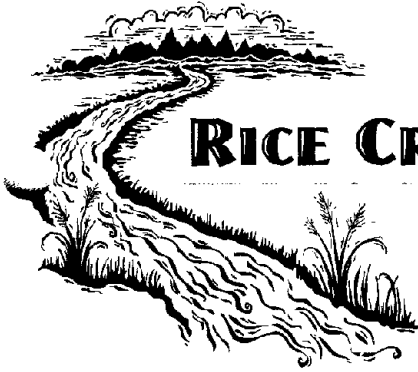


Approved



RICE CREEK WATERSHED DISTRICT

4325 Pheasant Ridge Dr. NE #611 • Blaine, MN 55449-4539
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REGULAR MEETING OF THE RCWD BOARD OF MANAGERS

Wednesday, July 14, 2004

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

Minutes

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ROLL CALL

Present: President Andrew Cardinal, 1st Vice-Pres. James Leroux, 2nd Vice-Pres. Harvey Karth, Treasurer Barbara Haake, and Secretary Roger Aiken

Absent: None

Staff Present: Administrator Steve Hobbs, TimeSaver Secretary Barbara Hughes

Consultants: District Engineer Brett Emmons of EOR; District Engineer Carl Almer of EOR; District Attorney Chuck Holtman

Visitors: Paul Haik, Joe Preiner, Dave Schumann, John Waller

CALL TO ORDER

President Cardinal called the meeting to order, a quorum being present, at 7:00 p.m.

SETTING OF THE AGENDA

President Cardinal stated that the agenda item requiring Board action with respect to review of the JBI contract status may be held in closed session. As a result, this item will be moved to the end of the agenda.

President Cardinal asked for any additions.

Manager Leroux stated he would like to add a couple of items for discussion and information.

The Board adopted the amended Agenda by consensus.

READING OF THE MINUTES AND THEIR APPROVAL

Minutes of the June 23, 2004, Board of Managers Meeting.

Motion by Manager Leroux, seconded by Manager Haake, to approve the June 23, 2004 minutes. Motion carried 5-0.

BOARD OF
MANAGERS

A.J. Cardinal, Sr.
Anoka County

Roger K. Aiken
Ramsey County

James A. Leroux
Washington County

Barbara A. Haake
Ramsey County

Harvey F. Karth
Anoka County

34 **OPEN MIKE** *Individuals may address the Board of Managers about any item not included on the regular agenda. Speakers are*
35 *requested to come to the podium, state their name and address for the record, and limit their remarks to three minutes. Generally the*
36 *Board of Managers will not take official action on items discussed at this time, but may typically refer the matter to staff for a future*
37 *report or direct that the matter be scheduled on an upcoming agenda.*
38

39 Mr. Paul Haik stepped up to the podium. Mr. Haik stated that an appeal was filed on June 4, 2004 regarding Security
40 Products and the District Administrator responded on June 24, 2004. He asked if any action has been taken on the appeal
41 either formally or informally.
42

43 Administrator Hobbs stated that the issue has been remanded back to RCWD because the Board of Water and Soil
44 Resources (BWSR) claimed it was not given proper notice. He stated RCWD will mitigate any impact of the improper
45 notice and the issue will come back to the Board of Managers at a future meeting. He noted there is room in the
46 comprehensive plan to mitigate any impact and BWSR has indicated it is not concerned about any long-term impact.
47

48 Administrator Hobbs stated that BWSR's appeal may be withdrawn following further consideration by the Board of
49 Managers.
50

51 Mr. Haik requested copies of all communications regarding the appeal and remand.
52

53 Administrator Hobbs agreed to provide copies to Mr. Haik.
54

55 Mr. John Waller, resident of the City of Hugo, stepped up to the podium. Mr. Waller requested that the Board of
56 Managers take aggressive remedial action on Judicial Ditch #2 between 157th and 170th to remove beaver dams and
57 sediment. He stated that several beaver dams exist at 165th and 157th. He noted the DNR has officially accepted the profile
58 of the ditch and does not disagree with the original depth of Judicial Ditch #2.
59

