

**Prior Lake-Spring Lake Watershed District
Monthly Meeting
October 14, 2003**

Members Present: William Kallberg, Larry Mueller, William Schmokel, Roger Wahl

Members Absent: Craig Gontarek

Staff Present: Bryce Huemoeller, District Attorney
Ed Matthiesen, District Engineer
Shannon Lotthammer, District Administrator
James Eggen, District Technician
Yolanda Coleman, Office Assistant

Others Present: Ray Brandt, Jim Siekmann, Bob Weigert, Tom Sletta, Scott Lee, Dan Altmann, Mark Thelen

1. CALL TO ORDER: Meeting called to order by Vice President William Kallberg at 7:00 PM.
2. PUBLIC COMMENT: Vice President Kallberg asked if there were any comments from the public. There were none.
3. ROUTINE BUISNESS:

A) Approve Monthly Minutes. Vice President Kallberg asked if there were any corrections or changes to the September 2003 minutes. There were none.

Motion to approve the September 2003 Monthly Minutes by Roger Wahl. Second by William Schmokel. Motion passed 4 ayes.

4. TECHNICIANS REPORT:

A) Permits: Jim Eggen said there are three permits for consideration at this meeting.

Permit Application #03.16 McCann Farm: Jim Eggen put up drawing of the proposed development, described the location and explained that there are nine residential lots laid out. He pointed out a small wetland that is protected with a filter strip along the edge and an infiltration basin within the filter strip. He said there is a larger wetland area to the south. He said he received from Ray Brandt the documents to put in the Declaration and Acceptance of Conservation Easements (DACE) for the buffer strip and a description of the infiltration basin to include in the Development Agreement. He said that Mr. Brandt advised him they are planning a homeowners association (HA). He said Staff has discussed the HA and their intent is to have a paragraph in the HA that describes primarily the obligation to be sure the infiltration basin stays in place and in operation. He said the rest of the project is fairly straightforward and asked if there were any questions or comments or if Mr. Brandt had anything to add. Mr. Brandt said he had nothing to add. Vice President Kallberg asked what the area north of the project is or will be. Mr. Eggen explained that area is not in the development area. Mr. Brandt said it is a City Park and in order for him to accomplish the buffer strip and setback he needed, the City agreed to give him ten feet of the park, and that he had to agree to build two berms as the City grades for a future parking lot.

Vice President Kallberg asked if there were any other questions or comments.

Motion to approve Permit Application #03.16 McCann Farm by William Schmokel. Second by Roger Wahl. Motion passed 4 ayes.

Permit Application #03.15 South Hamilton Estates: Jim Eggen put up a drawing on the project and its location on the north side of 150th Street west of the Crimson Arbor Development. He said the project is for single-family lots and some twin home units. He said the applicant, James Siekmann, said that an area to the west of this area will be developed in a future phase. He said there are no wetlands affected. He said there is planned a 2-lobed storm water pond. He said they talked about infiltration and the extent to which it could be done and required. He said what they came up with is there will be a perforated PVC pipe under a part of the pond and will drain from beneath the pond. Ed Matthiesen explained that good water quality treatment will be obtained by having 5 to 6 inches of water run through the drain tile and 12 inches of soil before it gets out the outlet structure.

Vice President Kallberg asked if the Developer or Engineer for the project had anything to add. They did not. He asked if there were any questions or comments from the members of the Board. There were none. Mr. Kallberg then asked what type of soil makes up the 12 inches of soil. Mr. Matthiesen said it was native pervious soil and would act like drain tile running through a field.

Motion to approve Permit Application #03.15 south Hamilton Estates by William Schmokel. Second by Larry Mueller. Motion passed 4 ayes.

Permit Application #03.17 Classic Auto Spa: Jim Eggen put up a drawing and pointed out the project area on the north side of County Road 42, between Tires Plus and Super America, in the City of Savage. He said it is a 6.5-acre site on which the developer proposes to build a car wash building and parking lot. He said that in 1998 when the Super America was built a stormwater management plan was approved that included this site. He said he and Administrator Lotthammer researched the original project, permit, meeting minutes, etc. and found at that time it was stated that the calculations used at that time should be redone or revisited when the rest of the site was developed. He said the calculations were revisited and it was determined that the stormwater pond was still adequate to cover this development. He said they have a sediment and erosion control plan for this site with the stormwater pond already done. He said there will be a silt fence around the site.

