer Otterness continued: In assessing whether a substantial change in the character
of the watershed resources may occur, we considered, not exclusively but as a measure of
impact, the presence of and potential impact to the following:
  • a 303(d) listed water body (i.e., an impaired water);
  • a high quality or non-degraded wetland;
  • a federally listed threatened or endangered species or state threatened, endangered or
    species of special concern and their critical habitat;
  • a Scientific and Natural Area as defined by the Minnesota Department of Natural
    Resources;
  • resources protected from degradation as identified within 7050.0180 Non-degradation
    for Outstanding Resource Value Waters; and
  • Other generally sensitive resources.

District Engineer Otterness stated: Per criterion (c) and whether issuing the variance has a
negative effect to the neighboring properties, we considered whether the granting variance will:
  • cause or contribute to a change in the 100-year floodplain elevation immediately downstream
    or upstream of the project site
  • increase the frequency or magnitude of flood damages to adjacent properties; or
  • increase hardship downstream from peak flow and flood duration.
District Engineer Otterness stated: the HWL of the pond has not changed from existing conditions and will not affect freeboard of the adjacent properties. Non-compliance with the freeboard requirements of Rule C.9(g) for the constructed building will not have a negative effect on neighboring properties.

District Engineer Otterness stated: The proposed pond is designed to NURP standards and will provide appropriate water quality treatment. The pond was designed with a retaining wall along the perimeter to maximize live storage, therefore they cannot feasibly increase the live storage past what has been submitted. The proposed runoff is reduced by 12% from existing conditions thus improving downstream flood conditions. The outlet of the NURP pond consists of an existing 12” pipe located within an outlet control structure on the site which limits flow out of the pond and if reduced in size would result in the HWL of the pond rising above existing conditions, which would reduce freeboard even further. In addition, the 12” outlet pipe is routed through the adjacent properties thus not able to be modified by the applicant. The applicant’s consultant Galloway Engineering has revised the plan by providing additional depth to the proposed pond to meet the NURP requirement.

Permit Coordinator/Wetland Specialist Hughes asked: Per criterion (d), an assessment of whether the practical difficulty can be alleviated by a feasible method other than a variance (economic considerations play a role in the analysis under this factor) is necessary.

District Engineer Otterness replied: Due to the building being constructed prior to the unforeseen drainage area adjustment and the limiting capacity of the pond outlet, the building cannot feasibly meet the freeboard requirement without being demolished and reconstructed.

District Engineer Otterness stated: The rate control reduction is not being reduced to the required 80%, however any further reduction would result in the HWL rising within the pond, resulting in a decrease in the freeboard to the constructed building (which is already noncompliant with District rules). Due to the existing local flooding constraint created from runoff from adjacent properties and the outlet constraint it is not feasible to meet a flow reduction to 80% of existing condition. The applicant has reviewed modifying the outlet structure by lowering the weir elevation, however by doing so the proposed pond would no longer be up to NURP standards and the additional live storage would provide little to no relief in the HWL. It is anticipated that when the adjacent properties redevelop, they will provide their own water quality and rate control which would likely reduce the flood elevation of the pond.

Permit Coordinator/Wetland Specialist Hughes asked: Per criterion (e), we considered how the practical difficulty occurred, including whether the landowner created the need for the variance requires consideration.

District Engineer Otterness replied: The District Engineer finds that the current landowner by initially incorrectly analyzing the drainage area flowing to the pond created the circumstances which led to the proposed constructed building not meeting the freeboard requirements of
District Rule C.9(g). However, the need for the variance from District Rule C.7(c) (peak flow reduction to 80%) was not created by the landowner because the pond size, which was designed to maximize onsite live storage, could not have been modified to meeting the District rate control standard for the drainage area as redelineated, short of reducing the existing building footprint and, according to the applicant, rendering the project commercially infeasible.

Permit Coordinator/Wetland Specialist Hughes asked: In consideration of criterion (f), some determination of whether in light of all of the above factors, allowing the variance will serve the interests of justice is necessary.

District Engineer Otterness replied: This criterion lies largely in the Board’s domain as it involves judgments of a non-technical nature. One criterion for assessing this portion of the practical difficulties standard is the ability or inability of other permit applicants with similar site conditions to comply with the District’s freeboard requirements of Rule C.9(g) and rate control reduction requirements of Rule C.7(c). Other applicants have had the ability to feasibly meet these requirements onsite. However, the practical difficulties provided by this project site, namely the discovery of the issue following building construction and the localized flooding issues, make it unique to the other sites. Another consideration is the relationship of the existing rule to the public interest. The intent of Rule C.9(g) is not to protect a downstream resource, but rather to decrease the risk of flood damages to the landowner’s property. In this case, the applicant has stated that it will accept the inherent increased flood risk. With this in mind, if the Board grants the variance request, it is our recommendation that this be conditioned on the applicant’s recording on the property a notice that the building is constructed with a freeboard of 1.52 feet above the regulatory 100-year flood elevation, which is non-compliant with RCWD standard freeboard regulations. The Board has applied this condition in similar situations of freeboard variance. Also, another consideration of public interest is that this project will not increase local flood elevations, thus not impacting adjacent properties.

