REGULAR MEETING OF THE RCWD BOARD OF MANAGERS
Wednesday, June 12, 2019
Shoreview City Hall Council Chambers
4600 North Victoria Street, Shoreview, Minnesota

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, 1st Vice-Pres. Barbara Haake, 2nd Vice-Pres. John Waller, Treasurer Steven Wagamon, and Secretary Michael Bradley.
Absent: None.

Staff Present: Interim Administrator Nick Tomczik, Lake and Stream Specialist Matt Kocian, Project Manager Kyle Axtell, District Technician Lauren Sampedro, Office Manager Theresa Stasica.

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

Visitors: Theresa Derksen, Brian Olsen.

SETTING OF THE AGENDA
Interim Administrator Tomczik requested the addition of #5, the Task Order for Anoka Washington Judicial Ditch 3 Main Trunk and Branch 3 Repair.

Motion by Manager Haake, seconded by Manager Waller, to approve the agenda, as amended. Motion carried 5-0.

READING OF THE MINUTES AND THEIR APPROVAL
Minutes of the May 22, 2019 Board of Managers Meeting.
Motion by Manager Wagamon, seconded by Manager Bradley, to approve the minutes as presented. Motion carried 5-0.

Minutes of the May 22, 2019 Workshop. Motion by Manager Wagamon, seconded by Manager Bradley, to approve the minutes as presented. Motion carried 5-0.
1. **CONSENT AGENDA**

**Table of Contents-Permit Applications Requiring Board Action**

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>
<thead>
<tr>
<th>No.</th>
<th>Applicant</th>
<th>Location</th>
<th>Plan Type</th>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>19-024</td>
<td>City of Columbus</td>
<td>Columbus</td>
<td>Street &amp; Utility Plan</td>
<td>CAPROC 4 items</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Forest Lake</td>
<td>Wetland Alteration</td>
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<td></td>
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<td>Floodplain Alteration</td>
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<tr>
<td>19-042</td>
<td>City of Centerville</td>
<td>Centerville</td>
<td>Final Site Drainage Plan</td>
<td>CAPROC 5 items</td>
</tr>
</tbody>
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President Preiner noted that there is a different format for the Consent Agenda and noted that there will be one section on the permit applications and another on the Water Quality Grant Program Cost Share Applications.

Interim Administrator Tomczik stated that for permit No 19-024, staff has applied the rule only to the new hard surface. He stated that the City of Columbus has acquired new right-of-way, the rule was developed and written regarding the constraints of right-of-way for urban development areas. He explained that for consistency and efficiency across all public projects, the rule has been applied the same way in this situation even though the typical constraints aren’t necessarily present because of the right-of-way acquisitions.

Manager Haake asked if that was why the report states that “the applicant does not intend to meet District Rule C-13 or to create a CSMP.”

Interim Administrator Tomczik explained that this statement is referring to a Comprehensive Stormwater Management Plan and the applicant’s intent not develop such a plan. He noted that the City of Columbus has oversized the BMPs and the capacity would be present for potential future use under permit.

District Engineer Otterness stated that the table included under Finding #2, does include projected development use.

Interim Administrator Tomczik stated that on page #38, staff would like to change the findings at the top of the page recognizing that an existing BMP is being removed from the site and district engineer found that the regional pond in the area is sufficient size to replace that loss.

Manager Haake expressed doubt that the regional pond would be large enough to handle replacing the loss.

*It was moved by Manager Bradley, seconded by Manager Wagamon, to approve the Consent Agenda item for permits 19-024, and 19-042 as outlined in the above Table of Contents in accordance with RCWD District Engineer’s Findings and Recommendations dated June 5, 2019, as corrected. Motion carried 5-0.*
2. **CONSENT AGENDA-**

Water Quality Grant Program Cost Share Application

<table>
<thead>
<tr>
<th>No.</th>
<th>Applicant</th>
<th>Location</th>
<th>Project Type</th>
<th>Eligible Cos</th>
<th>Pollutant Reductions</th>
<th>Funding Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>R19-03</td>
<td>Linda Dahlby</td>
<td>Shoreview</td>
<td>Shoreline Stabilization</td>
<td>$8,703.50</td>
<td>Volume: 57% TSS: 97% TP: 48%</td>
<td>Not to exceed 50%; up to $4,351.75</td>
</tr>
<tr>
<td>R19-04</td>
<td>Ben &amp; Kirsten Stapp</td>
<td>Shoreview</td>
<td>Shoreline Stabilization</td>
<td>$10,017.50</td>
<td>Volume: 57% TSS: 96% TP: 51%</td>
<td>Not to exceed 50%; up to $5,008.75</td>
</tr>
<tr>
<td>R19-05</td>
<td>Ron Dykstra</td>
<td>Shoreview</td>
<td>Shoreline Stabilization</td>
<td>$9,707.00</td>
<td>Volume: 74% TSS: 98% TP: 69%</td>
<td>No to exceed 50%; up to $4,853.50</td>
</tr>
<tr>
<td>R19-06</td>
<td>Randy &amp; Jan Jessup</td>
<td>Shoreview</td>
<td>Shoreline Stabilization</td>
<td>$8,982.00</td>
<td>Volume: 57% TSS: 96% TP: 52%</td>
<td>Not to exceed 50%; up to $4,491.00</td>
</tr>
<tr>
<td>R19-07</td>
<td>Dave Carlson</td>
<td>Shoreview</td>
<td>Shoreline Stabilization</td>
<td>$10,475.50</td>
<td>Volume: 77% TSS: 99% TP: 71%</td>
<td>Not to exceed 50%; up to $5,237.75</td>
</tr>
</tbody>
</table>