Mr. Eggen said the permit applicant did not know that he needed a permit from the District for at least the erosion and sediment control, and has started construction. Mr. Eggen said that they have viewed the project and do not feel there is a problem with the construction started. Manager Kallberg asked if construction was halted while waiting for permit approval. Mr. Eggen said they had not suspended construction.

Shannon Lotthammer said this is a situation where the stormwater management plan was approved when the entire piece of property was considered for development in 1997 and 1998. She said there was some confusion by the property developer and engineer as to whether a permit was needed since the stormwater plan was already approved. She said when they learned they did need a permit they immediately submitted information needed for a permit to the District.

Manager Kallberg asked if they have done the things they need to do. Mr. Eggen said he knows they have the silt fence and they are in the process of accomplishing what they need to do. He said he feels confident that the developer will comply completely and that he will inspect further. Manager Kallberg asked if there was anyone present representing the applicant. Mr. Eggen said he had thought some one from Hedlund Engineering would attend, but no one was at the meeting.

Motion to approve Permit Application #03.17 Classic Auto Spa by William Schmokel. Second by Roger Wahl. Motion passed 4 ayes.

Shannon Lotthammer said that as the subject of homeowners associations came up previously she wanted to update the Board. She said she, Ed Matthiesen and Bryce Huemoeller had met and discussed the Watershed District's requirements for homeowners associations. She said they discussed how this would play out short term during the time the District is still doing its own permitting within the City areas of Prior Lake, Savage and Shakopee. She said the long term is for the Cities to become equivalent to the Districts rules, so the District can move away from doing the permitting in the cities areas. She said over the short term what they had been doing was putting developers agreements in place and where a homeowners association agreement would work, to put that in place. She said Attorney Huemoeller is putting together some of the language for the agreement.

Vice President Kallberg said they are going to go to item 6 OTHER OLD/NEW BUSINESS, B) West Spring Lake EAW decision before going to item 5 ENGINEERING, A) West Spring Lake Wetland as they are related.

6-B) West Spring Lake EAW Decision. Shannon Lotthammer said the EAW Public Notice period closed on October 1, 2003. She said they have extended the comment period was extended to October 10, 2003 for the County since the County did not receive the copy that was originally sent to them. She referred to the memo in the packet that has the findings of facts and copies of comments received and responses to comments. She said they received four comment letters and that two of them were not substantive. She said one of the two substantive comments was from the DOT looking for additional information to evaluate if this project would impact water levels adjacent to Highway 13. She said they sent them the information and the DOT replied that they did not feel there was a need for a MN DOT Drainage Permit. She said the fourth letter was from Scott County Department of Natural Resources. She said they made a number of comments about the project and questions about plans. She said they have some concerns about the reed canary grass removal and trying to establish a more diverse plant community. She said a number of their comments were toward the temporary road and stockpile on the Hartell property. She said the District and the Hartells will need to get an interim use permit from the County for the stockpile. She said most of the County concerns will be addressed during the stockpile permitting process.

She said after all the comments were received they prepared a response to comments, which is included in the packets, and prepared a Finding of Facts for the EAW. She said basically the Board needs to decide that if any further review is necessary or if there is a need for an Environmental Impact Statement (EIS). She said Minnesota Rules that apply to environmental review have a series of criteria that the Board needs to consider before deciding if further environmental review is necessary. She said the four criteria are:

- The type, extent and reversibility of environmental effects
- The cumulative potential effect
- The extent to which environmental effects can be mitigated by ongoing public regulatory authority
- The extent to which the environmental effects can be anticipated and controlled

Shannon said the Findings of Facts walk through the determination of the potential environmental effects and how do those effects measure against those four criteria. She said the conclusion that the board needs to discuss and consider is that based on the criteria there is no significant environmental effects that are reasonably expected to occur, or those that could have occurred have been addressed through the EAW process planning, or will be addressed through the regulatory requirements. She said that if the Board accepts this, they can find that an EIS is not required and the project can go forward without additional environmental review. She said the Resolution 03-186 lays out the final Findings of Facts and provides that there are no potential significant environmental effects reasonably expected to occur and there is no need for an EIS. She asked if there were any questions.

