

Bassett Creek Watershed Management Commission

Minutes of the Meeting of April 21, 2011

1. Call to Order

The Bassett Creek Watershed Management Commission (BCWMC) was called to order at 11:35 a.m., on Thursday, April 21, 2011, at Golden Valley City Hall by Chair Loomis. Ms. Herbert conducted roll call.

Roll Call

<i>Crystal</i>	Commissioner Pauline Langsdorf	<i>Administrator</i>	Geoff Nash
<i>Golden Valley</i>	Commissioner Linda Loomis, Chair	<i>Counsel</i>	Charlie LeFevere
<i>Medicine Lake</i>	Commissioner Ted Hoshal	<i>Engineer</i>	Karen Chandler
<i>Minneapolis</i>	Commissioner Michael Welch, Treasurer	<i>Recorder</i>	Amy Herbert
<i>Minnetonka</i>	<i>Absent</i>		
<i>New Hope</i>	Commissioner John Elder		
<i>Plymouth</i>	Commissioner Ginny Black, Vice Chair		
<i>Robbinsdale</i>	<i>Absent</i>		
<i>St. Louis Park</i>	Commissioner Jim de Lambert, Secretary		

Also present: Laura Adler, BCWMC Technical Advisory Committee, City of St. Louis Park
Caroline Amplatz, Caroline's Kids Foundation
Derek Ashe, BCWMC Technical Advisory Committee, City of Plymouth
Jack Frost, Metropolitan Council Environmental Services
Christopher Gise, Watershed Resident
Kari Geurts, Caroline's Kids Foundation
Dave Hanson, Alternate Commissioner, City of Golden Valley
Len Kremer, Barr Engineering Company
Tom Mathisen, BCWMC Technical Advisory Committee, City of Crystal
Richard McCoy, BCWMC Technical Advisory Committee, City of Robbinsdale
Jeff Oliver, BCWMC Technical Advisory Committee, City of Golden Valley
Al Sarvi, New Hope Resident
Liz Stout, BCWMC Technical Advisory Committee, City of Minnetonka

2. Approval of Agenda and Consent Agenda

Commissioner Black moved to approve the Consent Agenda and the Agenda. Commissioner Elder seconded the motion. The motion carried unanimously with seven votes in favor [Cities of Minnetonka and Robbinsdale absent from vote].

3. Citizen Input on Non-Agenda Items

No citizen input on non-agenda items.

4. Administration

- A. Presentation of March 17, 2011, Meeting Minutes. The meeting minutes were approved at part of the Consent Agenda.
- B. Presentation of Financial Statements. The April Financial Report was received and filed as part of the Consent Agenda.
The general and construction account balances reported in the April 2011 Financial Report are as follows:

<u>Checking Account Balance</u>	<u>\$688,309.83</u>
<i>TOTAL GENERAL FUND BALANCE</i>	<i>\$688,309.83</i>
Construction Account Cash Balance	2,374,743.17
Investment due 5/13/2015	508,918.39
Investment due 9/16/2015	512,059.83
<u>TOTAL CONSTRUCTION ACCOUNT BALANCE</u>	<u>3,395,721.39</u>
<u>-Less: Reserved for CIP projects</u>	<u>4,891,909.20</u>
<i>Construction cash/ investments available for projects</i>	<i>(1,496,187.81)</i>

C. Presentation of Invoices for Payment Approval.

- i. Kennedy & Graven – Legal Services through 2/28/11 – invoice for the amount of \$1,489.80.
- ii. Barr Engineering Company – Engineering Services through 3/25/11 – invoice for the amount of \$41,544.94.
- iii. Watershed Consulting, LLC – Geoff Nash Administrator Services through 3/31/11 – invoice for the amount of \$3,771.30.
- iv. D’amico- ACE Catering – April BCWMC meeting catering – invoice for the amount of \$328.32.
- v. Shingle Creek – 2011 WMWA Workshops through 4/6/11 – invoice for the amount of \$954.53.
- vi. Shingle Creek – WMWA General Expense Quarterly Invoice – invoice for the amount of \$150.93.
- vii. Rice Creek Watershed District – Blue Thumb brochures for Education Committee – invoice for the amount of \$94.00.
- viii. SEH – Sweeney Lake TMDL Study through 3/15/11 – invoice for the amount of \$1,222.50.