Manager Bradley asked if each individual property owner was responsible for the 50% matching funds.

District Technician Sampedro stated that this was correct.

Manager Bradley suggested that language be added to the motion so it is clear.

Manager Haake stated that this was presented at the recent CAC meeting and is an excellent idea.

*It was moved by Manager Bradley, seconded by Manager Haake, to approve the Water Quality Grant contracts R19-03 up to $4,351.75, R19-04 up to $5,008.75, R19-05 up to $4,853.50, R19-06 up to $4,491.00, and R19-07 up to $5,237.75, all not to exceed 50% of eligible project expenses as outlined in the above table, in accordance with RCWD Staff’s Recommendation and established program guidelines with each landowner being separately responsible for the 50% match applicable to their property. Motion carried 5-0.*

**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.
Theresa Derksen, 4788 Dahlia Way N, Hugo, stated that she is a representative of the Creekside Villas Home Owners Association and they have concerns regarding the JD 3 project with regards to vegetation and tree removal. She stated that homeowners would like to get started planting some replacement vegetation for what will be going away in safer areas so the beauty of the neighborhood can be maintained. She also expressed concern about herbicides District staff had mentioned using to treat vegetation over what she understood to be a three-year term following construction, and the environmental impact of using these herbicides. She stated that she is requesting that the Creekside Home Owners Association get better, more precise and specific information about the whole JD3 project, including the maintenance access, removal of vegetation, and herbicides. She stated that she would like to thank Manager Waller for his involvement in trying to keep them informed and answer their questions.

President Preiner noted that the District will be on the property and will have specific meetings for the residents in her area.

District Engineer Otterness noted that later in the agenda is an item asking the Board to approve the next phase of this project and approve a task order with Houston Engineering to develop plans for the construction phase of the project. He stated that one of their first tasks would be to walk through the site and identify some of the constraints along the way. He explained that once that information is compiled and a decision made about which side of the ditch they will be working on, they will be able to hold public information meetings for landowners with specific information. He stated that they are planning to have maps available for each property owner that will show the approximate work limits that they anticipate for the project. He stated that he would anticipate the maps and more detailed information would be in the late summer timeframe. He stated that with regard to herbicides, their use will likely not be limited to 3 years because ongoing maintenance is continually required to ensure an access route. He explained that the District will use a herbicide that is appropriate for use along a waterway.

Ms. Derksen asked if there was a way for the residents of the Creekside Villas to be moved to the top of the list for the informational meetings.

President Preiner asked District Engineer Otterness if that would be possible.

District Engineer Otterness stated that to effectively and efficiently develop plans, they need to look at the entire project corridor and meet with the landowners along the drainage system as a whole, rather than by individual parcels.

Manager Waller noted that he had seen some photos presented at meetings that show the finished product after some of the vegetation has grown in. He asked if it would be possible to get a few of those pictures and share them with the landowners because it may help alleviate some of their concerns.
District Engineer Otterness stated that they do have some of that information available and can share it with the landowners.

Manager Waller reiterated that he would like the pictures that show what the project will look like a year or more out to be the ones shared with residents, so they can see some of the vegetation grown up. He asked if the informational meetings scheduled for later this summer would be for everyone east of 35E.

District Engineer Otterness stated that it will be everybody along the system that would potentially be affected by the project.

Manager Waller stated that one of the concerns that the Creekside Villas residents have shared with him is what will happen with some of the fairly large trees along the edge. He stated that they are also concerned about which side the work will be done because there is already a paved walking trail in the area. He asked that the surveyors take this into consideration when they are out walking the property.