District Administrator Tomczik stated that there has been a fair amount of discussion leading up to this variance with the City of Spring Lake Park. He noted that Permit Coordinator/Wetland Specialist Hughes spoke by phone with Spring Lake Park staff and was referred to their consulting engineering.

Permit Coordinator/Wetland Specialist Hughes stated that he had spoken with their building official who directed him to public works and was told that Spring Lake Park also has a freeboard requirement. He stated that Spring Lake Park has spoken with Houston Engineering about the project and are in support of the variance.

Manager Bradley asked if there was a way to lower the pond as a way to resolve this problem.

District Engineer Otterness stated that there could be a way of lowering the pond, however that would have very little impact on the 100-year flood elevation and would result in further non-compliance with the 80% downstream rule that the District has.
Manager Bradley asked how a deeper pond would result in more flowage downstream.

District Engineer Otterness stated that if the pond was simply dug deeper and the outlet was not changed, it would have no effect on the 100-year flood elevation.

Manager Wagamon stated that he feels this is a prime example of why there is a variance rule so there can be a common sense solution. He stated that the District has determined that this will cause no damage to anybody else with relation to flooding.

Manager Waller stated that the concern here is about this being a commercial business and not private residential. He stated that the commercial business is going to have other parties that are not the owners using this property. He asked what the risk to the District would be in this situation where there is damage to the property inside this commercial property.

President Preiner noted that she ran a storage facility for 25 years and could explain how the contracts work in this situation. She stated that when people move their contents in, there is a contract and it is ultimately the responsibility of the individual to have insurance to protect the contents. She stated that the potential customer issue of this facility is not the Board's business, just simply whether the drainage issues are covered.

District Attorney Smith stated that the legal relationship between the landowner and the tenants is private. He noted that the District has broad immunity for this type of discretionary decision. He stated that concerning the 2 feet of freeboard, that number is a widely adopted watershed requirement for flood plain protection and regulation. He stated that the 2 feet number is a prudential, precautionary margin above the elevation.

Manager Bradley noted that the only piece that makes him feel more comfortable about this is the 1-foot FEMA requirement, however, he noted that he doesn’t have a lot of faith in federal government standards for protecting the public. He stated that he feels the Board has been put in a hard place because of a contractor who didn’t do the job right. He stated that because the building has been built, the Board is between a rock and a hard place.

Manager Waller stated that the 2 feet freeboard requirement has been in place for probably around 30 years. He stated that when the Board granted this same type of variance to a private party, the Board made certain that it was put on the deed so that any future property purchaser would know about the risk involved. He stated that he would like that same requirement in this case so it is attached to the deed and will be clearly outlined for future purchasers without their having to do a lot of research.

Permit Coordinator/Wetland Specialist Hughes stated that one of the suggested conditions is that there will be notice recorded on the property. He stated that the District will see a draft of it
before it is official recorded on the property, so the District can ensure that the preferred
language is included.

It was moved by Manager Wagamon, and seconded by Manager Waller, to Approve the
Variance request for variance application 18-075 as outlined in accordance with RCWD District
Engineer’s Variance Technical memorandum dated December 17, 2019, with the understanding
that the Board expects there to be very explicit language on this particular deed. Motion
carried 4-0.

It was moved by Manager Wagamon, and seconded by Manager Waller, to CAPROC permit 18-
075 as outlined in accordance with RCWD District Engineer’s Findings and Recommendations
dated December 17, 2019. Motion carried 4-0.

OPEN MIKE – LIMIT 12 MINUTES. Any RCWD resident may address the Board in his or her
individual capacity, for up to three minutes, on any matter not on the agenda. Speakers are
requested to come to the podium, state their name and address for the record. Additional
comments may be solicited and accepted in writing. Generally, the Board of Managers will not
take official action on items discussed at this time, but may refer the matter to staff for a future
report or direct that the matter be scheduled on an upcoming agenda.

None.

ITEMS REQUIRING BOARD ACTION

1. Consider May Township Local Water Plan.
   District Technician Lauren Sampedro stated May Township submitted their revised LWP
   on December 20, 2019 which is consistent with District and State requirements. She
   stated that there is only a small portion of the District within their Township. She stated
   that they have generally identified the need to protect and improve water quality of
   surface waters and groundwater. She noted that there are no projects with the Township
   identified for this plan cycle. She stated that staff recommends approval of May
   Township’s LWP as submitted on December 20, 2019.
Motion by Manager Bradley, seconded by Manager Waller, to adopt Resolution 2020-01: Approving May Township Local Water Management Plan.

