



**Title:** Acceptance of MCWD's Historical Insights and Principles of Success

**Resolution number:** 23-007

**Prepared by:** Name: James Wisker  
Phone: 952.641.4509  
Jwisker@minnehahacreek.org

**Recommended action:** Accept MCWD's Historical Insights and Principles of Success  
Direct staff to:

- Finalize citations
- Integrate the information in Board/Staff/CAC onboarding
- Develop a process for periodically revisiting and updating the principles

**Past Board action:**

Res # 21-013	Approve Strategic Discussion Process Authorize Contract with Smith Partners
Res # 22-032	Authorize Second Phase Contract with Smith Partners

### **Project Purpose:**

The Minnehaha Creek Watershed District (MCWD) is committed to outstanding results that honor its partners. To deliver on its expectations of excellence the Board of Managers has consistently reinforced the importance of building a learning culture – by setting ambitious goals and then embracing and learning from the inevitable failures that are inherent in pursuing important work.

Living these values, in 2021-2022, as the Board of Managers prepared to begin visioning for the future it decided to first look back on the organization's history, to evaluate key events over time, extract strategic insights, and document learnings that could be carried forward as a shared foundation to guide the future success of the organization.

These lessons, captured as MCWD's principles, will serve future generations of the MCWD team as it aspires to deliver the vision of a Balanced Urban Ecology within the watershed.

### **Methods and Process:**

This work began with deep research of MCWD's historical archives, including Board agendas, minutes, technical reports, project details, and media stories. This research uncovered key events and decisions over time that built institutional inertia, affected external perceptions of MCWD, and ultimately shaped the next evolution of the organization's history.

Insights and lessons learned were extracted from this data by organizing key events into five defined thematic time periods, drafted into white papers, and then analyzing the resulting impacts to the organization, partner perceptions, and the watershed.

Finally, the white papers and their corresponding insights were distilled down into seven categorical principles, ranging from insights related to MCWD's origins, to the use of its statutory powers and regulatory authority, to the timeless value of working from a position of sound science, the critical importance of a cohesive team of staff and Board, and timeless guidance regarding the District's model of partnership and collaboration.

The scoping of this work, the white papers capturing insights from each era, and the distillation of principles, were discussed through MCWD Board committee, before undergoing review and feedback through an all-staff meeting and a meeting with the Citizen Advisory Committee.

- [October 22, 2020 PPC Meeting](#) Introductory Discussion
- [November 19, 2020 PPC Meeting](#) Discussion of purpose and desired outcomes
- [January 28, 2021 PPC Meeting](#) Review proposed process and scope of work
- [February 11, 2021 Board Meeting](#) Approval of the process and scope of work
- [March 25, 2021 PPC Meeting](#) Kickoff of Phase 1 Strategic Dialogs – Historic Analysis
- [June 2021 OPC](#) 1967 – 1979: MCWD Formation and Initial Mandate
- [August 2021 PPC](#) 1980 – 1992: Establishing Data-Driven Project Planning
- [November 2021 PPC](#) 1993 – 1999: Accelerating Capacity, Planning, and Implementation
- [March 2022 OPC](#) 2000 – 2009: Studies, A Regulatory Approach, and Expanding Programs
- [June 2022, PPC](#) 2010 – 2020: Focus on Partnership with the Land Use Community
- [September 2022, OPC](#) Draft Strategic Principles
- [September – October 2022](#) All-Staff and CAC Discussion of Draft Strategic Principles

### **MCWD’s Principles Summary:**

The seven categorical principles, distilled from the research and analysis of key events, are summarized below. The complete principles are captured in full detail within the attached document “Historical Insights and Principles of Success.”

1. Know where you came from, and what is central to your identity
2. Devoting time and effort to vision and focused execution produces results
3. Rely on sound science to make credible, results-based decisions, and build trust
4. Partnerships are a difference making ingredient in MCWD’s continued success
5. Statutory powers provide important authority, which must be used judiciously
6. The Board sets the direction, bar, and tone of the organization
7. Success is driven by people, so get the people and culture right

### **Next Steps:**

Pending Board acceptance on January 12, 2023, the document will receive final edit and completion of all citations, the document will be integrated into Board/Staff/CAC onboarding.

As MCWD grows its understanding and capabilities over time it is expected that these principles will be revisited and built upon – cultivating a system for documenting and transferring timeless knowledge that drives results.

### **Supporting documents (list attachments):**

- MCWD’s Historical Insights and Principles of Success



**RESOLUTION**

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**Resolution:** 23-007  
**Title:** Acceptance of MCWD’s Historical Insights and Principles of Success

WHEREAS, the Minnehaha Creek Watershed is committed to outstanding results that honor its partners.

WHEREAS, to support its expectations of excellence the MCWD Board of Managers has consistently reinforced the importance of building a learning culture – by setting ambitious goals and then embracing and learning from the success and inevitable failures that are inherent in pursuing ambitious work.

WHEREAS, as the MCWD Board of Managers approached the strategic junction point of 2022, it decided that it was important to first look back on the organization’s history, to map key events over time, extract strategic insights, and document learnings that could be carried forward as a shared foundation to guide the future success of the organization.

WHEREAS, this work was initiated in 2021 pursuant to resolution 21-013 which authorized a contract with Louis Smith, MCWD’s general counsel, trusted advisor, and author of the District’s vision policy *In Pursuit of a Balanced Urban Ecology*.

WHEREAS, deep research of MCWD’s historical archives was used to map key events and decisions over time that contributed to institutional inertia, affected external public perception of MCWD, and ultimately shaped the next evolution of the organization’s history.

WHEREAS, MCWD’s key events were organized into five defined thematic eras, drafted into white papers, and then discussed and analyzed in committee to reveal the lessons learned over time.

WHEREAS, these lessons were distilled into seven categorical principles, ranging from insights related to MCWD’s origin, to the use of statutory and regulatory authorities, the critical importance of working from a position of sound science, the value of a cohesive team of staff and Board, and timeless guidance regarding the MCWD’s model of partnership and collaboration.

WHEREAS, these principles were discussed in committee meetings with the Board of Managers, with staff at All-Hands meetings, and with the Citizen Advisory Committee (CAC).

WHEREAS, the final package of MCWD’s Historical Insights and Principles of Success reflect the feedback received through the engagement of the Board, Staff and CAC.

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby accepts MCWD’s Historical Insights and Principles of Success and directs the District Administrator to finalize citations and make non-substantive edits to layout and format, to integrate the information into the onboarding of new Board members, Staff and CAC, and to develop a process for periodically revisiting and updating the principles.

Resolution Number 23-007 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_.  
 Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: 1/12/2023

\_\_\_\_\_  
 Secretary Date: \_\_\_\_\_



**MINNEHAHA CREEK**  
WATERSHED DISTRICT

# Historical Insights and Principles of Success

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January 12, 2023

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# Introduction and Summary

## **Introduction and Purpose:**

The Minnehaha Creek Watershed District (MCWD) is committed to outstanding results that honor its partners. To deliver on its expectations of excellence the Board of Managers has consistently reinforced the importance of building a learning culture - by setting ambitious goals and then embracing and learning from the inevitable failures that are inherent in pursuing important work.

Living these values, in 2021-2022, as the Board of Managers prepared to begin visioning for the future it decided to first look back on the organization's history, to evaluate key events over time, extract strategic insights, and document learnings that could be carried forward as a shared foundation to guide the future success of the organization.

These lessons, captured here as MCWD's principles, exist to serve future generations of the MCWD team as it aspires to deliver the vision of a Balanced Urban Ecology within the watershed.

As MCWD grows its understanding and capabilities over time it is expected that these principles will be revisited and built upon - cultivating a system for documenting and transferring timeless knowledge that drives results.

## **Methods and Process:**

This work began with deep research of MCWD's historical archives, including Board agendas, minutes, technical reports, project details, and media stories. This research uncovered key events and decisions over time that built institutional inertia, affected external perceptions of MCWD, and ultimately shaped the next evolution of the organization's history.

Insights and lessons learned were extracted from this data by organizing key events into five defined thematic time periods, drafted into white papers, and then analyzing the resulting impacts to the organization, partner perceptions, and the watershed.

These lessons, distilled into seven categorical principles, range from insights related to MCWD's origins, to the use of its statutory powers and regulatory authority, to the timeless value of working from a position of sound science, the critical importance of a cohesive team of staff and Board, and timeless guidance regarding the District's model of partnership and collaboration.

## **MCWD Historical Eras:**

The delineated eras of MCWD history are outlined below and are discussed in detail in the coming pages of this document.

- [Chapter 1](#) - 1967-1979 - MCWD Formation and Initial Mandate
- [Chapter 2](#) - 1980-1992 - Establishing Data Driven Project Planning
- [Chapter 3](#) - 1993-1999 - Accelerating Capacity, Planning, and Implementation
- [Chapter 4](#) - 2000-2009 - Studies, A Regulatory Approach, and Expanding Programs
- [Chapter 5](#) - 2010-2020 - Focus and Partnership with the Land Use Community

**MCWD Principles Summary:**

The principles, distilled from the research and analysis of key events, are summarized below. The [complete principles](#) are captured in full detail following the five chapters of organizational history.

1. Know where you came from, and what is central to your identity
  - a. Flood mitigation is central to MCWD's mission, identity, and relationships
  - b. Gray's Bay Dam will always be a part of the conversation
  - c. Balanced Urban Ecology is the heart of MCWD's approach to watershed management
2. Devoting time and effort to vision and focused execution produces results
  - a. A clear vision is contagiously energizing
  - b. Success demands focus
  - c. Bold, creative, flexible, and integrated thinking are required
  - d. The success of bold visions demands an accurate accounting of risk
  - e. Verify that the desired results are being achieved, and learn from your mistakes
3. Rely on sound science to make credible, results-based decisions, and build trust
  - a. Value is delivered through science-based understanding that reveals practical solutions
  - b. Trust in MCWD has been built on sound science and partnership
  - c. A deep understanding of watershed hydrology is vital to MCWD's mission and credibility
4. Partnerships are a difference making ingredient in MCWD's continued success
  - a. Science is essential, but on its own is insufficient
  - b. Land use partnerships are essential, and Balanced Urban Ecology principles support them
  - c. Partnerships require clear messaging and strategic engagement with leaders, staff, and community
  - d. Partnerships can be challenging, time consuming, and require patience and persistence
  - e. Partnership is a process, not a posture
5. Statutory powers provide important authority, which must be used judiciously
  - a. Earning mutual respect can require speaking up or drawing a line
  - b. Lonely decisions rooted only in authority may create long-lasting consequences
  - c. With careful balance, MCWD can be perceived as a regulator and a partner
6. The Board sets the direction, bar, and tone of the organization
  - a. Leadership, excellence, and accountability flow from the Board
  - b. The Board of Managers has the authority to manage, but excels when it governs
  - c. To be successful, there must be a strong marriage between staff and Board
7. Success is driven by people, so get the people and culture right
  - a. People matter and hiring wrong is costly
  - b. People should be continuously developed, evaluated, and held accountable
  - c. Innovation and quality decisions comes from properly assessing the merit of all ideas
  - d. Trust in transparency

# Chapter 1: 1967-1979

## MCWD Formation and Initial Mandate

### Introduction and Overview

In its first twelve years, the MCWD focused on addressing flooding issues and planning for the reconstruction of the Gray's Bay dam. The MCWD formed a joint powers group with cities along Minnehaha Creek to advance a vision of uniform land use, flood plain management and a development guide while also obtaining federal funds to acquire 42 parcels for open space along the Creek. Invited by cities to review land use development for water resource impacts, the MCWD developed its first regulatory program. Monitoring data collection commenced from the District's inception, and the MCWD obtained funding from the federal Environmental Protection Agency to develop a groundbreaking computer model to plan for retention projects in the upper watershed.

The MCWD's early years reflected a strong commitment to partnership with cities in the watershed in planning and regulatory matters. The District's commitment to public education and outreach was reflected in the creation and active work of a 48 member advisory committee. Cities were deeply engaged in the preparation of the District's first overall plan, and initiated the

District's first major capital projects, including the Gray's Bay Dam, numerous creek improvements, and the Upper Watershed Retention Project.

### Impetus and Establishment of District

After an earlier request for a watershed district from the City of Minnetonka failed when encountering opposition from St. Louis Park and Edina, renewed serious flooding problems in 1966 prompted Minneapolis officials to join the call to form a district for the purpose of seeking improved flood control.<sup>1</sup> The result was that Hennepin County filed a petition to establish the Minnehaha Creek Watershed District on April 12, 1966.<sup>2</sup> The Minnesota Board of Water Resources held a public hearing on the petition on December 12 and 13, 1966 at the Prudential Insurance building on Wayzata Boulevard in Minneapolis.<sup>3</sup> On March 9, 1967, the Board of Water Resources issued its order to establish the District, noting the severe flooding conditions along the Creek, increasing urbanization causing runoff, removal of natural land cover causing soil erosion and impacting water resources, the impact of public roads on

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<sup>1</sup> "Fifty years ago a new era of water protection began in the Minnehaha Creek Watershed." *Minnehaha Creek Watershed District* (blog), 3 July, 2017, <https://www.minnehahacreek.org/blog/fifty-years-ago-new-era-water-protection-began-minnehaha-creek-watershed>

<sup>2</sup> Cairn, Rich and Susan. "History of Minnehaha Creek Watershed." p. 12, *Minnehaha Creek Watershed District*, 2003. [https://www.minnehahacreek.org/sites/minnehahacreek.org/files/attachments/Minnehaha%20History%20for%20Website%20FINAL\\_2003.pdf](https://www.minnehahacreek.org/sites/minnehahacreek.org/files/attachments/Minnehaha%20History%20for%20Website%20FINAL_2003.pdf)

<sup>3</sup> "In the Matter of the Establishment of the Minnehaha Creek Watershed District in Hennepin and Carver Counties and the appointment of Managers thereto," Findings of Fact, Conclusions of Law, Order. *Minnesota Water Resources Board*, March 9, 1967. <https://www.leg.mn.gov/archive/sos/film/pdf/18704.pdf>



stormwater runoff among the reasons to establish the District.<sup>4</sup>

The order established the first Board of five managers, one from Carver County, and four managers from Hennepin County.<sup>5</sup> The Board of Managers held its first meeting on March 30, 1967, and following a solicitation and interviewing process selected Raymond Haik to serve as the District's attorney and Eugene Hickok to serve as the engineer.<sup>6</sup> Both men would serve as the essential staff consultants for the District for decades.

Mr. Haik had a distinguished career in environmental law that spanned 50 years and some of America's most prominent causes in water resources law. He served as a Special Assistant Attorney General in the Minnesota Attorney General's office and was involved in the development of the Watershed Act adopted by the Minnesota Legislature in 1955.<sup>7</sup> He served as counsel for the state of Minnesota in U.S. Supreme Court litigation involving diversion of water from the Great Lakes and handled the litigation to prevent mineral exploration within the Boundary Waters Canoe Area Wilderness.<sup>8</sup> He was

appointed by the President of the United States to service on the national Water Pollution Control Advisory Board, and the President's Quetico - Superior Committee.<sup>9</sup> He served as Chairman of the American Bar Association's Section of Natural Resources Law, and President of the Izaak Walton League of America.<sup>10</sup>

Mr. Hickok, a high school classmate of Mr. Haik, had returned to Minnesota after first establishing a successful engineering practice in New York.

The Board of Managers devoted considerable effort in the early years to building an advisory committee which had 48 members and included local government officials and citizens with an interest in the watershed.<sup>11</sup> The District prepared a slide show to educate the public about the watershed, created a public relations committee and an inspections committee, and organized a "Minnehaha Creek Appreciation Day," which in 1973 involved gathering public officials, news media and citizens in 200 canoes to paddle the creek.<sup>12</sup>

Strong working relationships with the elected officials and staff of cities in the watershed were central to the work of the District in this early

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> Board Meeting Minutes, May 11, 1967.

<sup>7</sup> Interview with Raymond Haik (Jan. 8, 1987) (notes available online with the Minnesota Historical Society)

<http://collections.mnhs.org/cms/display?irn=10365673>

<sup>8</sup> *Izaak Walton League of America v. St. Clair*, 55 F.R.D. 139 (D. Minn. 1972)

<sup>9</sup> Interview with Raymond Haik (Jan. 8, 1987) (notes available online with the Minnesota Historical Society)

<http://collections.mnhs.org/cms/display?irn=10365673>

<sup>10</sup> *Ibid.*

<sup>11</sup> Board Meeting Minutes, July 27, 1967 [appointees from Board of Park Commissioners, Hennepin County Board of Commissioners, Laketown Township, Independence Village]; Board Meeting Minutes, February 29, 1968 [Lake Minnetonka Conservation District representative appointed]; Board Meeting Minutes, August 15, 1968 [Minnetrista Planning Commission, local citizens].

<sup>12</sup> Board Meeting Minutes, May 18, 1972 [educational slideshow]; Board Meeting Minutes, April 25, 1968 [Public Relations Committee]; Board Meeting Minutes, August 17, 1972 [Inspections Committee]; Annual Report 1972 (pg. 6); Special Meeting Minutes, April 4, 1973 [Minnehaha Creek Appreciation Day].

period. The Board of Managers relied heavily on city partners in the planning for Minnehaha Creek, development of the District's overall plan, and its regulatory program as described in more detail below.

### Minnehaha Creek Corridor Planning

St. Louis Park, Hopkins and Minnetonka initiated an important project for the District in 1969 to pursue a multi-community development plan for Minnehaha Creek.<sup>13</sup> The District developed a joint powers agreement with these cities and the parties pledged to promote uniform land use planning for the Creek corridor, uniform flood plain ordinances, and a general development guide.<sup>14</sup> In 1970 the Creek joint powers group began the process of seeking federal funds to acquire areas along the Creek to be set aside and remain undeveloped. Ultimately in 1971 this effort resulted in a grant from the federal Department of Housing and Urban Development of \$383,300 which facilitated the acquisition of 11 parcels in St. Louis Park, 13 parcels in Hopkins, and 18 parcels in Minnetonka.<sup>15</sup>

Edina formally joined the group of cities working with the District on cooperative development of a floodplain map for the Creek corridor.<sup>16</sup> This group of cities later would become the organizing forum to develop a petition for the Grays Bay Dam and other improvements to Minnehaha Creek.

### Regulatory Program

Almost immediately upon the formation of the District, the Board of Managers began to receive requests from cities and other local units of government as well as developers seeking technical review of land development and infrastructure projects.<sup>17</sup> The District's engineer provided technical review of the flooding and other water resource impacts of a proposed project, and these comments were in an advisory posture.<sup>18</sup> The District also invested in providing recommendations to cities on ordinances to protect floodplains and other water resources.<sup>19</sup>

By 1971, the District developed its own rules requiring permits from the District for many land disturbing activities, and later amended the rules in 1974.<sup>20</sup> These rules were largely based on established standards promulgated by the Department of Natural Resources (DNR) and adapted to suit the needs of the District. Road projects, housing and commercial developments, and requests for dredging Lake Minnetonka constituted the majority of projects seeking a District permit. The District worked extensively with the Lake Minnetonka Conservation District and the DNR to develop dredging standards in order to protect the riparian environment and littoral zone

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<sup>13</sup> Board Meeting Minutes, July 11, 1969; Special Meeting Minutes, July 23, 1969; Annual Report, 1978 (pg. 4) [last round of meetings].

<sup>14</sup> *Ibid*; Board Meeting Minutes, September 18, 1969; Annual Reports 1969 (pg. 4) & 1970 (pgs. 2-3).

<sup>15</sup> Resolution in Support of HUD Applications, Board Meeting Minutes, February 18, 1971; Annual Reports 1970 (pg.3) & 1971 (pgs. 5-6).

<sup>16</sup> Annual Report, 1970 (pg 3).

<sup>17</sup> Annual Report, 1968.

<sup>18</sup> Annual Report, 1970 (pg. 4).

<sup>19</sup> Annual Report 1970, (pg. 8).

<sup>20</sup> Annual Report 1971 (pgs. 7-8); Resolution Adopting Rules & Regulations, Board Meeting Minutes, May 20, 1971.

of the lake.<sup>21</sup> The District also successfully advocated for legislation to strengthen its regulatory authority to address land use development in the floodplain, open space and greenbelt.<sup>22</sup>

One important element of a regulatory program is enforcement. The District relied largely on a volunteer inspection committee to visit sites for compliance.<sup>23</sup> The District successfully prevailed in a lawsuit to enforce a remedy for floodplain fill in Hopkins on private residential property.<sup>24</sup> The District also denied a request by the Freshwater Society to dredge a channel in a wetland area adjacent to its facility.<sup>25</sup>

The regulatory program also provided the occasion for the District to take a cooperative approach to the planning of large scale developments. The District engaged in intensive discussions for cooperative planning of the Target Knollwood shopping center in 1971 to address important floodplain issues.<sup>26</sup>

### Comprehensive Water Resources Plan

The Board of Managers began in earnest to draft its first overall plan in 1968. The District established its large advisory committee of 48 local government officials and citizens mainly for the

initial purpose of providing input and advice in the development of the plan.<sup>27</sup> The District developed an extensive mailing list and distributed a newsletter, "Meander Lines," to inform residents and groups about the plan.<sup>28</sup> The Board of Managers also held numerous special meetings and hearings to review the preliminary draft of the plan.<sup>29</sup> By 1969, the District submitted to the State Board of Water Resources for review and approval.<sup>30</sup> The District also worked to clarify the relationship of its overall plan to the Metropolitan Council's review of comprehensive land use plans.<sup>31</sup> Legislation promoted by the District and adopted in 1971 provided that watershed plans and development guides were to be incorporated by municipalities and implemented through watershed district rules and city ordinances.<sup>32</sup>

The District's initial overall plan provided the basis for a District regulatory program and identified critical resource needs and potential capital improvement projects. Planning for comprehensive improvements for the Minnehaha Creek corridor, including the Gray's Bay Dam, resided in this first overall plan for the watershed.

### Grays Bay Dam

The original and central element of infrastructure in the watershed, the Gray's Bay Dam, was

<sup>21</sup> Special Meeting Minutes, February 9, 1972; Special Meeting Minutes, April 12, 1972; Special Meeting Minutes, June 13, 1972; Annual Report 1972 (pgs. 13-14).

<sup>22</sup> Annual Report, 1969 (pg. 3).

<sup>23</sup> Annual Report, 1973 (pg. 4).

<sup>24</sup> Annual Report, 1971 (pg. 3).

<sup>25</sup> Board Meeting Minutes, June 17, 1971; Board Meeting Minutes, July 15, 1971; Board Meeting Minutes, October 21, 1971 (pg. 5).

<sup>26</sup> Annual Report 1971.

<sup>27</sup> Annual Report, 1968 (pgs. 1-3, Appendix).

<sup>28</sup> Annual Report, 1969 (pg. 1-2).

<sup>29</sup> Special Meeting Minutes of October 28, October 30, November 7, 1968, and January 3, February 27, 1969.

<sup>30</sup> Board Meeting Minutes, January 15, 1970.

<sup>31</sup> Board Meeting Minutes of June 19, July 17, August 21, September 18, November 20, & December 18, 1969; Board Meeting Minutes, February 19, 1970; Annual Report 1969 (pg. 4).