District Engineer Otterness explained that one of the main purposes for going out and walking the project area is to determine what side the work will be done and noted that in some cases work may need to be done on both sides depending on the sediment. He stated that one of the critical pieces of information that the District would like to gather from the public information meeting is any critical item that the residents would like to preserve, such as large trees. He stated that they will attempt to avoid impacting those trees if it is possible to do so without negatively effecting the project. He reiterated that the investigation and plan development will take at least a couple of months before preliminary discussions with the landowners can occur.

Interim Administrator Tomczik stated that JD3 is a multi-phase project and asked for clarification on whether Ms. Derksen’s area was located in the initial phase or one of the subsequent phases.

District Engineer Otterness noted that the first phase will include everything on the Main Trunk that goes from Centerville to Bald Eagle Lake and Branch 3, which goes to the north past Frenchman’s Road running generally parallel to Highway 61. He stated that the second phase will be Branches 1 and 4 which come off the Main Trunk and run west to Lino Lakes. He stated that the third phase will be the area downstream of 35E and going into Centerville. He clarified that the Creekside Villas area will be part of the first phase of the project.

Manager Bradley stated that the District’s goal is to work with homeowners and has been very successful in the past in working with them and assured Ms. Derksen that the District would not try to avoid the landowners.

Manager Haake stated that she understands Ms. Derksen’s concern about the herbicides and noted that the District will take a look and use something that does not harm the critters living and eating in the area.
Manager Waller stated that to clarify the use of herbicides, this is not a huge blanket herbicide application similar to what is done to treat an entire corn field or for mosquito control, and will be more of a spot application where appropriate.

**ITEMS REQUIRING BOARD ACTION**

1. **Consider Water Quality Grant Application R-19-02: Presbyterian Homes: Johanna Shores, Arden Hills.**

   District Technician Lauren Sampedro explained that this grant application was being presented separately because it is a bit different than the typical projects that go through this program. She stated that Johanna Shores Senior Living property is about 21 acres on Lake Johanna. She noted that the proposed project is a multi-phase program to stabilize and rebuild a natural shoreline slope that is experiencing erosion. She stated that the first phase of the project will go up to their boat ramp and will use native plantings and Bio-D blocks to rebuild the natural shoreline and will restore 5,500 square feet of shoreline. She noted that there was a mistake in the staff memo and noted the correct numbers are that this project will provide a 50% reduction in volume, a 94% reduction in TSS and a 59% reduction in TP. She stated that one bid was received for this project. She explained that there was a requested patio and retaining wall that the District will not cover as part of the grant and have reduced the recommended grant amount accordingly. She stated the CAC recommends approval of the project.

   Manager Bradley stated that there are multiple funding sources for this project and asked who Ramsey County is “cost sharing” this project with.

   District Technician Sampedro stated that Brian Olsen with Ramsey County SWCD is present and can answer that question.

   Brian Olsen, Ramsey County SWCD, stated that they receive $10,000/year to spend on project funds for a clean water project and this year they will use that money to fund this project.

   Manager Bradley asked for clarification of whether this is a “cost share” program or a grant.

   Mr. Olsen stated that it is a State cost share grant that the Ramsey County SWCD receives every year.

   Manager Bradley stated that if this needs to be cost shared, then the landowner would need to provide $10,000 of their own money and if the District was providing 50%, they would only be providing $18,545.80.
Mr. Olsen stated that their cost share program does not require entities to have a specific match amount. He explained that the only constraint is that the total award from the Ramsey County SWCD cannot exceed 75% of the costs for the total project.

Manager Bradley stated that he thinks it should be clear that Presbyterian Homes is providing 32% of the funds for this project, RCWD is providing 50% and Ramsey County SWCD will provide the remaining 18%.

Interim Administrator Tomczik stated that the District has run into this situation before and asked Project Manager Axtell to address the questions. He stated that he wanted to make note of the failure of the old rip rap in the past installation was likely attributed to the design, the type of rock used, and the size of the rock that was used.

Project Manager Kyle Axtell stated that he sees this type of situation quite often as part of the Urban Stormwater Remediation Cost-Share Program. He stated that in this case there are three pots of money and each pot can be an eligible match for the other two pots of funding. He stated that the proposed funding split meets all of the necessary criteria.

Manager Waller stated that before District Technician Sampedro came to the District there were other shoreland restoration projects that used a product called Bio-Logs which ended up being a failure and disintegrated fairly quickly. He asked if the proposed Bio-D blocks were contained within a metal cage of any sort.

District Technician Sampedro stated that it does not use metal but is encased in coir material and erosion control fabric. She noted that the block is sturdy and very tightly wound. She explained that it is intended to biodegrade but should not do that before the plants establish themselves.

Manager Waller just asked that the District staff keep in mind the problems with the bio-log product and make sure they are paying attention to make sure the same problems won’t happen with this project.

Project Manager Axtell noted that Bio-Logs are effective when they are used appropriately and they are still sometimes proposed for projects. He stated that in his opinion, the Bio-D blocks are far more robust and will last much longer than the Bio-Logs.