Ed Matthiesen asked what is looked like for getting the schedule for the permit from the County. Shannon Lotthammer replied that she had talked to Marty Schmitz, The Permitting Coordinator for a Mining Permit, which is what would be required. She said basically they ordered the wetland delineation and SEH is doing that. She said their crew was out last week to do the groundwork. She said they

should receive the report in the next week or two. She said they were also waiting for contour information in order to prepare the application for the County. She said she also requested a cost estimate from SEH if they had one of their crew do the work. She said they are getting the information through the cost share with the County. She said Jim Hentges told her he thought the information should be available the last part of this month or first part of next month. She said once the application is ready it will take about three weeks to pull the County and Township group together. She said the group should be able to meet mid to late November and make a decision about granting the permit. She said she asked Marty if he had any special concerns about obtaining approval. She said he advised her that the County's big concern was that there is a plan for the stockpile so that it does not stay there indefinitely and that there are erosion control and stabilization measures. She said these were already in the information they have and that she feels they are in good shape to obtain the permit.

Vice President Kallberg asked if there were any other comments or questions. Manager Wahl asked what will be done with the stockpile. Shannon Lotthammer replied that the District will maintain it for a year per the agreement, and that it will be the property of the Hartells and they are hoping to be able to sell it to a commercial enterprise. Manager Kallberg asked if this was similar to what had been done by County Ditch 13. Ed Matthiesen replied that had been given part to Glen Klotz and part to Vernon Geis and that they in turn sold it, and that it was gone within a year.

Vice President Kallberg referred to the Resolution 03-186 of Negative Declaration of Need for an EIS for the West Spring Lake Wetland Enhancement Project. He said if there were no more comments or discussion they needed a motion for approval of the resolution.

Motion by Larry Mueller to approve Resolution 03-186. Seconded by William Kallberg. Motion passed: Larry Mueller – Aye, William Kallberg – Aye, Roger Wahl – Aye, William Schmokel – Aye.

5. ENGINEERS REPORT:

A) West Spring Lake Wetland: Ed Matthiesen put up drawings and pointed out the West Spring Lake Wetland Enhancement project location. He said that plans are now to add another pipe length with outlet ports to get a complete flow across the wetland to improve water quality treatment. He pointed out the ditch that comes from County Road 17 and flows directly into the lake. He pointed out where they plan to put in a ditch block and a fish barrier to keep out as many carp as possible. He pointed out where they plan to excavate about 22,500 yards, a temporary haul road and a permanent access point. He said the estimated construction is about \$207,000.00 and the original budget was \$193,000.00. He said they want to bid this as a unit cost to stay within the original budget. He said the project is being done in coordination with the Metropolitan Association of Soil and Water Conservation Districts. He said they provided a plan for some aquatic plants and pointed out where they would be. He said that at this point they have completed the drawings and specifications for review by Attorney Huemoeller and Shannon Lotthammer. He said they would like to stay consistent with the timing to get the mining permit. He said they are on track to have the project bid and then awarded at the December meeting.

Shannon Lotthammer said they should have a motion to authorize the bids be advertised.

Motion by William Schmokel to authorize the preparation of a resolution for the specifications and advertising for bids at a unit cost to proceed with the project and stay within the budget of \$193,000.00. Second by Larry Mueller. Motion passed 4 ayes.

B) Sandey Wetland: Shannon Lotthammer pointed out on drawings the location of the wetland, North Sutton Lake Blvd, Sutton Lake, the outlet from Sutton Lake that flows under North Sutton Lake Blvd and is the beginning of the County Ditch 13 system. She pointed out the Sandey property and said that Mr. Sandey is interested in a wetland creation. She pointed out the area that is presently cropped. She said they have been working with the Soil and Water Conservation District and Mr. Sandey to develop a wetland in that area. She said the project would involve the creation of about two acres of new wetland. She said that Mr. Sandey said that if the District would purchase conservation easements over that two acres then he would like to enroll an additional portion of his land into the filter strip program. She said

that would provide a filter strip along the ditch and a buffer strip around the wetland. She said the SWCD is in agreement with this plan. She said they have the proposed bid information for the project and the bid estimate is about \$38,000.00, which is consistent with the original estimate for the project. She said what is needed at this point is a motion approving requesting bids for the project and for negotiations with Mr. Sandey over price for the easement for the wetland. She said after review of what was paid for the easements for the West Spring Lake project of about \$2,000.00 per acre and a similar project in Belle Plain of about \$3,000.00 per acre, she felt they could make an offer to Mr. Sandey of \$3,000.00 per acre or obtain an appraisal. The Board discussed this and William Kallberg asked if they would have to have the easement rights before advertising for bids. Attorney Huemoeller advised that they would have to have the easements or advertising for bids contingent on obtaining the easement or withdrawal of bids if easements are not obtained. Manager Kallberg asked if this is time sensitive and if it would be winter construction. Ed Matthiesen said it would be January, February construction.

