REGULAR MEETING OF THE RCWD BOARD OF MANAGERS
Wednesday, June 28, 2017

Shoreview City Hall Council Chambers
4600 North Victoria Street, Shoreview, Minnesota

Approved Minutes

CALL TO ORDER
President 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, and Secretary Michael Bradley.

Absent: Treasurer Steve Wagamon (with prior notice).

Staff Present: Administrator Phil Belfiori, Permit Coordinator/Wetland Specialist Nick Tomczik, Water Resource Specialist Kyle Axtell, Technician Samantha Berger, District Technician Lauren Sampedro, Lake and Stream Specialist Matt Kocian, Office Manager Theresa Stasica.

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

Visitors: Larry Lanoux, Bob Zick.

SETTING OF THE AGENDA
District Administrator Belfiori requested the addition of an item #1 under Board Action: Consider 2016 MS4 Annual Report.

Motion by Manager Haake, seconded by Manager Waller, to adopt the agenda as amended. Motion carried 4-0.

READING OF THE MINUTES AND THEIR APPROVAL
Minutes of the June 12, 2017 Workshop. Motion by Manager Bradley, seconded by Manager Haake, to approve the minutes as presented. Motion carried 4-0.

Minutes of the June 14, 2017 Board of Managers Meeting. Motion by Manager Bradley, seconded by Manager Haake to approve the minutes as presented.

District Engineer Chris Otterness wanted to clarify a statement he made in the minutes on lines 388-389, “The date has passed for the highest amount of incentive payment for the contractor so they will not be
recommending that they receive the full incentive.” The minutes correctly reflect what he stated on June 14, but the content of his statement is incorrect. The project specifications state June 30, 2017 is the deadline for the highest amount of incentive payment.

Motion carried 4-0.

ANNUAL PUBLIC INFORMATION MEETING ON THE DISTRICT’S STORM WATER POLLUTION PREVENTION PROGRAM (SWPPP) (LAUREN SAMPEDRO)

President Preiner recessed the regular meeting to the public hearing. President Preiner stated the purpose of the meeting is to provide information to, and receive input from, the public regarding the District’s Storm Water Pollution Prevention Program.

District Technician Lauren Sampedro made a presentation on the District’s Storm Water Pollution Prevention Program (SWPPP). She stated this permit is federally mandated by USEPA and administered in Minnesota by MPCA. She noted it authorizes stormwater discharge from the Municipal Separate Storm Sewer System (MS4) to “Waters of the State”. This permit is designed to reduce the amount of sediment and pollutants that enters the surface and ground water from the storm sewer system. This permit requires the District to develop and implement a Storm Water Pollution Prevention Program (SWPPP). She stated the current MS4 permit became effective August 1, 2013. She noted they are in the third year of reporting for this permit.

District Technician Sampedro showed a map of the RCWD MS4 coverage area and noted that the RCWD is an MS4 only with respect to the public drainage systems that it manages and maintains. The RCWD did receive confirmation from the Minnesota Pollution Control Agency on its MS4 jurisdictional boundary. This jurisdictional boundary is defined by the public drainage systems that lie in the urbanized area as determined by the decennial census. She stated other MS4’s, like cities, tend to cover the whole city whereas they are only focused on the urbanized areas. Cities tend to have more extensive MS4’s. RCWD is only focused on its public drainage systems.

District Technician Sampedro stated as part of the program the RCWD is required to have best management practices that address six Minimum Control Measures (MCMs):

1. Public Education and Outreach
   The District distributes newsletters to 28 cities which circulated the community newspaper and newsletter articles to over 100,000 people. The District had stormwater-related events and 140 people participate in the Volunteer Water Monitoring Program and they also have a website and social media platforms for education and outreach. The District has seen an increase in usage from both of those from the public. The RCWD also does education and outreach through cost share programs and technical assistance.

2. Public Participation/Involvement
   RCWD is required to have a SWPPP Public Information Meeting every year. No written or verbal comments on the SWPPP have been received prior to this meeting.

3. Illicit Discharge Detection and Elimination
   The District is unique in that the public drainage systems are the only thing covered. RCWD regulates all land disturbances near ditches and actively monitors water quantity and quality. Staff coordinates the investigation of every complaint. No illicit discharges violating the rule were identified in 2016.
4. Construction Site Stormwater Runoff
The District actively implements and enforces controls. There are also established policies for addressing violations.

5. Post-Construction Stormwater Management
The District implements and enforces this MCM through the Regulatory Program, mostly through the permit review process and stormwater Rule C, Stormwater Management Plans. There are also drainage and utility easement requirements and obligations to maintain stormwater management facilities in the form of recorded declarations and agreements.