President Preiner stated that she would like to have it reflected in the record how long some of these products last.

Manager Waller stated that he didn’t mean to imply the product was ineffective, but meant to have staff take notice of these details so nobody has to go back and fix it in a few years.
Motion by Manager Haake, seconded by Manager Waller, to approve the Water Quality Grant contract R19-02, up to $28,545.80 and not to exceed 50% of eligible project expense, in accordance with RCWD Staff’s Recommendation and established program guidelines. Motion carried 5-0.

3. Annual Public Information Meeting on the District’s Stormwater Pollution Prevention Program (SWPPP) and Board Authorization to Submit 2018 MS4 Annual Report.

President Preiner opened the public meeting at 9:42 a.m. She stated the purpose of the meeting is to provide information to, and receive input from, the public regarding the District’s Stormwater Pollution Prevention Program. President Preiner requested District Technician Sampedro to provide a brief presentation for the audience.

District Technician Lauren Sampedro gave an overview of the District’s MS4 permit and noted that it is designed to reduce sediments and pollutants from getting into surface and ground water from storm sewer systems. She noted that the current permit expired on July 31, 2018 but the District can continue operating under the permit until the permit is reissued. She stated that reissuance of the permit is expected in fall of 2019. She gave a brief overview of the SWPPP minimum control measures and noted that every RCWD staff member helps implement best practices to ensure that the District is meeting the MS4 permit requirements. She highlighted the District’s practices from the 2018 MS4 Annual Report for meeting of the six minimum control measures.

Manager Waller asked about the map that showed the urbanized areas for the MS4 coverage areas. He stated that there is a development in Washington County that has larger lots and some create stormwater problems, but they are not urbanized, so there is not a real program and way to deal with managing the stormwater. He asked if there was a way that the District could handle what he calls the “in betweeners” that are not urbanized but are still a fairly dense development.

Interim Administrator Tomczik explained that the area on the map he is referring to is specific to the MS4 permit and the gap is filled by the District’s permit program should the development trigger the District’s rules.

Manager Waller stated that many of these projects were put in before the rules were put into effect and asked what could be done to retrofit these areas.

Interim Administrator Tomczik stated it could be addressed through redevelopment.

District Engineer Otterness stated that one of the things that the District is actively engaged in is to retrofit these kinds of developments created prior to modern stormwater controls, via projects and through partnerships with Cities. He stated that the District has rules that address stormwater management issues throughout the whole District.
President Preiner closed the public meeting at 9:59 a.m.

**Motion by Manager Haake, seconded by Manager Waller, to accept the 2018 MS4 Annual Report and direct the Interim Administrator to submit the report to the MPCA.**

Manager Haake commended the District staff for doing such a great job putting together this annual report.

*Motion carried 5-0.*

3. **Affirming CAPROC of RCWD Permit Application 19-021, Midtown Village.**

Interim Administrator Tomczik explained that the District had approved a CAPROC on #19-021 for the Midtown Village project in New Brighton on April 10, 2019. He stated that after this approval, the District found out that this project was subject to an EAW and suspended the Board’s action. He stated that the City has since filed a negative declaration with regard to the environmental review and staff has also reviewed the EAW document and found no need to continue with the suspension. Staff is recommending that the Board affirm the CAPROC for permit application #19-021.

*Motion by Manager Bradley, seconded by Manager Wagamon, to affirm the CAPROC consisting of 6 items for RCWD permit application #19-021 for Midtown Village.*

*Motion carried 5-0.*

4. **Consider Engineer Selection for the Lower Rice Creek Stabilization Project.**

Lake and Stream Specialist Matt Kocian briefly reviewed the approved budget, scope of project and tentative timeline for the Lower Rice Creek stabilization project. He stated that the District received 8 proposals and 3 finalists were selected. He noted that the Board had interviewed the 3 finalists at a special workshop meeting on May 22, 2019 and discussed the finalists at the June 11, 2019 workshop and selected Barr Engineering. Staff is recommending increasing the contract hours for Construction Management from 112 to 160 hours which increases the contract price to $59,780.

*Motion by Manager Bradley, seconded by Waller, to authorize the RCWD Administrator, on advice of counsel, to enter into a professional services contract for the Lower Rice Creek Stabilization Project with Barr Engineering Company, Inc., for a not to exceed amount of $59,780.00. The contract will provide that the engineer may not begin project design work until so directed by the Administrator. The Administrator is hereby authorized to enter into contract amendment for additional work in an aggregate amount not to exceed $68,747.00.*
Manager Haake explained that she will be abstaining from a vote on this item because she believes one of the other firms should have been selected, but understands the Board decided on a consensus at their workshop to save the tax payers some money and go with Barr Engineering.