The Board further discussed this in regards to creation of the berms, how much would be excavated, obtaining permits for the stockpile, etc. Manager Schmokel said they needed to request Staff to negotiate with Mr. Sandey for the price for the easement per acre plus the exact area and creation of the purchase agreement. William Kallberg asked if the Board needed to set a not to exceed cost per acre. The Board agreed to a \$2,000.00 to \$3,000.00 price. Manager Kallberg asked why this project was different from the West Spring Lake project by not needing and EAW. Shannon Lotthammer said it was because this project is not working in a public water. She said the only permits that might be required would be if they do stockpile soil on site they would need an interim use permit. She said another permit that might be required would be a construction stormwater permit from the MPCA. She said there is an exception for a restoration project within an area that is cropped, so this permit should not be required. She said she is not sure if it will be required on the West Spring Lake Wetland project.

Vice President Kallberg asked if there were any more questions or comments from the public or the Board. There were none.

Motion by William Schmokel to direct Staff to proceed with negotiations on the Sandey Wetland easement. Second by Larry Mueller. Motions passed 4 ayes.

Shannon Lotthammer asked the Board if they wanted to authorize proceeding to bid once the purchase agreement is in place for the easement, or would they prefer to wait until the next meeting.

Motion by William Kallberg to authorize the advertising for bids on the Sandey Wetland Banking Project contingent upon satisfactory negotiation with the landowner for the proper easements and the terms of the landowners participation in the project. Second by Larry Mueller. Motion passed 4 ayes.

Vice President Kallberg said that since there were people in attendance regarding the Cates Lake they would take Item 6 OTHER OLD/NEW BUSINESS, A) Cates Lake Outlet Design next.

6-A) Cates Lake Outlet Design. Shannon Lotthammer said the District had received a letter from the City of Savage requesting that the District cost share in an effort to complete a management plan for a permanent solution to the Cates Lake outlet issue. She referred to the memo in the packets. She said the estimated project cost is just under \$10,500.00 not to exceed \$13,000.00 and the City is proposing a 50-50 cost share on this project. She said in the past the District had indicated a willingness to levy \$50,000.00 to contribute to the Cates Lake outlet solution. The District included that \$50,000.00 in the preliminary levy from last year, but as they found out the project would not happen over the next year it was pulled out of the final levy that was certified last year. It was determined that when it is levied \$22,000.00 would actually be used to repay the District for costs already incurred for some early feasibility studies for a long term solution for Cates Lake. This would leave \$28,000.00 for additional costs. She said that Scott Lee from the City of Savage indicated to her that the study would take place over the next six months to a year, with the permanent solution happening in 2005. Manager Mueller

asked where the money would come from for the District's share. Shannon said there are some operating funds in the General Fund and the Board could authorize using those funds with the understanding that they would be repaid when funding is levied specifically for Cates Lake.

Manager Kallberg asked what the object of the study would be. Scott Lee said they had met with different agencies of the County and the DNR and they agreed that the Cates Lake Outlet should go to the Prior Lake Aggregate. Prior Lake Aggregate has agreed to accept the water. He said the object of the study would be to model the watershed fully developed, determine the capacity of the pump station, operating levels of the reservoir, etc. He said they have money in the budget for some meetings with the County and the DNR.

The Board discussed the fact that the original commitment had been for \$50,000.00 of which \$22,000.00 has already been used. They discussed that they cannot now include in the 2004 levy as the preliminary has already been approved and cannot be increased, but items can be changed within the levied amount. Manager Schmokel said he would be in favor of approving up to \$6,500.00 if they have the funds this year and asked if the funds are available and when they would be needed. Manager Kallberg asked when the study was expected to be completed. Scott Lee said they would like to begin right away for completion of the study in 2004 and construction in 2005.

Motion by William Schmokel to authorize 50 percent of the total cost not to exceed \$6,500.00 for the Cates Lake Outlet Management Plan to be paid upon completion of the study. Second by Larry Mueller. Motion passed 4 ayes.