6. Pollution Prevention/Good Housekeeping
The District implements this measure through an annual inspection of District owned facilities and the public drainage system. In 2016 staff inspected all of these within the MS4, though the District is required by the permit to inspect only twenty percent (20%).

District Technician Sampedro noted all RCWD staff members play a role in ensuring that they are addressing these six MCMs.

District Technician Sampedro reviewed the RCWD MS4 Outfall Locations map. She stated in addition to the MCMs they are also required to report on discharges to impaired waters with an approved Total Maximum Daily Load or TMDL. They do have a designated waste load allocation for both the Hardwood Creek TMDL and the Golden Lake TMDL. In the future they will need to report on additional TMDL’s including Chain of Lakes, Upper Mississippi and others.

Manager Waller stated on Hardwood Creek where they have a lack of dissolved oxygen, are there any other proposed projects to resolve that problem. District Technician Sampedro indicated she was not sure about that. Lakes and Streams Specialist Kocian stated there are no imminent plans for projects on Hardwood Creek to address the dissolved oxygen issue. Recent data have indicated the dissolved oxygen concentrations have improved since some of their recent projects. There are some other project ideas that the District has on the books but no imminent plans to enact them.

Manager Waller wondered how rigorous the monitoring was and where were the stations located. Lakes and Stream Specialist Kocian stated they have two monitoring stations, one at 20th Avenue and one further upstream on Hardwood Creek.

District Administrator Belfiori clarified the RCWD MS4 coverage area for the Board.

President Preiner asked if there was any member of the public who would like to speak.

Mr. Larry Lanoux, City of Grant Councilman, voiced his concerns about Mahtomedi Wildwood Elementary School, former Minnesota Superfund Site, Belair Sanitation MND0647092427. District Administrator Belfiori stated under the MS4 laws, the RCWD has no jurisdiction anywhere in the City of Grant or the City of Mahtomedi. Mr. Lanoux was invited to speak during Open Mike if he wished to address matters unrelated to the RCWD’s MS4 implementation through its SWPPP.

Mr. Bob Zick, Insight Insight News Hour, asked if the District doesn’t have jurisdiction then who does have jurisdiction. District Administrator Belfiori stated the jurisdiction under the MS4 program would be the City of Grant and the City of Mahtomedi, both of which are MS4s. District Attorney Holtman stated each MS4 has to have at least one public meeting a year. When speaking of jurisdiction in this case, it is
about the MS4 program, a very specific EPA law that really pertains to how stormwater is managed. There are many different laws that deal with water pollution, the contamination of land and so forth. It is not to say there are not other laws that govern contaminated land, it is to talk about this specific program that has to do with stormwater.

Mr. Zick stated if it is stormwater and it picks up pollution from a given site, is it still stormwater or is it going to be called something else. District Attorney Holtman stated this specific law, the way it is carved up, the way that jurisdiction is defined is that it has to do with a mandate that is put on cities and other bodies like the District that own or operate conveyances for moving stormwater. It is a feature of the law and is about how the water lands on the ground, how it ends up in pipes and channels and moves through those so if stormwater is falling on the ground coming through the soil and then entering a city’s stormwater pipe system then it might be something that would be under this law. It is a very specifically defined law that has to do solely with who owns and operates the pipes and how they manage their systems. It does not have to do with soil or groundwater contamination from industrial activity, which is governed by a number of other laws.

Mr. Zick asked what happens if the stormwater goes through a ditch instead of a pipe and goes into a lake. He asked if the water did not go into a pipe, is it not covered. He wondered who ends up with jurisdiction. He stated if the City is not doing its job and RCWD cannot help then where does a concerned citizen go. District Attorney Holtman stated this is a public hearing on a specific program; it is a very defined jurisdiction. Particular laws are written to address particular things and it can take time to figure them out. There are a lot of different programs and for each program the first question is “Does this program apply to the type of issue that the concern is about.” For the purpose of this public hearing, his judgment from what he understands of Mr. Zick’s concerns is that the concern does not fall under the MS4 program. Also, staff has advised that the District’s jurisdiction under this program does not apply to this area. He thought what Mr. Zick is concerned about is outside of the scope of this public hearing but something Mr. Zick can address at Open Mike.

Water Resource Specialist Axtell referenced a map and stated in this particular case within the RCWD the pink areas outline the urbanizing area within this part of the watershed. RCWD jurisdiction under the MS4 program is limited only to the public drainage systems, the green lines within the pink area on the map. It is a small subset of the urbanizing area. In the Grant and Mahtomei areas there are no public drainage systems managed by the Watershed District in that area. Manager Waller explained what a public drainage system is.

President Preiner determined that no other members of the public wished to speak, closed the public hearing and resumed the regular Board meeting.