<sup>32</sup> Board Meeting Minutes, May 20, 1971; Annual Report, 1971 (pg. 14).

envisioned from the beginning as a critical project to address historic flooding problems along Minnehaha Creek. In 1971, the District engineer provided a report on the need for improvement of the historic Gray's Bay Dam.<sup>33</sup> By 1972 the Board of Managers conceived of promoting the Gray's Bay project as one of a set of comprehensive projects to improve Minnehaha Creek, including projects to facilitate recreational access.<sup>34</sup> The District circulated the petition for creek improvement projects to all of the municipalities along the Creek and the Minneapolis Park & Recreation Board.<sup>35</sup>

These communities formally submitted the petition to the District, and by September 1973, the Lake Minnetonka Conservation District, the cities of Minnetonka, Hopkins, Edina, St. Louis Park, and Minneapolis and the Minneapolis Park & Recreation Board executed a cooperative agreement in support of the improvements of the Creek and the construction of the Gray's Bay headwaters control structure at the site of the original dam built in 1897.<sup>36</sup> Further engineering work ensued on the project design, along with pursuit of regulatory approvals. The DNR approved the project, and in February 1975, the U. S. Army Corps of Engineers (Corps) issued a report determining that Lake Minnetonka and the portion of Minnehaha Creek upstream of Minnetonka Mills are "navigable waters of the United States for

purposes of the exercise of regulatory jurisdiction" by the Corps.<sup>37</sup> Discussions with the Corps continued into 1976 and by April 1976 the District and its partners took several steps to join issue with the Corps.<sup>38</sup>

The District applied on April 27, 1976 to the Corps for a permit to proceed with the Gray's Bay project, but also on April 29 filed a lawsuit in federal district court joined by the Lake Minnetonka Conservation District, the Lake Minnetonka Association and two private land owners from Lake Minnetonka.<sup>39</sup> Their suit asked the court to determine that Lake Minnetonka and the upper portion of Minnehaha Creek are not navigable waters within the meaning of the Rivers and Harbors Act of 1899 (RHA).<sup>40</sup> The DNR intervened on behalf of the plaintiffs, contending that, should the court determine that Lake Minnetonka and Minnehaha Creek were waters of the United States, the court should find permits issued by the U.S. Army Corps of Engineers (Corps) for activities on the lake to be invalid because the permits duplicated and conflicted with state and local regulations.<sup>41</sup> At the time, the Corps had also asserted regulatory jurisdiction over docks, and placement of riprap shoreline maintenance work on Lake Minnetonka.<sup>42</sup> The MCWD also unsuccessfully pursued a legislative remedy through U.S. Representative Bill Frenzel, who introduced H.R.

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<sup>33</sup> Board Meeting Minutes, May 20, 1971.

<sup>34</sup> Annual Report, 1972 (pg. 3).

<sup>35</sup> Annual Report, 1972 (pgs. 3-4).

<sup>36</sup> Resolution regarding improvement projects adopted, Board Meeting Minutes, October 18, 1973.

<sup>37</sup> *Minnehaha Creek Watershed Dist. v. Hoffman*, 449 F. Supp. 876 (D. Minn. 1978) (quoting *Ryder Aff.*).

<sup>38</sup> Board Meeting Minutes, September 18, 1975; Board Meeting Minutes, March 18, 1976; Board Meeting Minutes, April 15, 1976.

<sup>39</sup> *Minnehaha Creek Watershed Dist. v. Hoffman*, 449 F. Supp. 876 (D. Minn. 1978).

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> Board Meeting Minutes, January 15, 1976 [application of River and Harbors Act to Lake Minnetonka]; Board Meeting Minutes, March 18, 1976 [mentions docks specifically].

377 in early 1977, a bill to declare that Lake Minnetonka was non-navigable.<sup>43</sup>

Two years later, the federal district court ruled in favor of the MCWD and other plaintiffs, holding that because Lake Minnetonka and the portion of Minnehaha Creek above Minnetonka Mills were located entirely in Minnesota and not part of connected navigable waters used for interstate commerce, the lake and the creek did not constitute navigable waters of the United States under the scope of the RHA.<sup>44</sup> The court also determined that, while the portion of Lake Minnetonka and Minnehaha Creek above Minnetonka Mills were navigable waters under the Federal Water Pollution Control Act Amendments of 1972 (FWPCA), the placement of rip-rap and construction of a dam were beyond the scope of what constituted a pollutant subject to the Corps' FWPCA permitting authority.<sup>45</sup> The court further noted that local and state governmental water quality regulations were already in place for Lake Minnetonka and Minnehaha Creek, and that the Corps' regulatory jurisdiction largely duplicated existing local and state regulations.<sup>46</sup>

In 1979, the Corps appealed the U.S. district court's decision to the Eighth Circuit Court of Appeals. On appeal, the Eighth Circuit agreed that Lake Minnetonka and the portion of Minnehaha Creek above Minnetonka Mills did not constitute navigable waters of the United States under the

RHA.<sup>47</sup> The waters were located in Minnesota only, and did not connect to navigable waters or enable interstate commerce, and thus the Corps did not possess federal regulatory jurisdiction over the lake or portion of the creek at issue.<sup>48</sup> The Eighth Circuit reversed the district court's decision as to whether the Corps had jurisdiction under the FWPCA, holding that the Corps did have authority to regulate the placement of rip-rap in Lake Minnetonka and the construction of Gray's Bay Dam.<sup>49</sup> The Eighth Circuit reasoned that the construction of dams and placement of rip-rap constituted discharges of dredged or fill material under the FWPCA, and that such discharges fell under the broad definition of "pollutant" under the act, which included "the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water."<sup>50</sup> The Eighth Circuit further determined that state and local regulatory efforts could not replace the Corps' authority to enforce the FWPCA in the absence of an Environmental Protection Agency-approved state plan to administer dredged or fill permitting for the state.<sup>51</sup> Ultimately, the MCWD obtained a Corps permit for the Gray's Bay Dam project and construction occurred in following years.

#### Upper Watershed Retention

At the same time the MCWD was pursuing the Gray's Bay Dam and other Creek improvements, it

<sup>43</sup> H.Amdt.377 to H.R.3038 - 99th Congress (1985-1986), H.Amdt.377, 99th Cong. (1985), <https://www.congress.gov/amendment/99th-congress/house-amendment/377>.

<sup>44</sup> *Minnehaha Creek Watershed Dist. v. Hoffman*, 449 F. Supp. 876, 884 (D. Minn. 1978).

<sup>45</sup> *Ibid.* at 886.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Minnehaha Creek Watershed Dist. v. Hoffman*, 597, 622 F.2d 617 (8th Cir. 1979)

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.* at 625.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.* at 627.

also aggressively pursued retention projects in the upper watershed to achieve larger flood protection for the area draining into Lake Minnetonka. In 1975, the District received a petition from upper watershed communities seeking comprehensive retention projects in all six sub-watersheds draining into Lake Minnetonka.<sup>52</sup> The Board of Managers, engineer and attorney worked extensively with the upper watershed cities to build a shared understanding of the project and its potential benefits.<sup>53</sup> The MCWD was able to obtain a federal grant from the Environmental Protection Agency to create one of the first computerized models to calculate storage potential.<sup>54</sup>

With the benefit of this modeling exercise, the District engineer submitted a preliminary engineering report for the project in 1977.<sup>55</sup> The report identified 21 potential retention basins and estimated that the projects could provide a total of 7,800 acre-feet of storage, equivalent to 6.7 inches on Lake Minnetonka.<sup>56</sup> The engineer estimated that the cost for these retention projects would be approximately \$375,500.<sup>57</sup> Retention projects in the Six Mile Creek and Painters Creek sub-watersheds accounted for 70% of the storage.<sup>58</sup>

The retention projects would not ultimately be constructed for some years, after lengthy contested proceedings and later condemnation actions.

### Hydrologic Data and Water Quality Studies

MCWD immediately committed resources to data collection and analysis to provide a science-based understanding of the watershed. Within a few months of its creation, the District began installing gauging stations and collecting water level data, borrowing considerable equipment from the Minneapolis - St. Paul Metropolitan Sanitary District.<sup>59</sup> The 1968 budget adopted by the Board of Managers included \$8,000 (8% of its \$100,000 total budget) for lake gauge installation, precipitation gauging stations, water quality monitors, and ground water observation wells.<sup>60</sup> By 1969, the District expanded its hydrological data program and included the Minneapolis lakes in coordination with the Minneapolis Park & Recreation Board.<sup>61</sup> Water quality studies also began in 1969 with an analysis of stormwater discharge to Minneapolis lakes.<sup>62</sup> This hydrodata collection and the water quality studies informed the District's first overall plan process in 1969, along with soils and floodplain mapping.

In 1971, municipalities requested the District to expand its hydrological data program and to serve

<sup>52</sup> Board Meeting Minutes, August 21, 1975.

<sup>53</sup> Special Meeting Minutes, September 2, 1976; Board Meeting Minutes, November 17, 1976 [public hearing scheduled].

<sup>54</sup> Annual Report, 1978 (pg. 5).

<sup>55</sup> Board Meeting Minutes, February 19, 1976 [21 basins identified]; Annual Report 1976 [complete citation]

<sup>56</sup> Complete citation

<sup>57</sup> Complete citation

<sup>58</sup> Complete citation

<sup>59</sup> Board Meeting Minutes, June 27, 1967.

<sup>60</sup> "Minnehaha Creek Watershed District 1968 Budget," Board Meeting Minutes of September 28, 1967.

<sup>61</sup> Board Meeting Minutes, February 26, 1970.

<sup>62</sup> *Ibid.*

as a centralized source of floodplain mapping.<sup>63</sup> The District's commitment to its data collection and analysis also clearly supported its application to the EPA for the early computerized modeling development.<sup>64</sup>

### Lake Minnetonka

The Board of Managers devoted balanced attention to the needs of the lower and upper watershed in these formative years. The District worked extensively with the Lake Minnetonka Conservation District to coordinate water resource initiatives relating to Lake Minnetonka. The District took an active interest in the Metropolitan Sewer improvements to improve water quality for the lake and other area water bodies.<sup>65</sup> Although the District had no direct role in the funding or implementation of the sanitary sewer system, its comments on development reviews included recommendations that projects connect to the Metropolitan Sewer system.<sup>66</sup>

In addition to the District's development of plans to construct retention basins in the upper watershed, the District was invited to take ownership of Hennepin County's groundwater wells adjacent to

Lake Minnetonka.<sup>67</sup> The District agreed to acquire these wells, but early on made it clear to the public that pumping groundwater from these wells provided no means for increasing the level of Lake Minnetonka.<sup>68</sup>

One early regulatory focus of the District involved protection of the lake bed ecology through regulation of dredging activity on Lake Minnetonka. The District carefully coordinated its approach with the DNR and LMCD to align dredging policy.<sup>69</sup> The District also engaged in active promotion of wetlands or "marshlands" protection as one means of protecting the Lake Minnetonka ecology.<sup>70</sup> The District worked with the City of Orono to develop model ordinances on marshland protection which also served other lake communities.<sup>71</sup>

### Reflections and Lessons Learned

1. Flood mitigation is central to the MCWD's mission, identity, and relationships.

Severe flooding in the 1960s threatened homes and flooded city streets, and extreme rain events in 1987 and 2014 would again create major flooding

<sup>63</sup> Board Meeting Minutes, November 18, 1971 [Village of Deephaven floodplain mapping]; Board Meeting Minutes, February 18, 1971 [Edina floodplain mapping]; Board Meeting Minutes, June 17, 1971 [floodplain mapping completed].

<sup>64</sup> Board Meeting Minutes, October 19, 1972 [marshland study submitted to EPA, Complete citation]; Annual Report, 1974 (pgs. 9-10) [stormwater research project funded by EPA, Complete citation].

<sup>65</sup> Board Meeting Minutes, February 18, 1971 [Minnetonka sewer lines installation]; Board Meeting Minutes, April 15, 1971 [Victoria Interceptor]; Board Meeting Minutes, August 19, 1971 [Spring Park storm sewer inlet to Lake Minnetonka]; Board Meeting Minutes, September 1972 [various sewer projects]; Board Meeting Minutes, November 21, 1972 [Wayzata stormwater treatment using sewer lines]; Special Meeting Minutes, March 5, 1973 [Mound's sanitary sewer interceptor]; Annual Reports 1971 (pg. 4) & 1972 (pg 11-12).

<sup>66</sup> *Ibid.*

<sup>67</sup> Annual Report 1972 [county and judicial ditch jurisdiction is transferred to MCWD, nothing about wells specifically]; Board Meeting Minutes, September 19, 1975 [refers to past event that wells were transferred but no specifics about when that happened]

<sup>68</sup> Complete citation

<sup>69</sup> Special Meeting Minutes, February 9, 1972; Special Meeting Minutes, April 12, 1972; Special Meeting Minutes, June 13, 1972; Annual Report 1972 (pgs. 13-14).

<sup>70</sup> Annual Report 1971 [protection of marshlands considered in development permit applications]

<sup>71</sup> Board Meeting Minutes, January 21, 1971; Annual Report, 1972 (pgs. 7-8).

problems for local communities. These flooding events will always be a source of conflict and strategic opportunity for MCWD to provide value at the nexus of land use and water management.

2. MCWD establishes its value through responding to the needs of cities and other land use actors with science-based, data-driven technical assistance.

The MCWD launched a hydrological data collection program within months of its establishment, and worked on the leading edge to develop computer modeling and floodplain mapping. Combined with the technical analysis of the District engineer, the MCWD provided value to cities and other parties with its assessment of flooding and water quality problems. Indeed the MCWD's regulatory program was a response to requests from cities and developers to provide technical review of projects to address water resource issues.

3. Establishing a credible regulatory program requires a commitment to enforcement.

Once the MCWD adopted its overall plan in cooperation with its city partners and other

stakeholders, the District adopted a regulatory program that involved enforceable requirements, not mere advisory comments. Inevitably there were a few landowners who challenged the District's authority. It was critical for the MCWD to demonstrate that it was willing to enforce its rules by taking the landowners to court. In fact, a few early demonstrations of that resolve led to a long period of few challenges to the MCWD's regulatory program.

4. MCWD can play a leadership role in mobilizing resources for conservation of riparian areas in collaboration with a city partners.

The cities of St. Louis Park, Hopkins and Minnetonka worked extensively with the MCWD to pursue public acquisition of 42 parcels along Minnehaha Creek. While quite small in scale compared to the early acquisition of the Creek corridor by the Minneapolis Park and Recreation Board, this initiative reflected an early understanding of the role of land conservation in watershed management and community development. The partnership with these three cities also illustrated the success in pursuing outside funding through collaboration.



## Chapter 2: 1980-1992

### Establishing Data-Driven Project Planning

#### Introduction and Overview

The MCWD completed its first major project at the Grays Bay Headwaters Control Structure and continued to build its technical understanding of the watershed. Keeping a primary focus on flood mitigation, the MCWD also integrated water quality into a second more comprehensive water resources management plan. This period also saw a significant expansion of the reach of the District's regulatory program and a related increase in enforcement efforts.

#### Precipitation Cycles

This twelve-year period saw major swings in precipitation in the watershed. Higher than normal precipitation in the early 1980s prompted ongoing concerns about flooding along Minnehaha Creek.<sup>72</sup> In May 1986, Lake Minnetonka elevation was 930.4, and the Creek was flowing at 285 cubic feet per second, overtopping the fixed crest portion of the dam and overflowing the Creek banks in many places.<sup>73</sup> The District worked

extensively during this time with municipalities on floodplain policy. The District found the state floodplain standards inadequate, and urged municipalities to adopt more stringent floodplain ordinances to prohibit filling in the floodplain.<sup>74</sup> The District adopted a "High Water Conditions Policy Statement" in September 1980 in conjunction with its operating plan for the Grays Bay dam and control structure.<sup>75</sup> Many of the public comments on the operating plan in the early 1980s emphasized concerns with creek flooding.<sup>76</sup> The District considered adopting a canoe policy to warn the public of dangerous Creek flow conditions.<sup>77</sup> The District embraced a request from the Minneapolis Park & Recreation Board to cooperate in a hydraulic study of Minnehaha Creek.<sup>78</sup>

By November 1986, the level of Lake Minnetonka had subsided to 928.45.<sup>79</sup> Notwithstanding a major storm and flooding event in July 1987, the overall precipitation trend declined, and the Grays Bay control structure remained closed from the Fall of 1986 to June 25, 1991.<sup>80</sup> The level of Lake

<sup>72</sup> Board Meeting Minutes, April 21, 1983 [reporting high precipitation, high creek levels]; Board Meeting Minutes, August 21, 1986 [city and citizen concerns].

<sup>73</sup> Board Meeting Minutes, August 21, 1986.

<sup>74</sup> *Ibid.*

<sup>75</sup> Board Meeting Minutes, August 21, 1980 [policy statement passed]; Board Meeting Minutes, September 18, 1980 [policy statement amendment]; Board Meeting Minutes, June 18, 1981 [policy statement incorporated into the Operational Plan].

<sup>76</sup> "Memo Re: Lake Minnetonka Discharge Rates," January 11, 1980; Board Meeting Minutes, January 17, 1980 [reduced flow in response to cities' comments]; Board Meeting Minutes, June 18, 1981 [public hearing, flooding concerns]; Board Meeting Minutes, July 15, 1982 [comments on Operational Plan]; Annual Report 1982, pg. 3 [Operational Plan revised based on comments].

<sup>77</sup> Minutes on Public Hearing, July 21 and August 18, 1983 [high creek levels cause private bridge clearance at Cedar Lake Road to be dangerous to canoes]; Resolution, August 18, 1983 [bridge must be raised or altered to let canoes pass]. Meeting Minutes of July 21, 1983 note that in April 1983, high water warning signs were posted for canoeing.

<sup>78</sup> Board Meeting Minutes, June 16, 1983.

<sup>79</sup> Board Meeting Minutes, November 20, 1986.

<sup>80</sup> Board Meeting Minutes, June 20, 1991 [discharge reopened at 12 c.f.s.].

Minnetonka decreased to as low as 925.48 in December 1989.<sup>81</sup> These lower lake levels prompted intensive interest in dredging Lake Minnetonka for navigational access, and the MCWD entered a period of more intensive regulation and enforcement activities to protect the lake as noted more fully below.<sup>82</sup>

### More Comprehensive Water Resource Plan

In 1982, the Minnesota Legislature adopted the Metropolitan Surface Water Management Act, which required all parts of the seven county metropolitan areas to be within an established watershed management organization and required all metro watersheds to complete comprehensive water resources management plans every ten years.<sup>83</sup> The MCWD invested significant time with the Minnesota Association of Watershed Districts to develop standards for this planning process. The District also engaged in a multi-year planning effort to update its plan. Beyond its regular hydrologic monitoring program begun with the District's inception in 1967, the MCWD invested considerable resources in developing its first computerized model to simulate the hydrologic characteristics of the entire watershed, which it completed in 1986.<sup>84</sup> This model, along with water quality study of Lake

Minnetonka formed the technical basis of the District's comprehensive water resources management plan, a draft of which was completed in 1987.<sup>85</sup> The MCWD had also spent several years developing its policies and updating its rules as a part of this planning process.

A quite lengthy period of plan review ensued after the initial distribution of the MCWD's draft plan in 1987. The District spent several years unsuccessfully seeking a cooperative agreement with Hennepin County for the financing of the MCWD's capital improvement projects.<sup>86</sup> Several municipalities within the watershed registered comments of caution and concern with the District's process of ordering capital projects, seeking assurance of opportunities for city input.<sup>87</sup> Ultimately, these concerns delayed the approval of the MCWD's plan by the Board of Water and Soil Resources until 1992.<sup>88</sup>

### Major Projects

The MCWD successfully completed projects identified in its initial plan, the Gray's Bay outlet structure and Creek recreational improvements, and the Painter Creek Upper Watershed Retention Project. The Grays Bay project was completed in 1980, and the Department of Natural Resources

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<sup>81</sup> Board Meeting Minutes, December 21, 1989.

<sup>82</sup> Board Meeting Minutes, January 18, 1990; Board Meeting Minutes, February 15, 1990; Board Meeting Minutes, March 1, 1990; Board Meeting Minutes, March 15, 1990; Board Meeting Minutes, May 17, 1990; Board Meeting Minutes, December 20, 1990.

<sup>83</sup> Chapter 509, Laws of 1982, Minnesota Statute Section 103B.201 to 103B.255 as amended. Historic version:

<https://www.revisor.mn.gov/laws/1982/0/Session+Law/Chapter/509/pdf/>

<sup>84</sup> Board Meeting Minutes, February 20, 1986 [1, 10, 100 year modeling]; Board Meeting Minutes, September 18, 1986 [problems corrected].

<sup>85</sup> Board Meeting Minutes, August 12, 1987 [final draft distributed to govt. agencies for comment]; Board Meeting Minutes, December 17, 1987 [comment period extended]; Annual Report 1987, pg. 5.

<sup>86</sup> Board Meeting Minutes, August 20, 1987 [letter sent to Hennepin County re: financing]; Board Meeting Minutes, January 21, 1988 [draft joint agreement]; Board Meeting Minutes, March 17, 1988 [amendments]; Board Meeting Minutes, June 16, 1988 [amendments]; Board Meeting Minutes, December 15, 1988 [H. County refuses to agree to tax districts for limited benefit projects]; Board Meeting Minutes, December 20, 1990 [states MCWD intent to renew contact w/ Hennepin County re: finance agreement].

<sup>87</sup> Board Meeting Minutes, February 18, 1988.

<sup>88</sup> Board Meeting Minutes, June 18, 1992 [all comments received].

approved its operating plan in March 1980. This project had always been part of a package with smaller projects to improve recreational access to Minnehaha Creek, and these smaller projects were also complete by 1980.

The Grays Bay outlet structure received regular ongoing attention, as the District made small physical adjustments with staff gauges and consideration of fish and weed barriers in 1981.<sup>89</sup> The District entered into an agreement with the City of Minnetonka to assist in maintenance of the structure, but declined the City's request to augment Creek flow for its summer festival.<sup>90</sup> Ongoing hearings to update the operating plan reflected creek resident and some legislative concern with balancing upstream and downstream interests.<sup>91</sup> The District also determined that generally it is not feasible to operate an open channel discharge during winter months, and devoted technical study to maintaining base flow of the Creek in summer months.<sup>92</sup>

MCWD's second major capital improvement project was the Painter Creek Upper Watershed Retention Project. The Lake Minnetonka Conservation District petitioned for this project.<sup>93</sup>

The product of multiple years of feasibility study, planning and design, the project involved construction of various flow control devices and channel improvements to slow runoff to Lake Minnetonka and improve water quality.<sup>94</sup> The District made extensive use of a project advisory committee to build community understanding and provide process advice for the project.<sup>95</sup> The Board of Managers approved the preliminary engineering report for the project in May 1983, and after a public hearing held at the Orono High School auditorium on September 29, 1983, formally ordered the project.<sup>96</sup> Detailed aerial photography and topographic mapping ensued in 1984 to assist in final project design and identification of easements required on 25 parcels.<sup>97</sup> By December 1984, the Board awarded the construction contract, and commenced eminent domain proceedings to acquire the easements.<sup>98</sup> Ultimately 21 of the easements were acquired voluntarily, and four acquired through the eminent domain process.<sup>99</sup>

A third major capital improvement project to improve water quality in Long Lake commenced

<sup>89</sup> Board Meeting Minutes, June 18, 1981 [staff gauges]; Board Meeting Minutes, February 19, 1981 [DNR permits for weed removal].

<sup>90</sup> Board Meeting Minutes, June 18, 1981.