President Preiner asked Manager Haake to consider voting rather than abstaining.

Manager Bradley stated that there were several very qualified bids, but there is approximately a $20,000 savings by using Barr Engineering.

**Motion carried 4-0-1 (Manager Haake abstained).**

5. **Consider Final Order Directing the Repair of Anoka/Washington Judicial Ditch 3 (Phase 1).**
Interim Administrator Tomczik noted that at the beginning of the meeting the Board confirmed a modified agenda to add the Task Order for this project. He stated that the resolution is for a project of 3 phases and this the first phase. He asked Engineer Otterness to confirm that each of the phases has independent utility.

District Engineer Otterness stated that is correct and in particular, the first phase of the system will provide benefit to the whole system which means there is value in this phase regardless of what happens in the subsequent phases.

Interim Administrator Tomczik stated that this information was not included as a “whereas” in the resolution language but could be added if it is important to the Board.

Manager Bradley stated that there are comments by Kevin Amundsen, Tom and Joanne Benick, and Bryan Bear which raise concerns that are basically answered under one of the “whereas” statements that states, that the Board deems those comments “informational and not substantive to the need for, benefit from or configuration of the proposed repair”. He stated that he thinks the District could respond to each of the comments with an individual sentence. He stated that in the future he would prefer that this type of document be written up in a way that provided the public with the District’s response to the comments. He asked what the intent is of the last sentence under Order of Program B that states, “The Board reserves to itself, however, all subsequent actions required by law to proceed upon Board approval.”

District Attorney Smith explained that the intent of that sentence is written broadly to reserve the authority of the Board to follow the procedure required under the drainage law for each subsequent step noting that this is a multi-phase project that the Administrator has authorized to coordinate and implement this first phase but recognizing any other phases will need to come back to the Board.
District Engineer Otterness stated that it is his understanding that District Attorney Kolb suggested this addition after this was discussed at the last workshop meeting on this topic.

Manager Haake asked if this is referring to the fact that this project will cost $3 million dollars spread over three phases. She stated that she had neglected to pass along some information at the workshop meeting that she found out from a lobbyist at the State legislature. She explained that there are two bills out there that deal with the funding of a project and are alive and active. She stated that it will not happen this year because the session is over, but nobody has taken their names off of the bill. She reiterated that the bills are alive and well, but the Board doesn’t know where they may go. She asked if everyone involved understands the consequences of what could happen if those bills move forward. She asked whether the Board should consider tabling this item until it finds out more and whether the bills will pass. She asked if there should also be more public meetings or input so everybody understands the consequences if these bills pass.

President Preiner stated that the District has done the research and has funding for the project and noted that the District has been told that this is sufficient because each phase of the project has its own merits.

Manager Wagamon stated that the District has intimated that the three projects would be ad valorem and at this point the Board cannot guarantee that. He stated that he feels that the Board should go back and clear it up and tell people that this may not be an ad valorem bonded project for future phases. He stated that he is concerned that if this project is done and the bill goes through, the people that are part of the next two sections of this project will be extremely unhappy finding out that they have to pay for theirs but the first phase did not. He stated that he really feels that people in all three phases are under the impression that all of the phases will be done under ad valorem. He stated that he will not be voting for this until it is clear and the District has talked to the people to give them a heads up or wait until they figure things out and the bills are gone. He stated that he feels really bad about this because he got on the Board because of drainage and is 110% in favor of this drainage project. He reiterated that he was not comfortable moving forward at this point, without people knowing the full story.

Manager Haake asked District Attorney Smith if Manager Wagamon’s interpretation was correct because she does not want to do anything based on misinformation.

Manager Bradley suggested that the Board may want to know what the other counsel for this project has advised the Board.

Manager Wagamon stated that he spoke with counsel after the meeting for about 20 minutes and he told him that he could not say that the funding would not change. He
stated that the Board knows the funding could change and is not sure the community
does, which is a big distinction.

Manager Bradley stated that any legislation passed on the next 2020 session will be
prospective and by then this project will be in the rearview mirror and this issue will
absolutely need to be addressed in phase 2.

District Attorney Smith stated that the Board is proceeding under a pretty clear picture
that if the Board voted in favor of this project, it would be proceeding with the first phase
with the understanding that it is to be funded by the ad valorem tax and the Board will
not address how the next phases will be funded until it gets there. He stated that Manager
Bradley is correct that this phase will be underway by the time any potential legislation is
passed, so it would affect the other two phases and how they are funded. He stated that
there is no way to predict what the legislature will do in 2020.

Manager Wagamon stated that he is sure most residents think the entire project will be
ad valorem and noted that he had even read that information in the paper.