**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:
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Permit Applications Requiring Board Action

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<td>CAPROC 3 items</td>
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CAPROC= Conditional Approval Pending Receipt of Changes

Permit Coordinator/Wetland Specialist Tomczik stated there were a couple of changes on the above items. Regarding the Engineering Report for 17-048, a revised engineer’s report was provided prior to the meeting. Permit Coordinator/Wetland Specialist Tomczik stated adjustments on page 3 at the bottom of the page were made. Staff is exercising some judgment in regard to the fact that the property previously had some impervious area and was cleared historically since that time with the intent to redevelop. After considering the gap in time and related circumstances evidencing the intent to redevelop, staff is of the judgment that the previous impervious condition, before site clearing, appropriately may be used as the “existing condition” for modeling purposes.

Manager Bradley asked under this interpretation would staff in the case of development on a prior-developed site always treat the prior-developed condition as the existing condition, including within the eighty percent area. He wondered why this property should go back in time to a different state than it is now. Permit Coordinator/Wetland Specialist Tomczik assured Manager Bradley that the present treatment is consistent with staff’s application of the rule previously. The judgment that staff is exercising is about the ability of the owner to demonstrate the historic condition. The content also refers to some past permits where the impervious area was documented, the ability to see the change on the photo and they feel that it is reasonable to recognize it for this applicant.

President Preiner clarified this is not something new staff is doing, this is now come forward and staff is adding it back into the permit. The process is usual and this was missed going in. Permit Coordinator/Wetland Specialist Tomczik indicated that was correct.

Manager Bradley asked why this is the right interpretation and why is this staff’s judgement. Permit Coordinator/Wetland Specialist Tomczik noted the reason being is it can be documented. District Technician Berger noted the modeling that was established as part of the City is a big component of this permit. The City specifically developed a regional model and that regional model showed the developed, existing condition and then showed how it will be developed in the future. She noted this is an important distinction to make.

District Attorney Holtman stated staff has looked at the process of development which in most cases involves demolition of some existing structures and then reconstruction, but also in many cases with a time lag between the two steps. Staff is concerned that if it requires site clearing and redevelopment to occur in immediate conjunction in order for the property owner to benefit from having the prior development considered as the existing condition, it will put an artificial constraint on the ordinary options regarding the timing of the redevelopment process. Staff’s judgment is aimed at whether in fact the time period in between the two steps is not so great, and the other factors involved are such, that staff can accept site demolition and redevelopment are two parts of one unit and can document the previous condition.
Permit Coordinator/Wetland Specialist Tomczik recommended a correction to the language to permit 17-055, page 50 there was a typo in item six on the very last line. The word should be “or” not “nor.”

Manager Haake noted that both 17-046 and 17-048 reports require that the applicant “provide documentation that an NPDES permit has been applied for and submitted to the MN Pollution Control Agency.” She asked for clarification on if all the District is asking for is that the applicant has applied for the permit, but doesn’t ask to see what the Pollution Control Agency said in response. Permit Coordinator/Wetland Specialist Tomczik stated staff is only asking that the applicant demonstrate that it has applied for the NPDES Permit.

Manager Haake asked why the District does not want to see what the PCA has to say about this before the permit is issued. District Technician Berger stated the PCA Permit is required when there is soil disturbance over one acre so within that, the District is requiring the applicant to show proof that it has applied for the permit. Permit Coordinator/Wetland Specialist Tomczik indicated the District needs the applicant to demonstrate application only. The idea is that the District takes the step to ensure that the agency with jurisdiction is aware of the proposed work, and that agency then has the responsibility to carry out its role. He added that the PCA permit concerns soil erosion and stormwater management, both of which the District’s rules independently address.

It was moved by Manager Bradley and seconded by Manager Waller to approve the consent agenda for permits 17-046, 17-048, and 17-055 with the additional language/corrections recommended by staff to permits 17-048 and 17-055 as outlined in the above Table of Contents in accordance with RCWD District Engineer’s Findings and Recommendations, dated June 21 and 27, 2017.

PERMIT APPLICATIONS REQUIRING BOARD ACTION

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Two Actions: Variance Request and CAPROC decision.

Permit Coordinator/Wetland Specialist Tomczik stated this is a CAPROC item that also requires a variance. He reviewed the project with the Board.