<sup>91</sup> Board Meeting Minutes, June 18, 1981 [public hearing on Grays Bay Operational Plan];

<sup>92</sup> "Re: Gray's Bay Dam Operational Plan - Permit No. 76-6240," letter dated August 6, 1981 [DNR Approval of winterizing]; Board Meeting Minutes, June 18, 1981 [hydraulic study proposal]; Board Meeting Minutes, October 15, 1981 [re: hydraulic study].

<sup>93</sup> Board Meeting Minutes, December 11, 1980.

<sup>94</sup> Board Meeting Minutes, November 8, 1984 [scope of project]; "In the Matter of the Petition of the Lake Minnetonka Conservation District for an Upper Watershed Storage and Retention Project," Findings of Fact, Conclusions, and Order, September 29, 1983.

<sup>95</sup> Board Meeting Minutes, February 17, 1983 [board seeks input of advisory committee]; Board Meeting Minutes, May 19, 1983 [advisory committee involved in approval of preliminary engineering report].

<sup>96</sup> Board Meeting Minutes, May 19, 1983 [preliminary engineering report completed]; "In the Matter of the Petition of the Lake Minnetonka Conservation District for an Upper Watershed Storage and Retention Project," Findings of Fact, Conclusions, and Order, September 29, 1983; Annual Report, 1983, pg. 5.

<sup>97</sup> Board Meeting Minutes, July 19, 1984 [aerial photography completed; easement identification commenced]

<sup>98</sup> Board Meeting Minutes, December 20, 1984 [contract awarded; majority of easements secured]; Board Meeting Minutes, August 30, 1984 [resolution authorizing condemnation proceedings]; Board Meeting Minutes, November 8, 1984 [easement appraisal values approved].

<sup>99</sup> Board Meeting Minutes, January 17, 1985; Annual Report, 1985, pg. 5.

the diagnostic feasibility study process in 1988.<sup>100</sup> Discussion of concerns for Long Lake water quality led to the District seeking a Clean Water Partnership grant from the Minnesota Pollution Control Agency to fund this initial diagnostic study.<sup>101</sup>

### Other Projects

MCWD annually funded small projects requested by cities through its maintenance and repair fund. These projects typically involved removal of obstructions such as fallen trees from the Creek, sediment removal from storm sewer outfalls, or aquatic weed harvesting.<sup>102</sup> The District also spent several years working with local partners on a variety of localized flooding problems, including storm drainage improvements at Galpin Lake, channel improvements to the Creek at Highway 100 in cooperation with MnDOT and the City of Edina, dredging of the Creek at 44<sup>th</sup> Street in Edina, and work with the City of Shorewood to address flooding problems at Glen Road and County Road 19.<sup>103</sup>

### Regulatory Program Expansion

MCWD devoted substantial resources to the development of its regulatory program during this period. From approval of 113 permits in 1980 to a high of 206 permits in 1986, most of these permit

applications related to development activity in the Lake Minnetonka area. Some projects arose in response to the precipitation cycle changes, with repair of shorelines in response to erosion or increased demand for dredging projects to achieve navigational access on Lake Minnetonka during the low water years of 1986-91. At its June 15, 1989 meeting, for example, the Board of Managers approved 11 permits for dredging projects alone.<sup>104</sup>

Based on the technical information that the littoral zone of a lake is vital to the lake's ecology, the MCWD joined with the DNR to protect the lake bottom from over-dredging, and protect the lake's floodplain from fill of dredging spoils.<sup>105</sup> As more marinas and other boating enthusiasts grew concerned with low lake levels and navigation access, some operators decided to challenge the MCWD's enforcement authority. One example came from a group of homeowners on Libbs Lake (a small waterbody connected by a narrow channel to Lake Minnetonka) who in 1989 obtained a permit to dredge approximately 2,000 cubic yards from the lake bottom to improve their access to Lake Minnetonka, but in fact were found to have dredged 9,000 cubic yards and left much of the spoils in the floodplain.<sup>106</sup> The District devoted multiple meetings over a period of two years with the homeowners and the DNR. Some of the homeowners filed a district court action to appeal

<sup>100</sup> Board Meeting Minutes, June 16, 1988 [water quality issues prompt discussions with City of Long Lake].

<sup>101</sup> Board Meeting Minutes, December 15, 1988; Annual Report, 1989, pg. 5.

<sup>102</sup> Board Meeting Minutes, March 20, 1980 [formal budget for the Fund recommended]; Board Meeting Minutes, April 21, 1983 [examples of tree removal, dredging, creek-side repair].

<sup>103</sup> Board Meeting Minutes, April 17, 1980 [Galpin Lake]; Board Meeting Minutes, May 19, 1983 [citizen concern prompts cooperation between District, MnDOT, City of Edina]; Board Meeting Minutes, February 17, 1983 [44<sup>th</sup> Street]; Board Meeting Minutes, November 19, 1987 [Glen Road & County Road 19]; Annual Reports 1987, pg. 7, & 1989, pg. 4.

<sup>104</sup> Board Meeting Minutes, June 15, 1989.

<sup>105</sup> Board Meeting Minutes, January 19, 1989 [meeting w/ DNR re: dredging depths]; Board Meeting Minutes, April 20, 1989 [Rules E & K revised].

<sup>106</sup> Board Meeting Minutes, February 16, 1989; Board Meeting Minutes, June 15, 1989; Board Meeting Minutes, July 20, 1989; Board Meeting Minutes, August 24, 1989; Board Meeting Minutes, September 21, 1989; Board Meeting Minutes, September 28, 1989; Board Meeting Minutes, November 16, 1989 [remedial plan].

the Board's remedial order, and ultimately the parties achieved a settlement that required removal of all of the dredging spoils from the floodplain and payment of the MCWD's enforcement costs.<sup>107</sup>

In July 1989, Gayles Marina sought an amendment of its MCWD dredging permit to allow the marina to dredge to an elevation of 921.6 feet instead of 924.0 feet as allowed by the District rules.<sup>108</sup> The marina contended that half of its boat slips were unusable under the existing conditions, and the deeper elevation was necessary to meet the needs of its dredging barge.<sup>109</sup> When the MCWD stood by the original permit decision, Gayles Marina sought judicial review in district court. The district court declined, concluding that only decisions about watershed district projects were appealable to district court.<sup>110</sup> The marina appealed to the Minnesota Court of Appeals, which held that the marina could obtain an accelerated jury trial to review the Board of Managers decision de novo.<sup>111</sup> The Minnesota Supreme Court affirmed the court of appeals.<sup>112</sup> The MCWD then successfully petitioned the legislature to revise the statute to provide that watershed district permit decisions are reviewed in district court, but through a declaratory judgment action based on the record made before the board of managers.<sup>113</sup> (The legislature did not adopt another MCWD request

to provide authority to issue civil fines or administrative penalty orders for watershed district rule violations.<sup>114</sup>)

During this time the MCWD addressed multiple dredging violations and devoted considerable effort to updating its rules and adopting a requirement that dredging contractors who work on "priority" lakes in the watershed be licensed by the District.<sup>115</sup> The Board of Managers adopted this rule to address a number of unpermitted and unfeasible dredging projects that threatened the lake environment. The District also updated its dredging standards and modified its rule regulating installation of sand blankets.<sup>116</sup>

The MCWD's regulatory program also prompted engagement with the Minnesota Department of Transportation during this time, with President James Spensley taking the lead in commenting on MnDOT's plans for expansion of I-35W in south Minneapolis.<sup>117</sup>

### Other Policy Concerns

The MCWD engaged in a variety of other policy issues beyond its regulatory program during this period. In addition to intensive flood study and promotion of stronger floodplain ordinances, the District commented extensively to promote the

<sup>107</sup> Board Meeting Minutes, December 21, 1989 [notice of appeal in District Court]; Board Meeting Minutes, December 20, 1990 [licensed contractor; work plan to be developed]; Annual Report, 1991, pg. 5.

<sup>108</sup> Special Meeting Minutes, July 14, 1989.

<sup>109</sup> *Ibid.*

<sup>110</sup> *Gayle's Marina v. Minnehaha Creek*, 451 N.W.2d 907 (Minn. Ct. App. 1990). [recounts District Court's decision].

<sup>111</sup> *Gayle's Marina v. Minnehaha Creek*, 451 N.W.2d 907 (Minn. Ct. App. 1990).

<sup>112</sup> *Minnehaha Creek Watershed Dist. v. Gayle's Marina Corp.*, 461 N.W.2d 224 (Minn. 1990).

<sup>113</sup> Minn. Session Laws, 1992 Regular Session, Chapter 466 - S.F. No. 2298, <https://www.revisor.mn.gov/laws/1992/0/466/>; Board Meeting Minutes, January 16, 1992; Board Meeting Minutes, April 16, 1992 [legislation passed]; Annual Report, 1991, pg. 5.

<sup>114</sup> Board Meeting Minutes, March 19, 1992.

<sup>115</sup> Board Meeting Minutes, April 20, 1989 [Rules E & K revised]; Annual Report, 1989, pg. 4.

<sup>116</sup> Board Meeting Minutes, April 20, 1989 [Rules E & K, dredging]; Board Meeting Minutes, June 20, 1991 [Rule F, sand blankets]; Annual Report, 1991, pg. 5.

<sup>117</sup> Board Meeting Minutes, March 21, 1991 [EIS reviewed]; Board Meeting Minutes, November 21, 1991 [MPRB raises water quality concerns].

ultimate closure of the Maple Plain sewage treatment plan, which was the last sewage discharge to Lake Minnetonka.<sup>118</sup> Again through President Spensley's engagement, the MCWD weighed in with ongoing comments about the discharge from the Reilly Tar remedial gradient wells in St. Louis Park, urging that the wells discharge to the Minneapolis lakes.<sup>119</sup> In 1991, managers participated extensively in the development of a new comprehensive management plan for the Lake Minnetonka Conservation District, providing for changes in the LMCD board's composition, funding sources for LMCD projects, and increased enforcement to address water quality and safety issues.<sup>120</sup> The District also promoted watershed education and stewardship through annual Minnehaha Creek clean up days sponsored by the Izaak Walton League and Boy Scouts.

### Governance

Barbara Gudmundson (Ph.D. in Botany and Water Resources) became the first woman to serve on the MCWD Board of Managers, serving one term from 1980 - 1983.<sup>121</sup> The MCWD Board of Managers expanded from five to seven managers in late 1983 through the District's petition to the Minnesota Board of Water Resources.<sup>122</sup> The two additional managers were for appointment from Hennepin

County, and James Spensley from Minneapolis and James McWethy of Edina took their seats on the board in the spring of 1984.<sup>123</sup> Manager Spensley contested and prevailed to be elected the board president in 1988.<sup>124</sup> As Board President, Manager Spensley represented the District in many regulatory and policy discussions.

During this period, Mike Panzer of Wenck assumed the role of District Engineer [in 1992], and Louis Smith from the Popham Haik firm assumed the role of District counsel in 1987. The engineer and attorney continued to serve as the sole staff support for the District.

### Reflections and Lessons Learned

1. Strong technical understanding of Creek hydrology is essential to the MCWD's mission and establishes a basis for city relationships, credible regulatory program, and project partnership potential.

The MCWD continued to invest greatly in its hydrodata collection program and partners like the City of Minneapolis and the Minneapolis Park & Recreation Board sought the District's expertise and resources in hydraulic study of the Creek. This database and expertise provided the District with

<sup>118</sup> Board Meeting Minutes, February 16, 1984 [MPCA EAW report]; Board Meeting Minutes, May 17, 1984; Board Meeting Minutes, June 21, 1984 [City of Orono withdraws request for public hearing]; Board Meeting Minutes, June 20, 1985 [application for interceptor approved].

<sup>119</sup> Board Meeting Minutes, December 12, 1985; Board Meeting Minutes, April 17, 1986; Board Meeting Minutes, October 15, 1987; Board Meeting Minutes, December 17, 1987 [discussion of Remedial Action Plan]; Board Meeting Minutes, January 21, 1988 [Resolution on discharge to the Minneapolis Lakes].

<sup>120</sup> Board Meeting Minutes, February 19, 1987 [MCWD joins task force on LCMD CMP]; Special Meeting Minutes, January 4, 1990 [overview of CMP issues]; Board Meeting Minutes, March 1, 1990 [MCWD Chairman & Engineer provide comments on the CMP]; Board Meeting Minutes, May 17, 1990 [draft CMP out for public comment]; Annual Reports 1991, pg. 4, & 1990, pg. 3.

<sup>121</sup> Board Meeting Minutes, April 21, 1983.

<sup>122</sup> Minnesota Water Resources Board, "In the Matter of Restructuring the Board of Managers of the Minnehaha Creek Watershed District (M.S. Section 112.42, Subd. 3a)," Findings of Fact, Conclusions of Law, and Order dated January 12, 1984.

<sup>123</sup> *Ibid*; Annual Report, 1984, pg. 1.

<sup>124</sup> Board Meeting Minutes, May 19, 1988.

a policy platform from which to promote more stringent floodplain protection in municipal ordinances.

2. Occasionally, it is necessary for the MCWD to exercise its power of eminent domain for a project to move forward.

The Painter Creek upper watershed retention project designed by the District engineer involved flow control devices and retention on a total of 25 land parcels. While the vast majority, twenty-one, of these land owners agreed to voluntarily convey the necessary project easements, it was necessary to use the condemnation process to acquire the last four easements. From the record, it appears that this use of eminent domain was generally accepted at the time, such that it led to no major community controversy. The Painter Creek project was generally perceived as an MCWD effort to address flooding and water quality through retention in a major upper watershed contributing stormwater flow to Lake Minnetonka.

3. If the regulatory program becomes the primary point of contact with stakeholders, the District is perceived as a regulator.

As the Grays Bay dam and the Painters Creek retention projects were completed in the early 1980s, the District's attention moved from its capital improvement program to regulation. The

low precipitation, sustained low water levels of Lake Minnetonka, and resulting dredging pressures posed a serious challenge for the District. Based on a scientific understanding shared with the DNR that excessive dredging harms the lake ecology, the Board of Managers was faced with challenges to its enforcement authority. Ultimately, a great deal of board meeting time, public interaction, and litigation were devoted to this regulatory enforcement role.

While the parties most impacted were marinas and lake shore owners on Lake Minnetonka, the District's regulatory role also framed growing interaction with MnDOT and some watershed municipalities. While there were multiple reasons for the long delay in approval of the MCWD's 1987 plan, the cautionary posture taken by some municipalities and Hennepin County clearly sent a signal to BWSR that more review time for the District's plan was in order. The MCWD's plan was finally approved after negotiating with some municipalities and Hennepin County to insert more detailed capital improvement project approval process. Even so, after several years of effort the District ultimately abandoned its pursuit of a cooperative agreement with Hennepin County for financing its capital improvement projects, and in fact the MCWD undertook no major projects until later in the 1990s.

# Chapter 3: 1993-1999

## Accelerating Capacity, Planning, and Implementation

### Introduction and Overview

MCWD entered a time of greater public visibility by addressing water quality in Minneapolis Chain of Lakes. City leaders learned the power of MCWD's broad tax levy, technical expertise, and unique ability to improve water quality in major lake assets. MCWD learned the power of negotiating effective multiparty agreements to reflect true working partnerships and learned the challenging consequences of proceeding with projects such as Long Lake without such partnerships in place.

Along with the accelerated engagement in major projects, the MCWD continued to pursue a strong regulatory program that included drawing lines and rising to challenges with MnDOT and a shoreline contractor, among others. During this period, MCWD also made the significant decision to create its own office and professional staff.

### Board Organization and District Staff

Changes to the District staff and the Board of Managers' operations reflected the intense activity of this seven-year period. In late 1992, the Board of Managers hired Ellen Sones (née Klanderma) under a contract with the City of Minnetonka to serve as District Coordinator, a role she held until

October 1, 1994 while officed in Minnetonka City Hall.<sup>125</sup> During this time, Board meetings shifted from alternating between St. Louis Park City Hall and Wayzata City Hall to being held exclusively at Minnetonka City Hall.<sup>126</sup> Upon terminating the coordination contract with the City of Minnetonka, the District office moved to a private building on Wayzata Boulevard.<sup>127</sup> On December 1, 1995, the District office moved to the Freshwater Foundation.<sup>128</sup>

From October 1994 through February 1995, as the Board of Managers developed a search for new staff, the District relied on the services of the engineer, attorney, and Manager Tom LaBounty. In March 1995, the Board of Managers hired Gene Strommen, a former executive director of the Lake Minnetonka Conservation District, as District Administrator, and Suzanne Weedman as Assistant Administrator.<sup>129</sup>

Beginning in 1994, the District began to regularly hold two meetings per month, and in 1995 amended its rules to set the District's regular meeting schedule with two meetings per month.<sup>130</sup> Even two meetings were not always adequate; in August 1995, the Board held four meetings.<sup>131</sup> The Board had six standing committees, with two managers assigned to each committee.<sup>132</sup> For

<sup>125</sup> Board Meeting Minutes, February 25, 1993.

<sup>126</sup> 1993 Annual Report.

<sup>127</sup> Notice of Address Change, October 2, 1994.

<sup>128</sup> Board Meeting Minutes, November 9, 1995.

<sup>129</sup> Board Meeting Minutes, June 14, 1995.

<sup>130</sup> Board Meeting Minutes, October 27, 1994.

<sup>131</sup> *Complete Citation*

<sup>132</sup> Committees included: Management Plan Implementation; Personnel & Administration; Finance; Complaints & Violations; Rules; and Communications. See Board Meeting Minutes for July 13, 1995.



each major District project, the Board assigned two or three members to serve as lead managers for the project.<sup>133</sup>

### Gleason Creek Improvement Project

The Gleason Creek Improvement Project, petitioned by the City of Wayzata, involved three primary components that were intended to manage floodwaters and improve water quality. These components were: a new outlet structure and raised elevation for Gleason Lake; stormwater ponds near Lake Minnetonka; and a stormwater pond near Glenbrook.<sup>134</sup> In April 1993, the District held a joint special meeting with the Wayzata City Council to adopt plans and specifications for the project, and adopted a cooperative agreement for the project.<sup>135</sup> Manager LaBounty served as lead manager for the project, which broke ground in July 1993.<sup>136</sup> The construction of the dam and outlet structure at Gleason Lake was delayed until February 1993 due to the need to obtain easements from all lakeshore property owners, a very slow process that resulted in attainment of easements from 75% of owners; and a Phase II environmental site assessment for water quality of a pond upstream of Gleason Lake, offered as an incentive for lakeshore owners to provide

easements, which was ultimately ordered in September 1994.<sup>137</sup>

During the project, the District encountered funding issues with the City of Wayzata. The Board learned after the execution of a cooperative agreement that the City received a MnDOT grant for its share of the project funding.<sup>138</sup> The Board considered the MnDOT grant a shared resource, and offset half of the MnDOT grant amount in its final payment to the City for the project.<sup>139</sup> The funding dispute was ultimately resolved through mediation.<sup>140</sup>

### Minneapolis Chain of Lakes Improvement Project

In July 1993, the Minneapolis Park and Recreation Board presented a study of water quality problems within the Minneapolis Chain of Lakes, and approached the District to partner on a Minnesota Pollution Control Agency Clean Water Partnership grant.<sup>141</sup> Throughout 1993, the District remained in talks with the Park Board, and the District engineer identified two early potential projects: the first, Twin Lakes in St. Louis Park; and the second, Cedar Meadows adjacent to Cedar Lake. The Park Board submitted an application for the Clean Water Partnership grant in October 1993, supported by a letter from the District.<sup>142</sup> During this time and

<sup>133</sup> Board Meeting Minutes, July 13, 1995.

<sup>134</sup> "Gleason Lake/Creek Water Cleanup Projects," Minnehaha Creek Watershed District, <https://www.minnehahacreek.org/project/gleason-lakecreek-water-cleanup-projects>

<sup>135</sup> Minutes of Special Meeting of April 21, 1993, Minnehaha Creek Watershed District Board of Managers.

<sup>136</sup> Board Meeting Minutes, July 8, 1993 (groundbreaking).

<sup>137</sup> Board Meeting Minutes, May 27, 1993 (easement approval secured); Board Meeting Minutes, September 22, 1994 (Phase II Order).

<sup>138</sup> [Complete Citation]

<sup>139</sup> Board Meeting Minutes, November 10, 1994 (motion passed that the check to City of Wayzata should be offset by MNDOT grant amount).

<sup>140</sup> Executive Sessions, Board Meeting Minutes for July 13, 1995; July 27, 1995; August 10, 1995; August 24, 1995; September 14, 1995; September 28, 1995; October 12, 1995; October 26, 1995; November 9, 1995;

<sup>141</sup> Board Meeting Minutes, July 22, 1993; Board Meeting Minutes, August 12, 1993; Board Meeting Minutes, October 14, 1993.

<sup>142</sup> Board Meeting Minutes, October 28, 1993.

throughout the project, the residents surrounding Twin Lakes actively met as a task force to explore how Twin Lakes could be improved while contributing to improving Cedar Lake's and the Chain of Lakes' water quality.<sup>143</sup>

By February 1994, the District and the Park Board received news that MPCA approved the Clean Water Partnership grant, and the two entities began to discuss a work plan and joint agreement.<sup>144</sup> In March 1994, the District learned that the mayor of Minneapolis had designated the project as a high priority, and proposed a summit meeting of the parties, directing District counsel to outline a cooperative agreement.<sup>145</sup> The Board designated Manager Maple, Manager Love, and Manager Blixt as lead managers for the project.<sup>146</sup> In April 1994, the summit meeting was deemed a success. The District emerged as the largest funder of the project through funding from its watershed-wide levy, and also took a leadership role to promote public understanding of the watershed approach to addressing water quality problems in the treasured Chain of Lakes.<sup>147</sup> District counsel was assigned to draft a cooperative agreement, and the Park Board was assigned to draft a work plan.<sup>148</sup>

The parties took several months to negotiate elements of the cooperative agreement, including the shared control of communications and public education between the District and Park Board, and the District's request for six years of committed street sweeping in the project's subwatershed from the City of Minneapolis.<sup>149</sup> A Coordinating Board of policy makers for project oversight and governance, an Implementation Committee to drive staff work, and a Communications Committee to coordinate project public relations were established among the parties.<sup>150</sup> Hennepin County was also a partner in the project, taking a role as a project financier.<sup>151</sup> The cooperative agreement was finalized in August 1994, and the District ordered the project at a cost of \$2.5 million.<sup>152</sup> The District amended its watershed plan to include project work in September 1994, and the District engineer proceeded with detailed design, specifications, and permitting for the project.<sup>153</sup> The parties participated in a cooperative agreement signing ceremony on November 23, 1994.<sup>154</sup> The Coordinating Board planned to meet quarterly to oversee and govern project progress.<sup>155</sup>

The District presented a viable design in February 1995.<sup>156</sup> The City of St. Louis Park had requested to dredge Twin Lakes to a depth of 6.5 feet, which

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<sup>143</sup> Board Meeting Minutes, November 23, 1993.

<sup>144</sup> Complete Citation

<sup>145</sup> Board Meeting Minutes, March 10, 1994; Board Meeting Minutes, April 14, 1994.

<sup>146</sup> Complete Citation

<sup>147</sup> Notice of Public Hearing, September 12, 1994.

<sup>148</sup> Board Meetings Minutes, April 14, 1994.

<sup>149</sup> Board Meeting Minutes, August 11, 1994.

<sup>150</sup> Board Meeting Minutes, May 11, 1995.

<sup>151</sup> Notice of Public Hearing, September 12, 1994.