5. ENGINEERS REPORT: (continued)

C) Outlet Channel Design at Jeffers Property: Ed Matthiesen said they are having a meeting tomorrow 10/15/2003 at the Fire Station in Prior Lake. He said they have the design plans for the section from the outlet point coming off County Road 21. He said there are three design sheets that take them to Upper Jeffers Pond. He said Kestrel Design has been doing some surveying along the channel and matching that in with the topographic information they received from Schoell and Madsen. He said they have their information matched between the two sets. He said the Jeffers project has been undergoing a huge revision and that he does not know their latest plans. He said they are proceeding as if they have the same road crossings within the same easement areas, but know that they will need some additional easement areas. He said at the meeting their drawings will show the typical sections where they have grid control and vegetative plans for shoreline vegetation. Manager Schmokel asked what the changes in the development plans are and if that would cause the District to have to change and/or redo a lot of their work. Mr. Matthiesen said he did not foresee a problem at this time as it looks like earlier development plans will have to be scaled back. Manager Schmokel asked if the City of Prior Lake has agreed to the outlet flow rates. Mr. Matthiesen said this is the next item on the agenda.

D) City of Prior Lake Discharge Limits. Ed Matthiesen referred to the memo in the packet and the response from the City of Prior Lake regarding the peak flow rates. He pointed out a development where Schoell and Madsen came in with a higher flow rate. Mr. Matthiesen said they could handle that one area, but if other developments also came in with higher rates the District would not be able to work with that. He said the letter from the City of Prior Lake confirms that they intend to manage development in the area in a manner consistent with the rates outlined in Mr. Matthiesen's letter to them of July 21, 2003. The Board discussed concerns that the letter from the City does not reflect the rates in Mr. Matthiesen's letter to them. They are also concerned that other developments will expect to have the same rates as the development that is at the higher rate. Manager Kallberg asked if the plans Mr. Matthiesen would present at the meeting would have to be substantially changed due to changes in the development plans. Mr. Matthiesen said he did not think so as development would not be encroaching more on the channel, but would be encroaching less.

Shannon Lotthammer said that Peter MacDonagh had sent her a note that his proposal for doing the preliminary design for Jeffers was for \$33,400.00 and Ed had included that in the amount that the Board authorized for preliminary design. She said Peter MacDonagh informed her that he had not included

expenses in that original proposal and was asking if the amount could be increased up to \$1,800.00 and he is also running into some additional expenses for surveying. The Board discussed the fact that Mr. MacDonagh has a track record of coming back for more money over his original proposals. They directed the Administrator to advise Mr. MacDonagh they would not approve the additional \$1,800.00.

E) Kinney Driveway: Ed Matthiesen said they have all the insurance certificates and Ed Klamm will be doing the project probably the end of October.

6. OTHER OLD/NEW BUSINESS (continued)

C) 2002 Audit. Shannon Lotthammer said the audit received from Messerli Schadow and Johnson is included in the packets along with two letters. She said one is the standard letter provided each year regarding the audit preparation. She said the second letter dated August 14, 2003 contains some items of note that came up during the audit. One of the items is grant reimbursement requests and that over the last couple years it has taken the District awhile to get to the reimbursement requests. She said some of the reasons are that some of the grant requirements are that you do not do a reimbursement request until 50% of the grant has been expended. Regarding the MEP Rules Grant some of the intricacies of getting the information from the University of Minnesota system that we need has been a challenge.

Shannon said one item is a conflict of interest question that is on the agenda for later. She said the other item is dual signature check signing. Two checks on the September 2002 statement had gone through without two signatures and this a reminder to be sure there are two signatures on all checks. She said one thing that comes up every year is the fact that there is significant access by one individual to all of the accounting in the District, which is the District Administrator. Ideally, functions should be separated to different people, but with small organizations that is hard to do. She asked if there were any questions about the audit. The Board accepted the Audit.