THEREFORE, BE IT RESOLVED that the RCWD Board of Managers hereby approves May Township’s local water management plan, as submitted on December 20, 2019.

ROLL CALL:
Manager Waller – Aye
Manager Haake – Absent
Manager Bradley – Aye
Manager Wagamon – Aye
President Preiner – Aye

Motion carried 4-0.

2. Consider BWSR Watershed-Based Funding: Designate Representative & Authorize Delegation.
District Administrator Tomczik stated that BWSR has asked the Board to designate an official representative that will have the authority to represent the District. He stated that this was discussed at the last workshop meeting and noted that staff is recommending he serve in that position.

President Preiner asked how many meetings will be involved.

District Administrator Tomczik stated that this is not certain as this is the first year with this particular approach. He stated that they are also unsure how many participants will be involved. He stated that he thinks it will be good to have a seat at the table.

Manager Waller noted that he does not anticipate receiving a lot compared to what the District received on the County based system. He explained that last year there was $400,000 in the 3 different counties. He stated that he would not consider the new system watershed based. He stated that he is not against the resolution but wants the public to understand that it is very possible that the District does not receive any money in the future. He stated that he is very disappointed with this approach by BWSR.

Manager Bradley stated that he agrees with Manager Waller’s assessment. He stated that at the workshop he had suggested that there be some sort of regional program that could be of benefit, for example, purchasing street cleaners and allowing cities within the area to borrow them.

Manager Waller stated that he doesn’t disagree that type of thing may be a good idea, but first there needs to be the money and he does not feel that is going to happen.
President Preiner stated that she would hate for the District to be reduced to buying street cleaners when it should be doing major projects.

District Administrator Tomczik stated that he was not involved in previous years allocations but believes the County distribution last year was the result of the convening of the parties in a determination to distribute simply on a County level.

*Motion by Manager Bradley, seconded by Manager Wagamon, to adopt Resolution 2020-02: Designating Administrator as Staff Representative for BWSR Watershed-Based Funding Implementation Program (WBFIP) and Authorizing Delegation.*

THEREFORE, BE IT RESOLVED that the RCWD Board of Managers designates the District Administrator to serve as RCWD’s official WBFIP representative for the Mississippi (East) watershed area partnership Convene Meetings; and

BE IT FURTHER RESOLVED that the District Administrator, in their judgment, may, in writing, delegate their duties and authorities established herein to another RCWD staff member.

**ROLL CALL:**
- Manager Waller – Aye
- Manager Haake – Absent
- Manager Bradley – Aye
- Manager Wagamon – Aye
- President Preiner – Aye

Motion carried 4-0.

**ITEMS FOR DISCUSSION AND INFORMATION**

1. **District Engineers Update and Timeline.**
   District Engineer Otterness stated that draft plans and specs for the Judicial Ditch 8 repair and construction project have been reviewed by District staff. He stated that there should be a set of plans for the Board to review and consider fairly soon. He stated that they have also completed draft design plans for the Bald Eagle Lake iron enhanced sand filter project. He stated that they are being reviewed by District staff, so the Board will be seeing those soon as well.
2. **Managers Update.**

Manager Waller stated that Mr. Kocian won the recognition of being Watershed District Employee of the Year. He stated that the program he won for limits phosphorus in the watershed by catching the carp and taking them away. He noted that he believes that Mr. Kocian deserves tremendous recognition for working on this program and this award was well deserved.

President Preiner stated that she believes all the Managers agree that Mr. Kocian has done an excellent job.

District Administrator Tomczik stated that various Board Managers had asked for an estimate of staff time related to house file and senate file which is roughly 284 hours. He explained that staff gave a presentation for the new Ramsey County Commissioner on Rice Creek Watershed District and its activities.

President Preiner stated that she believes the new Commissioner really appreciated the information that was shared.

District Administrator Tomczik stated that the District is ramping up its attentiveness to the appointing Counties and the Commissioners in order to keep them well informed about District operations. He stated that staff is planning to provide comment on the MS4 rule that is out for comment. He stated that staff plan to express concern seeking the clarity on the applicability of the MS4 for watershed districts and specifically how that interacts with public drainage systems.

President Preiner asked about the MS4 commenting process.

District Administrator Tomczik stated that the District commented during the unofficial notice period. He explained that the PCA has engaged the District directly on the concern and there have been discussions with himself, Lake and Stream Specialist Kocian, and District Technician Sampedro.

**ADJOURNMENT**

*Motion by Manager Wagamon, seconded by Manager Bradley, to adjourn the meeting at 10:01 a.m. Motion carried 4-0.*