Commissioner Black moved to approve payment of all invoices clarifying that the payment for the WMWA invoice for its quarterly general expenses is for the amount of \$150.93. Commissioner Langsdorf seconded the motion. By call of roll the motion carried unanimously with seven votes in favor [Cities of Minnetonka and Robbinsdale absent from vote].

- D. Final Decision on 2011 CAMP Monitoring and Contract with Met Council Environmental Services for 2011 CAMP Program.** Commissioner Black moved approving the CAMP program for six of the seven sites sampled in 2010 and adding a second sample site on Medicine Lake if the BCWMC could find the additional funds in the budget. Commissioner Hoshal seconded the motion. The Commission clarified that the six historical sample sites referenced in Commissioner Black’s motion were Medicine Lake, Northwood Lake, Sweeney Lake site one, Sweeney Lake site two (north), Twin Lake, and Westwood Lake. The Commission discussed that the 2011 costs to sample a site will be \$550 per lake and that new sample kits cost between \$150 and \$200. Commissioner Welch made the friendly amendment that the additional costs above the 2011 budgeted amount for the CAMP program be invoiced to the 2011 Demonstration/ Education Grants budget line. Commissioners Black and Hoshal approved the friendly amendment. The motion carried unanimously with seven votes in favor [Cities of Minnetonka and Robbinsdale absent from vote].

- E. Motion Not to Waive Monetary Limits on BCWMC’s Tort Liability Insurance through LMCIT.** Commissioner Welch moved not to waive the monetary limits on the BCWMC’s tort liability insurance through the LMCIT. Commissioner Black seconded the motion. The motion carried

unanimously with seven votes in favor [Cities of Minnetonka and Robbinsdale absent from vote].

- F. **Execute Contract with Kennedy & Graven for Legal Services to the BCWMC for 2011-2012.** Commissioner Welch moved to execute the contract with Kennedy & Graven for legal services to the BCWMC for 2011-2012. Commissioner de Lambert seconded the motion. The motion carried unanimously with seven votes in favor [Cities of Minnetonka and Robbinsdale absent from vote].

5. New Business

- A. **Discuss Draft 2010 Annual Report.** Commissioner Hoshal commented that the report should note in what ways the report has been streamlined from the 2009 annual report format. Administrator Nash said that he would mail out the draft annual report to the Commission and recommended that the Commission add an item to its May agenda to approve the final 2010 annual report. Chair Loomis directed the Commission to get its comments to Administrator Nash by Saturday, April 30th.
- B. **Contract for 2011 and 2012 Engineering and Technical Services.** Administrator Nash summarized the information that was e-mailed to the Commission about the Barr Engineering Company transition plan and he provided an overview of proposed changes to the contract in place between the Commission and Barr Engineering Company. Commissioner Black moved to approve the contract for 2011 and 2012 Engineering and Technical Services using the fee schedule used in 2010. The motion was not seconded. Commissioner Welch asked about the mark-ups indicated in the contract's terms and conditions and that were initialed by Len Kremer. Mr. Kremer said those changes to the terms and conditions reflected changes that were discussed with the Commission's legal counsel and that were approved by the Commission in the Commission's previous contract process with Barr Engineering Company. Mr. LeFevere commented that in summary he had discussed with Barr Engineering Company the idea that Barr Engineering Company remove certain terms and conditions that limited the Company's liability. Commissioner Welch commented that he would be more comfortable with delaying approval to allow the Commission more time to review the contract. Chair Loomis directed staff to put the item onto the Commission's May agenda.

6. Old Business

- A. **Cooperative Agreement for Sweeney Lake Outlet Reconstruction Feasibility Report.** Mr. LeFevere explained that at the last meeting the Commission directed him to prepare an agreement to be executed between the City of Golden Valley and the BCWMC under which the Commission would agree to reimburse the City of Golden Valley for the preparation of a feasibility report.

Commissioner Hoshal mentioned an edit to be made in paragraph 4 where the reference states paragraph 5 but should state paragraph 3. Counsel and the Commission agreed with the edit.