<sup>152</sup> Notice of Public Hearing, September 12, 1994. Tax Levy Resolution, Board Meeting Minutes, September 22, 1994.

<sup>153</sup> Board Meeting Minutes, September 22, 1994.

<sup>154</sup> Board Meeting Minutes, November 22, 1994.

<sup>155</sup> Board Meeting Minutes, April 27, 1995.

<sup>156</sup> Board Meeting Minutes, February 23, 1995 [all parties agree on the plan but no details].

encountered objections from the DNR, and the design subsequently focused on two wet detention ponds, one near Twin Lakes and one in Cedar Meadows.<sup>157</sup> In April 1995 the Coordinating Board met and resolved ongoing issues regarding neighborhood communications and citizen involvement in the project.<sup>158</sup> Public engagement on project design included questions about mosquitoes and landscaping.<sup>159</sup> Pursuant to design recommendations from Damon Farber, the Park Board asked for a \$200,000 landscaping budget for Cedar Lake, for which the District engineer originally estimated at \$17,000.<sup>160</sup> The parties ultimately compromised on a \$50,000 landscaping budget.<sup>161</sup> The construction contract for project work was awarded in September 1995 for work at Twin Lakes, Twin Lakes Park, and Cedar Meadows.<sup>162</sup> The groundbreaking ceremony was held in October 1995, along with a Coordinating Board meeting.<sup>163</sup> In late 1996, the Park Board requested that the District submit an application for wetland banking credits under the Wetland Conservation Act for work being done at Cedar Meadows.<sup>164</sup>

Following the project at Cedar Lake, the District and its partners turned attention to planning at project to improve water quality for Lake Bde Mka Ska (then Calhoun). Public concern over the wetlands at Cedar Meadows pond mounted

through 1997, and in March of that year the Board held a public hearing on the environment assessment worksheet for the Southwest Calhoun Ponds/subwatershed improvement project, and assessed whether there was a need to prepare an environmental impact statement.<sup>165</sup> In April 1997, the Board voted that no environmental impact statement was required for the project, and moved forward with a minor plan amendment in September.<sup>166</sup>

In 1998, the Board held a public hearing on a minor plan amendment for a Lake Nokomis project, and in 1999 the Minneapolis Park & Recreation Board expressed its preliminary approval for the project.<sup>167</sup>

In 1998, the Board authorized a technical evaluation panel to address wetland issues regarding the Chain of Lakes, and continued to work with the U.S. Army Corps of Engineers regarding permitting, the State Historic Preservation Office's designation of adverse impact on the historical landscape of the area, and a memorandum of understanding with USACE, SHPO and the Park Board, including federal input on historical preservation.<sup>168</sup> In 1998, the District elected to seek a permit from itself for wetland

<sup>157</sup> Board Meeting Minutes, February 23, 1995; Board Meeting Minutes, March 23, 1995.

<sup>158</sup> Board Meeting Minutes April 27, 1995.

<sup>159</sup> Twin Lakes Task Force Letter, from the Director of Public Works of the City of St. Louis Park, dated Jun 9, 1995; Board Meeting Minutes, July 13, 1995; Board Meeting Minutes, September 14, 1995.

<sup>160</sup> Board Meeting Minutes, July 27, 1995.

<sup>161</sup> Board Meeting Minutes, August 24, 1995.

<sup>162</sup> Board Meeting Minutes, September 28, 1995.

<sup>163</sup> Board Meeting Minutes, October 12, 1995.

<sup>164</sup> Board Meeting Minutes, January 25, 1996.

<sup>165</sup> Public Hearing Minutes, March 20, 1997.

<sup>166</sup> Board Meeting Minutes, April 10, 1997.

<sup>167</sup> Public Hearing, Board Meeting Minutes, November 12, 1998; Board Meeting Minutes, May 27, 1999.

<sup>168</sup> Board Meeting Minutes, March 26, 1998; Board Meeting Minutes, August 20, 1998.

excavation work related to the project.<sup>169</sup> Citizen and community concerns continued to arise regarding dewatering elements of the project and perceived potential for related damage to homes.<sup>170</sup> The Board approved an emergency pumping request from the Park Board for the Chain of Lakes in 1998.<sup>171</sup> Project planning continued through 1999 and beyond.

### Long Lake Improvement Project

About the time that BWSR approved the MCWD's Water Resources Management Plan in May 1993, the District received a Clean Water Partnership grant from the Minnesota Pollution Control Agency of \$100,000 for the Long Lake Improvement Project.<sup>172</sup> Throughout 1993, the MCWD worked on outreach to the cities of Long Lake, Medina and Orono, and applied in October 1993 for Phase II of the Clean Water Partnership funding.<sup>173</sup>

The MCWD established a technical advisory committee for the project in January 1994, and Manager Martha Hartfiel (spouse of Long Lake council member and later mayor) reported to the Board of Managers that the three cities were concerned about whether the MCWD was sufficiently committed to the successful

completion of this project.<sup>174</sup> She noted that cities wanted assurance of MCWD's funding commitment, while the Board of Managers noted that the MCWD's newly approved plan had the project identified as a priority.<sup>175</sup> The Board directed counsel to work on a draft cooperative agreement to reflect these commitments.<sup>176</sup>

MCWD's work on the project continued earnestly through 1994. The TAC continued to meet, the Board of Managers authorized a feasibility study, and the DNR expressed support of the preliminary design concept for the project.<sup>177</sup> In June 1994, the MCWD engineer presented the project to the city councils of Medina, Orono and Long Lake.<sup>178</sup> By August 1994, the Long Lake city council adopted a resolution of support for the project, while Medina and Orono expressed conceptual approval.<sup>179</sup> The MCWD attorney presented a draft cooperative agreement approved by the Board of Managers for circulation to the three cities.<sup>180</sup> In September 1994, the Board of Managers ordered the Project and adopted a minor plan amendment,

<sup>169</sup> Board Meeting Minutes, October 29, 1998; Board Meeting Minutes, November 12, 1998.

<sup>170</sup> Board Meeting Minutes, October 8, 1998; Board Meeting Minutes, October 29, 1998; Public Comments, Board Meeting Minutes, November 12, 1998; Board Meeting Minutes, November 19, 1998; Board Meeting Minutes, November 24, 1998; Board Meeting Minutes, December 10, 1998; Board Meeting Minutes, December 22, 1998; Board Meeting Minutes, January 28, 1999.

<sup>171</sup> Board Meeting Minutes, March 26, 1998.

<sup>172</sup> Board Meeting Minutes, April 22, 1993.

<sup>173</sup> Board Meeting Minutes, October 28, 1993; Resolution dated October 28, 1993.

<sup>174</sup> Board Meeting Minutes, December 21, 1993 [states technical advisory committee for Long lake will be meeting, but nothing in 1993/4 mentions it getting established]; Board Meeting Minutes, March 24, 1994.

<sup>175</sup> Board Meeting Minutes, March 24, 1994.

<sup>176</sup> Board Meeting Minutes, March 24, 1994.

<sup>177</sup> Board Meeting Minutes, May 26, 1994 [feasibility study]; Board Meeting Minutes, June 23, 1994; Board Meeting Minutes, July 14, 1994 [DNR permit required, TAC meeting];

<sup>178</sup> Board Meeting Minutes, June 23, 1994.

<sup>179</sup> Board Meeting Minutes, August 11, 1994; Board Meeting Minutes, August 29, 1994.

<sup>180</sup> Board Meeting Minutes, August 11, 1994; Board Meeting Minutes, January 26, 1995.

and by October 1994, Hennepin County and BWSR had expressed support for the project.<sup>181</sup>

While all appeared generally sound for the Project to proceed, fundamental problems then emerged. First, the MCWD had yet to acquire land rights to construct the Project. William and Barbara Pearce, owners of the County Road 6 pond location, retained legal counsel and an engineer.<sup>182</sup> The Pearces appealed the ordering of the Project and pursued related litigation.<sup>183</sup> The MCWD resolved the litigation with the Pearces by agreeing to downsize the pond on the Pearce property and look upstream in the sub-watershed for additional treatment capacity.<sup>184</sup>

That additional capacity was found in Medina on the property owned by Jack Wahlfors. An initially friendly conversation with the Wahlfors became more adversarial once the Wahlfors retained legal counsel.<sup>185</sup> An extended period of negotiations led the Board of Managers, through several board meetings of consideration to initiate condemnation proceedings by September 1995.<sup>186</sup> The MCWD acquired the necessary easement through 'Quick Take' condemnation, but

ultimately paid significant sums for the easement and related payments to the Wahlfors for accepting excavation spoils on their property.<sup>187</sup>

The Long Lake City Council, after extensive review of multiple drafts, ultimately signed a cooperative agreement for the Project.<sup>188</sup> The Medina City Council, sympathetic to the interests of their constituent Jack Wahlfors, never agreed to execute the cooperative agreement. Medina objected to contributing to maintenance of the Project, given that Long Lake is not within their city – though the upstream treatment pond was.<sup>189</sup> Similarly, the Orono City Council had similar objections to sharing in maintenance costs, and never signed the cooperative agreement. The Board of Managers contemplated establishing localized sub-watershed assessment districts to pay for project maintenance, but ultimately did not pursue that option.<sup>190</sup>

Groundbreaking for the Long Lake Improvement Project finally occurred in November 1995, and the MCWD implemented an alum treatment of Long

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<sup>181</sup> Notice of Public Hearing, Minor Improvements to Capital Improvement Program, August 25, 1994; Board Meeting Minutes, October 13, 1994.

<sup>182</sup> Board Meeting Minutes, September 22, 1994 [Pearce's attorney raises concern at public hearing]; Board Meeting Minutes, October 13, 1994.

<sup>183</sup> Board Meeting Minutes for November 22, first mention litigation with the Pearces

<sup>184</sup> Letter to Gregory A. Fontaine, Esq., re: Pearce v. Minnehaha Creek Watershed, Dec. 23, 1994; Wenck Memorandum, Dec. 22, 1994 recommends 5-6 acre pond in vicinity of County Road 6, Board Meeting Minutes of Sept. 14, 1995 states the construction of ponds will begin in Jan '98, Board Meeting Minutes of Feb. 22, 1996 mention an easement agreement w/ the Pearces

<sup>185</sup> Board Meeting Minutes, May 11, 1995.

<sup>186</sup> Board Meeting Minutes, June 8, 1995; Letter to Chairman Maple from Mr. John B. Lennes, June 14, 1995; Meeting Minutes, Special Board Meeting, August 31, 1995; Board Meeting Minutes, September 14, 1995.

<sup>187</sup> Executive Sessions discussing Wahlfors litigation during Board Meetings on Nov. 21, 1995, Feb. 22, 1996; April 11, 1996; April 25, 1996; May 9, 1996; June 13, 1996; June 27, 1996; July 11, 1996; August 1, 1996; August 22, 1996; September 12, 1996; October 10, 1996. Board Meeting Minutes, Dec. 21, 1995 [No minutes for that meeting] Board Meeting Minutes, October 24, 1996 [conclusion of litigation, MCWD orders payment of \$21,193.01 to Wahlfors]

<sup>188</sup> Board Meeting Minutes, August 24, 1995.

<sup>189</sup> Board Meeting Minutes, January 26, 1995 [Cities of Medina and Orono raise objections].

<sup>190</sup> Board Meeting Minutes, January 26, 1995.

Lake in 1996.<sup>191</sup> In later years, monitoring data raised ongoing questions about poor performance of the treatment ponds at the Pearce and Wahlfors sites.

### 60<sup>th</sup> and 1<sup>st</sup> Project

In 1998 the Board of Managers held a public hearing on construction of a regional water quality and stormwater management facility at 60<sup>th</sup> St. and 1<sup>st</sup> Ave. So. in Minneapolis. The MCWD adopted a plan amendment for the project and a cooperative agreement with the City of Minneapolis.<sup>192</sup> In 1999, the Board approved the cooperative agreement, along with a plan for the District to design demolition for the project and a wet detention pond, and to take responsibility for site work in coordination with the City of Minneapolis.<sup>193</sup> The City of Minneapolis constructed the project, but did not agree to fulfill facility maintenance obligations, which in turn forfeited the MCWD's reimbursement to the City for project construction costs.

### Landview Landscaping

Landview Landscaping was a contractor and sole proprietor with chronic performance problems in installing shoreline improvements and rip-rap within the District. Issues with the contractor included slope steepness; mono-, rather than

mixed-sized, boulders for stability and erosion prevention; and repeated violations.<sup>194</sup> The District had successfully implemented a licensing program for dredging contractors for several years, and elected to adopt a shoreline contractor license program as a way to ensure that shoreline improvement contractors complied with District adequate shoreline protection and erosion prevention standards.<sup>195</sup>

In May 1993, the District received evidence of multiple violations of its standards by Landview.<sup>196</sup> Following a public hearing concerning Landview's fitness for a shoreline contractor's license, at which the DNR went on record affirming Landview's repeated violations, the Board issued a conditional license to Landview.<sup>197</sup> The District placed the same conditions on Landview's license for the following two years as well.

Landview appealed these license conditions to the Board of Water and Soil Resources, arguing that the District failed to provide due process and challenging the District's authority to license contractors.<sup>198</sup> BWSR affirmed the District's decisions, upholding the District's authority to license and finding that the conditions the District imposed on the licenses were reasonable and

<sup>191</sup> Board Meeting Minutes, November 21, 1995; Board Meeting Minutes, May 23, 1996.

<sup>192</sup> Board Meeting Minutes, May 14, 1998 (moved to prepare cooperative agreement); Board Meeting Minutes, September 24, 1998 [BWSR concern whether the project is a minor plan amendment]; Board Meeting Minutes, December 22, 1998 [cooperative agreement & minor plan amendment adopted].

<sup>193</sup> Board Meeting Minutes, December 22, 1998.

<sup>194</sup> Board Meeting Minutes, September 23, 1993 [discussing slope steepness and randomized placement of boulders].

<sup>195</sup> Board Meeting Minutes, February 25, 1993 [Public Hearing and adoption of Rule M].

<sup>196</sup> Board Meeting Minutes, May 27, 1993 [granting a provisional shoreline improvement contractor's license citing violations]; Proposed Finding of Fact, Conclusions, and Order for Conditional License, September 23, 1993 [violations detailed].

<sup>197</sup> Proposed Finding of Fact, Conclusions, and Order for Conditional License, September 23, 1993.

<sup>198</sup> Board Meeting Minutes, October 28, 1993 [appeal to BWSR, MCWD sends materials]; Board Meeting Minutes March 24, 1994 [BWSR affirms MCWD issuance of a conditional license].

were not in violation of due process.<sup>199</sup> Specifically, BWSR concluded that “MCWD has authority to adopt rules to require permits for shoreline improvements; licensing of shoreline improvement contractors is a reasonable means for MCWD to implement its regulatory program; the conditions imposed on Landview’s 1994 and 1995 Licenses are reasonable; Landview had adequate notice and an opportunity to be heard.”<sup>200</sup>

BWSR also affirmed the District’s rationale for its licensing rule:

The need for the licensing of shoreline improvement contractors will vary from watershed district to watershed district. In the case of Lake Minnetonka, there is a great deal of shoreline improvement activity by means of placement of rip rap. The MCWD has determined that, in light of the amount of this activity and its potential for significant impact upon the watershed, it is necessary to ensure that rip rap and other shoreline improvements are properly constructed in accordance with MCWD rules and permit requirements.<sup>201</sup>

Landview continued to contest the conditions placed on its license, and appealed BWSR’s decision to the Minnesota Court of Appeals, where it ultimately found success.<sup>202</sup> In 1997, the court of appeals reversed BWSR and sustained Landview’s

challenge, holding that the District lacked express or implied statutory authority to license shoreline improvement contractors.<sup>203</sup> When Landview then sued the MCWD for damages, the court of appeals held that, although the District’s conduct in promulgating shoreline contractor licensing rules was determined to be without statutory authority, the District’s conduct was protected by statutory discretionary and due-care immunity because its actions were consistent with the public purpose underlying its rule and comported with due process.<sup>204</sup>

### City of Greenwood

Kee Construction, Inc. (Kee) applied to the District for a dredging permit in connection with the excavation of a navigational channel at the inlet of St. Alban’s Bay on Lake Minnetonka, located in the City of Greenwood.<sup>205</sup> Following hearings on the permit application, the District determined that the project did not have the potential for significant environmental impact and issued the permit.<sup>206</sup> The City of Greenwood sued in district court contesting the MCWD’s issuance of the permit.<sup>207</sup>

The district court held that the permit was valid and granted summary judgment for the MCWD, but imposed its own additional conditions on the permit and the activities authorized under the

<sup>199</sup> Board Meeting Minutes, October 28, 1993 [appeal to BWSR, MCWD sends materials]; Board Meeting Minutes March 24, 1994 [BWSR affirms MCWD issuance of a conditional license].

<sup>200</sup> [Complete citation. Need record of BWSR’s decision, early 1994]

<sup>201</sup> [Complete citation. Need record of BWSR’s decision, early 1994].

<sup>202</sup> *In re 1994 & 1995 Shoreline Improvement Contractor Licenses of Landview Landscaping*, 546 N.W.2d 747 (Minn. Ct. App. 1996).

<sup>203</sup> *In re 1994 & 1995 Shoreline Improvement Contractor Licenses of Landview Landscaping*, 546 N.W.2d 747 (Minn. Ct. App. 1996).

<sup>204</sup> *Landview Landscaping v. Minnehaha Creek Watershed Dist.*, 569 N.W.2d 237 (Minn. Ct. App. 1997).

<sup>205</sup> Board Meeting Minutes, October 28, 1993.

<sup>206</sup> Board Meeting Minutes, November 9, 1993.

<sup>207</sup> *City of Greenwood v. Minnehaha Creek Watershed District*, No. 9320126 [Complete citation, no database identifier, not listed in Lexis/Westlaw] (D. Minn. [no date available]).

permit.<sup>208</sup> The district court set compulsory dates for dredging activities, required specific descriptions of work authorized, and stated that any violation by Kee of District rules or of Kee's permit would result in the District having violated the district court's order.<sup>209</sup>

The MCWD appealed, arguing that the district court exceeded its scope of review by imposing conditions on the permit and ordering that the District would be held to be in violation of the court's order if Kee failed to comply with District rules or the permit itself.<sup>210</sup> The Minnesota Court of Appeals agreed, and removed the conditions imposed by the district court.<sup>211</sup> The court of appeals addressed the specific conditions of the permit, holding that decisions by administrative agencies are subject only to limited review.<sup>212</sup> Specifically, courts may only decide whether the agency has authority with respect to a specific matter, whether it acted under the correct theory of applicable law, and whether the facts found by the agency are supported by the evidence.<sup>213</sup> In short, the court could declare the existing permit valid or invalid as issued. The court agreed with the District that detailed decisions about how to reduce the impact on the environment of dredging do not fall within judicial functions.<sup>214</sup> The court

held that when courts impose detailed conditions, they improperly substitute their judgment for that of the responsible administrative agency.<sup>215</sup> The court further agreed that the district court had exceeded its authority when it ordered that the District would be held in contempt if Kee violated the terms of its permit.<sup>216</sup> Since Kee had not begun work, much less violated the terms of the permit, such a question was purely speculative.

### Ewing Wetland

In July 1994, the developer Halley Custom Homes proposed a multi-lot subdivision home construction project near Ewing Avenue in Minneapolis and St. Louis Park in an area abutting a wetland.<sup>217</sup> Citizen opposition to the project included prominent environmental and conservation activists, voicing concerns about groundwater impacts, including the groundwater connection to Cedar Lake.<sup>218</sup> (Many of these same conservation activists would appear later before the MCWD concerning Camp Coldwater Springs as noted below.) The District tabled the project proposal several times for further analysis.<sup>219</sup> The District engineer confirmed the wetland delineation for the project, and that the project had no impact on the wetland, and a hydrogeologist

<sup>208</sup> *City of Greenwood v. Minnehaha Creek Watershed Dist.*, Nos. C2-94-1726, C2-94-1807, 1995 Minn. App. LEXIS 318 (Ct. App. Mar. 7, 1995). [Recounts the D. Court's decision and findings].

<sup>209</sup> *City of Greenwood v. Minnehaha Creek Watershed Dist.*, Nos. C2-94-1726, C2-94-1807, 1995 Minn. App. LEXIS 318 (Ct. App. Mar. 7, 1995). [Recounts the D. Court's decision and findings].

<sup>210</sup> *Ibid.*

<sup>211</sup> *Ibid.*

<sup>212</sup> *Ibid.*

<sup>213</sup> *Ibid.*

<sup>214</sup> *Ibid.*

<sup>215</sup> *Ibid.*

<sup>216</sup> *Ibid.*

<sup>217</sup> Board Meeting Minutes, July 14, 1994.

<sup>218</sup> Public Comments, Board Meeting Minutes, July 14, 1994; Public Comments, Board Meeting Minutes, September 8, 1994.

<sup>219</sup> Board Meeting Minutes, July 14, 1994; Board Meeting Minutes, September 8, 1994; Special Meeting, Board Meeting Minutes, September 22, 1994; Board Meeting Minutes, March 23, 1995; Board Meeting Minutes, July 13, 1995; Board Meeting Minutes, July 27, 1995 [permit conditions deemed satisfied].



from Wenck confirmed that there were no groundwater impacts from the project.<sup>220</sup> The District's permit decision was appealed to BWSR, an appeal that was ultimately abandoned, and later mooted by construction of the project.<sup>221</sup>

### MnDOT Permitting

In 1994, the District learned that MnDOT was pursuing its work at the Highway 62/35W interchange without an MCWD permit.<sup>222</sup> In September 1994, the District received notice of a blanket MnDOT policy change: MnDOT would no longer seek watershed district permits for highway projects.<sup>223</sup> A June 1995 environmental impact statement letter from US DOT also reported MnDOT's position that it need not apply for watershed district permits.<sup>224</sup> Near the Highway 62/35W interchange, residents of Grass Lake expressed concern about the impact of the MnDOT project to the lake, and the District formed a Grass Lake Citizens Advisory Committee to monitor this issue and develop a management plan for Grass Lake.<sup>225</sup>

The Board of Managers adopted a motion that any MnDOT project proceeding without a permit

would be considered a violation and brought this issue to the 1995 annual conference of the Minnesota Association of Watershed Districts (MAWD).<sup>226</sup> MAWD adopted a strong resolution advocating that MnDOT projects should be subject to watershed district permitting, and in 1996, the Legislature added a specific provision to the Watershed law making it explicit that MnDOT must obtain watershed district permits for its projects.<sup>227</sup>

In early 1999, MnDOT sought a stormwater management permit for reconstruction work along Highway 55 in Minneapolis.<sup>228</sup> The Board of Managers developed concerns that the construction involved deep disturbance of bedrock and could potentially impact seeps and springs in the area.<sup>229</sup> The Board ultimately approved the project permit with conditions, and directed a hydrogeological study of the construction area.<sup>230</sup> MnDOT challenged these permit conditions in district court, and the litigation continued beyond 1999 (to be discussed in Chapter 4).

<sup>220</sup> Report of District Engineer, Board Meeting Minutes, December 16, 1994.

<sup>221</sup> Board Meeting Minutes, January 12, 1995.

<sup>222</sup> Special Meeting Minutes, Board Meeting, June 9, 1994.

<sup>223</sup> [Complete citation. No source in minutes/annual reports]

<sup>224</sup> Board Meeting Minutes, June 8, 1995.

<sup>225</sup> Executive Committee Meeting, October 5, 1994 [formation of Grass Lake Citizen Advisory Committee]; Board Meeting Minutes, December 8, 1994 [citizen interviews].