60 Mr. Waller indicated there is currently six feet of water at 157th Street. He stated there is six feet of water in a ten foot
61 culvert at 170th and the water is flowing well at that point. He noted there is flooding at 165th Street and upstream from
62 165th.
63

64 President Cardinal asked if we could easily get in there to remove the dams. Mr. Waller replied in the affirmative.
65

66 Manager Leroux stated that excavating was supposed to take place in the area this spring but apparently that did not
67 occur. He indicated that if there are residual beaver dams in the bottom of the ditch, it is easy to see how the flow would
68 be obstructed.
69

70 District Engineer Emmons stated the area south of 157th was excavated; however, there were apparently some landowner
71 concerns north of 157th. As a result, excavating did not occur.
72

73 Manager Haake requested staff to perform an assessment of the area between 157th and 170th in order to address the
74 obstruction issues.
75

76 Administrator Hobbs stated that the issues with the landowners have been resolved. He will direct staff to perform an
77 assessment of the area and a report will be provided to the Board of Managers at its next meeting.
78

79 Manager Karth stated it would be appropriate to remove the residual dams, and sediment trapped behind them, at this
80 time. President Cardinal concurred. Administrator Hobbs agreed that RCWD will move forward with minor maintenance
81 by removing the residual dams and sediment at this time.

82
83 Manager Leroux asked about the status of the Environmental Assessment Worksheet (EAW). Administrator Hobbs stated
84 the notice period has expired. He indicated the DNR and others have stated their belief that an Environmental Impact
85 Statement (EIS) is needed and staff is working with these agencies regarding the potential need for an EIS.

86
87 Mr. Paul Haik stepped up to the podium. He stated that with respect to the Preiner property, a permit was granted for
88 maintenance of their private ditching system. However, a condition was placed in the permit requiring the Preiners to
89 secure an additional temporary construction easement granting permission to cross the CSM property. That entity has
90 told the Preiners to go ahead and they were reticent to sign anything. Mr. Haik requested that the conditions on the
91 permit be removed so that the Preiners can complete the maintenance on their private ditching system.

92
93 In addition, Mr. Haik stated he has been informed that Minnesota Department of Transportation (MnDOT) is not
94 intending to complete the permit granted by RCWD for work to be done by August 1 or August 31. Mr. Haik stated that
95 he recently learned that the MnDOT has sued the RCWD with respect to this issue and requested advice from the Board
96 of Managers regarding moving forward with the work.

97
98 Administrator Hobbs stated he does not have the proper documentation to grant permission to cross the CSM property
99 in order to perform any of the ditching activities and reiterated that RCWD needs documentation from the current
100 landowner granting access to perform that work.

101
102 Mr. Haik stated that the original Rehbein document provided to RCWD verifies the easement rights. He suggested that
103 Mr. Rehbein entered into a contract in the mid-1970s with the Board of Managers and he obtained easements from each
4 of the property owners at that time. Mr. Haik reiterated that they would like to complete the maintenance on the ditch
105 and agreed to indemnify the Board of Managers from any liability whatsoever for crossing the CSM property if an issue is
106 raised by CSM.

107
108 Administrator Hobbs stated he will review the Rehbein document showing the easement as it pertains to the ditch.

109
110 Administrator Hobbs indicated that the MnDOT filed a lawsuit against RCWD due to a concern about wetland mitigation
111 requirements.

112
113 Mr. Haik requested copies of all documents related to the MnDOT appeal.

114
115 Administrator Hobbs concurred and stated he is working with MnDOT to resolve the issue as soon as possible.

116
117 Mr. Haik asked when the County is going to take care of the Lexington Avenue obstructions within the culverts. Manager
118 Karth stated that he spoke with one of the county commissioners who indicated they are getting bids for the project and
119 the bids are due the end of July.