Commissioner Welch said that the nature of the agreement is that the City will prepare the feasibility report. He said that based on his review of the March 2011 meeting minutes it appeared that the Commission discussed not only that the City would contract for the preparation for the feasibility report and for the actual project construction but that the Commission would be allowed to approve the selection of who the City contracted with to do the work. Commissioner Welch said that if the feasibility report and the work are let together so that the same entity does both pieces and the process for bids is a sealed bid process, then the Commission would need to go with the lowest bidder and would not really have an opportunity to review proposals and bids. Mr. LeFevere said that in order to hold a public hearing the Commission needs a feasibility report and he clarified that this agreement only addresses the feasibility report. He said that the contract discussion at the previous Commission meeting wasn't about a construction contract but was about a cooperative agreement between the City and the Commission and that will need to be executed if the Commission decides to go ahead with the contract.

Commissioner Welch asked if there is a timing issue with regard to the Commission having the

opportunity to weigh in on who the City selects to prepare the feasibility report. Mr. LeFevere said that ordinarily the Cooperative Agreements provide that the City will do the design engineering and inspection and that the City can do it in-house or can contact out for it. He said that in this case the agreement is for a feasibility study, which the City can do in-house or can farm out. He said that he doesn't recall in the past the Commission saying yes or no to a city's selection of consulting engineers. Commissioner Welch said that the Commission has a continued fuzziness on the Commission's policy and procedure on the contracting for feasibility studies. Mr. LeFevere said that the City of Golden Valley communicated that it felt that ultimately it would be doing the project with an engineer of the City's selection, if the Commission decides to move ahead with the project, and that the City thought it would make sense for the City to select the same engineer for the feasibility study and the construction so there would be continuity.

Commissioner Welch said that the Commission should work to achieve clarity on where it will have input on projects because the feasibility study weighs the various options that could be accomplished. He said that he has a particular interest in the Commission's role in having input, review, and/ or approval of the design of projects and components that are being constructed with Commission funds.

Caroline Amplatz raised her concern about information she received about the dam having been illegally altered in the past and she wondered if the Commission's money should be spent fixing this vandalism in light of the question of how such an action could be prevented from happening again after the Commission spends funds to fix the dam. Mr. Oliver replied that the alteration of the dam did occur sometime and that the alteration did raise the water level of the lake three to six inches but that the more pressing issue is that erosion occurred around the edges of the dam. He explained that the dam was constructed sometime in the 1970s and that although it has served its function well it is not a legal structure or an appropriate structure for the role that the lake serves for the overall watershed with regard to flood control. He continued by saying that the City requested that a new outlet structure be installed in order for the dam to be a conforming outlet structure that is a dam of record with the Department of Natural Resources.

Caroline Amplatz asked if there is any scientific data to shed light on whether the level of water in Sweeney Lake affects the water quality of Twin Lake and she asked if such information should be considered in light of the proposed dam project. Mr. Kremer answered that the watershed of Sweeney Lake is much greater than the watershed of Twin Lake, so when there is a flood or a significant rainfall, Sweeney Lake may raise by four and a half or five feet and then the water would flow into Twin Lake. He said that when the water level drops the water then would flow back into Sweeney. Mr. Kremer commented that the proposed dam will not have a significant effect on that process. He explained that for severe events there are controls downstream of the dam that regulates the flows going into Bassett Creek and those controls won't change. He said that the water quality of Sweeney Lake does affect the water quality of Twin Lake.

Commissioner Black moved to approve entering into the Cooperative Agreement with the City of Golden Valley for the Sweeney Lake Outlet reconstruction feasibility report with the change noted by Commissioner Hoshal in paragraph 4. Commissioner Elder seconded the motion. Commissioner Welch added the friendly amendment that the report will be presented to the Commission. Commissioners Black and Elder approved the friendly amendment. The motion carried unanimously with seven votes in favor [Cities of Minnetonka and Robbinsdale absent from vote].

- B. Funding/ Cooperative Agreement for Bassett Creek Main Stem Restoration Project.**
Commissioner Black moved to approve the amendments to both the Cooperative Agreement for the Bassett Creek Main Stem Restoration Project and the Plymouth Creek Restoration Project. Commissioner Welch seconded the motion. Ms. Chandler noted that the amendments are necessary due to the need to decrease the amounts that the Commission will reimburse the City of Golden Valley and the City of Plymouth for those two projects because of the grant funds received by the two cities for those projects. The motion carried unanimously with seven votes in favor [Cities of Minnetonka and Robbinsdale absent from vote].