Permit Coordinator/Wetland Specialist Tomczik stated Anoka County Parks, as the project applicant for the RCCOL Maintenance Facility project, has submitted a permit application and written request for a variance from Rice Creek Watershed District (RCWD) Rule F.6(e), minimum vegetated wetland buffer width (hereafter buffer requirement) for the project. Anoka County is proposing a new maintenance facility within the Rice Creek Chain of Lakes Campground and Regional Park that is approximately 3500 square feet, has an outdoor yard area for material storage and a gravel access drive. The new building will consist of an office area, break room, restroom(s), a work shop and three to four parking stalls. The first phase of the proposed project is to be constructed in 2017 and will include the large pole-barn type cold storage structure, a gravel access drive and yard area. The second phase, which includes the office area, break room and restrooms would be added in a future phase when funding becomes available. This proposed structure is on a parcel that is within the Lino Lakes Comprehensive Wetland Protection and Management Plan (CWPMP) area and as such, is required to meet requirements for vegetated buffers. The applicant is requesting a variance from the 25-foot minimum buffer width standard and from the total buffer area required. The constraint is that the upland corridor between wetland areas is
not of sufficient width to provide the required buffer due to the existing road and the edge on either side of it that must be mowed for safety reasons.

The District Staff 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 Tomczik stated some of the discussion relevant to these criteria has already been documented in the Engineer’s Report (ER) narrative. Rather than reiterate the ER discussion, it is the intent of this memorandum to incorporate the discussion by reference where necessary, and use this memorandum to indicate how it applies to the above criteria. Ultimately, the Board determines whether consideration of the above criteria supports approval of a variance. 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 in the presented variance memorandum should be construed as rendering a legal opinion.

Permit Coordinator/Wetland Specialist Tomczik stated the ER for the RCCOL Campground, dated June 21, 2017, finds that the applicant would need to provide a total of 2.9 acres (126,400 sq. ft) of buffer, with a minimum width of 25-feet at all locations. The applicant has proposed 1.23± acres (53,457 sq. ft), and has not met the 25-minimum width in all locations. The applicant is requesting the variance for a reduced buffer width in areas where there is existing road infrastructure.

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

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

District Technician Berger replied: The applicant has provided 43% of the full buffer total area requirement, and 33% of the 25-foot minimum where feasible. The applicant has provided over 50-feet of buffer in feasible areas to accommodate for the loss of buffer width in areas with existing infrastructure. The existing 22-foot-wide bituminous roadway allows visitors to access the state-owned Centerville Lake boat launch, located south of the project site. To the west of the road, there is a 10-foot bituminous trail behind a curb. The adjacent trail is part of the Rice Creek Regional Trail North system, which provides access to the entire Chain of Lakes park system. The existing infrastructure use
is low-density park use, with low pollutant loads. Removal of the existing roadway and trail would eliminate access to the amenities of the Chain of Lakes and the regional trail system. The applicant has maximized the amount of buffer without removing the existing roadway within the park. On the east, flow from the existing roadway sheet flows through approximately 5-10 feet of mowed area and 1-6 feet of un-mowed area before discharging into the wetland to the southeast. On the west, the paved trail adjacent to the roadway sheet flows over 8-10 feet of mowed area and 10-16 feet of un-mowed area before entering into the wetland. Areas around the road and trail are required to be mowed for sightlines and safety requirements. The un-mowed and mowed areas are downgradient of the existing road and trail and consist of dense vegetation including trees and wetland species in the un-mowed areas. Overall, there are no concentrated flows within the project area, and the concentrated flow requirement of the Rule is not applicable. Other than Rule F.6 (e)(2) the applicant will meet the remaining provisions of the buffer requirement.

President Preiner commented the grass adjacent to the roadway is mowed for public safety. District Technician Berger replied that is correct.

Permit Coordinator/Wetland Specialist Tomczik asked per practical difficulties criterion (b) the effect the variance would have on government services. District Technician Berger replied: the issuance of a variance for RCCOL Maintenance Facility project is not expected to increase flooding (see criteria (c)) or have any negative effect on government services. The improvements to the park will allow for easier maintenance of the park and surrounding campground facility.

Permit Coordinator/Wetland Specialist Tomczik asked Per criterion (c), which sets the criteria for consideration of whether the variance will effect a substantial change in the character of resources within the watershed, 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.

Permit Coordinator/Wetland Specialist Tomczik asked: 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 nondegradation as identified within 7050.0180 Nondegradation for Outstanding Resource Value Waters; and
- Other generally sensitive resources.

District Technician Berger replied: George Watch Lake, which receives project drainage, is listed on the Section 303(d) impaired water list, for Nutrient/Eutrophication Biological Indicators. The project as a
whole is not expected to cause adverse impacts. The reduced buffer width areas consist of dense trees and wetland vegetation that provide habitat and a filtration buffer for any pollutants coming off the roadway. The increase in 0.47 acres of impervious area will include a gravel access drive and small maintenance building. The park is a low impact use, so the buffer would be playing less of a role in pollutant removal. The mowed areas, with the addition of the un-mowed areas, do provide a level of filtration on the landscape prior to discharging into the wetlands.