120
121 **CONSENT AGENDA**

- 122 1. **Cost-share projects (see memo from Hobbs)**

123 *Motion by Manager Haake, seconded by Manager Aiken, to approve the cost-share projects for Bald Eagle*
124 *Lake curly-leaf pondweed control (\$3,500), Kelley Farms Wetland Restoration (\$2,000), Balego Lakescaping*
125 *Project on Pike Lake (\$2,038.62), Harvey Lakescaping Project on Bald Eagle Lake (\$2,400), and Forest Lake*
126 *School District CMP Project (\$10,000). Motion carried 5-0.*

128 Manager Leroux commented that current measures to control curly-leaf pondweed do not appear to be working
129 and questioned the grant.

130 Administrator Hobbs stated the grant money will be used to perform a plant inventory which is complementary
131 to RCWD's work to determine the native plant composition. RCWD will target how the money is spent.

132 Manager Leroux requested information regarding the location of the Kelley Farms wetland area and its proximity
133 to RCWD.

134 Administrator Hobbs replied that Kelley Farms has water that flows into Rice Creek; as a result, it makes sense to
135 do this as a cost-share project. Administrator Hobbs noted that a lot of water flows to Rice Creek as well as to the
136 Carnelian-Marine Watershed District. Administrator Hobbs provided the Board of Managers with a copy of a
137 letter from Jeff Berg providing a description of the project.
138

139 2. **Check Register dated 7/14/04, in the amount of \$21,730.33, Prepared by HLB Tautges Redpath**
140 *Motion by Manager Haake, seconded by Manager Aiken, to approve check register dated 7/14/04, in the*
141 *amount of \$21,730.33, prepared by HLB Tautges Redpath. Motion carried 5-0.*
142

143 3. **Consider finding that there is not a need for an Environmental Impact Statement for the Rice Creek**
144 **Restoration Project (see EOR memo)**
145 Administrator Hobbs stated that limited comments were received, comments were favorable and no commenter
146 suggested the potential for a significant adverse environmental impact from the project. He recommended that
147 the Board make a negative declaration of the need for an Environmental Impact Statement in light of the absence
148 of potential significant adverse impacts from the project.

149 *Motion by Manager Haake, seconded by Manager Aiken, to adopt Administrator Hobbs' recommendation*
150 *and find that there is not a need for an Environmental Impact Statement for the Rice Creek Restoration*
151 *Project. Motion carried 5-0.*
152

153
154 4. **Consider extending EAW comment period for Hardwood Creek/JD2 Official Profile Repair & Corridor**
155 **Restoration to August 25, 2004. (additional time is needed to meet with those that have made comments**
156 **regarding the EAW and to analyze their comments)**
157 *Motion by Manager Haake, seconded by Manager Aiken, to approve extending EAW comment period for*
158 *Hardwood Creek/JD2 Official Profile Repair & Corridor Restoration to August 25, 2004.*
159

160 Administrator Hobbs stated that at this time, RCWD is not moving forward with an EIS on Hardwood Creek/JD2.
161 Rather, additional time is needed to meet with those who have made comments regarding the EAW and to
162 analyze their comments and gain more information to determine why they believe an EIS may be needed and to
163 evaluate the scientific basis of the claims that wetlands will be drained.

164 Mr. John Waller stepped up to the podium. He questioned why the EAW comment period for Hardwood Creek is
165 being extended when it does not appear that the DNR, PCA or Met Council is objecting to the project.

166 Administrator Hobbs clarified that Mr. Waller appeared to be referring to the Rice Creek Meander EAW, which is
167 a separate matter.

168 District Attorney Holtman replied that the rules provide at least 30 days for EAW comment. RCWD desires to
169 extend the comment period for an additional 30 days in order to allow the Board of Managers to obtain more
170 information and comments from interested parties prior to the Board of Managers reaching consensus. When

171 the comment period is extended, the rules require notice be given again of the additional comment period,
172 indicating the information needed. District Attorney Holtman stated that the rules require the Board of
173 Managers to make a decision within a set number of days after the close of the comment period. He
174 recommended that it is better to clarify and seek resolution of issues now than to go through a lengthy and
175 expensive EIS process unnecessarily or, conversely, simply go forward and risk prompting formal disputes.