D) Conflict of Interest. Shannon Lotthammer said that during the audit Mr. Schadow noticed that the attorney services are now provided by Huemoeller, Bates and Gontarek and asked if there was any relationship between Craig Gontarek and the Gontarek in the attorney firm. She said she told him that yes they were husband and wife. She said Mr. Schadow told her he felt there was a potential conflict of interest based on guidelines he receives to prepare audits. She said once she was made aware of this both she and Attorney Huemoeller starting looking into information regarding conflict of interests. She said there is a particular Minnesota Statute that pertains to this situation that states basically that a public officer who is authorized to take part in any manner in making a sale, lease or contract shall not voluntarily have a personal financial interest in that sale, lease or contract. She said the next section of the law gives a list of exceptions to those requirements, but the list of exceptions seems to apply to everybody except watershed districts. She said based on this law there is a potential concern about the contract with the law firm going forward. She said the determination is that the existing contract is fine since that was entered into before Craig Gontarek's spouse became a partner in the law firm. She said the question is in going forward with new contracts there is the appearance of a conflict of interest in entering into a new contract while Craig Gontarek is a member of the board with a law firm where his spouse is a partner. Shannon said they did contact the Attorney General's office and the Board of Water and Soil Resources and there are some Attorney General opinions that apply to similar situations, but these are just opinions not stated as law, so there is some level of concern. She said there is basically two things to consider; the first how to proceed with the next contract, as the solicitation deadline is October 27, 2003 for all of the professional services to the Watershed. She said the Board could consider working with BWSR or MAWD to address the fact that within this law, that secondly, watershed districts are not specifically mentioned in the list of exceptions. Shannon said she has a potential draft resolution that the Board could submit to MAWD to see if they would like to pursue this for future resolutions, but this would not apply to the immediate situation.

Attorney Huemoeller said they had signed the contract with the District for services in 2002 and 2003 at a time when Allison Gontarek worked for them as a contract attorney with no ownership or legal interest in the firm. He said he talked to the Attorney General's office and determined that what was done in

2002 and 2003 is fine. He said the issue is what to do for the new contract period. He said there are Attorney General opinions that suggest that there are ways that the District and the law firm and the Gontareks can work around the issue. He said there are issues; 1) that if you look at it from the legality of a statute that even the Attorney General admits is hard to interpret, 2) the practical administration of the law and dealing with the public, and 3) the appearance presented to the public. He said he referred to the disciplinary rules for attorneys and there is a rule that they are to avoid the appearance of conflict. He said in this instance there is an appearance if the auditor raised the question. He said that he and the District have all worked hard to develop and maintain a public image that avoids this type of situation. He said there is one opinion that says that if a bid comes in while the conflict exists, even resigning from the Board after the bid comes in does not remove the conflict. He said that their decision is that as long as Craig Gontarek is a member of the Board, they will not submit a proposal. He said that if the legislature did act and change the law, they could apply again in two years. He said also if Mr. Gontarek resigned and the law was changed he could come back in two years. He said in either scenario one or the other of them would be out for two years. He said that their decision at this time is to finish out their contract and not reapply as long as the current situation exists. He said that Dean Gavin has been working with them for about a year, has a lot of governmental experience and if Huemoeller, Bates and Gontarek cannot apply then Mr. Gavin probably will apply. He said he is sure there are others that will submit applications. He said it is disappointing but very necessary to deal with this decisively and move on. Manager Schmokel asked when the current contract expires. Attorney Huemoeller replied that it expires the end of this year. Manager Kallberg asked if it was the firm's intention to wait until the last minute to decide to apply. Attorney Huemoeller replied that if the situation was resolved allowing them to apply by the deadline of October 27, 2003, they would do so. He said that he and the other two owners, Jim Bates and Allison Gontarek, and Dean Gavin discussed this and decided they wanted a clean decision and does not want to put the District in any difficult situations. He said Craig Gontarek is a very good manager and could be an asset to the District for years to come and if he elects to stay on then the law firm of Huemoeller, Bates and Gontarek will not apply.

Manager Kallberg asked if it would be appropriate for the remaining board members to go into a closed executive session to discuss this further and if they can do this without advertising first.

Attorney Huemoeller said that Shannon Lotthammer has gone outside the organization to the Attorney General, BWSR, the League, etc. in a separate investigation separate from his to find a course of He said he feels they both have found that the existing contract is okay, but going forward there is a conflict. He said his feeling is that this does not justify a closed session.

E) Annual Report: Shannon said this is the report for 2002, what the District has accomplished and what is planned for 2003. She asked if anyone wanted more of a summary or if there were any questions. She said it is something the District is required to do on an annual basis and provide to a list of recipients to keep them abreast of the Districts activities. Manager Kallberg said it is too bad that it is not feasible to send it to all the landowners in the District. Shannon Lotthammer said some Districts do a five to six page summary to be sent out on a more mass distribution and suggested that maybe they could consider doing that for the 2003 report. Manager Kallberg noted that copies are available for public review at the District and the Public Library and asked how the public is notified, if there is an announcement in the paper, etc. Shannon Lotthammer said they can do that.