<sup>226</sup> Board Meeting Minutes, October 12, 1995; "A Resolution Requesting the Minnesota Association of Watershed Districts to Require the Minnesota Department of Transportation to Apply for Watershed District Permits for Roadway Construction and Road Improvement Projects," October 12, 1995.

<sup>227</sup> Board Meeting Minutes, January 25, 1996 [bills introduced in House and Senate Transportation Committees]; Board Meeting Minutes February 8, 1996 (Senate Committee passed); Board Meeting Minutes, February 22, 1996 (House Committee passed). Text of the statute: [1996 Minn. ALS 407](#), [1996 Minn. Chapter Law 407](#), [1995 Minn. S.F. No. 2167](#).

<sup>228</sup> Public Comments, Board Meeting Minutes, May 27, 1999.

<sup>229</sup> Board Meeting Minutes, June 10, 1999; Board Meeting Minutes, June 22, 1999.

<sup>230</sup> Board Meeting Minutes, June 22, 1999; Board Meeting Minutes, July 1, 1999; Board Meeting Minutes, July 15, 1999 (Approval of execution of the Study contract).

## Hennepin County Study of Water Management

In December 1994, the District learned of a Hennepin County legislative initiative to abolish watershed organizations and turn water resource management over to county government. The District promoted a resolution, adopted at the MAWD annual conference, affirming watershed districts as cost effective and environmentally sound managers of water resources.<sup>231</sup> Hennepin County staff prepared a report on the alternatives to watershed district management.<sup>232</sup> At a study session briefing on the Long Lake Improvement Project, MCWD managers learned that the apparent root of the County's concern came from Commissioner Mike Opat, who have been frustrated with the lack of progress toward addressing water quality issues in his district.<sup>233</sup> After a productive discussion with MCWD managers, Commissioner Opat withdrew his earlier interest in broad reform and invited collaboration to address local water issues in his district.<sup>234</sup>

## Metropolitan Airport Commission

In 1996, the Metropolitan Airport Commission applied for wetland alteration permits to expand the Minneapolis International Airport.<sup>235</sup> The Board approved MAC's permit application in 1997, and in 1998 approved a variance from Rule B because stormwater runoff from the project would discharge outside of the District, into another watershed (the Mississippi River).<sup>236</sup>

## Rule Amendments

The latter half of the 1990s saw various amendments to the District's rules. In 1996, the Board amended its rules to include buffer zones around wetlands.<sup>237</sup> That same year, the Board proposed revisions to Rule B, stormwater management, and Rule D, wetland protection.<sup>238</sup> In 1998, the Board voted to revise the District's treatment of multi-unit residential development in its rules and to amend Rule B, stormwater management, and Rule N, erosion control, pursuant to that aim.<sup>239</sup>

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<sup>231</sup> Petition of Managers from Watershed Districts to the Minnesota Association of Watershed Districts and the Minnesota Board of Water and Soil Resources, December 3, 1994. Adopted by MCWD Board of Managers during the Regular MCWD Board Meeting of December 22, 1994.

<sup>232</sup> *Ibid.*

<sup>233</sup> [Complete citation. Didn't find a source for this in the minutes]

<sup>234</sup> Board Meeting Minutes, October 12, 1995 [refers to scheduled meeting with Hennepin County to discuss water management issues]; Board Meeting Minutes, October 26, 1995 [mutual education meeting with Comm'r Opat];

<sup>235</sup> Board Meeting Minutes, December 26, 1996 [permit application introduced]; Board Meeting Minutes, February 27, 1997 [permit application approved].

<sup>236</sup> Board Meeting Minutes, April 9, 1998.

<sup>237</sup> MCWD Rule Revision, February 22, 1996, p. 14.

<sup>238</sup> Public Hearing on Proposed Revisions to the MCWD Rules, June 13, 1996; MCWD Rule Revision, June 13, 1996.

<sup>239</sup> Board Meeting Minutes, October 10, 1998 [Rule B amendments approved for public comment]; Board Meeting Minutes, October 19, 1998 [Rule B & N amendments discussion]; Board Meeting Minutes, November 12, 1998 [packages sent to commenters, public hearing scheduled]; Board Meeting Minutes, November 19, 1998 [adoption additional changes to Rules B and N fails]; Public Hearing on Rule Amendments, Board Meeting Minutes, November 24, 1998 [interim final state pending 6 month review, approved].

## Reflections and Lessons Learned

1. The MCWD learned the value of strong relationships with local leaders in pursuing major watershed improvement projects.

Collaboration with the mayor of Minneapolis and Hennepin County commissioners positioned the MCWD to assert a more vigorous leadership role in the Minneapolis Chain of Lake projects. MCWD also learned through the Gleason Lake project how partner transparency and shared understanding of project finances can be an essential element of project success.

2. Lonely tough decisions may create long-lasting consequences.

MCWD faced tough dilemmas deciding whether to proceed with the Long Lake project. While some local leaders pushed the District to proceed, the lack of clear commitment from all three affected municipalities became a serious challenge. Ordering a major watershed project without the necessary property rights in hand creates serious project risks. Exercising eminent domain to acquire these property rights worked to a satisfactory conclusion with the Painter Creek project but created significant costs in local perceptions and relationships for the Long Lake project. Just because there is science to support a project does not mean the District is ready to proceed, or should go it alone. There are many more opportunities and needs than time or money can fully support. Selectively working where MCWD has partnership capital provides

long term wind in our sails, and credibility. Building relationship capital requires more than MCWD's technical study or financial investment.

3. Earning mutual respect can require speaking up or drawing a line.

Especially in its early years, MCWD occasionally faced critical tests of its credibility and authority. MnDOT deciding that it would not comply with watershed district permitting requirements posed one such test for MCWD and watershed districts generally. Over time, working through these issues allowed MCWD to find a stronger and more productive posture with MnDOT and other actors, one based on mutual respect. Similarly, adopting a shoreline contractor license program seemed to be an appropriate means to address a persistent case of noncompliance. While certainly MCWD was simultaneously pursuing major watershed improvement projects, but active and visible enforcement actions present risk in creating the perception of heavy-handed regulatory agency.

# Chapter 4: 2000-2009

## Studies, A Regulatory Approach, and Expanding Programs

### Introduction and Overview

MCWD entered the new millennium taking strong stands, willing to pursue the leading and bleeding edge of water resources protection. Comprehensive studies undertaken during this period laid a strong scientific foundation to drive key events, including the underpinning of the 2007 Water Resources Management Plan (Plan). A Total Maximum Daily Load or pollutant loading allocation approach in the MCWD Plan brought more stringent regulatory standards and imposed somewhat unwelcome demands on cities. MCWD succeeded with groundwater protection at Highway 55 thanks in part to strong legislative support and failed with regulatory ideas like imposing lake buffers. The MCWD also continued to expand its vision of partnerships to include private partners such as Methodist Hospital, Duke Realty, and Bachman's, and invested in cost share programs to promote watershed stewardship with individual property owners.

### Hydrologic, Hydraulic, and Pollutant Loading Study (HHPLS)

Initiated in 2000 and completed in 2003, MCWD undertook the HHPLS study to document the watershed's physical and biological characteristics.<sup>240</sup> The study combined data on water volume, quality, and other monitoring

projects to model the amount and quality of water moving through the watershed. When completed, it was one of the largest H&H models in the country.<sup>241</sup> However, the model ran into various technical issues, including calibration against actual creek flows measured in the field.<sup>242</sup> MCWD faced pushback from cities on these technical grounds, and the project also faced significant cost overruns.<sup>243</sup> In subsequent years, however, following development, feedback from communities, and calibration the Department of Natural Resources and the Federal Emergency Management Agency used it for the 100-year flood mapping for the National Flood Insurance Program.<sup>244</sup>

### Wetland Function & Value Assessment

In 2001, MCWD contracted with the Hennepin Conservation District (HCD) to develop a comprehensive inventory of the 4,500 wetlands within the watershed. The goal was to develop a management strategy aimed at the active preservation of these areas rather than simply post-degradation improvement. The program focused on wetlands larger than a quarter of an acre, with smaller wetlands considered on a case-by-case basis.<sup>245</sup> The project made use of an enhanced version of MnRAM (a numerical model that ranked each wetland function in a traditional Excel sheet)

<sup>240</sup> Board Meeting Minutes, April 13, 2000 [Request for Proposals receives 8 bids]; Board Meeting Minutes, November 6, 2003 [model presented to Board on Nov. 20, 2003].

<sup>241</sup> [Complete citation. need source]

<sup>242</sup> Board Meeting Minutes August 8, 2002 [accuracy and calibration issues discussed].

<sup>243</sup> Board Meeting Minutes, March 6, 2003 [Emmons & Olivier requesting more funds]; Board Meeting Minutes August 8, 2002 [E&O request \$126k additional funds].

<sup>244</sup> Board Meeting Minutes, March 15, 2007

<sup>245</sup> Board Meeting Minutes, June 20, 2002.

known as MCRAM (the Minnehaha Creek Resource Method). This new model was reviewed favorably by the Board of Water and Soil Resources (BWSR).<sup>246</sup> The data resulting from the assessment was used to identify high value wetlands, around which the MCWD built a wetland classification framework (Preserve, Manage 1, 2 & 3) used to drive policy and management decisions.<sup>247</sup> It also included recommendations for the restorative management of already-degraded wetlands.<sup>248</sup> These results were made available to all watershed cities, which had been initially skeptical about the project and concerned with how MCWD would use the tool.<sup>249</sup> The results were incorporated into the District's Water Resources Plan, and later informed the drafting of Rule M on vegetative buffers, which cities strongly opposed.<sup>250</sup>

### Stream Assessment

The final major assessment project of the decade was a stream assessment study, proposed in response to the destabilization of Minnehaha Creek due to stormwater discharges and bed scour.<sup>251</sup> The project made a comprehensive baseline assessment of stream conditions, which were mapped using GIS, and focused on stream classifications, the identification of erosion and scour locations, habitat condition, buffers and

exotics, and floodplain encroachments.<sup>252</sup> Initial results in 2004 indicated that Minnehaha Creek was aggrading, rather than incising as thought, and found that excessive grade control had resulted in excessive impoundments of the Creek.<sup>253</sup> These conditions had impaired aquatic life habitat through the Creek.<sup>254</sup> In 2005, the assessment focused on the upper watershed, and expanded to include macroinvertebrate sampling and the creation of a physical inventory database.<sup>255</sup> Overall, the assessment work resulted in recommendations for better control of stormwater flows into the Creek (by replacing stormwater sewer outlets) and streambank restoration projects at more than 50 locations.<sup>256</sup> These results and recommendations were shared on the MCWD website as well as made available to all upper watershed cities.

### Creek Visioning Work

Driven by the HHPLS project, the Creek Visioning initiative sought to move from data collection and leading-edge modeling work into strategically using that information to drive future projects. MCWD partnered with the United States Army Corps of Engineers (USACE) and cities to create a task force to which MCWD made nine appointments from the Citizen Advisory

<sup>246</sup> Board Meeting Minutes, August 9, 2001 [BWSR reviewed MCRAM favorably].

<sup>247</sup> Board Meeting Minutes, March 20, 2003; "Benefits of Wetland Buffers: A Study of Functions, Values, and Size," 2001. <https://www.minnehahacreek.org/sites/minnehahacreek.org/files/attachments/MCWD%20Buffer%20Study.pdf>

<sup>248</sup> "Benefits of Wetland Buffers: A Study of Functions, Values, and Size," 2001.

<https://www.minnehahacreek.org/sites/minnehahacreek.org/files/attachments/MCWD%20Buffer%20Study.pdf>

<sup>249</sup> Board Meeting Minutes, March 13, 2003 [content made available to city, not the skepticism part].

<sup>250</sup> Board Meeting Minutes, March 20, 2003 [Rule M]; Board Meeting Minutes March 4, 2004 [Rule M]; Board Meeting Minutes, October 9, 2003 [incorporate FAW into Plan].

<sup>251</sup> Board Meeting Minutes, May 10, 2001.

<sup>252</sup> Stream Assessment (2003), MCWD website: <https://www.minnehahacreek.org/project/stream-assessment-2003>

<sup>253</sup> Board Meeting Minutes, July 8, 2004.

<sup>254</sup> *Ibid.*

<sup>255</sup> Board Meeting Minutes, March 17, 2005.

<sup>256</sup> Board Meeting Minutes, July 8, 2004.

Committee, the Technical Advisory Committee and agency representatives to whom the results of the visioning would be useful.<sup>257</sup> Much of this work built off the initial HHPLS model, expanded to model Minnehaha Creek's full conditions. The project identified the top priorities of erosion control and support of aquatic life over the creek's length, while also identifying issues like streambank stabilization and the need for support and maintenance of recreational opportunities.<sup>258</sup> The challenge came in implementing these goals. MCWD pursued wide ranging projects that alternated between regional stormwater infiltration projects and streambank stabilization, stretching resources and time. Nevertheless, the Visioning work did provide a strong platform that led to the introduction of successful programs like the Land Conservation Program and more informed regulatory work.

### Rulemaking

In early 2001, MCWD began drafting a new Rule M that removed buffer provisions from Rule D (Wetland Protection) and created a more comprehensive standalone buffer rule. The new rule would impose minimum buffer width requirements on lakes, streams and wetlands—instead of just wetlands and public waterways in Rule D—and included constraints on grading and filling, the placement of structures and surfaces, and overall vegetative disturbance.<sup>259</sup> The buffer width requirements drew upon the Wetland

Function and Value Assessment and based in substantial scientific literature that found demonstrated benefits for water quality, integrity of riparian edges, and habitat protection as a result of vegetative buffers.<sup>260</sup>

the proposed rule faced strong opposition from both cities and the Builders Association of the Twin Cities (BATC), although some environmental organizations expressed support.<sup>261</sup> A first round of opposition at a public hearing in February 2002 questioned the benefits of buffers on water quality and expressed fears that buffers would increase sprawl, reduce land value, and result in the loss of buildable acreage.<sup>262</sup> Subsequently, a revised version of the draft rule was released, this time accompanied by a guidance document to clarify and interpret its provisions.<sup>263</sup>

The revised draft of the buffer rule also included alternatives like grandfathering provisions, exceptions for public roads, utilities, and trails, and a Comprehensive Site Water Resource plan that cities could utilize instead of buffer requirements.<sup>264</sup> Opposition persisted, however, and BATC even threatened legal action challenging the buffers as a taking and the authority of MCWD to regulate based on wildlife protection.<sup>265</sup> The Minnesota Parks and Recreation Board also expressed criticism of the proposed rule and stated that it felt it had been excluded

<sup>257</sup> Board Meeting Minutes, August 26, 2004.

<sup>258</sup> Final Report, Minnehaha Creek Visioning Partnership.

<https://www.minnehahacreek.org/sites/minnehahacreek.org/files/attachments/MinnehahaCreekVisioningPartnership.pdf>

<sup>259</sup> Board Meeting Minutes, January 17, 2002.

<sup>260</sup> Board Meeting Minutes, March 4, 2004.

<sup>261</sup> *Ibid.*

<sup>262</sup> Board Meeting Minutes, February 14, 2002.

<sup>263</sup> Meeting Minutes, March 4, 2004

<sup>264</sup> Board Meeting Minutes, March 4, 2004.

<sup>265</sup> *Ibid.*

from the rulemaking process.<sup>266</sup> The draft rule went through another round of revisions.

The final version of the draft buffer rule, released in late 2003, again received similar responses, especially from cities concerned about single-family properties exemptions, and BATC continued to threaten legal action.<sup>267</sup> The Minneapolis Department of Public Works questioned the sufficiency of data to even demonstrate effectiveness of the rule, despite the scientific literature and local wetland assessment work.<sup>268</sup> Notably, multiple environmental groups expressed strong support for the rule, including the Conservation League of Edina.<sup>269</sup>

Despite efforts to work directly with cities and the creation of a task force to deal with these issues, MCWD finally decided to abandon the rule, prioritizing good relationships with the community over forcing compliance with a controversial rule.<sup>270</sup> Wetland protection buffers were left as is in Rule D.

### 2007 Watershed Plan

Initiated in 2005, the updates to the MCWD watershed plan were envisioned as a place where goals for future rulemaking and policies were articulated and from which projects could work to achieve those goals. The objective for the plan was to organize and enhance the GIS system for the

watershed, reviewing and incorporating previous floodplain mapping and the HHPLS modeling work. All elements of watershed programs and data were to be integrated, creating sub-watershed implementation plans and capital programs.

Central to this work was the development of the Total Maximum Daily Load (TMDL) approach and the creation of performance-based rules. MCWD embraced the pollutant loading approach of TMDLs to develop pollution reduction budgets for each subwatershed to meet water quality standards.<sup>271</sup> This was seen as a way to reorient regulations and project planning to move proactively towards meeting water resource goals for specific waterbodies, instead of playing “catch up” and only addressing development impacts after the fact. With the support of an MPCA grant, MCWD developed load-reduction goals and plans for the waterbodies in the District and incorporated these TMDLs into the Plan.<sup>272</sup> These goals were intended to be collaborative with cities, but also placed expectations, as cities would be the entities held responsible for meeting TMDLs ultimately, and not watershed districts.<sup>273</sup> The approach was a “three legged stool;” performance targets were to be achieved three ways, through (1) load allocation to cities; (2) increased rule protections; or (3) MCWD capital projects. Cities often viewed (1) and (2) as unfunded mandates.

<sup>266</sup> *Ibid.*

<sup>267</sup> *Ibid.*

<sup>268</sup> *Ibid.*

<sup>269</sup> *Ibid.*

<sup>270</sup> Board Meeting Minutes, April 8, 2004.

<sup>271</sup> Board Meeting Minutes, February 17, 2005 [Wenck Associates contracted to develop subwatershed plans]; Board Meeting Minutes, January 18, 2007 [subwatershed approach developed out of H&H Model]; Jan 19, 2006 [subwatershed plans discussed]; Feb. 9, 2006 [upper watershed water quality reformatted to subwatershed focus]; Board Meeting Minutes, June 8, 2006 [discussion of subwatershed pollutant loading goals].

<sup>272</sup> Board Meeting Minutes, February 8, 2007.

<sup>273</sup> Board Meeting Minutes, December 14, 2006.

Unsurprisingly, this met with pushback from cities, although the main concern was cost and not the scientifically based goals themselves.<sup>274</sup> Clarifications that MCWD would not dictate to cities how to meet these goals, and the inclusion of three ways to garner credits to reduce load requirements (including adopting a capital project, introducing Best Management Practices like street sweeping, and other regulations) mitigated the city concerns, and the Watershed Plan went on to be formally adopted by MCWD.<sup>275,276</sup>

Some cities used the 2007 Plan as an occasion to request funding of capital projects to address local water issues. Minneapolis, for example, requested major MCWD funding to assist in addressing the federal regulatory requirement of disconnecting combined sewer overflow and mitigating local flooding issues.<sup>277</sup> MCWD identified such needs generally, but not all these requests could be embraced in the plan.

It is also noteworthy that the plan had 17 ambitious goals that pushed significant expansion of MCWD's activities. While MCWD accomplished much in line with these goals, the broad range of multiple goals reflected a lack of strategic coordination between programs and at times impacted relationships between partners and programs internally.

## Land Conservation Program

Initially proposed as a possibility in 2003, the Land Conservation Program was another effort to preempt water resource degradation by taking proactive measures. The goal of the program was to preserve high quality natural areas and green infrastructure that had the potential for the protection and improvement of water resources throughout the watershed. For its development, MCWD worked with a wide range of advisory partners, including the Hennepin County Environmental Services, Three-Rivers Parks District, U.S. Fish & Wildlife, Natural Resources Conservation Service, Carver County SWCD, and Carver County Planning.

Investigative work throughout 2003 on strategies to identify appropriate target land for conservation resulted in recommendations to identify sites with (a) the highest natural biodiversity, (b) high potential for improving water quality, and (c) strategic potential to contribute to the creation of natural corridors.<sup>278</sup> This strategy resulted in the identification of four "macrosites," within which specific sites took priority due to existing natural and developed features: the Painters Creek Wetlands, Painters Creek Northwest, Forest Bluff, and Dutch Lake.<sup>279</sup> Both acquisition of title and the use of conservation easements were recommended as preservation methods.<sup>280</sup>

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<sup>274</sup> Board Meeting Minutes, December 14, 2006.

<sup>275</sup> Board Meeting Minutes, December 14, 2006.

<sup>276</sup> MCWD Comprehensive Water Resources Management Plan 2007-2017

[https://www.minnehahacreek.org/sites/minnehahacreek.org/files/CompPlan/2007%20Comprehensive%20Plan\\_Full\\_with%20amen\\_dments.pdf](https://www.minnehahacreek.org/sites/minnehahacreek.org/files/CompPlan/2007%20Comprehensive%20Plan_Full_with%20amen_dments.pdf)

<sup>277</sup> Board Meeting Minutes, January 18, 2007 [references meeting w/ Minneapolis reps regarding integrated stormwater/flooding & sewage issues into WMP – no funding request].

<sup>278</sup> Board Meeting Minutes, November 13, 2003.

<sup>279</sup> Board Meeting Minutes, November 13, 2003.

<sup>280</sup> Complete citation. Board Meeting Minutes, December 17, 2009 [program audit reiterates flexible approach regarding fee title or conservation easements in order to best meet MCWD conservation goals; states that original policy was neutral as to one or the other].



In 2004, MCWD hired a full time Land Preservation Specialist, and the program began acquiring land in 2005.<sup>281</sup> Over the next five years, more than 300 acres of land were acquired for protection, multiple easement projects were utilized, and over ten thousand feet of lakeshore and creek frontage were protected.<sup>282</sup> In 2006, the program secured \$20 million in bonded financing from Hennepin County.<sup>283</sup>

While the program had significant success, it lacked integration with the ongoing capital project planning, leaving MCWD working with uncoordinated initiatives instead of using the program to complement and support those goals. Specific land acquisitions faced particular challenges, including one large acquisition contemplated in Victoria that turned out to conflict with the city's land use and development plans.<sup>284</sup> Other cities questioned the MCWD's use of its ad valorem tax levy or large real estate purchases.<sup>285</sup> As the program moved into the new decade, these concerns remained ongoing.

### Mound Downtown Redevelopment Projects

In 2004, the City of Mound began initial stages of a re-development plan for the downtown area that would include water quality issues and efforts to protect the ecological health of wetlands and waters in that area.<sup>286</sup> MCWD worked with the City

of Mound, the Mound Harbor Development Group, and Our Lady of the Lake Catholic Church to demonstrate the ideal approach to redevelopment, re-imagining stormwater management as an asset to create aesthetic amenities like rain gardens, rather than as a liability to divert. The end project included rain gardens surrounding the private development, sand filters at the Metro Transit stop, and experimental porous concrete at the Wolner Baseball fields.<sup>287</sup> While the load reduction achieved was proportionally rather limited, the project nonetheless demonstrated innovative stormwater management techniques, and as one of MCWD's first public/private partnerships, remained a successful venture.<sup>288</sup>

### Pamela Park

MCWD took on several successful water quality improvement projects over the decade, of which the Pamela Park project offered a case study in healthy cooperative relationships and comprehensive wetland restoration. When the City of Edina responded to MCWD's solicitation of city interest in regional water quality ponding, the City and MCWD initiated a cooperative agreement, with the City handling project management and MCWD contributing financially and with restoration guidance and work.<sup>289</sup> The project itself concerned 18.4 acres of degraded wetland and a 7-acre lake, with about 500 developed acres in Edina draining into the area.<sup>290</sup> The lake suffered

<sup>281</sup> Board Meeting Minutes, August 12, 2004; Annual Report 2004 pg. 10.