None of the other resources identified above are located immediately downstream of the site.

Permit Coordinator/Wetland Specialist Tomczik asked: 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 Technician Berger replied: The proposed variance is for the minimum buffer width requirements, which has minimal effect on flood elevations. The applicant has fully complied with the water quality requirements of Rule C, utilizing a bio-filtration and infiltration basin to treat onsite runoff.

Permit Coordinator/Wetland Specialist Tomczik 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).

District Technician Berger replied: The existing infrastructure was already in place prior to the CWMPM implementation and is placed closer to the wetland edge than the minimum 25-feet. The District Staff finds that moving the roadway and trail is not feasible and would limit recreational opportunities in the park.

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

District Technician Berger replied: The District Engineer finds that the current landowner did not cause the situation which lead to the implied practical difficulty. The need for this project and a variance was created by the need for a maintenance facility for the park and campground. The existing features of the park, which include a boat launch, parking, camp areas, and existing roads existed prior to the implementation of the CWMPM rules.

Permit Coordinator/Wetland Specialist Tomczik 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.

District Technician Berger replied: This criterion lies largely in the Board’s domain as it involves judgments of a non-technical nature. Our 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 Rule F. 6 (e)(2) buffer requirements. Other applicants have had the ability to feasibly meet this requirement onsite when the site constraints presented here were not evident.
Permit Coordinator/Wetland Specialist Tomczik also requested a revision to the Engineer’s Report, page 4 item 6 (Agenda Packet page 57) to read:

6. Documenting Easements and Maintenance Obligations – Applicant must meet the easement and maintenance obligations per Recommendations listed above. Applicant must provide a draft maintenance declaration for approval, and a receipt showing recordation of the approved maintenance declaration and drainage and flowage easements (if required). Applicant must execute an agreement with the RCWD for the maintenance of the WMC buffer and the stormwater facilities to ensure proper functioning.

**It was moved by Manager Bradley and seconded by Manager Waller, to approve the variance request for Anoka County Parks permit 17-016. Motion carried 4-0.**

**It was moved by Manager Bradley and seconded by Manager Waller, to CAPROC permit 17-016 as outlined in accordance with RCWD District Engineer’s Findings and Recommendations, dated June 21, 2017 and including staff’s recommended edits to item 6 under Findings. 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.

Mr. Lanoux stated he has filed an MS4 complaint with the MPCA and other agencies. He stated he has been working on legislation which would prohibit schools on dump sites. He stated the State of Minnesota has eleven schools on dump sites, nine of which are within the Rice Creek Watershed District. He stated no one to date has given him any documentation indicating that the Mahtomedi school site is safe. He noted he has documentation showing it to be a Superfund site. The City of Grant and the School District applied to take the site out of the Superfund Program in order to get it financed. He stated this was done in an illegal special meeting. He provided the District documentation that the School District used an illegal bid process. He stated he was very concerned with the City of Grant; after leaving this body last week the District indicated a ten-day letter would be sent to the School District, but neither he nor the City of Grant has seen it. He wondered how this body asked for the documentation but has not seen what is out there.

Mr. Lanoux reviewed the history of the documentation he has provided to the RCWD Board. He was before the Board to ask the School Board to be held accountable because no one else will take the responsibility. He thinks the District has some liability because this is the body that issued the final permit on this and released the cease and desist order.

Mr. Zick asked if the RCWD does not have jurisdiction, then why did the District issue a permit? What gave the District the authority to issue a permit if there is no jurisdiction? The City of Grant Attorney issued a cease and desist order, and the District killed it by issuing the permit. He wondered how they permitted something when they do not have jurisdiction for it. District Attorney Holtman stated the District has jurisdiction in certain respects. The District has the authority to adopt rules governing development and to enforce those through permits. The District exercised that authority in February.
2017 when it issued a permit with conditions. That permit had to do with how storm water is being
managed and how disturbance of the site would be handled during construction to prevent erosion.

Once that permit was approved there were conditions that the School District had to meet to get the
permit. He is not knowledgeable as to the concrete details being referred to about when those
conditions were met, but once they were met, the permit was issued.

Mr. Zick asked how the first permit was issued, was it because it was a development. He wondered how
this area is in jurisdiction one time and out of jurisdiction another time. If it is out then the District does
not have jurisdiction and how does the School District come to the RCWD to get permits. Manager
Bradley stated the distinction they made earlier was that the MS4 Program is a specific program. They
have jurisdiction over different things in a different variety of ways. The RCWD separately has
jurisdiction to issue permits for projects depending on their size and scope, where it is looking at the
impact of that specific project on the volume of water that comes off of the project site and whether or
not it is being treated as best it can for water quality and to avoid flooding. The RCWD had permitting
authority over the parking lot work. It does not have jurisdiction over whatever caused the potential soil
plume that is the concern and that is the MPCA and the Department of Health jurisdiction.