F) Morlock Easement: Attorney Huemoeller referred to the memo he handed out. He said what is on the table with Mr. Morlock is for the District to confine their easement to a sub-surface easement to allow him the use of the surface area. He said they talked to the City to determine if the City would authorize a building permit in those circumstances. He said that assuming that the legal and technical niceties can be met the City would agree to issue a permit. He said he feels the District can move forward with the modification and he listed several of the factors or provisions that would be in a modified easement. He said regarding the indemnity for damage to the District's pipe might be an important provision, but from a standpoint of collecting damages there could be problems. He said they could tie it into a lien on the property, but then the person would not be able to obtain a mortgage. He said that during construction the builder could provide the District with a Letter of Credit or some surety, and that if

damage were going to occur, that would be the time. He said the District has to have the right to use, maintain, repair or replace the structure and there must be a waiver that if the District does do work causing vibrations or other problems, the builder cannot come after the District for damages. He said the builder must be willing to take the chance if they are going to build over the top. He said they need to have something to ensure that future owners receive notice of the situation. He said Mr. Morlock promised that he would grant the maintenance easement for access for personnel and equipment. He said the open issues are costs; are there means to reimburse the District for costs. He said this is a one-of-a-kind of agreement and is complicated. Easement over some property owned by Chip Isaacson along the north side is also needed. Manager Kallberg asked if the current easement was granted from Mr. Morlock or a previous owner. Attorney Huemoeller said that it was purchased from Mr. Morlock. Manager Schmokel stated that by the District granting the right to building above the easement directly affects the value of the property and that there should be some discussion of cost sharing. Attorney Huemoeller said that considering the Morlock property alone it is 8 to 10 feet wide, and the District needs 13 to 14 feet which necessitates the easement over the Isaacson property. He said Mr. Isaacson was going to grant that easement, however as of about nine months ago Mr. Isaacson had two mortgages on the property and it might prove difficult to obtain a release of consent to the easement from the mortgage holders.

Attorney Huemoeller said the next step is a draft document for everybody to review and he is trying to locate someone to involve who might have expertise with sub-surface easement rights. He reviewed the next steps in the process as outlined in his memo. Manager Kallberg asked if there was any way to gain access without the easement over the Isaacson property. Attorney Huemoeller said there was not and in fact the District may owe Mr. Isaacson some reimbursement for money he spent on an attorney hired to review the draft documents. Manager Kallberg asked if it would be possible or feasible to rent or obtain a temporary easement over the Isaacson property for the period of time needed to replace the outlet structure. Attorney Huemoeller said that is an alternative and what is really need for the long term is the Morlock easement.

Attorney Huemoeller asked the Board if they wanted to review the information further over the next month or if they wanted to direct him to proceed. Manager Schmokel reviewed some of the issues raised and recommended proceeding with the efforts to finalize the easements with a quiet title action and discuss cost sharing.

Shannon Lotthammer asked to return to Conflict of Interest question. She asked if the Board approved the proposed resolution to send to MAWD. The Board approved.

G) Clean Water Partnership: Shannon Lotthammer referred to her memo in the packets and said that it is her recommendation that the Board not re-submit a CWP application this year and consider re-submitting next year. She said the reason is that there is no CWP grant money available this year due to budget cuts. She said there is some available through 319 grant, but the priority this year is on projects implementing a completed Total Maximum Daily Load study. She said the chances of the District receiving any funds are pretty slim. She said delaying re-submission of the application by a year would allow them to complete the Sustainable Lakes Planning efforts and make any final adjustments to the proposed plan. She said this would help in the efforts to obtain funds next year.

H) Education Program: Shannon referred to the information in the packets summarizing some of things that have happened since the education workshop held earlier in the summer. She said Scott County held a meeting in September with all entities involved in the NPDES Phase II education requirements. She said the County is taking the lead and one of the elements needed is an education plan. She said at this meeting it was agreed they should develop one education plan that could be referenced and used by all the entities involved. She said the County does have some funding for a contractor to put this together and they are looking for help in developing this plan. She said she had indicated she would be willing to assist in this process.

Shannon said there is also a metro based information and education group called Watershed Partners which has launched a campaign with an obituary article about a fictitious lake published in the Star

Tribune. She handed out copies of the article. She said the group has also created a web site which she referenced and pulled off a copy of a tip sheet of tips for fall clean up. She said copies of this will be available for distribution at the District's exhibit at the Community Fest.