<sup>282</sup> MCWD Annual Reports 2005 pg. 10, 2006 pg. 13, 2007 pg. 15-16, 2008 pg. 14, 2009 pg. 13-14.

<sup>283</sup> MCWD Annual Report 2006 pg. 13.

<sup>284</sup> Complete citation.

<sup>285</sup> Complete citation. [comments received during acquisition comment period]

<sup>286</sup> Board Meeting Minutes, June 22, 2004.

<sup>287</sup> <https://www.minnehahacreek.org/project/downtown-mound-redevelopment>

<sup>288</sup> Complete citation [identify project cost-benefit from ordering]

<sup>289</sup> Pamela Park Wetland Restoration Project, MCWD website: <https://www.minnehahacreek.org/project/pamela-park-wetland-restoration-project>

<sup>290</sup> *ibid.*

from significant sediment build up.<sup>291</sup> Restoration work focused on dredging and removal of accumulated sediment, then addressed water quality issues like phosphorus removal.<sup>292</sup> The project also included removal of the invasive purple loosestrife, which crowded out native vegetation that would naturally buffer water edges.<sup>293</sup> Stormwater ponds and wet detention ponds were constructed to reduce erosion and manage stormwater flows.<sup>294</sup> While the public and residents of the area raised some issues regarding loss of trees and creek backups, MCWD worked with these concerns directly, meeting with residents on site at times, and these concerns did not spiral into larger opposition.<sup>295</sup>

### Big Island Restoration Project

The Big Island Restoration was a large and successful restoration project achieved through a partnership with the City of Orono and the Big Island Veterans' Camp. In 2005, the City of Orono approached MCWD regarding the purchase of the island, already having secured a purchase agreement with the Veteran's Camp.<sup>296</sup> In addition to contributing financially to the purchase, MCWD also executed a conservation easement to ensure additional enforcement of conservation goals—MCWD had previously scored the site highest

among potential land preservation options due to its unique features as a large and generally undeveloped island on Lake Minnetonka.<sup>297</sup> In 2005 the MCWD purchased a conservation easement from the City of Orono on 56 acres adjacent to the Big Island Regional Park and in 2009 the MCWD and Orono partnered in an effective shoreline protection and restoration project.<sup>298</sup>

The project focused on wetland restoration, with an emphasis on habitat restoration as a way to improve water quality and ensure long-term land and water resource management. Restoration was divided into two main zones: the first included a cattail marsh, perched march, and the eastern beach ridge wetland, while the second focused on the restoration of ephemeral forested swamps and the isthmus beach ridge wetland.<sup>299</sup> Later, stabilization of the cliffs and shoreline expanded the scope, and MCWD handpicked riprap used for installation to ensure both the functionality and aesthetic appeal of the design.<sup>300</sup> While this expansion caused a significant budget increase, the end results were highly successful and saved a significant natural resource from a future that had been otherwise slated for private development.<sup>301</sup>

<sup>291</sup> *Ibid.*

<sup>292</sup> *Ibid.*

<sup>293</sup> Meeting Minutes, February 24, 2005

<sup>294</sup> Pamela Park Wetland Restoration Project, MCWD website: <https://www.minnehahacreek.org/project/pamela-park-wetland-restoration-project>

<sup>295</sup> Board Meeting Minutes, January 25, 2001 [citizen concerns].

<sup>296</sup> Board Meeting Minutes, May 5, 2005.

<sup>297</sup> Board Meeting Minutes, July 10, 2008; Big Island Restoration, MCWD website: <https://www.minnehahacreek.org/project/big-island-restoration>; Board Meeting Minutes, May 5, 2005.

<sup>298</sup> Board Meeting Minutes, April 6, 2006 [closes on the conservation easement]; Big Island Restoration, MCWD website: <https://www.minnehahacreek.org/project/big-island-restoration>.

<sup>299</sup> Board Meeting Minutes, June 14, 2007.

<sup>300</sup> Board Meeting Minutes, January 17, 2008.

<sup>301</sup> Board Meeting Minutes, July 10, 2008; Big Island Restoration, MCWD website: <https://www.minnehahacreek.org/project/big-island-restoration>

## Methodist Hospital Development

One of the first projects to begin to restore Minnehaha Creek to ecological health was the partnership with the Methodist Hospital to re-meander the Minnehaha Creek. Methodist Hospital identified its interest in the restorative, healthy aspects of access to nature for hospital patients, and was open to increasing public access to the creek through the hospital campus, while MCWD saw the site as an opportunity for creek and wetland restoration, in which MCWD would invest \$500,000.<sup>302</sup> The construction included a wetland trail with an elevated boardwalk, watershed education features, and a canoe launch.<sup>303</sup> By 2009 the re-meander was completed, and in 2010 re-vegetative work in the wetland was nearly completed. The project was well-received by not only the hospital's patients, visitors, and staff, but also the general public.<sup>304</sup> It remains a template reference project for MCWD that showed the enormous potential of upstream restoration.

## Duke Realty & West End

Duke Realty applied for an MCWD permit for the redevelopment of a 35-acre parcel in the southwest quadrant of Highway I-394 and Highway 100, a project which became known as the West End.<sup>305</sup> MCWD identified that opportunities existed at the site to achieve significant water

quality benefits beyond what MCWD rules required, and for which the Board of Managers was willing to pay.<sup>306</sup> Duke Realty cooperated in project design to meet and exceed regulatory standards, and MCWD provided \$150,000 in funding clean water infrastructure, including green roofs, crosswalks and boulevards with porous surfaces, large underground stormwater cisterns that allowed infiltration into the ground instead of a water body, and innovative "slot storm drains" that drained water from roads under the sidewalks to water roadside trees.<sup>307</sup> The results were to reduce phosphorus loading from the site by 47 pounds per year, reduce stormwater volume by 62 acre feet per year, and eventually remove downstream Brownie Lake from the Impaired Waters list.<sup>308</sup>

## Bachman's on Lyndale

MCWD's partnership with the Bachman's at its original store in Minneapolis at Lyndale Avenue brought watershed stewardship to a visible and relevant retail setting. The project featured rain gardens as demonstration sites for stormwater management within the store campus and a succulent green roof on a garden store shed.<sup>309</sup> In 2008 MCWD honored Bachman's as an outstanding partner for including displays and demonstration sites that highlight attractive and

<sup>302</sup> Board Meeting Minutes, October 6, 2005 [MCWD budget].

<sup>303</sup> Methodist Hospital Boardwalk, MCWD website:

[https://www.minnehahacreek.org/sites/minnehahacreek.org/files/Methodist%20Hospital%20Fact%20Sheet%2006-2017\\_web\\_accessible.pdf](https://www.minnehahacreek.org/sites/minnehahacreek.org/files/Methodist%20Hospital%20Fact%20Sheet%2006-2017_web_accessible.pdf)

<sup>304</sup> *Ibid.*

<sup>305</sup> Board Meeting Minutes, September 13, 2007.

<sup>306</sup> Board Meeting Minutes, September 13, 2007.

<sup>307</sup> West End Redevelopment, MCWD website: <https://www.minnehahacreek.org/project/west-end-redevelopment>

<sup>308</sup> West End Redevelopment, MCWD website: <https://www.minnehahacreek.org/project/west-end-redevelopment> [Brownie Lake off impaired Waters List].

<sup>309</sup> Complete citation from agreement; Board Meeting Minutes, December 20, 2007 mention requiring Metro Blooms to work with Bachman]

innovative stormwater management techniques that homeowners can install.<sup>310</sup>

### Watershed Association Initiative

In 2006, MCWD partnered with Minnesota Waters and later with the Freshwater Society to manage the Watershed Association Initiative, which sought to cultivate watershed-oriented citizenship and to engage and empower residents to help the MCWD meet its water quality goals. In addition to getting new groups started, WAI supported existing groups to increase the effectiveness of their work, developing action and lake management plans to guide their work toward reaching achievable goals. MCWD's support of lake and stream associations was considered unique in the Twin Cities and Minnesota. At the same time, advocacy by some lake associations led to triangulated relationships with MCWD and cities, and lake association interests in aquatic plant management and boating did not always align with MCWD priorities.

### Cost Share Iterations

In 2008, MCWD began exploring cost-share programs as a way to streamline working with partners who had identified problems and needed funding to achieve solutions. Approved by the Board of Water and Soil Resources as an element of the MCWD's Plan, the program took shape as a three-step process: the subject (1) identifies a problem, (2) works with the MCWD staff and

Citizen Advisory Committee to review solutions, (3) brings the agreed upon solution to the MCWD Board for approval.<sup>311</sup> The program was incorporated successfully into the Watershed Management Plan in 2009, and split into three elements that focused on low impact development, shoreline and restoration work, and habitat restoration.<sup>312</sup> While the program was independently successful, it was also evident of MCWD's divergent expansion at the time, as it lacked healthy coordination with MCWD's other partnerships and programs during this period.

### Coldwater Springs and Hwy. 55 Construction

While this project began in the 90s as an effort by MnDOT to improve a commuter bypass to the Metropolitan Airport, construction impact on groundwater at the nearby Coldwater Springs and on seeps in the area resulted in a years-long conflict. Work done by the DNR in 1999 found that the area around Minnehaha Creek and the Mississippi River bluffs included many highly ecologically valuable seeps, including a black ash seep almost as rare as a calcareous fen.<sup>313</sup> In the late 90s, concerns began to develop that MnDOT's bedrock drilling and excavation work had impacted the groundwater.

In June of 2000, an unexplained four-foot drop in groundwater occurred, and MCWD began to incorporate permit requirements that required monitoring of the spring and seep waters.<sup>314</sup> Local opposition that already existed due to the

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<sup>310</sup> Past Watershed Heroes, MCWD website: <https://www.minnehahacreek.org/get-involved/get-inspired-watershed-heroes/past-watershed-heroes>

<sup>311</sup> Board Meeting Minutes, March 5, 2009.

<sup>312</sup> Board Meeting Minutes, July 9, 2009 [habitat cost-share work plan reviewed]; Board Meeting Minutes, July 2, 2009 [criteria for shoreline fund cost-share fund approved]; Board Meeting Minutes, June 4, 2009 [criteria for low-impact development cost-share fund approved].

<sup>313</sup> Board Meeting Minutes, March 15, 2007.

<sup>314</sup> Board Meeting Minutes, January 6, 2000 [permit conditions review]; Board Meeting Minutes, June 29, 2000.

proposed path of the bypass through a neighborhood now also rallied around environmental concerns. A citizen petition was brought to MCWD requesting that Camp Coldwater be brought into the MCWD boundaries to increase protection for the history and ecology of the site.<sup>315</sup> Eventually District boundaries were expanded to include 635 acres of land in the Fort Snelling Park area, including Camp Coldwater, but not including the MnDOT interchange.<sup>316</sup>

Groundwater concerns with construction persisted, however, and in September of 2000, many of the seeps were reported dry.<sup>317</sup> Independent review of MnDOT spring analyses found several issues, and MCWD issued formal complaints to MnDOT, LMRWD, BWSR and MN DNR to take further steps on the issue.<sup>318</sup> Through citizen advocacy by the Friends of Camp Coldwater, in the spring of 2001 the Minnesota Legislature adopted a statutory protection of natural flow and prohibiting and state or local unit of government from taking “any action that may diminish the flow of water to or from Camp Coldwater Springs.”<sup>319</sup> As MnDOT indicated its intent to proceed with construction without regard to impact on the Springs, MCWD took the step of taking MnDOT to district court, where the court enjoined MnDOT from proceeding with groundwater pumping for construction and to

allow a dye test.<sup>320</sup> The dye test found that the 55/62 interchange construction area had a groundwater connection to Coldwater Spring.<sup>321</sup>

Finally, the Federal Highway Administration intervened in late 2001 and concurred that the groundwater connection between the interchange area and Camp Coldwater was a serious concern. In 2002 the parties agreed on a redesign of the project that included elevation of the construction bed and a liner that prevented bedrock disturbance and allowed groundwater to move through the interchange area.<sup>322</sup> In addition, MCWD stressed the need for ongoing monitoring, and a 30-month monitoring plan conducted by MnDOT was agreed to, with the opportunity for MCWD to continue monitoring after that period as interested.<sup>323</sup>

While the project concluded with increased attention on groundwater in the area and the protection of Coldwater Springs, MCWD’s experience confirmed the need to get involved earlier in such projects and to ensure the ability to influence design and management plans in order to better protect the resources from the start, instead of addressing problems after they develop.

<sup>315</sup> Board Meeting Minutes, January 6, 2000 [citizen first raises boundary change in public comments]

<sup>316</sup> Board Meeting Minutes of January 20 and January 27, 2000; Board Meeting Minutes, May 11, 2000 [Minneapolis City Council adopts resolution supporting boundary change]; Board Meeting Minutes, May 25, 2000.

<sup>317</sup> Board Meeting Minutes, September 7, 2000.

<sup>318</sup> “Minnehaha Creek Watershed District, Board of Manager’s Resolution Requesting Commitment to Protect Camp Coldwater Spring,” passed during Board Meeting of September 28, 2000.

<sup>319</sup> Minn. Statute § 138.665, Subd. 4. House Research Act Summary: <https://www.house.leg.state.mn.us/hrd/as/82/as101.pdf>

<sup>320</sup> Order, Minnehaha Creek Watershed District v. Minn. Dept. of Transportation, Henn. Co. D. Ct., Court File No. MC 01-07478, Judge F. Knoll, May 30, 2001. On earlier negotiated dye tests with MnDOT, see Board Meeting Minutes, April 12, 2001 [District Consultant recommends dye test]; Board Meeting Minutes, April 26, 2001 [approval of interagency agreement to perform dye test].

<sup>321</sup> Letter to Judge Franklin Knoll, June 18, 2001, from Louis N. Smith.

<sup>322</sup> Board Meeting Minutes, September 26, 2002.

<sup>323</sup> *Ibid*; Board Meeting Minutes, October 14, 2004 [thirty month monitoring agreed to].

## Quagmire in Minnehaha Glen

In 2007, a feasibility study looked at the potential for improvement and restoration of the Minnehaha Glen and Falls area, and found issues related to stream channel repair, erosion and stormwater control, as well as accessibility for recreation and safety.<sup>324</sup> Consequently, in 2008 MCWD entered into cooperative agreements with the MPRB and USACE for the design and cost-share funding of the restoration.<sup>325</sup> The State of Minnesota also supported the project with funding, approving bonding that exceeded the initial request.<sup>326</sup>

The design included retaining walls and bioengineering of the creek banks for the stabilization, a revitalized trail system with boardwalks and other path improvement, invasive species management, as well as new stormwater management practices at the adjacent Minnesota Veterans Home.<sup>327</sup>

As the project got fully underway in 2009, however, issues with USACE and their contractor began to dog the process. Sediment filled the streambed, and there was disagreement over bad weather conditions temporarily halting the work.<sup>328</sup> The State Historical Preservation Office became concerned that the trail work was impairing historical preservation in the glen and endangering cultural resources, the issue was

complicated by USACE's failure to finalize the required cultural resource review.<sup>329</sup> While one element of the Army Corps of Engineers was an MCWD partner, another arm chose to treat MCWD as a violator of Corps regulations, charging that MCWD had engaged in authorized dredging and filling.<sup>330</sup> A lengthy regulatory dispute ensued. Eventually as the problems persisted, MCWD internally declared the situation a "natural resources emergency."<sup>331</sup> MPRB cancelled the construction along the upper trail portion due to ongoing issues, and MCWD issued a plan of repair to ameliorate the damage caused by wall collapse and streambed sediment.<sup>332</sup>

The scaled-back project was eventually completed, and while the project was successful in the end in implementing stabilization and general trail improvements, the history of its completion emphasized at best the need for more coordination and better communication in project execution, and at worst a great deal of caution in partnering with the Army Corps of Engineers.

## Reflections & Lessons Learned

### 1. Science is essential but not sufficient.

While MCWD accomplished major technical studies in this period, including the wetland assessment, stream evaluation, and HHPLS, the policies and projects undertaken based on those

<sup>324</sup> Board Meeting Minutes, August 2, 2007.

<sup>325</sup> Board Meeting Minutes, May 15, 2008 [MPRB cooperative agreement]; Board Meeting Minutes, June 5, 2008 [USACE cooperative agreement].

<sup>326</sup> Board Meeting Minutes, January 10, 2008 [\$2.5 million bonding request made]; Board Meeting Minutes, June 12, 2008 [\$2.9 million bond granted].

<sup>327</sup> "Minnehaha Falls and Glen Restoration," MCWD website: <https://www.minnehahacreek.org/project/minnehaha-falls-and-glen-restoration>.

<sup>328</sup> Board Meeting Minutes, June 4, 2009.

<sup>329</sup> Board Meeting Minutes April 2, 2009; *Ibid*.

<sup>330</sup> Letter from Col. Jon. L. Christensen re Minnehaha Creek Project 2008-03754JJY, June 4, 2009.

<sup>331</sup> Board Meeting Minutes, July 16, 2009.

<sup>332</sup> *Ibid*.

studies encountered significant conflict with existing economic, land use and development plans. MCWD had sound technical support to propose lake buffers but had not cultivated a sufficient buffer constituency. Similarly, the 2007 Plan was the product of the HHPLS and robust modeling of the watershed and pollutant loading, but the MCWD failed to muster strong support of the Plan's TMDL approach among city policy leaders. Achieving a shared technical understanding with staff does not equate with political or community support.

2. Private actions on the landscape can present public opportunities.

Most of the MCWD's previous capital improvements were conceived by the District, often through its own planning process, and involved acquiring rights of access and use of public land, or acquiring such rights through eminent domain. The Methodist Hospital, Duke Realty - West End, and Bachman's projects demonstrated the opportunity to achieve water resource improvements through cooperation with private development plans. The MCWD gained significant understanding during this period of how to integrate water resource goals with community and market plans.

3. Intensive growth comes with a price.

This period was a time of intensive program expansion and growth of the MCWD staff. While each new initiative made sense to the Board and staff at the time, the result of many new and independently successful initiatives can be a lack of internal coordination. Some of the conflicts the MCWD endured may have been avoidable with more strategic focus and internal coordination.

4. Get to know your partners well.

It can be critical to build trust and strong working relationships with each element of influence or decision-making in a partnering organization. Supportive staff is not the same as supportive policy leadership. As the MCWD learned from painful experience, collaboration with one planning element of the U.S. Army Corps of Engineers does not assure cooperation with all elements of the Corps such as its regulatory arm.

5. An ounce of prevention can be a sound investment.

During this period the MCWD launched a land conservation program that reflected a long-term commitment to preserving sensitive natural landscapes for the long-term protection of water resources. This policy decision reflected a strategic focus looking to the future instead of simply remedying past environmental harms.

6. Highway projects can be re-designed to avoid harm to water resources.

MCWD invested considerable time and expense to address the impacts to groundwater and Coldwater Springs threatened by the Highway 55/62 interchange. In what may be only case of a court injunction halting highway construction to address an environmental concern, ultimately the MCWD's technical concerns were backed by the Federal Highway Administration. In succeeding years, MnDOT has been a largely cooperative partner with the MCWD.

# Chapter 5: 2010-2020

## Focus and Partnership with Land Use Community

### Introduction and Overview

MCWD entered a new era of strategic focus on integrating its mission with the missions of public and private land use actors through effective partnerships. The organization underwent a significant staff change and undertook its first major strategic planning exercise as an organization which facilitated refocused direction, deeper Board engagement in governance, new staff organizational structure and attention to culture, and capacity to pursue a new watershed management plan.

### Himle-Horner Governance Evaluation

The MCWD retained the Himle- Horner firm in 2012 to advise the District in search of better and increased engagement in long term planning and policy work. Previous projects and programs over the past decades had been widespread and lacked a coordinated focus, and in order to better coordinate programs, establishing a clear and foundational internal structure of the District was necessary. Additionally and relatedly, general concern around the quantity of and time spent in meetings had grown as meetings themselves multiplied.

Three main goals were developed for the restructuring proposal to focus on: (1) enhancement of the public's ability to monitor and engage with the District, specifically by addressing the confusing amount of committees and

meetings; (2) achieving a better balance between policy and strategic planning compared to program management and implementation, and finally (3) the allocation of staff resources to their best use.<sup>333</sup>

In response to these goals, the proposal advanced the consolidation of committees down to three streamlined versions: an executive committee, an operations and programs committee, and a planning and policy committee.<sup>334</sup> Externally, these would be a clear and understandable organization for the public to engage with. Internally, the streamlined versions consolidated staff work and planning in an efficient structure. This supported both the balance between policy development and program management and created a clear mechanism for staff to fully utilize their respective skills.

### Leadership Transition (2014-18)

In April 2014, a majority of the Board of Managers made the difficult decision to relieve Eric Evenson Marden as administrator, after over fifteen years of serving in the position. While four managers felt it was time to change direction, three managers were strongly in support of Mr. Evenson Marden.<sup>335</sup> Community representatives expressed support for him as well.<sup>336</sup> While much of 2014 reflected this division of views, Jeff Spartz, the former Hennepin County administrator and former county commissioner, agreed to serve as the

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<sup>333</sup> Board Meeting Minutes, January 24, 2013

<sup>334</sup> Board Meeting Minutes, January 24, 2013

<sup>335</sup> Board Meeting Minutes, May 8, 2014

<sup>336</sup> *ibid.*



interim MCWD administrator.<sup>337</sup> Mr. Spartz provided seasoned leadership and a strong listening ear to the staff, while also helping the MCWD move toward a permanent administrator. A lengthy and robust search process culminated in the Board's selection of Lars Erdahl to serve as administrator in February 2015.<sup>338</sup> Mr. Erdahl had a background in environmental education at the Minnesota Zoo, and served as MCWD administrator until February 2018.<sup>339</sup> During this time, Planning and Projects Director James Wisker took on increasing responsibility for projects, policy development, and human resources planning. When Mr. Erdahl resigned in early 2018, the Board of Managers named Mr. Wisker as MCWD administrator.<sup>340</sup> Having first joined the MCWD as an intern in 2005, Mr. Wisker was the first internal selection for administrator in the fifty-year history of the District, a reflection of the staff development and capacity over this time.<sup>341</sup>

#### Watershed Partnerships Paper (2011)

In 2011, administrator Eric Evenson commissioned District counsel to undertake an exploration of public-private collaboration to address watershed issues. The MCWD joined with Nine Mile Creek

Watershed District, the Dakota County Farmland & Natural Areas Program, and with private sector partners Allina Health and Target to explore new approaches to water resource management.<sup>342</sup> Focusing on Minnehaha Creek, Nine Mile Creek, and the Vermilion River, the paper noted that each of these streams was impaired, had difficult land use issues that posed impacts to water quality and habitat, and each stream was the focus of recreational interest.<sup>343</sup> Target brought direct experience in community engagement in the Midtown Greenway and an interest in great design, sensitivity to place-making, and a commitment to sustainability. Allina brought a vision of health extending beyond treatment of illness to healing communities, and a sense of strong connections between healthy people, healthy stream corridors and greenways, and healthy communities.

The paper traced the evolution of watershed management, including Minnesota's unique creation of watershed districts, and the general absence of the private sector in watershed work. It also traced the development of greenways and conservation corridors - continuously linked tracts of land, often parks or trails, which are protected and managed for multiple uses, including

<sup>337</sup> Board Meeting Minutes, June 12, 2014; Board Meeting Minutes, January 29, 2015.