Mr. Zick stated that the size and scope of the project gave the RCWD authority to issue a permit and the
District’s concern was the stormwater runoff. Manager Bradley stated that is correct, with the concern
being the runoff caused by that project. Mr. Zick asked whether the RCWD is concerned about pollution
in the stormwater. Manager Bradley replied that one of the permit conditions was that the School
District was responsible to document that it had informed the MPCA and the Department of Health,
agencies with jurisdiction over the concerns Mr. Zick has, about the project and the site contamination.

Mr. Zick stated the problem is, according to the District, it not even sure if the EPA even looks at the
stormwater and yet permits are being issued based on some other entity’s jurisdiction. It was noted
that the reference to EPA oversight concerned the MS4 permit program. Mr. Zick asked the District to
talk to other entities to find out how they can get together to review this issue and to protect the public.

Mr. Lanoux requested that the District draft a letter supporting legislation he is working on.

**ADDITIONAL ITEMS REQUIRING BOARD ACTION**

1. **Consider 2016 MS4 Annual Report.**
   
   Motion by Manager Haake, seconded by Manager Bradley, to accept the 2016 MS4 Annual
   Report and direct the Administrator to submit the report to the MPCA. Motion carried 4-0.

2. **Consider Pay Request #5 from City of Saint Anthony for Mirror Park Project.**

   Water Resource Specialist Axtell stated District staff recommends that $181,062.56 be issued to
   the City of Saint Anthony per the August 25, 2015 cooperative agreement. He reviewed the
   background with the Board.

   Motion by Manager Waller, seconded by Manager Bradley, to approve the City of Saint
   Anthony’s reimbursement request of $181,062.56 pursuant to the August 25, 2015
   Cooperative Agreement. Motion carried 4-0.

3. **Consider Safety Protocols for Operation of ProCom Electric Fish Barrier.**

   District Attorney Holtman stated the District is moving forward, as discussed, to proceed with
   the portable, electric fish barriers which are not a method in extensive use. This involves placing
an electric current in the public waters. It is important that the District be knowledgeable and 
thoughtful about whether there are any safety risks associated with that. There are two driving 
thoughts behind the process. The first is that the District does not want to be installing 
technology that is going to result in someone being injured. The District has a direct interest in 
making sure that it is safe and if there are operational protocols to support safety, that the 
District is employing those.

The concern coincides with the fact that the District does not want to be subject to financial 
jeopardy as a result of not being thoughtful about how the site is managed for safety purposes. 
In other words, what has been put together by District staff for Board consideration and 
concurrence is to ensure the District has exercised due diligence so that it has an understanding 
whether there is a safety risk, what the risk is and what the best practices would be to make 
sure that risk is minimized.

District Attorney Holtman directed the Board’s attention to the bottom of page 82, top of page 
83, which shows an important feature of the way the District structured the contract with the 
vendor of the system. The paragraph, excerpted from the contract, states explicitly that Pro 
Com is the expert and Pro Com has an affirmative obligation to give the District all of its advice 
as to any risks associated with the system and best practices to guard against those. In addition, 
Lake and Stream Specialist Kocian has gone out and explored with the DNR and the Shell Rock 
Watershed District, which operates similar systems, for their best practices. Pro Com has come 
back and has provided an assessment of the safety risk, including an independent technical 
review that ProCom commissioned from a Dr. Stefan Gierlotka as to the risk of the system and 
the types of measures ProCom would use. District Attorney Holtman added that in addition to 
public safety, the District wishes to protect the installation components from physical damage.

Referencing the independent review and the ProCom materials, District Attorney Holtman 
summarized that there does not appear to be a safety risk, but there are best practices that are 
reasonable to be used in any event to keep people from the installation and to physically 
protect it.

The second element is that even where the District has exercised due diligence, it does not want 
to be sued in any event. The law provides for certain immunities from suit for public bodies 
related to the types of policy decisions that the Board makes in carrying out its public duties. He 
directed the Board’s attention to that part of the memorandum reviewing the considerations 
that staff has weighed in developing its recommended protocol. These include not just safety, 
but also cost, the need to maintain the sites in a way acceptable to Anoka and Ramsey Parks, 
the need to avoid creating a hydraulic obstruction, and maintenance considerations, among 
others.