Shannon said she has started to compile some information for developing a District web site. She said she has gotten information from various designers to help with this and talked to the person that designed the web site for the City of Prior Lake. She said he would be able to design a web site of about 8 to 11 pages for a little under \$800.00. She said she will continue gathering information and bring to the next board meeting.

Shannon Lotthammer said another thing to consider updating is the District Logo. She said the current logo would not reproduce well for a web site. She said she will also compile information on what it might cost to update the logo.

Shannon Lotthammer said the Preliminary Budget for 2004 includes \$12,000.00 as a line item for education efforts. She said she is hoping to have a detailed proposal for the Board to consider for the next meeting.

I) Training Opportunities/Conferences: Shannon Lotthammer said there are two conferences coming up in the near future. She said the first is the Water Resources Conference on October 27-28, 2003 in Brooklyn Center and the second is the MAWD Annual Meeting. She said the PLSLWD actually has two projects on the Water Resources Conference Agenda. She said one is a review of the County Ditch 13 Ferric Chloride system and the other is the Lake Friendly Project. She reviewed what would be covered and who would benefit from these conferences. She indicated that both she and Jim Eggen would be interested in attending both or trading off and that Board Members might also be interested in attending the MAWD Annual Meeting. The Board agreed that both Shannon and Jim Eggen should attend the Water Resources Conference. Decisions for the MAWD Annual Meeting can be discussed and information given to Shannon in time to submit reservations by November 12, 2003.

J) Updates; Pike Creek Tour, Sustainable Lakes, others: Shannon Lotthammer said the Pike Creek Tour is still on for Thursday and to plan on meeting at the District Office at 9:00 AM. She said she has rented a van that can accommodate all of them. She said box lunches will be provided and she will get a mixture of turkey, roast beef and ham. She said they should be finished by early afternoon.

Shannon Lotthammer said the last meeting for the Sustainable Lakes was a good one she feels that now they are at the point of preparing a draft to send out for review.

Shannon Lotthammer reminded the Board that a previous meeting they had discussed having a thank you presentation for volunteers before a board meeting. She said she is proposing doing this before the regular meeting at the November 2003 board meeting. She said Jim Eggen has sent out a thank you to the CAMP volunteers and referenced the potential meeting. The Board agreed to have this at the November meeting.

Shannon Lotthammer said that regarding the November 11, 2003 meeting, that this date is also Veteran's Day which is a holiday for the District. She said the Board may want to move the meeting to Monday or Wednesday or some other date. After discussion the Board agreed to hold the meeting on Tuesday November 18, 2003.

Shannon Lotthammer said she and Bill Schmokel attended the City of Prior Lake 2020 Update plan meeting last Wednesday. She said one of the items reviewed was the annexation and that gave the District the opportunity to bring up the density question and the connection of how that area develops, what density it develops to, what happens with the outlet channel and what happens with the lake levels on Prior Lake. She said hopefully that will be reflected in the revision to the 2020 Plan.

7. ADMINISTRATIVE:

A) Claims: Shannon Lotthammer said there was nothing out of the ordinary on the Claims list. She pointed there were two second half filter strip payments due and on the list. She reminded the Board that they had approved providing a \$1,000.00 grant to the Five Hawks Elementary on the condition that the District be allowed to participate in at least a couple of the classes to talk about Watershed District issues. She said she talked to Jim Hughes of Five Hawks Elementary and that he told her they would be more than pleased to have the District participate. She said basically they will enter into a contract with the school stating that the District is providing a grant with the understanding they will be able to participate in the program. She said the grant will be based on reimbursement so the District will need to see proof of costs. She said she said this is listed on the claims list with an asterisk indicating it is contingent on the school entering into a letter contract with the District.

Motion by William Schmokel to approve September 2003 Claims #03-288 – 03-321. Second by Larry Mueller. Motion passed 4 ayes.

B) Financial Report: Shannon said this report is pretty straight forward. She said compared to last month's report there is a jump in Data Acquisition due to the payment of the \$10,000.00 cost share to Scott County. She said the numbers vary somewhat due to the adjustments made between accounts by the accountant during the audit.

8. ADJOURN:

Motion to adjourn by Larry Mueller. Second by Roger Wahl. Motion passed 4 ayes.

William Kallberg, Vice President

Larry Mueller, Secretary