C. **Funding/ Cooperative Agreement for Plymouth Creek Restoration Project.** See discussion and action in item 6A.

D. **Reimbursement Request from the City of Plymouth for Plymouth Creek Restoration Project.** Commissioner Black moved to approve reimbursing the City of Plymouth in the amount of \$568,622.33 for the Plymouth Creek Restoration Project. Commissioner Elder seconded the motion. By call of roll the motion carried unanimously with seven votes in favor [Cities of Minnetonka and Robbinsdale absent from vote].

E. **TAC Recommendations**

- i. **Transition Plan for Barr Engineering Company.** Administrator Nash mentioned that the Commission had discussed the transition plan, as described in the April 15, 2011, memo from Barr Engineering, during an earlier agenda item. He commented that the TAC did have suggestions to the draft transition plan and that the suggestions were incorporated into the final plan and that the TAC approved the plan, which was e-mailed to the Commission. Administrator Nash said that the TAC recommended that at his discretion he request that Jim Herbert of Barr Engineering attend meetings where his technical input on projects need to be discussed by the TAC or the Commission. Commissioner Welch commented that the TAC discussed that there are various staff at Barr Engineering including Jim Herbert among others that provide technical expertise on BCWMC projects and that Administrator Nash would handle the logistical details of setting up when the Commission and the TAC need input at meetings from those experts.
- ii. **Engineering/ Technical Pool.** Administrator Nash said that the TAC reviewed a 2009 RFQ (Request for Qualifications) prepared by the Scott County Watershed Management Organization (WMO) for consulting services. He reported that the TAC recommended that he produce a similar document for the Commission's review and he asked for that direction from the Commission. Commissioner Black moved to direct Administrator Nash to prepare the RFQ. Commissioner Elder seconded the motion.

Commissioner Welch said that he supports the idea of the Commission more actively soliciting work from other parties who provide services. He said that he doesn't support the idea of creating a pre-approved pool of contractors. Commissioner Welch commented that he thinks that the areas of feasibility studies and design are two areas where the Commission could get a lot of benefit from bringing in someone with particular expertise due to their history and staff in certain disciplines. He said that the TAC discussed using the professional services pool for the areas of feasibility studies and TMDLs but that he is concerned that because the Commission won't be doing that many feasibility studies and TMDLs there is a risk that the pool would be created but the firms wouldn't get work from the Commission. Commissioner Welch continued by saying that he thinks the Commission would receive just as much benefit from identifying projects for which the Commission would solicit requests and then soliciting requests for those projects. He said that he isn't sure what the Commission would gain from having a pool and he wondered how the Commission could narrow down firms into a pool without having details on the specific project expertise needed.

Administrator Nash agreed that Commissioner Welch's suggestion is a much more targeted approach and that it would be easier for a consultant to respond to a request such as Commissioner Welch described as opposed to a shot-gun approach.

Commissioner Black said that there were two Commission projects this year that didn't go out for an RFP because of the tight project schedules. She said that she would like the Commission to have some ability to draw from a preapproved list so that it doesn't face the timeline issues it has faced in the past.

Mr. Oliver stated that the process of going through an RFP is expensive and that a pool would reduce the cost to the Commission and would streamline the process.

Mr. LeFevere commented that he didn't think that the two ideas were mutually exclusive.

Kari Geurts asked about the process that would be undertaken to identify the firms that would get into the pool. Chair Loomis said that the motion on the table is for the Administrator to prepare a request for qualifications that would then be reviewed by the Commission and the Technical Advisory Committee.

Commissioner Welch commented that an RFQ to identify a pre-qualified pool costs firms money just to get in the door. He said that services agreements could be approached as an RFP process that is as quick and specific as a two or three letter process and that there doesn't need to be a pre-qualification to do proceed in that manner.

By call of roll, the motion carried with six votes in favor [City of Minneapolis opposed the motion; Cities of Minnetonka and Robbinsdale were absent from the vote]. Chair Loomis directed the TAC to review the draft RFQ at its next meeting and for the RFQ to come in front of the Commission at its June meeting.