President Preiner asked if after all the research done was anything found that was negative. She 
asked if there ever was a lawsuit against ProCom. Lake and Stream Specialist Kocian stated he 
was not aware of any issues and he noted that there are other electric barrier systems in place 
in Minnesota and most are high voltage electric systems which inherently have greater risk than 
this low voltage system that the District is installing.
Lake and Stream Specialist Kocian stated the purpose of this item is to describe proposed safety
protocols associated with the installation and operation of two ProCom NEPTUN low-voltage
electric fish barriers on Rice Creek. He reviewed the background with the Board. Staff
recommends that the RCWD implement the hazard mitigation approach described above to
provide information and warning to the public, avoid even low risk of public injury, and protect
the system equipment. He noted the Shell Rock Watershed District operates a high voltage
electric barrier which generally supplies ten times the voltage of what this system supplies.

Manager Bradley stated on page 89 of the report, fourth paragraph describes the DC2 area
between line A and curve B, states “no harmless shock effects occur” and believe it should read
“no harmful shocks occur”. Lake and Stream Specialist Kocian indicated that change would be
correct.

Manager Bradley indicated on page 91, second paragraph, the last sentence states “such
duration is beyond the scope of harm specified in the diagram”. He believed the sentence
should read “such duration is below the scope of harm specified in the diagram”. Lake and
Stream Specialist Kocian concurred.

Manager Bradley stated both Dr. Gierlotka and ProCom recommend that “the maximum voltage
of the electric pulse at 110 V be used only in extraordinary cases and only when the distance
between rows of electrodes is greater than 1.9 m (which arises from the span of a swimmer’s
arms).” He asked if staff has any problem with the Board incorporating that language into its
motion. Lake and Stream Specialist Kocian indicated staff does not have an issue with that and
noted those exact specifications are included in the existing contract with ProCom. Manager
Bradley stated he would feel better if the Board’s direction were clear for the contractor.

District Attorney Holtman advised that under the contract, Pro Com will be supervising
installation but he is not sure if it will be directing the installation of that particular component
or if the District will. Lake and Stream Specialist Kocian affirmed that Pro Com will be directing
the installation, and RCWD staff will provide labor support.

**Motion by Manager Bradley, seconded by Manager Waller, to concur in the hazard mitigation
approach described in the memorandum, including that the maximum voltage of electric pulse
at 110 volts be used only in extraordinary cases and only when the distance between rows of
electrodes is greater than 1.9 meters.**

Further Discussion:
Manager Waller stated the documentation indicates this will be used seasonally. That does not
mean it will be continuous all day all year long. Will it only be certain periods of the year. Lake
and Stream Specialist Kocian stated that is correct. These are seasonally operated.

Manager Waller asked what impact will this barrier have on other native fish, some migrate
also. Lake and Stream Specialist Kocian stated the migration times are different and the District
is relying on the DNR fisheries to address such questions and they have not expressed any
concern so far with fish migration.

**Motion carried 4-0.**
4. **Consider Order Accepting Plans and Specifications; Directing the Solicitation of Bids and Allowing Costs for Construction of the Halls Marsh Repair Project.**

   District Administrator Belfiori reviewed the changes to the Resolution noting the Whereas addition of the solicitation of quotes. This is a project that will have quotes rather than bids. There is a new B under the Order.

   District Administrator Belfiori noted August 9, 2017 will be the next review date for the Board for possible consideration of the contract for the actual construction work. Staff and Houston Engineering recommend that the Board, through Resolution 2017-15, formally accept the project plans and specs and authorize staff and Houston Engineering to request quotes from contractors.

   District Engineer Otterness noted there are two different construction schedules in the specification. One is a primary schedule beginning on September 11, 2017 and the second is a secondary schedule to begin on September 18, 2017. The intent of the secondary schedule is to provide leeway in case weather conditions are forecasted that could disrupt construction operations for multiple work days. The District will push forward with the first construction schedule unless there is some sort of weather condition that looks like it will be catastrophic to the construction project. He also noted there are plans to have an information meeting in early July with the affected landowners to update them on construction plans and scheduling and receive any feedback.

   **Motion by Manager Bradley, seconded by Manager Haake, to Approve Resolution 2017-15 with the following orders:**

   A. **The Board of Managers accepts the plans and specifications for the repair the Halls Marsh outlet control structure, and directs the solicitation of quotes according to the Engineer’s recommendation for implementation of the repair and as required by law.**

   B. **The Board of Managers directs its administrator to submit all quotes received to the Board along with a recommendation for award of a contract for the repair for approval by the Board.**

   C. **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.**

   D. **The Board of Managers further authorizes expenditures for the repair of the Halls Marsh outlet control structure.**

   **ROLL CALL:**

   Manager Waller – Aye
   Manager Haake – Aye
   Manager Bradley – Aye
   Manager Wagamon – Absent
   President Preiner – Aye

   **Motion carried 4-0.**

District Administrator Belfiori stated staff is recommending approve of Resolution 2017-16. He reviewed the background with the District.