<sup>338</sup> Board Meeting Minutes, January 29, 2015.

<sup>339</sup> "MCWD names Lars Erdahl as new District Administrator," January 30, 2015, MCWD website, <https://www.minnehahacreek.org/about/newsroom/press-release/mcwd-names-lars-erdahl-new-district-administrator>; "Lars Erdahl Departing as Minnehaha Creek Watershed District Administrator," January 4, 2018, <https://www.minnehahacreek.org/about/newsroom/press-release/lars-erdahl-departing-minnehaha-creek-watershed-district-administrator>.

<sup>340</sup> Board Meeting Minutes, March 8, 2018; "James Wisker begins role as administrator of the Minnehaha Creek Watershed District" March 2, 2018, SW News Media, [https://www.swnewsmedia.com/lakeshore-weekly/news/local/james-wisker-begins-role-as-administrator-of-the-minnehaha-creek-watershed-district/article\\_339ce8fb-3739-5e2c-845e-b4055b270ffd.html](https://www.swnewsmedia.com/lakeshore-weekly/news/local/james-wisker-begins-role-as-administrator-of-the-minnehaha-creek-watershed-district/article_339ce8fb-3739-5e2c-845e-b4055b270ffd.html)

<sup>341</sup> "James Wisker begins role as administrator of the Minnehaha Creek Watershed District" March 2, 2018, SW News Media, [https://www.swnewsmedia.com/lakeshore-weekly/news/local/james-wisker-begins-role-as-administrator-of-the-minnehaha-creek-watershed-district/article\\_339ce8fb-3739-5e2c-845e-b4055b270ffd.html](https://www.swnewsmedia.com/lakeshore-weekly/news/local/james-wisker-begins-role-as-administrator-of-the-minnehaha-creek-watershed-district/article_339ce8fb-3739-5e2c-845e-b4055b270ffd.html).

<sup>342</sup> Smith, Louis. "Watershed Partnerships: Breakthroughs in Collaboration to Create and Sustain Great Conservation Corridors." *Prepared for* Minnehaha Creek Watershed District, Dakota County Farmland & Natural Areas Program, Nine Mile Creek Watershed District, Target, Allina. Feb. 2010.

<sup>343</sup> *Ibid.*

recreation, non-motorized transportation, and conservation. Many greenways are adjacent to streams, and the tangible nature of greenway developments also frequently facilitates the effective engagement of the private sector. Finally, the paper considered the history of public-private partnerships, noting that the dynamic relationship between the public and private sectors is a critical quality of our democracy. It concluded with concrete recommendations for greenway partnerships along Minnehaha Creek, Nine Mile Creek, and the Vermilion River.<sup>344</sup>

### Balanced Urban Ecology

The Balanced Urban Ecology policy framework grew out of the vision developed in the Watershed Partnerships Paper of 2011 and became a guiding, influential philosophy for MCWD. Its goals center the need to foster partnership work with public, private, and civic partners while making decisions and plans for water resource protection and management.<sup>345</sup> This took three main iterations: first, to join others in pursuing watershed management goals; second, to intensify and maintain focus on high-priority projects, and finally, to maintain flexibility and creativeness in adapting practices to partnership practices.<sup>346</sup>

The policy reflected a distinctive change in direction for the framework of MCWD work. Projects over the previous decade had been scattered and lacked focus; this re-directed vision focused work and centered partnerships in order

to do a better job of project implementation and partner communication.

### 2016 Strategic planning and Program Insights

In advance of the 2017 Watershed Management Plan, the District worked to undertake work on strategic planning and program insights. The work resulted in a revised mission and vision statement that better captured and communicated the District's goals and values: a vision of "a landscape of vibrant communities where the natural and built environments in balance create value and enjoyment; and a mission to "collaborate with public and private partners to protect and improve land and water for current and future generations."<sup>347</sup>

### 2017 Watershed Plan

The watershed plan for the new decade developed out of the new Balanced Urban Ecology approach of partnership, focus, and flexibility. The plan incorporated measurable goals and metrics, as well as specific drivers and strategies to accomplish the District's key goals. Specific plans for sub-watershed plans, their respective resource issues and an implementation priority hierarchy provided a definite and strategic baseline from which the District could develop projects over the next ten years.<sup>348</sup>

Central to the plan was the division of the watershed into focal geographies, including

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<sup>344</sup> *Ibid.*

<sup>345</sup> "In Pursuit of a Balanced Urban Ecology," MCWD website, <https://www.minnehahacreek.org/about/vision-and-history/pursuit-balanced-urban-ecology>

<sup>346</sup> "In Pursuit of a Balanced Urban Ecology," MCWD website, <https://www.minnehahacreek.org/about/vision-and-history/pursuit-balanced-urban-ecology>

<sup>347</sup> Vision and Mission Statements, MCWD website, <https://www.minnehahacreek.org/about/vision-and-history/mission-vision-and-goals>

<sup>348</sup> Board Meeting Minutes, June 22, 2017

Minnehaha Creek, Six Mile/Halsted Bay area, and Painter Creek.<sup>349</sup> These focal geographies were designed to guide restoration work in better coordination with partners, and to thereby consolidate the expenditure of time and resources. This initiative took shape directly in line with the Balanced Urban Ecology policy framework.

### Minnehaha Greenway

The Minnehaha Greenway project was a central, multi-pronged and highly successful project that spanned the decade, including the initiatives at Cottageville Park, 325 Blake Road, the Minnehaha Creek Preserve, and the Methodist Hospital project of the previous decade. The multi-project and multi-partner effort focused on the restoration of degraded urban stretches of Minnehaha Creek and the creation of recreational access and habitat protection. Guided by the Balanced Urban Ecology philosophy, the Minnehaha Greenway project emphasized the integration of community planning, redevelopment and improvement of water resources.

### Cottageville Park Development

A cooperative agreement with the City of Hopkins signed in 2014 coordinated efforts between the City and the District on a degraded area that drained into Minnehaha Creek. Restoration of the stretch included vegetation restoration of 400ft of streambank and installation of a park and recreation area, as well as an innovative

underground stormwater management and drain system that captured both dissolved phosphorus and sediment from runoff.<sup>350</sup> Funded by a \$483,000 grant from the Clean Water Land & Legacy Fund through the Board of Water and Soil Resources, the project resulted in not only ecological restoration but also a reduction of crime in the surrounding community.<sup>351</sup> The project took significant input from the community at many stages, working to incorporate local voices to guide key aspects of project design.<sup>352</sup>

### Japs Olson

The Japs Olson project intersection with the Minnehaha Greenway project highlights the successful nature of the District's collaboration with private partners during this decade. Here, the company's plans for redevelopment were integrated with District long-term goals to provide stormwater management along one of the most degraded sections of Minnehaha Creek.<sup>353</sup> A letter of understanding was signed in February of 2014, which served to align visions at the start and guide project implementation, thus facilitating communication and goals to avoid the difficulties encountered by partnerships in the prior decade.

### Minnehaha Preserve

In 2010, through its land conservation program, the MCWD acquired four contiguous parcels along Minnehaha Creek on Excelsior Boulevard in St. Louis Park. At the time, the District did not have

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<sup>349</sup> Board Meeting Minutes, June 22, 2017

<sup>350</sup> "Cottageville Park Expansion," MCWD website, <https://www.minnehahacreek.org/project/cottageville-park-expansion> (reduction in crime)

<sup>351</sup> Board Meeting Minutes, April 10, 2014 (Clean Water Grant); "Cottageville Park Expansion," Minnehaha Creek Watershed District, <https://www.minnehahacreek.org/project/cottageville-park-expansion> (reduction in crime)

<sup>352</sup> "Hopkins' Newest Park Features Restored Minnehaha Creek," September 30, 2015, MCWD website, <https://www.minnehahacreek.org/about/newsroom/press-release/hopkins%3F-newest-park-features-restored-minnehaha-creek>

<sup>353</sup> Board Meeting Minutes, August 27, 2015

specific plans for the use of the property, but the acquisition opportunity presented itself and the Board of Managers elected to acquire the site for the significance of its location.<sup>354</sup> By 2013, the MCWD took advantage of the site to construct a major restoration of this stretch of Minnehaha Creek, re-meandering the Creek by restoring natural curves and lengthening the Creek by 1600 feet.<sup>355</sup> The project also treated polluted stormwater from 79 acres of surrounding area that previously flowed untreated into the creek, preventing erosion by slowing down water, creating fish and wildlife habitat, and connecting the creek to its historic wetlands.<sup>356</sup> In July 2015, the MCWD completed and opened the “Minnehaha Preserve,” featuring 2,200 feet of boardwalk and 4,600 feet of paved trail around this restored stretch of Minnehaha Creek.<sup>357</sup> It became the cornerstone of the Minnehaha Greenway, now a stretch of more than 109 acres of continuous green space constructed or planned for construction along Minnehaha Creek. The Preserve quickly became a site of great community use and recreation, including outdoor education areas for schools and community groups and reconstructed canoe launches. Unfortunately, premature wood rotting led to temporary closures of the boardwalk, and the MCWD had to take legal action against the design and construction firms and plan boardwalk reconstruction in 2022.<sup>358</sup>

### 325 Blake Road

In 2011, the MCWD purchased a 17-acre cold storage industrial site in Hopkins with the goal of the site becoming a capstone on the Minnehaha Greenway project.<sup>359</sup> The site has more than 1,000 feet along Minnehaha Creek and is adjacent to the Metro Green Line light rail transit project, as well as the Cedar Lake Regional Trail. The MCWD’s vision is to retain about five acres of the site to create access to Minnehaha Creek and treat 270 acres of stormwater runoff coming to the site.<sup>360</sup> The MCWD has worked closely with the City of Hopkins to assure that the City’s land use plans and goals are incorporated into the project. By 2018, the MCWD had obtained state and county grants to facilitate environmental cleanup of the site and complete demolition of the industrial facility.<sup>361</sup> The MCWD collaborated with the City of Hopkins in a process that led to selecting Kraus Anderson as a developer to pursue the private development portion of the site.<sup>362</sup> By 2019, the MCWD and Kraus Anderson were not able to come to terms on the sale of the site and development concepts, and the MCWD elected to focus on the planning and development of the public realm elements of the site to assure that any future private developer

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<sup>354</sup> Board Meeting Minutes, July 13, 2010 (427-429 Blake Road acquisition in City of Hopkins raised)

<sup>355</sup> “Minnehaha Creek Preserve,” MCWD website, <https://www.minnehahacreek.org/project/minnehaha-creek-preserve>

<sup>356</sup> “Minnehaha Creek Preserve,” MCWD website, <https://www.minnehahacreek.org/project/minnehaha-creek-preserve>

<sup>357</sup> “Minnehaha Creek Preserve,” MCWD website, <https://www.minnehahacreek.org/project/minnehaha-creek-preserve>

<sup>358</sup> Board Meeting Minutes, April 23, 2020, (Potential for litigation first raised due to failing materials); Meeting Minutes, May 28, 2020 (closed session on litigation strategy)

<sup>359</sup> Board Meeting Minutes, July 7, 2011.

<sup>360</sup> “325 Blake Road Restoration and Redevelopment,” MCWD website, <https://www.minnehahacreek.org/project/325-blake-road-restoration-and-redevelopment>

<sup>361</sup> Board Meeting Minutes, June 28, 2018 (Transit-Oriented Development funding approved; Metro Council asbestos grant approved)

<sup>362</sup> Board Meeting Minutes, May 24, 2018

would align its plans with the MCWD public realm.<sup>363</sup>

By 2020, the MCWD and the City entered into a new cooperative agreement to express concurrence in guiding design principles and a process for collaborating in the selection of a developer for the site. The MCWD worked intensely in 2020 and 2021 to develop a strong design vision for the public realm elements of the site, which would assure that any private developer would embrace Creek access and water resource management as key design features of any development.<sup>364</sup> This design work allowed the MCWD to enter a developer selection process with a much stronger vision of its goals. In June 2021, at a joint meeting of the Board of Managers and the Hopkins City Council, the MCWD and the City agreed to select Alatus as the developer for the site.<sup>365</sup>

### Six Mile Creek Halsted Bay

Building on the successes and lessons from the Minnehaha Greenway, the MCWD chose to make the Six Mile Creek - Halsted Bay Subwatershed its next focal geography in applying its Balanced Urban Ecology principles. The work on the Six Mile Creek project focused on the large-scale restoration of 2,488 acres of habitat across 14 connected deep and shallow lakes.<sup>366</sup> Restoration

focused on the creation of restored wetland and upland corridors between these lakes, and included carp management and prairie restoration projects as well.<sup>367</sup> The Halsted Bay area had been determined to require the largest nutrient load reduction in the Minnehaha Creek Watershed, which supported designating this area as one of the main focal geographies for the 2017 watershed plan.<sup>368</sup>

### Wassermann Lake Preserve

A first major project in the Subwatershed was the Wassermann Lake Preserve. In 2015, the MCWD executed a memorandum of understanding with the City of Victoria, which affirmed the mutual value of cooperative and integrated land use and water resource planning. Lake Wassermann was on the state Impaired Waters list due to invasive common carp and high phosphorus loading to the lake.<sup>369</sup> In 2016, the MCWD worked with partners to establish the Six Mile - Halsted Bay Planning Partnership, which committed all partners to proactive and collaborative planning and communication about priorities. City of Victoria and MCWD staff soon identified 33.5 acres of undeveloped land on the Lake Wasserman shoreline. This parcel included Wassermann West Pond and adjacent wetlands; restoring these areas could result in significant reduction in phosphorus

<sup>363</sup> "MCWD and Kraus-Anderson Part Ways on 325 Blake Road Redevelopment in Hopkins," March 6, 2019, MCWD website, <https://www.minnehahacreek.org/about/newsroom/press-release/mcwd-and-kraus-anderson-part-ways-325-blake-road-redevelopment-hopkins>.

<sup>364</sup> Board Meeting Minutes, May 13, 2021 ["triple bottom line" of social, economic, environmental considerations noted]; Community Engagement & Design Overview PowerPoint, November 15, 2021, Alatus website, <https://www.325blakeroadn.com/blog/engaging-community-43-hoops-325-blake-road-n-neighborhood-meeting> [Complete citation with MCWD project design]

<sup>365</sup> Board Meeting Minutes, June 10, 2021 (closed session developer selection meeting)

<sup>366</sup> <https://www.minnehahacreek.org/project/six-mile-creek-halsted-bay-habitat-restoration>

<sup>367</sup> Board Meeting Minutes, January 3, 2013 (prairie marsh restoration); Meeting Minutes June 13, 2013 (carp study)

<sup>368</sup> "Six Mile Creek-Halsted Bay," Watershed Management Plan 2018: Executive Summary, p. 28,

<https://www.minnehahacreek.org/sites/minnehahacreek.org/files/CompPlan/MCWDCompPlan/Volume%201.pdf>

<sup>369</sup> "Wasserman Lake Preserve," MCWD website, <https://www.minnehahacreek.org/project/wassermann-lake-preserve>

entering Lake Wassermann, while also providing the public access to the lake, which was a goal identified in the City of Victoria's 2008 Comprehensive Plan. The MCWD purchased the 33.5 acres in June 2017, and then executed a cooperative agreement with the City of Victoria to coordinate responsibilities to design and construct a public park, while restoring wetland and woodland areas and implementing water quality improvements.<sup>370</sup> The project was completed in 2021 and enjoys extensive public use.

### Carp Management

The MCWD received a grant from the Lessard-Sams Outdoor Heritage Council for carp management in this Subwatershed.<sup>371</sup> The Aquatic Invasive Species Research Center of the University of Minnesota partnered with the District on this aspect, tagging and tracking migration patterns, developing a comprehensive data set that then provided researchers with the ability to develop three primary carp management strategies: suppressing carp reproduction, installing three permanent carp barriers, and significant adult carp removal.<sup>372</sup>

### Six Mile Marsh Prairie Restoration

To help improve water quality in the Subwatershed, the MCWD purchased two adjacent farms totaling 210-acres and conducted comprehensive habitat restoration, restoring steep

slopes and drain-tiled low areas to native prairie and wetlands, thereby reducing soil erosion and pollutant contamination in Six Mile Creek.<sup>373</sup> The MCWD planned and executed the project in two phases. Beginning in 2012, the first phase included restoration of the natural areas and preservation of the historic barn on the property. After drain tile was removed, over 10 wetlands reappeared on the landscape, which were then enhanced with native plantings in order to facilitate full restoration.<sup>374</sup> Additionally, the drier upland areas underwent work to restore native tallgrass prairie vegetation, and an existing oak savanna above Six Mile Marsh was expanded.<sup>375</sup> Public access was facilitated by installed a mowed trail leading, which has been maintained since 2016.<sup>376</sup> Construction of the second phase, including the installation of a permanent pedestrian trail from the Dakota Rail Trail and placement of interpretive elements, is expected to be completed in 2022.<sup>377</sup>

### Arden Park

The Arden Park project success also grew out of an implementation of the Balanced Urban Ecology policy goals of partnership and fostering of a coordinated focus on preservation and rehabilitation of water resources. The City of Edina had adopted a transportation policy to balance the needs of motorists, bicyclists, and transit riders in order to improve safety and community

<sup>370</sup> "Wasserman Lake Preserve," MCWD website <https://www.minnehahacreek.org/project/wassermann-lake-preserve>

<sup>371</sup> Board Meeting Minutes, March 8, 2018

<sup>372</sup> "Six Mile Creek – Halsted Bay Habitat Restoration," MCWD website, <https://www.minnehahacreek.org/project/six-mile-creek-halsted-bay-habitat-restoration>

<sup>373</sup> "Six Mile Marsh Prairie Restoration," MCWD website, <https://www.minnehahacreek.org/project/six-mile-marsh-prairie-restoration>

<sup>374</sup> *Ibid.*

<sup>375</sup> *Ibid.*

<sup>376</sup> *Ibid.*

<sup>377</sup> *Ibid.*

throughout the metropolis.<sup>378</sup> As the scope of this work included reconstruction of streets, the City and the District began a collaboration to try and implement better stormwater management techniques into the project.<sup>379</sup>

From there, the City and MCWD collaboration led the project to include creek improvements, and the installation of a new park facility and trails along the creek, with the District contributing around \$2.3 million in project funding.<sup>380</sup> The District and City worked jointly to install significant stormwater management features, including a subsurface infiltration trench under Halifax Avenue, a new and innovative pervious paver system in Jay Place, and the placement of sump manholes at three different locations within city neighborhoods.<sup>381</sup> Altogether, these features provided significantly improved stormwater management along the reconstructed streets, resulting in both better safety and access for community transport as well as creek health and pollution reduction.<sup>382</sup> Community residents were initially quite concerned about the project's changes to historic park uses, but through ongoing community engagement and project adjustments, the ultimate result has been well received.<sup>383</sup>

### Response to Historic Flooding

In August of 2013, the Atlas 14 Report noted that average rainfall had increased an average of 5 inches over the last 50 years.<sup>384</sup> The ensuing decade would go to be the wettest in the state's recorded history.

In February of 2014, delays in melting of the larger-than-usual snowpack triggered concerns over a quick melt in mid-March and intense flooding.<sup>385</sup> Concerns were valid, and spring led to wet conditions around the state. In June, this was compounded by severe high water and flooding events, as the first six months of the year broke flooding records.<sup>386</sup> In September, the District contracted Wenck Associates to complete a flood assessment report, which catalogued the record-breaking precipitation and its impact on lake levels and creek flows.<sup>387</sup> Of particular interest to the District during this period was the integrity of stream slopes: seven stream slopes collapsed under flooding stress, but most significantly, many streams overflowed without degradation.<sup>388</sup> Examination of these stream banks later led to interest in incorporating these natural features into stream bank restoration projects.<sup>389</sup>

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<sup>378</sup> Board Meeting Minutes, November 20, 2014

<sup>379</sup> Board Meeting Minutes, November 20, 2014

<sup>380</sup> "Arden Park Restoration," MCWD website, <https://www.minnehahacreek.org/project/arden-park-restoration>; Board Meeting Minutes, November 9, 2017

<sup>381</sup> Board Meeting Minutes, November 20, 2014

<sup>382</sup> Board Meeting Minutes, November 20, 2014; "Arden Park Restoration," MCWD website, <https://www.minnehahacreek.org/project/arden-park-restoration>

<sup>383</sup> Public Hearing, Meeting Minutes, October 26, 2017; Resolution of Issues at Oct. 26 Public Hearing, Board Meeting Minutes, November 9, 2017.

<sup>384</sup> Atlas 14 Report, Volume 8, Version 2.0, [https://www.weather.gov/media/owp/oh/hdsc/docs/Atlas14\\_Volume8.pdf](https://www.weather.gov/media/owp/oh/hdsc/docs/Atlas14_Volume8.pdf)

<sup>385</sup> Board Meeting Minutes, February 27, 2014

<sup>386</sup> Board Meeting Minutes, 26, 2014

<sup>387</sup> Board Meeting Minutes, September 11, 2014

<sup>388</sup> Board Meeting Minutes, June 26, 2014.

<sup>389</sup> *Ibid.*

Precipitation records of 2014 were subsequently broken in 2019. Intense flooding that began earlier in the year sparked coordination between the District, the NWS, Hennepin County Emergency Management and all 29 of the District's communities to share information on areas with high flooding potential in order to better manage storm impact.<sup>390</sup> By August, precipitation had broken 2014 records, and November marked precipitation for the year at 11.25 inches above average.<sup>391</sup>

This record precipitation and related flooding sparked intensive community discussion around Lake Nokomis, where some residents were experiencing unusual flooding, and around planning for the future of the Hiawatha golf course.<sup>392</sup> The MCWD served as a technical convener to address these issues in partnership with the City of Minneapolis, Minneapolis Park and Recreation Board, Hennepin County, Department of Natural Resources, United States Geological Survey, and the University of Minnesota. The MCWD produced a white paper presenting data and analysis of the Lake Nokomis area groundwater and surface water issues, and the University of Minnesota provided third party review of this paper.<sup>393</sup> A productive town hall meeting to discuss the paper was held in May 2022.

## Minneapolis Planning

In fall of 2014, the District began to make assessment of flood damage that had occurred on the six major creeks of the watershed during the intense flooding that spring and summer. In light of the findings, the District applied to and secured \$500k in FEMA funding assistance for creek repairs.<sup>394</sup>

Within the Minnehaha Creek sub-watershed, the District entered into a Memorandum of Understanding with both the City of Minneapolis and the Minneapolis Parks and Recreation Board to undertake integrated project planning of work. A key feature to facilitate this work was map sharing, where priority sites could be identified and shared mutually to develop the scope of work.<sup>395</sup>

Throughout the watershed, the project scope focused on stream bank repairs, especially those damaged by the high water flows of 2014 and 2015. Initially, 47 damaged sites were identified for repair, a number that was narrowed down to 11 priority sites given that several had been able to self-repair over time and others were targeted for MPRB work in the future.<sup>396</sup>

<sup>390</sup> Board Meeting Minutes, March 14, 2019.

<sup>391</sup> Board Meeting Minutes, August 22, 2019; Board Meeting Minutes, November 7, 2019.

<sup>392</sup> Board Meeting Minutes, May 28, 2015 [Meadowbrook Golf Course discussions motivated by historic flooding]; Schaufler, et al. "Lake Nokomis Area Groundwater and Surface Water Evaluation," April 2022.