176 Manager Haake concurred with staff's recommendation to extend the EAW comment period to August 25, 2004.

177 Mr. Haik inquired about whether an EAW was done to examine the basic repair.

178 District Engineer Emmons stated the EAW was based on the rehabilitation/repair report previously submitted.

179 Mr. Haik asked the date this report was submitted.

180 District Engineer Emmons stated he did not recall the date of the report. He indicated the original large technical
181 document was prepared and EOR has worked on the hybrid design per a set of letters exchanged between Hugo
182 and EOR; the EAW document was prepared to reflect that hybrid design and has been out for public review. Mr.
183 Haik asked if the Board of Managers has received those comments.

184 Administrator Hobbs replied the comments were sent under separate cover last week and the City of Hugo
185 engineer has been provided those comments as well.

186 Mr. Haik asked if an EAW has been submitted that directly addresses a repair without sloping changes.

187 Manager Aiken called for a point of order.

188 President Cardinal stated there was a motion and a second on the floor and requested a vote on the motion.

190 *Motion carried 5-0.*

191 Mr. John Waller asked whether an EAW had been required.

193 District Attorney Holtman stated that the Board of Managers received a petition for an EAW and voted in the fall
194 of 2002 that it would prepare an EAW once it was at the point where there was a concrete proposal in place.

196 **ITEMS REQUIRING BOARD ACTION**

197 1. **Review of TEP Findings Permit 03-151, Preiner**

198 Administrator Hobbs stated that no Board action is required regarding the TEP findings. He indicated he recently
199 learned that BWSR has appealed the findings based on procedural issues. It is BWSR's contention that the TEP
200 met the deadline for comments; as a result, they contend that the Board of Managers is required to review and
201 consider their comments. Administrator Hobbs stated separate comments were received from the Anoka
202 Conservation District and BWSR. He indicated it was not the consensus document that RCWD asked for and
203 BWSR contends that even though it was not the consensus document asked for, it still constitutes comments that
204 TEP has made and that the Board needs to consider.

206 Administrator Hobbs has discussed the issue with the TEP members and they have agreed to do a site visit to put
207 together some findings that the Board of Managers can review in order to make a decision. The permittee's
208 wetland consultant will be present, and EOR will represent the RCWD. Administrator Hobbs stated this issue will
209 be brought back to the Board of Managers at its August 11, 2004 meeting.

211 Manager Leroux requested that the members of TEP be present at the August 11, 2004 Board of Managers
212 meeting.

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Administrator Hobbs agreed to request their presence at that time.

Manager Aiken noted that page 5 of EOR's recommendation provides a concise summary of the TEP process.

Motion by Manager Haake, seconded by Manager Aiken, to continue this matter until August 11, 2004 to provide additional time for BWSR to review and comment on the TEP findings. Motion carried 5-0.

Mr. Paul Haik requested a copy of all communications, including the EOR memo, regarding this matter.

Administrator Hobbs agreed to provide copies.

2. **Approval of Rule M Minor Amendment.**

Administrator Hobbs stated the comment period for Rule M amendment has expired and final approval of the Rule M amendment is now appropriate.

Manager Aiken offered Resolution No. 04-06, Resolution Adopting CWMP Rule M and moved its adoption, seconded by Manager Haake. The question was on the adoption of the Resolution and there were 5 yeas, 0 nays, and 0 abstentions, as follows:

- Aiken** **yea**
- Cardinal** **yea**
- Haake** **yea**
- Karth** **yea**
- Leroux** **yea**

Upon vote, the Chair declared the Resolution passed.

ITEMS FOR DISCUSSION AND INFORMATION

1. **EOR Timeline and Budget.**

No discussion occurred.