District Engineer Otterness noted there is one additional project component in the plans that is not located on Branch 2. This component is located on Branch 1, Lateral 1 of County Ditch 53-62. This is for replacement of the outlet structure for the pond behind Home Depot and addresses the issue brought up last fall regarding upstream neighborhood flooding. This would relieve some of the issues and eliminate some of the maintenance headaches they have had related to that structure. It is within a half mile of the project they are working on but not technically part of Branch 2.

Motion by Manager Bradley, seconded by Manager Waller, to approve Resolution 2017-16, Order Accepting Plans and Specifications, Directing the Solicitation of Bids and Allowing Costs for the Repair of Branch 2 of Anoka County Ditch 53-62 with the following order:

A. The Board of Managers accepts the plans and specifications for the repair of Branch 2 of ACD 53-62 and directs the solicitation of bids according to the Engineer’s recommendation for implementation of the repair and as required by law.

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 of Branch 2 of ACD 53-62 and the collection of revenues consistent with this order.

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

Motion carried 4-0.


District Administrator Belfiori stated per consensus at the June workshop for review is a draft letter. The letter generally tries to capture the discussion at that meeting and also at the meeting in January when the issue was formally voted on. At the January meeting, there was a unanimous decision to decline election of jurisdiction of buffer law enforcement at this time. This position was reconfirmed at the June meeting through full consensus of the Board at the June workshop. The letter attempts to communicate that the District will continue to closely collaborate with the SWCDs and Counties to assist in the implementation of this law and that the District views it as an important program.

District Administrator Belfiori reviewed the letter with the Board.
Motion by Manager Haake, seconded by Manager Waller, to have RCWD staff send letters to Anoka, Ramsey and Washington County Boards regarding the Buffer Law update.

Further Discussion:
President Preiner asked by stating this, does the District risk being found to have assumed any legal responsibility for buffer law enforcement? District Administrator Belfiori stated the Board has not approved the sending of any letters to regulated property owners yet; that will come to a workshop for review. Once the Board were to become comfortable with the letter, the District would modify the guidelines of the Water Quality Cost Share program. Staff is working on that and once revised guidelines are adopted, the Board will be able to authorize sending the letters to affected individuals advising them of potential cost-share assistance. He stressed that if the Board chooses to do all that, it would be an element of the District’s cost-share program only, and would not cause the District to bear responsibility for enforcement under the buffer law.

Motion carried 4-0.

7. Consider Check Register dated June 28, 2017, in the amount of $326,533.95, prepared by Redpath and Company.  
Motion by Manager Haake, seconded by Manager Bradley, to approve check register dated June 28, 2017, in the amount of $326,533.95, prepared by Redpath and Company.  Motion carried 4-0.

ITEMS FOR DISCUSSION AND INFORMATION

1. Staff Reports.
Staff Coordinator/Wetland Specialist Tomczik gave an update on the Compliance Hearing for Shade Tree Construction, Inc. Permit 17-005. He stated District review continues and Houston Engineering is reviewing the finer details. Staff is working with the applicants on getting the recordings, surety and everything in order. He suspected that not too far in the future they will be working with District Administrator Belfiori on issuing the permit.

2. July Calendar.
The Board had no comments.

3. Managers Update.
Manager Haake stated the MAWD meeting was just held and both the By-Laws and MOPP were approved pretty much unanimously. There will be a more detailed budget once they get to December for review.

Manager Waller stated he attended the Forest Lake City Council meeting and there was discussion about Mrs. Moore and McCullough properties. The City of Forest Lake has done some research and found evidence that there is no need for the weir structure that has been installed in the culvert under Hwy 61. He assumed discussion will occur with staff and the McCulloughs regarding the water backing up on their property.
Permit Coordinator/Wetland Specialist Tomczik stated Ryan Goodman of Forest Lake did communicate in an email to Mr. Schmidt and himself a wealth of historic documents and their position on what they thought occurred. In review of all of those materials and in consultation with Houston Engineering, the permit that the District issued was under Rule G and he asked Houston Engineering about the importance of the weir in regard to that assessment under their regulation and the removal of the weir would not be contrary, or compromise their position. The removal specific to their regulation is not an issue. Expanding on that because of the wealth of documents and the exchange between Rice Creek, the City, MnDOT, DNR and all the entities present he noted that MnDOT was acting as the local Government unit for the administration of the Wetland Conservation Act. He noted that the DNR waived its public water interests to MnDOT and that ultimately the culvert elevation may be tied into those two entities doing their work. He has not heard anything back since it was sent a week ago.

**ADJOURNMENT**

*Motion by Manager Haake, seconded by Manager Bradley, to adjourn the meeting at 11:47 a.m.*

*Motion carried 4-0.*