Interim Administrator Tomczik stated that if legislation changes and the Board can no
longer act under the typical procedures, the Board would have to consider that when it is
in place. He stated that he does not think the language and the information that was
discussed helped the Board define the in between position because the future is
unknown. He asked District Engineer Otterness to share how he felt the information was
shared with the public.

District Engineer Otterness stated that it was made clear through one of their slides during
the public hearing presentation that it was the current Board policy to pay for the project
under ad valorem. He noted that he also feels it was made clear that while that was the
current Board policy, it was always subject to change.

Manager Haake stated that part of phase 1 is all the engineering studies and plans. She
asked what would happen if the next phase was put off a year and whether the
engineering report would still be valid in a few years.

District Engineer Otterness stated that they have anticipated the design of both phases
one and two in the repair report. He noted that if phase two was postponed a few years,
there could be things that have changed along the way in terms of design but he would
expect them to be minor.

Interim Administrator Tomczik asked District Engineer Otterness to address what
activities the resolution allows and asked if there is construction involved in phase 1.
District Engineer Otterness stated that this order is for work beginning at final design and proceeding all the way through construction for phase 1.

Manager Bradley noted that his understanding is that phase 1 will be completed and will have stand alone benefits without phase 2 or phase 3.

Manager Wagamon stated that if the bill passes and Washington County is expected to pay the bill rather than it being ad valorem, they are going to be very upset.

Manager Bradley stated that they can assist in making sure the bill is voted down.

Manager Wagamon noted that he wasn’t sure that it would be voted down because everyone he has spoken to is in favor of it.

Interim Administrator Tomczik stated that regarding subsequent phases, the Board will once again go through the public process in which it can be explained that if the District changes its practice based on legislation or any other reasons that may arise. He reiterated that the reasons for a change in funding can be communicated to the public.

Manager Wagamon asked if Manager Waller knew anything more about the bill.

Manager Waller stated that as far as he knows it stands just the way it has been described at the meeting. He stated that he thinks it is like anything else in the world and you don’t what will happen until it actually happens.

Motion by Manager Bradley, seconded by Manager Waller, to adopt Resolution 2019-17: Final Order Directing The Repair Of Anoka/Washington Judicial Ditch 3 (Phase 1), as amended to reflect that the benefits of this project, JD3, phase 1, provides benefits on a standalone basis from the future benefits of phase 2 and phase 3.

ORDER

A. The Board of Managers orders implementation of the repair of AWJD 3, phase 1, consistent with the engineer’s recommended repair alternative, and consistent with the capital improvement program contained in the District’s Watershed Management Plan.

B. The Board of Managers directs its administrator to coordinate and take all subsequent actions necessary for implementation of the repair in a manner consistent and compliant with existing law. The Board reserves to itself, however, all subsequent actions required by law to proceed upon Board approval.

C. The Board of Managers further authorizes expenditures for the repair.
Motion by Manager Haake, seconded by Manager Wagamon, to supersede the previous motion and table discussion of Resolution 2019-17: Final Order Directing the Repair of Anoka/Washington Judicial Ditch 3 (Phase 1) until it is more thoroughly conveyed to the City of Hugo and the County Commissioners as to possible financial consequences in the future, at least until the first meeting in July 2019.

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

Motion failed 2-3.

Manager Bradley explained that the reason he voted no is because he feels it has been made crystal clear what this will mean if the legislation passes.

Manager Haake stated that she feels they need to understand how tenuous this situation is and noted that the vote was close. She stated that her motion was just to put this aside for one month to make sure that they understood the dichotomy of the situation.

President Preiner stated that this had already been put on hold and research was conducted and they were made aware of it. She called for a roll call vote on the initial motion.

ROLL CALL on the main motion:
Manager Waller – Aye
Manager Haake – Nay
Manager Bradley – Aye
Manager Wagamon – Nay
President Preiner – Aye

Motion carried 3-2.

Manager Wagamon stated that he is very unhappy that the Board has been put in this situation because of action taken by one manager against the wishes of the Board.

Manager Haake stated that she believes everybody has a right to say what they want but she is looking at this on a watershed basis and not what one individual did independently.

Consider HEI Task Order task order 2019-005.
Interim Administrator Tomczik suggested that District Engineer Otterness give a brief summary of the Task Order.
Manager Wagamon requested in the future the Board get this kind of information earlier in the process.

Interim Administrator Tomczik explained that the Task Order was shared with the managers at yesterday’s meeting and was unfortunately left out of the packet. He apologized and noted that staff will make every effort to ensure that this type of information is included in the future.

District Engineer Otterness stated that this task order takes the process from preliminary plans all the way through construction for phase 1 of JD3. He stated that part of this task order will be the public engagement piece of holding meetings with the landowners on the project.