2. **Advisory Committee Applicants and Discussion.**

Administrator Hobbs stated that the Board of Managers previously asked for names of applicants to the Advisory Committee. He indicated the Board of Managers may wish to form a subcommittee for the purpose of interviewing and selecting new members to the advisory committee and making its recommendation to the Board of Managers.

Manager Haake stated her desire to form a subcommittee to interview applicants.

Mr. Dave Schumann, chair of the advisory committee, stated he has been on the advisory committee since 1991 and stated it may be worthwhile to formalize the process of recruiting and selecting applicants. He stated his belief that it is worthwhile to add applicants to the advisory committee and it has been his experience that they are not overrun with applicants wanting to be on the advisory committee.

Manager Karth asked Mr. Schumann if he has talked to any of the current applicants, noting that some of the applications were received earlier this year. Mr. Schumann stated that he has talked with the current applicants and it appears they continue to show interest in being on the advisory committee.

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Manager Karth stated it is important for the Board of Managers to have ongoing agenda items for the advisory committee's review.

Manager Haake noted it would be worthwhile to consider having less frequent meetings of the advisory committee, e.g., eliminate the July and December meetings.

Mr. Schumann commented that there are currently 5 members on the advisory committee. Eight applications have been received to date, which would bring total membership on the advisory committee to 13. Manager Haake expressed concern that a large group may get a little unwieldy. Mr. Schumann stated he is not concerned about possibly having 13 members on the advisory committee.

Manager Haake stated she would like to talk to each of the applicants and provide an opportunity for questions and answers.

Motion by Manager Karth, seconded by Manager Aiken, to conduct 15 minutes interviews of each of the applicants to the advisory committee on Thursday, July 22, 2004, from 6:30 p.m. to 8:30 p.m. at the RCWD offices.

Manager Haake stated she would not be available on July 22, 2004. Manager Haake requested that a list of questions be prepared in advance of the interviews.

Manager Aiken stated he feels it is important to introduce more structure to the advisory committee role in order to use their time more constructively.

Manager Leroux stated he will draft questions for use during the interviews and email those draft questions to the Board of Managers.

District Attorney Holtman stated that the July 22, 2004 meeting will be a public meeting requiring notice. In addition, the Board of Managers is not permitted to email draft questions to one another; rather, they can email their draft questions to the District Administrator or a Manager designated to collect and refine the questions. District Attorney Holtman stated the Board of Managers could convene in a public meeting prior to the first interview on July 22, 2004 for the purpose of reviewing their list of proposed questions for the applicants.

Mr. Schumann asked if, as chair of the advisory committee, he could submit proposed questions for the applicants and if he could attend and participate in the July 22, 2004 meeting. Manager Leroux replied in the affirmative.

Administrator Hobbs stated he will contact each of the applicants to notify them of the date and time of their interview.

Motion carried 5-0.

3. Performance Evaluation and Board Self-Evaluation.

Manager Leroux stated that a formal performance evaluation needs to be conducted by year end and stated the evaluation should be scheduled in the near future.

Manager Leroux asked the Board of Managers if they felt a board self-evaluation would be a valuable tool for evaluating their performance.

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President Cardinal concurred and asked Administrator Hobbs to work with Manager Leroux on preparing a board self-evaluation.

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CLOSED SESSION: REVIEW OF JBI CONTRACT STATUS

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District Attorney Holtman informed the Board of Managers that the record needs to reflect the basis and reason for a closed session regarding the JBI contract status. He stated the basis for the closed session is attorney/client privilege and the reason for the closed session is to allow the Board of Managers to discuss the status of the contract with JBI, to discuss the status of pending claims, and to preserve confidentiality and attorney/client privilege due to threatened litigation.

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Motion by Manager Aiken, seconded by Manager Karth, to convene the Board of Managers in closed session regarding the status of the JBI Contract in order to preserve the attorney/client privilege and in light of threatened litigation. No action will be taken regarding the JBI Contract during the closed session of the Board of Managers.

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Mr. Paul Haik requested that the record reflect his objection to closure of the meeting and stated it is not appropriate for the Board of Managers to convene in closed session regarding the JBI Contract.