<https://lms.minneapolismn.gov/Download/RCAV2/27072/Lake-Nokomis-Area-Groundwater-and-Surface-Water-Evaluation-April-2022.pdf>.

<sup>393</sup> Schaufler, et al. "Lake Nokomis Area Groundwater and Surface Water Evaluation," April 2022.

<https://lms.minneapolismn.gov/Download/RCAV2/27072/Lake-Nokomis-Area-Groundwater-and-Surface-Water-Evaluation-April-2022.pdf>.

<sup>394</sup> Board Meeting Minutes, February 23, 2017.

<sup>395</sup> *Ibid.*

<sup>396</sup> Board Meeting Minutes, April 26, 2018; Board Meeting Minutes, July 26, 2018.



## Richfield Taft-Legion Development

The Taft-Legion project concerned the drainage of 1500 acres of land into Lake Nokomis, a partnership initiated by the City of Richfield. A Memorandum of Understanding was signed in 2010 that detailed key project goals to guide communication, and a cooperative agreement was completed in 2012 to further develop the partnership.<sup>397</sup>

The 1500 acres that the project targeted comprised nearly 60% of the Lake Nokomis drainage area.<sup>398</sup> Project features included a water reuse irrigation system and infiltration system, as well as native prairie restoration and buffer strips, pretreatment basins, grit chambers, and a flocculation treatment feature for Taft Lake internal loading.<sup>399</sup> These extensive measures all worked together to improve storm water quality flowing into the Lake and creek, and were estimated to remove 187-482 lbs. of phosphorus runoff every year as well as a 130-280 acre ft. in volume reduction.<sup>400</sup> These results would aid TMDL reduction goals assigned to sources even outside of the City of Richfield.<sup>401</sup>

The City financed the project with \$2.7 million in bonds, and provided for operations and maintenance costs, while the District agreed to make the payments on the bonds thorough its annual capital improvement levy.<sup>402</sup>

Despite efforts to clarify project goals and communication by use of the MOU and cooperative agreement, the project experienced ongoing problems and significant failure to achieve the project's performance goals. Poor historic data on nutrient concentrations that were meant to guide project design caused setbacks, and mechanical issues complicated volume reduction goals.<sup>403</sup> The MCWD and the City of Richfield agreed to have the project reviewed by a different engineering firm and discussions to address these problems are ongoing.<sup>404</sup>

## Bushaway Road Development

The reconstruction of the intersection of Highway 101 and Bushaway Road took shape as a multi-partner project with Hennepin County, the City of Wayzata, and the City of Minnetrista. Out of these partners, a task force was assembled. Initially, the project was sparked by the City of Wayzata's work to handle a large lakefront surface parking lot, but then grew into vision to design a lakefront landscape that restored recreational and ecological value and represented the city's relationship with the lake.<sup>405</sup>

Implementation of this vision involved the use of native plants and extensive bioengineering work to stabilize and restore the shoreline, with the goals of reducing erosion and encouraging infiltration of stormwater, as well as providing habitat and

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<sup>397</sup> Board Meeting Minutes, May 26, 2010; Board Meeting Minutes, September 22, 2011.

<sup>398</sup> Board Meeting Minutes, June 10, 2010.

<sup>399</sup> "Taft-Legion Volume and Load Reduction Project," MCWD website, <https://www.minnehahacreek.org/project/taft-legion-volume-and-load-reduction-project>

<sup>400</sup> Board Meeting Minutes, September 22, 2011.

<sup>401</sup> Board Meeting Minutes, June 10, 2010.

<sup>402</sup> Board Meeting Minutes, September 22, 2011.

<sup>403</sup> Board Meeting Minutes, February 14, 2019.

<sup>404</sup> Board Meeting Minutes, December 3, 2020.

<sup>405</sup> Board Meeting Minutes, April 14, 2016.

improving overall aesthetics.<sup>406</sup> Throughout the project, the community voiced positive support, and participation at public meetings hosted by the District were constructive in addressing concerns and providing a platform for question and answer.<sup>407</sup>

### Reach 14 Streambank Projects

The Reach 14 Stream Bank projects were some of the most extensive rehabilitation of the Minnehaha reach work. Reach 14 consists of a 0.75 mile stretch of Minnehaha Creek that had poor habitat as a result of shallow water and lack of vegetation, according to a 2004 study.<sup>408</sup> Accordingly, the project's scope included 2000 ft. of shoreline stabilization, with native plantings along the bank.<sup>409</sup>

The plantings required the partnership of multiple private properties riparian to the creek throughout the City of Edina; 16 landowners in total worked with the District to facilitate this work, and throughout the project the community remained strongly supportive of the project and engaged during its execution.<sup>410</sup> Property owners coordinated with the District on planting design and implementation, and the project featured educational signage located along the properties in the area.<sup>411</sup>

### Meadowbrook Project

The Meadowbrook Project was envisioned as a joint-partnership with the Minneapolis Parks and Recreation Board for golf course redevelopment and creek restoration. The concept involved restoration of the Meadowbrook Golf Course so that the Course could handle high water events without extensive damage.<sup>412</sup> Additionally, 7-9 acres of wetland restoration and creek re-meandering at the Course would continue District work along Minnehaha reaches 19 and 21.<sup>413</sup>

A cooperative agreement was signed with MPRB in 2015, which outlined scope of work and mutual goals to facilitate communication during the project.<sup>414</sup> The project included a budget total of \$9 million, with the District work totaling \$1.5 million.<sup>415</sup> The MPRB decided not to go forward with the project as it further contemplated budget and golf course policy issues.<sup>416</sup>

### Master Water Stewards Initiative

In 2013, the District contracted with the Freshwater Society in a grant agreement with the Board of Soil and Water Resources to implement the newly developed Master Water Stewards program. Developed by the Freshwater Society, the

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<sup>406</sup> "Highway 101 Causeway Reconstruction Project," MCWD website, <https://www.minnehahacreek.org/project/highway-101-causeway-reconstruction-project>

<sup>407</sup> Public Hearing, Board Meeting Minutes, February 26, 2015; Mayor's Speech, Meeting Minutes, April 14, 2016.

<sup>408</sup> "Minnehaha Creek Reach 14 Restoration," MCWD website, <https://www.minnehahacreek.org/project/minnehaha-creek-reach-14-restoration>

<sup>409</sup> *Ibid.*

<sup>410</sup> *Ibid.*

<sup>411</sup> *Ibid.*

<sup>412</sup> Board Meeting Minutes, August 27, 2015.

<sup>413</sup> *Ibid.*

<sup>414</sup> *Ibid.* [working on cooperative agreement]; Board Meeting Minutes, October 22, 2015 [amendment to cooperative agreement].

<sup>415</sup> Board Meeting Minutes, January 14, 2016.

<sup>416</sup> [Complete citation. Pull from MPRB minutes]

program was modeled off the Master Gardener's program and aimed to educate individuals who could then encourage and teach others in their communities how to effectively manage stormwater on their own properties and promote the message of water resources stewardship.<sup>417</sup>

Candidates go through a program of extensive training and practical implementation. Based in social networking, the program curriculum was designed to broaden the implementation strategies used to meet the Clean Water Act Municipal Separate Storm Sewer System requirements for cities and the District.<sup>418</sup> Upon completion, candidates receive a certificate that authorizes them as Master Water Stewards, creating a pool of volunteers and educators throughout the District communities.<sup>419</sup>

In its first year, the program focused on the Chain of Lakes area and eastern region of the watershed, with the goal of shifting the focus westward across the District as the program expands.<sup>420</sup> Statistics from the first year indicated that over 4,761 gallons of water had been captured in a one-inch precipitation event alone, using the 14 Best Management Practices constructed by and in collaboration with the Master Water Stewards.<sup>421</sup> Additionally, 7542 feet of drainage area was captured.<sup>422</sup> Freshwater Society assumed full responsibility for the program in 2019 (check), and to date, 277 master water stewards have undertaken over 80 projects and have contributed to infiltration of over 1 million gallons of stormwater.<sup>423</sup>

## Reflections and Lessons Learned

### 1. Leadership matters.

Careful attention to staff leadership and personnel generally can transform the organization's culture, resiliency, and capacity for success. The MCWD committed several years to organizational change, refocusing on mission, vision, and building human resources planning from that central focus. This commitment, and attention to several years of strategic changes, has led to improved staff morale, focused and disciplined staff, and greater capacity to pursue significant projects.

### 2. Balanced Urban Ecology principles are effective.

MCWD can achieve much more resource protection by working in partnership with key land use actors including cities and private developers. The commitment to focused attention on a priority area of the watershed, sustained cultivation of trusted relationships, and collaboration with partners to integrate community, land use, and water resources goals has demonstrated tangible results.

### 3. Consider risks up front.

A thorough risk analysis and staff engagement before launching new projects can help to avoid a misdirection of MCWD resources. Unplanned opportunities may present themselves, but it is

<sup>417</sup> Board Meeting Minutes, February 14, 2013.

<sup>418</sup> Board Meeting Minutes, December 19, 2013.

<sup>419</sup> Board Meeting Minutes, February 14, 2013.

<sup>420</sup> Board Meeting Minutes, December 19, 2013.

<sup>421</sup> *Ibid.*

<sup>422</sup> *Ibid.*

<sup>423</sup> <https://minnesotawaterstewards.org/by-the-numbers/>; [Complete citation, for Freshwater assuming responsibility]

worth pausing amidst fresh exuberance to carefully identify and evaluate a proposal's potential risks - financial, technical, political - before committing resources to it.

#### 4. It takes more than relationships.

Investing in trusted relationships is critical, but relationships alone are not enough. MCWD is most impactful when we have an optimized blend of sound science justifying our work, we integrate outside considerations (land use) to maximize benefit of our actions, we assess risks, and develop relationships and support at all levels needed to be successful.

#### 5. Maintain a culture of self-critical reflection.

MCWD thrives in a culture of transparency and openness to critical review. Continued mutual assessment and reflection is essential for a culture of learning and self-awareness. This learning culture requires openness about mistakes, so that failures are understood as opportunities to grow, and thereby contribute to our continuous improvement.

# MCWD Principles

## 1. Know where you came from, and what is central to your identity

### a. Flood Mitigation is central to the MCWD's mission, identity, and relationships

MCWD was petitioned into existence in 1966 after Minneapolis officials joined the call to form a district for the purpose of flood control. Extreme rain events in 1987 and 2014 again created major flooding problems for local communities, impacting property and infrastructure.

These flooding events will always be a source of conflict and strategic opportunity for MCWD to provide value at the nexus of land use and water management.

### b. Gray's Bay Dam will always be a part of the conversation

Gray's Bay Dam is the original, and central element of infrastructure in the watershed. Its development had support. However, given the complexity of its operation, and the respective property, recreational, and aesthetic perspectives of the Lake and Creek communities, coupled with emerging climate change dynamics, Gray's Bay Dam will continue to be source of upstream-downstream questioning, misunderstanding, and blame for both drought and flooding.

It will remain important to find new ways to strategically communicate the benefits of Gray's Bay Dam, and MCWD's balanced upstream-downstream approach to water management.

### c. Balanced Urban Ecology is the heart of MCWD's approach to watershed management

Leveraging the power of sound science, seeking to understand and join others to pursue watershed management goals, an intense focus on high-impact projects that integrate natural and built environments to create value, and being flexible, creative and adaptable to the needs of cross-sector partners. These principles of a balanced urban ecology have underpinned tremendous success for the MCWD.

Honoring the balanced urban ecology spirit and weaving its ideals into the fabric of the organization, will continue to deliver results and build long-term relationships within the watershed.

## 2. Devoting time and effort to vision and focused execution produces results

### a. A clear vision is contagiously energizing

A clear, compelling, and mutually understood vision serves to focus and harness the full potential of an organization. Understanding WHY, aligns the day-to-day steps, taken as part of a larger process that produces lasting results. As MCWD's vision of a Balanced Urban Ecology crystallized it provided a central and organizing rallying cry for all of MCWD.

Vision should consistently be lifted up as an energizing and focusing force.

### b. Success demands focus

Focus and simplicity drive results. There is power in purpose and having a singleness of purpose allows an organization to give up on good and to go for great. As MCWD evolved, it expanded, diminishing focus, clarity and results. A renewed focus on high impact projects and policy aligned the organization, generating results and the support of partners.

Focus produces results but requires discipline. Innovation in support of the vision is required, but new initiatives must be measured against the organization's established focus.

### c. Bold, creative, flexible and integrated thinking are required

MCWD's Balanced Urban Ecology commits to providing a safe harbor for bold, creative thinking that incorporates the goals of partners with the broader public interest of the watershed. The Board has consistently pushed for more ambitious vision, and strategic thinking from staff, resulting in growth outside of the traditional realm of water, in areas of business, finance, transportation, public safety, real estate, and development. This holistic and integrated approach, coupled with ambitious goals, has built MCWD's reputation as bold, creative, problem-solving partners.

Ambitious goals must be set. Innovation will be required. Status quo should be challenged.

### d. The success of bold visions demands an accurate accounting of risk

Impact comes from vision and bold new ideas, which contain inherent risk. A thoughtful analysis of risk before launch supports effective decision making and avoids the potential misdirection of resources. Unplanned opportunities may present themselves and being nimble and non-traditional has produced results. However, it is important amidst fresh exuberance, to carefully identify and evaluate a proposal's potential risks - technical, financial, and political.

To ensure bold ideas can succeed, develop plans to manage risks on the path to execution.

### e. Verify that the desired results are being achieved, and learn from your mistakes

MCWD is committed to excellence and achieving outstanding results that benefit the watershed and honor its partners. Meeting these high standards requires vision, strategy, learning, and continuous improvement. Clear vision catalyzes organizational energies. A compelling strategy focuses the effort, providing a pathway to success. But to learn and grow requires analysis of results, how they were achieved, and how they can be improved.

No matter how clear the vision or elegant the strategy, time must be spent evaluating the results. Debrief on what worked, and what didn't. This is where the learning happens.

### 3. Rely on sound science to make credible, results-based decisions, and build trust

#### a. Value is delivered through science-based understanding that reveals practical solutions

Before every significant phase of accomplishment was an emphasis and investment in data collection and analysis, which yielded deep insights that MCWD used to work with partners to reveal impactful policy and project solutions.

The watershed and communities benefit when MCWD uses data to understand problems and unlock solutions.

#### b. Trust in MCWD has been built on sound science and partnership

Trust is the most valuable currency for any brand, and polling data has consistently shown MCWD's credibility to be high. This public confidence has been built painstakingly over time by consistently making high-quality, data-driven decisions, a clear communication of the facts, and partnership.

Maintaining priority on a data-driven culture will continue to build MCWD's reputation as a credible source of information and wise decision making.

#### c. A deep understanding of watershed hydrology is vital to MCWD's mission and credibility

The Minnehaha Creek watershed is a large and relatively complex system, that includes a diverse and interdependent mix of natural and built systems. This can make it difficult for people to understand the full dynamics at play across the watershed. Things that are difficult can drive frustration, upstream-downstream tensions, and the potential for conflict.

As rainfall patterns shift due to climate change, a strong understanding and clear communication of the watershed's hydrology will support MCWD's mission and underpin its credibility.

#### 4. Partnerships are a difference making ingredient in MCWD's continued success

##### a. Science is essential, but on its own is insufficient

Using science to understand issues and find solutions is a critical first step in all of MCWD's most significant work. It is possible to go it alone, following just the science, and still get the immediate job done. However, doing so can cause conflict and friction that diverts valuable time, energy, and resources. It can also result in lasting relational damage.

Technical understanding integrated with political and community support produces superior and sustainable results to working alone.

##### b. Land use partnerships are essential, and Balanced Urban Ecology principles support them

What happens on the landscape affects the quality and amount of water moving through a watershed. So, watershed management requires working directly with the land. However, landowners and decision makers have many concerns beyond water. MCWD's Balanced Urban Ecology commits to focused attention in project priority areas of the watershed, providing the opportunity to cultivate trusted relationships, learn about local issues and priorities, achieve impact at scale, and creatively position investment in water through mutually beneficial solutions.

Balanced Urban Ecology means integrating water resources with landowner priorities, to deliver environmental, social, and economic value.

##### c. Partnerships require clear messaging and strategic engagement with leaders, staff and community

To get big things done MCWD must gain support from decision makers in their respective processes, and the community which influences those decisions. MCWD has learned that distilling complex issues into clear simple stories builds buy-in from decision makers and the community. Also, that staff support is not the same as supportive policy leadership, and that, even with supportive leadership, staff are critical to driving work forward to execution.

MCWD is most successful when it frames a clear data-driven visual story, and then strategically engages partner agencies and the community at respective levels.

##### d. Partnerships can be challenging, time consuming, and require patience and persistence

Working in partnership is often less comfortable and slower than working alone. But it offers the promise of achieving superior results. Bridging interests across a diversity of partners, with varying perspectives, should be expected to result in points of conflict.

Partnership dynamics require proactive management, time, patience and persistence.

##### e. Partnership is a process, not a posture

Partnership is not a state of being, and messages of partnership will not remedy a bad experience. Partnership is the result of sustained action over time in cultivating the relationships needed to deliver impact. Earning trust by being responsive, polite, courteous, clear, direct, unflappable, and of service and value, pays dividends in building a network of relationships that are critical to the sustained success of the organization.

Relationships are a prime commodity in MCWD's success, and every interaction is an opportunity to build or erode MCWD's brand with a prospective partner.



## 5. Statutory powers provide important authority, which must be used judiciously.

### a. Earning mutual respect can require speaking up or drawing a line

Following the initial adoption of a regulatory program that involved enforceable requirements, not mere advisory comments, MCWD's authority was inevitably challenged. A few early demonstrations of resolve, including time spent in court, led to a long period of few challenges to the MCWD's regulatory program. One notable example was MNDOT's refusal to comply with watershed permitting requirements and issues with the Highway 55/62 interchange. In what may be the only case of a court injunction halting highway construction to address an environmental concern, ultimately the Federal Highway Administration backed MCWD's technical concerns. Over time, working through these and other issues allowed MCWD to find a stronger and more productive posture, based on mutual respect and an understanding of MCWD's underlying authority.

Challenges to authority that are carefully met with science and resolve ultimately reinforce MCWD's credibility and foster mutual respect.

### b. Lonely decisions rooted only in authority may create long-lasting consequences

All decisions have future consequences that can positively or negatively affect both the organization's reputation and effectiveness. Over the years MCWD faced many decisions points which generated lasting consequences. Among them have been decisions to proceed with projects (e.g. 1990s Long Lake) without clear commitment from affected municipal partners and without the necessary property rights. In this instance, while eminent domain had been used successfully in the past, its use in the Long Lake project resulted in significant costs in local perceptions and relationships. Similarly, MCWD decided in the mid-2000s to use its local water planning authority to assign waste load allocations to municipalities while simultaneously developing new leading regulatory standards for managing stormwater runoff volume and for wetland buffers. These decisions, while rooted in authority and science, resulted in a lasting perception that MCWD was a regulator first and partner second.

Forging ahead on a basis of science and authority, without clear support, can create lasting relational damage. Selectively working where MCWD has partnership capital provides long term wind in our sails, and credibility.

### c. With careful balance, MCWD can be perceived as a regulator and a partner

Over time, MCWD's emphasis on regulation cycled to meet the needs of the day: from initial challenges to MCWD's authority, to principled challenges on transportation projects, through controversial rulemaking, and into watershed planning policies that were perceived as unfunded regulatory mandates for local communities. This strategic arc built MCWD's reputation as a regulator, rather than a partner. In time, MCWD learned the value of collaboration and the realization that leading with partnerships need not sacrifice water resource protection.

MCWD can maintain the authority of its regulatory program to assure water resource protection while also being alert to achieving greater protection through partnerships.

## 6. The Board sets the direction, bar, and tone of the organization

### a. Leadership, excellence, and accountability flow from the Board

Leadership sets the direction and tone for the organization, and the Board of Managers are the organization's leaders. The focus and quality of the organization flows from the Board. As the Board's role has naturally evolved over time, the example the Board sets for the organization has become increasingly important. MCWD's Board has led well when it has:

- Welcomed diverse perspectives and facilitated an environment where ideas flow fluidly and are welcomed, challenged and scrutinized, with the good ones being put quickly into action.
- exhibited the courage to ask tough strategic questions and cultivate creative tension, while avoiding group think and complacency; and
- shown the ability to harmonize through leadership, humility, insight, trustful culture, and learning.

### b. The Board of Managers has the authority to manage, but excels when it governs

Over time the MCWD Board has naturally evolved from a hands-on role before hiring staff, to the role of managers as the organization grew, into leadership and governance to support the evolution of an effective staff team.

In its role, the Board excels when it establishes clear expectations and parameters for success, maintains a strategic view ahead, uses managers' insights to look deeper, and are active partners with staff in driving next level innovation.

### c. To be successful, there must be a strong marriage between staff and Board

A focused Board concentrates on oversight of strategy and governance, seeks the best interests of the whole watershed, and maximizes effectiveness to avoid getting lost in the details. To work in this way requires a strong mutual partnership and trust with staff leadership. There is risk in Board led organizations that staff will either view the Board as a nuisance to navigate around, or an authority to unquestioningly take orders from.

The optimal relationship between Board and staff is built on shared vision, trust, respect, frequent transparent communication, and a mutual willingness to offer candid critique.

## 7. Success is driven by people, so get the people and culture right

### a. People matter and hiring wrong is costly

As important as what must be done, is the question of who should be given responsibility for determining what should be done. Among the decisions an organization can make, perhaps most critical is the selection of the right people to be responsible for the goals and outcomes of the organization. Careful attention to personnel transformed the organization's culture, resilience, and capacity for success.

Place a premium on staff leadership by cultivating clear expectations, trust, and accountability.

### b. People should be continuously developed, evaluated, and held accountable

An important part of the training and learning process is making mistakes. Allowing people to make mistakes, provided they are not too serious, promotes learning and growth. However, to effectively leverage mistakes it must be unacceptable not to learn and grow from them. Professional growth also requires everyone to get in sync about performance, which comes from consistently providing accurate feedback, with a mutual understanding that clear feedback is kind. While growth is the goal, when evaluating people and delivering feedback be careful in making attempts to significantly change people's value or abilities. Rehabilitation in these dimensions is often impractical.

Train and develop, set clear sideboards, or remove, rather than collecting and working to change people's nature.

### c. Innovation and quality decisions comes from properly assessing the merit of all ideas

In many organizations decisions are often made either top-down by leadership, or democratically where the most widely supported opinions are implemented. Both processes produce inferior decisions. Quality decisions rely on the objective merit of an idea, and good ideas can come from any level or part of an organization. So, the key is to determine the merit of ideas. This can be done by weighing an idea's believability, stress-testing it (red-teaming) through open critical dialog with other capable people who have independently thought about it. In these instances, the most believable opinions come from people who (1) have repeatedly accomplished the thing in question, or (2) can logically explain the cause-effect behind their conclusions.

Value ideas from all levels of the organization and make decisions based on the stress-tested merit of the idea.

### d. Trust in transparency

High performing teams operate with high degrees of trust. Trust is generated by being radically transparent. Providing broad access to all information, across staff and the Board regardless of hierarchy or department builds trust, drives clarity, and reduces the risk of office politics which like to happen behind closed doors or in the shadows. Within this framework everyone has the right to understand what makes sense, and no one has the right to hold a critical opinion without speaking up.

Value honesty, integrity, and authenticity, and make it important to be extremely open, to speak up, to own it, or to opt out of the organization.

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