Manager Haake stated that she was not aware that the Board was going to be asked to approve the Task Order for the JD3 project today, so she did not give it a lot of consideration.

District Otterness noted that in the Board’s earlier approval for the Lower Rice Creek contract, one of the things in the resolution order was that the Administrator would have the ability to modify the contract so it can be adjusted which is something that has not been typically done on contracts with HEI. He suggested that the Board consider something like that in this situation, because it may save having to come back to the full Board so it doesn’t push out the construction management timeline.

Manager Bradley asked what flexibility they were looking for because it is currently $218,500.

Manager Waller stated that generally the District has about a 10% contingency.

The Board discussed the typical amount that can be approved by the President, the Administrator and the full Board.

Project Manager Axtell stated that in his experience, the amounts have varied based on the size of the project and the size of the budget. He stated that for example on a stand-alone project, the Administrator can go up to $10,000 and then $10,000-$30,000 can be approved by the President and when it goes beyond $30,000 it needs full Board approval.

Interim Administrator Tomczik stated that this is an “advance of”, so the Board is setting typical procedures aside and saying, in light of what is before us, we think 10%, or whatever percentage they think is appropriate for the Administrator to take action on regardless of the other procedures that are in place.
Manager Waller stated that this is a $218,500 contract which would mean that 10% of that is about $21,000 which is above what the Administrator can approve, but below what the President can approve, so he believes the authority is already there to cover the contingency fund.

Manager Haake asked what the total dollar amount will be for phase 1.

District Engineer Otterness stated that the total approximate cost for phase 1 is $1.3 million.

Manager Haake stated that this better not go one penny over what was approved for phase 1 because she does not want to see anything on this project until the Board figures out what is going on with the legislature.

Interim Administrator Tomczik stated that he thinks it is important to hear from the District Engineer. He stated that for the Lower Rice Creek project just approved, you want to make sure you have clear communication between your engineer and the contractor on the ground, so he thinks that the additional funds that may be authorized by the Administrator if the Board chooses, should include and cover those types of situations. He stated that much of what has been discussed today has been about things that are unknown to the District and how to proceed when they come up. He stated that when the fluidness of taking action and construction is interrupted and demobilized, it actually raises the cost when the contingency isn’t in place to allow for a reasonable expansion of the budget.

District Engineer Otterness stated that there are two different things that Board contracts services for during this phase, the task order for design services from the engineer and the contract with the contractor to complete the construction. He stated that with regard to the construction contract, they have always recommended allocating somewhere between 10%-15% to provide the Administrator the ability to sign the change orders to cover any unforeseen conditions. However, the District has not typically authorized a similar contingency with the engineering task order. He gave the example of the Hansen Park project that had one or two additional services requests from the engineering contract which had to come back to the full Board because it was part of a larger contract, but as Interim Administrator Tomczik alluded to, the process becomes clunky and sometimes delays the ability to react to the project as it is moving forward.

Manager Waller stated that under the current rules, the President can approve anything up to 10% for this project, which he believes provides enough flexibility to make those decisions. He stated that his only request is that if she does exercise that authority is that she will communicate and update the full Board.
District Attorney Smith stated that typically, when a Board approves a contract for a “not to exceed” amount, in order to exceed that amount for the contract, you must have further Board action. He explained that he is generally uncomfortable with the practice of using the Administrator’s authority to add on to the amount that the Board said you “shall not exceed”. He stated that in his opinion, the best way would be to authorize the additional percentage in “not to exceed” amount because that clearly provides Board direction anticipating that there may be events that trigger that contingency.

President Preiner stated that this is not the normal place for that because it is normally done for construction.

Motion by Manager Bradley, seconded by Manager Waller, to approve the Houston Engineering scope of services with a total cost of $218,500 as defined in the attached Task Order 2019-005, dated March 29, 2019, subject to the existing polices of the RCWD with the ability of the Administrator and the President to be able to modify that amount an additional $21,850 and authorizing the Board President to execute the document, to deal with unexpected contingencies. Motion carried 5-0.


Project Manager Kyle Axtell stated that after discussions the District Attorney, he is veering a bit from the original intended action. He noted that this site was identified as an ideal site for an iron enhanced sand filter, similar to what was installed at Hansen Park and Oasis Park. The District received a $392,000 grant from BWSR for this project and noted that the total budget is about $490,000. He stated that he had met with the White Bear Township Board at an executive session and has also presented to their park board and this project has full support from White Bear Township. He stated that this will be similar to the Hansen Park project in that it will remain under the District’s operational control and maintenance responsibility for a 25-year term which is required by BWSR. He explained that he was under the impression that the Board could order this project under 103B.231, but that was incorrect, so similar to the Lower Rice Creek project discussed earlier there will be a public hearing scheduled on June 26, 2019. He stated that staff is asking the Board for a motion approving the project agreement between the District and White Bear Township and noted that he will bring the agreement to the Township Board on June 17, 2019. He explained that the District will proceed with a resolution ordering the project after the public hearing.