- iii. 2011 Watershed Tour. Administrator Nash said the TAC discussed allowing 20 to 25 minutes for each stop and that city staff would provide comments on projects during the bus ride to the projects. He said that the TAC recommended that he work on a schedule and an itinerary.
- iv. Addition of more Lakes to the CAMP program and Changes to Sweeney and Twin Lakes Monitoring. Kari Geurts asked about the TAC recommendation that the Twin Lake water quality monitoring be moved from 2012 to 2014. Ms. Chandler explained that the reason for the recommendation to delay the detailed water quality monitoring on Twin Lake is because the Commission collected detailed monitoring data on Sweeney and Twin Lakes in 2008 and 2009 and then also did an additional study of Twin Lake in 2010. She stated that the Commission did take action to continue participating in the CAMP monitoring program in 2011 for Sweeney Lake. Ms. Chandler added that the Commission hopes that the Sweeney Lake TMDL will be approved shortly and with that approval it would be good for the Commission to have detailed monitoring take place at least a couple of years after the TMDL is approved in order to be able to evaluate how well the lake is responding to actions taking place in the watershed. Ms. Chandler said that 2012 is too early to be able to see that information. Ms. Geurts asked how the delay of the monitoring on Twin Lake would affect the aeration of Sweeney Lake. Ms. Chandler said that previously the aeration was turned off for the year of the monitoring. Chair Loomis said the Commission hasn't discussed aeration yet in terms of future needs to monitor Sweeney Lake.

Commissioner Welch asked if the CAMP monitoring data would provide the Commission with the water quality information it would need in order to be able to make comparisons. Ms. Chandler said probably not.

Ms. Amplatz said that it was her understanding that the Commission hasn't made a list of priorities for use of Sweeney Lake and that she was wondering if the Commission would be willing to make a list of use priorities for the lake and to make a statement of the most important use of the lake or to make a statement to endorse and support the priority list in the Sweeney Lake TMDL study, which she thought identified that swimming in the lake was the number one priority.

Ms. Chandler said that she thinks that through the TMDL the BCWMC adopts the MPCA's priorities. Chair Loomis stated that the Commission's *Watershed Management Plan* documents the BCWMC's water quality goals for Sweeney Lake. Mr. Oliver said that the classification identified for Sweeney Lake is full-body contact. Commissioner Welch said that the Commission's goal is a water quality goal and does not dictate goals for uses. Ms. Amplatz asked if eliminating blue-green algae would be a water quality goal for Sweeney Lake. Mr. Mathisen commented that algae is responsive to phosphorus and that the Commission is working to improve water quality, which over the timeline of 20 to

40 years should see improvements due to the Commission's and cities' projects and will hopefully lead to improvements in areas such as usability of the water bodies.

Mr. Kremer added that TMDLs call for MS4s to prepare a progress report on how well the lake is responding to BMPs that have been implemented. He said the Commission will want to schedule testing that coordinates with that reporting schedule.

Commissioner Welch asked if the Commission discussed options in light of Dr. Pilgrim's information on Twin Lake last month. Ms. Chandler said that some options were presented by Dr. Pilgrim but the Commission didn't discuss them in detail and did not discuss how to proceed. Chair Loomis directed staff to add to one of the upcoming future BCWMC meeting agendas an item regarding how the Commission should proceed with regard to the information presented by Dr. Pilgrim in March on the water quality of Twin Lake.

Ms. Geurts commented that maybe the Commission would want to monitor Twin Lake as originally scheduled because the Commission may need more data. Ms. Chandler stated that as part of the upcoming 2012 budget process the Commission Engineer can provide the Budget Committee with information on the costs of 2012 monitoring, which will help with the discussion.

Ms. Black said that she would like for the Commission to accept the changes to the BCWMC's monitoring program as described in the April 12, 2011, TAC memo. Chair Loomis directed staff to proceed with preparing the 2012 monitoring program budget with the changes discussed for review during the 2012 budget review. Commissioner Welch encouraged the Commission Engineer to stay on top of the need for assessment of Twin Lake and Sweeney Lake.

Ms. Langsdorf said that an edit should be made to the TAC memo under number two, first paragraph, sixth line, where the reference to the April meeting should be changed to read the March meeting.