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District Attorney Holtman suggested the Board of Managers would receive findings regarding the JBI Contract during closed session. Mr. Holtman reminded the Board of the extensive findings it had adopted to clarify the basis of previous closed sessions to discuss JBI contract litigation issues and suggested that the Board adopt those same findings at the present time.

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Motion carried 5-0.

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The Board of Managers convened in closed session at 8:52 p.m. due to threatened litigation, given the need for absolute confidentiality as described in the previous written findings of the Board supporting a closed session in this matter.

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The Board of Managers reconvened the regular meeting at 9:25 p.m.

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ADJOURNMENT

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Motion by Manager Haake, seconded by Manager Karth, to adjourn the meeting at 9:25 p.m. Motion carried 5-0.

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MEMORANDUM
Rice Creek Watershed District
Cost-Share Projects

To: Board of Managers

Date: 7/9/04

From: Steve Hobbs

Subject: Approval of Cost-share projects

Background & Recommendation

In your packet you will find applications for five cost-share projects that were presented to the Advisory Committee on July 7th. Dave Schumann and Mary Jo Truchon were the only members in attendance and they concurred with the staff recommendations including \$2,000 for the Kelley Farms wetland restoration project. I sent emails to the other three members of the Advisory Committee to ask their opinions on the projects. Betty Cowie said she was away and could not comment. John Waller said he objects to taking any action when a quorum of the Advisory Committee has not met as a committee to review the projects. Rick Gwynn stated that he concurs with Dave and Mary Jo.

It will be a hardship for these projects to wait until mid-August for the Board to act on them again. While it might not be the preferred Advisory Committee review process, I suggest that under these circumstances and having heard opinions from the majority of Advisory Committee members regarding the projects, that the Board move forward and take action on the applications.

MEMORANDUM



To: Board of Managers
Rice Creek Watershed District

From: Kevin Biehn, RLA CPESC

Subject: Rice Creek Restoration Project - EAW

Date: July 6, 2004

The purpose of this memorandum is to inform the Board of comments received on the Environmental Assessment Worksheet (EAW) for the Rice Creek Restoration Project and recommend that the Board decline the need for an Environmental Impact Statement (EIS). Since RCWD is the Responsible Government Unit (RGU) for this project it is the responsibility of the Board to determine the need for an (EIS).

FINDINGS OF FACT

1. An EAW on the above referenced project was adopted for public review by the Rice Creek Watershed District Board of Managers on April 28, 2004.
2. The RCWD issued a press release to the *Lillie Newspaper* (Shoreview Area) on May 13, 2004. The press release was printed in the newspaper on May 19, 2004.
3. Copies of the EAW were submitted to the EQB and its entire "EAW Distribution List" on May 11, 2004. Copies were also provided to Larry Holmberg with the Ramsey County Parks and Recreation Department.
4. The EAW was open for public comment from May 24, 2004, when notice was published in the *EQB Monitor*, with the comment period open through June 23, 2004.
5. Comments on the EAW were submitted during the public review period by:
 - Metropolitan Council (May 25, 2004 letter)
 - Minnesota Department of Natural Resources (June 23, 2004 letter)
 - Minnesota Pollution Control Agency (June 23, 2004 letter)

UPDATE

The 30-day comment period for the Rice Creek Restoration Project EAW ended on June 23, 2004. The District received responses of support for the project from the Metropolitan Council and Department of Natural Resources. The Pollution Control Agency formally declined to comment on the EAW; due to sited resource limitations. No questions or concerns about the project or the EAW were raised any parties.

RECOMMENDATION

Since the EAW brought forth no objections or concerns regarding the project, we recommend the Board decline the need for an Environmental Impact Statement.

Attachments: Response from Metropolitan Council (letter dated May 25, 2004)
Response from MnDNR (letter dated June 23, 2004)
Response from MPCA (letter dated June 23, 2004)

c: Steve Hobbs, RCWD