Manager Bradley suggested a small change and noted that on page 145 of the packet, paragraph 5 and paragraph 14 need to be consistent with each other.

Project Manager Axtell asked District Attorney Smith if the words “at least” could be struck from paragraph 14 because there is a requirement from the State to provide maintenance for 25 years.
The Board discussed the proposed changes in the agreement.

Interim Administrator Tomczik stated that this is under a grant agreement and asked if the intent is that upon completion of the project that this is a District facility. He asked if the contemplation is that after 25 years the District is disposing of the facility or, if it continues to function, the District would want to maintain the easements so it would continue to function and provide the service.

Project Manager Axtell stated that this will be a District facility for 25 years and the arrangement with the Township is basically that beyond 25 years, because it is their property, if they decide that they want the property for another use, they can tell the District to discontinue the project.

District Engineer Otterness suggested that for paragraph 5, what may better reflect it being a District facility is to take the 25-year time period out of the language.

Project Manager Axtell stated that BWSR will not accept that language change.

*Motion by Manager Bradley, seconded by Manager Wagamon, to authorize District staff to take the project agreement to White Bear Township for the proposed project between the District and White Bear Township for construction, operation and maintenance of Bald Eagle Lake Iron Enhanced Sand Filter, with the minor modifications discussed concerning what happens before and after 25 years and authorizing the Board President to execute the agreement. Motion carried 5-0.*


Project Manager Kyle Axtell explained that there is a Task Order with HEI for the project with a “not to exceed” amount of $95,600. Staff is asking for Board approval of the Task Order, contingent on two items. The first being that White Bear Township approves the project agreement and secondly that the project is ordered, presumably on June 26, 2019. Staff is asking for the authorization for the Board President to execute the task order.

*Motion by Manager Bradley, seconded by Manager Wagamon, to approve the Houston Engineering scope of services with a total cost of $95,600 as defined in the attached Task Order 2019-009, dated June 4, 2019, and authorize the Board President to execute the document, as soon as the project agreement between the District and White Bear Township is approved and this Board actually approves the underlying project. Motion carried 5-0.*
8. Consider Change in Statutory Maximum for Manager Per Diems.
Interim Administrator Tomczik explained that the State has taken the action of allowing Managers per diem to go up to $125/day, which will take effect beginning August 1, 2019.

Motion by Manager Wagamon, seconded by Manager Waller, to adopt Resolution 2019-16: Incorporating 2019 Per Diem Legislation.

THEREFORE BE IT RESOLVED that the Board of Managers hereby determines that effective August 1, 2019, the per diem compensation of managers for meetings and for performance of other necessary duties shall be $125 per day;
BE IT FURTHER RESOLVED that the Administrator is directed to incorporate this resolution into the District’s Policy and Procedure Manual.

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

President Preiner stated that this will raise the budget or the taxes and suggested that the Managers consider what will be removed from the budget if they would like to have the higher wage. She suggested that this item be discussed at the upcoming budget meetings.

Motion carried 5-0.

9. Consider Check Register dated June 12, 2019, in the amount of $40,766.84 prepared by Redpath and Company.

Motion by Manager Wagamon, seconded by Manager Bradley, to approve check register dated June 12, 2019, in the amount of $40,766.84, prepared by Redpath and Company. Motion carried 5-0.

ITEMS FOR DISCUSSION AND INFORMATION
1. District Engineer Report and Timeline.
District Engineer Otterness stated that he had no additional information to share with the Board.

2. Managers Update.
Manager Haake stated that she has a list of people that may be a good fit for the open District Administrator position and asked how it can be shared.
Interim Administrator Tomczik stated that this broader issue will be before the Board in a workshop setting.

Manager Waller stated that he would like to review the job description that was presented and provided at an earlier workshop and then the District should receive applications before a list of potential candidates be considered.

President Preiner stated that the usual process can be followed and if anyone on Manager Haake’s list of candidates applies, they can be considered for the position.

Interim Administrator Tomczik stated that staff attended the Legislative Water Commission meeting and the bill the Board has been discussing was not discussed. He stated that the Legislative Water Commission will be continuing as a committee under the legislative coordinating commission. He noted that there was a discussion on the comparison of conservation funding against the neighboring states. He stated that they are also looking at communicating the success of investing in water projects, in the dedicated funds to the State versus just the general levied funds.

**ADJOURNMENT**

*Motion by Manager Wagamon, seconded by Manager Haake, to adjourn the meeting at 11:10 a.m. Motion carried 5-0.*