Chair Loomis announced that the next TAC meeting will be May 5th and that Commissioner Harper-Lore is slated to be the Commission liaison at the meeting. Commissioner Black volunteered to be the liaison if Commissioner Harper-Lore isn't available to make it.

- F. **Clean Water Legacy Grant Fund - Local Match Update.** Administrator Nash said that this update closes the circle on the modifications to the grant application to BWSR related to the two streambank restoration projects. He said that Brad Wozney approved the modification to the application amount regarding the lower local match amount. Administrator Nash announced that the Wirth Lake Outlet agreement with BWSR was signed by Chair Loomis and that he has asked Deputy Treasurer Sue Virnig to let the Commission know when the check from BWSR is received.
- G. **Education Committee.**
- i. Commissioner Langsdorf announced that the West Metro Water Alliance's (WMWA) March volume management workshop was cancelled due to snow and has been rescheduled for May 31st.
 - ii. Commissioner Langsdorf said that WMWA's nutrient management workshop will be held on May 18th at the Maple Grove City Hall.
 - iii. Commissioner Langsdorf reported that WMWA held the rural volume management workshop and that 20 people attended and that it went well.
 - iv. Commissioner Langsdorf announced that the next WMWA meeting will be on May 10th at Plymouth City Hall at 8:30 a.m.
 - v. Commissioner Langsdorf reported that the Commission had its display up at the

Plymouth Yard & Garden Expo.

- vi. **Commissioner Langsdorf said that the Commission will have its display at the May 12th Zachary Lane School Environmental Fair, which will be held at the school from 5:30 p.m. to 8:00 p.m.**
- vii. **Commissioner Langsdorf announced that she handed out some of the Blue Thumb brochures to each of the BCWMC's member cities and that she has left the rest of the brochures with the exhibit.**
- viii. **Commissioner Langsdorf reported that the Education Committee recommended that Administrator Nash be the BCWMC contact for Blue Thumb so that information will be sent to him from Blue Thumb to be passed on to the Education Committee.**
- ix. **Commissioner Langsdorf asked if anyone saw the education newspaper article on rain gardens and Chair Loomis said that it ran in the Golden Valley paper. Commissioner Langsdorf said that the article would have then run in the watershed member cities' editions of the *Sun Current/ Sun Sailor*.**
- x. **Commissioner Langsdorf said that the Education Committee recommends that new education articles come out in the newspaper when the streambank restoration projects are being constructed.**
- xi. **Commissioner Langsdorf reported that the Committee discussed the Committee's sustainability. Chair Loomis requested that the Committee discuss and communicate to the Commission how it would function without a Committee chair if a chair isn't found and to discuss alternate ways of functioning. Commissioner Langsdorf said that the Committee discussed the possibility of having staff step in to lead the meetings and write up the reports. Chair Loomis said that the Budget Committee would discuss the idea.**
- xii. **Commissioner Langsdorf announced that the next Education Committee meeting will be at 9:00 a.m. on May 24th at Plymouth City Hall.**

7. Communications

A. Chair:

- i. **Chair Loomis commented that the Lakes and Rivers Conference will be held next week.**

B. Administrator:

- i. **Administrator Nash mentioned that his Administrator's Report was included in the meeting packet. He mentioned that item 10 on the report discussed his invitation by Hennepin County staff to attend a planning meeting for the Southwest Light Rail Transit Line from Eden Prairie to Minneapolis. Administrator Nash said that two proposed LRT stations would be in the Bassett Creek Watershed. He said that upon request he provided Bonestroo information on the locations of planned BCWMC CIP projects within one-half mile of the stations.**
- ii. **Administrator Nash reported that he received a request from Kari Geurts to present the findings of the Braun Intertec report on whole-lake aeration of Sweeney Lake and said that there had not been room on the April agenda for that item. He said that he is still waiting to receive permission to distribute the report to the Commission.**
- iii. **Administrator Nash said that he got word from Brad Wozney that biennial solicitation is not required for audits. He said that biennial solicitation is not required for accounting services performed by cities with a Joint Powers Agreement.**
- iv. **Administrator Nash reported that he received a copy of a response from the Three Rivers Park District regarding a communication from the Association of Medicine Lake Area Citizens (AMLAC) that discussed a concern about aquatic invasive species.**

