

## Fwd: CARPC, Badger Mill Creek, and MMSD

Topf Wells <topfwells@gmail.com>

Wed 6/12/2024 8:47 PM

To: Nick Bower <nickb@capitalarearpc.org>

I'm trying to send this letter to Mr. Valerius and through him to the Commission. I'm not sure I have his correct email. Would you please send it to him and if appropriate and possible to the Commission? Sorry to bother you; hope you are well, Topf Wells

----- Forwarded message -----

From: **Topf Wells** <topfwells@gmail.com>

Date: Wed, Jun 12, 2024 at 8:36 PM

Subject: CARPC, Badger Mill Creek, and MMSD

To: <jasonv@capitalarearpc.org>, Caryl Terrell <carylterrell@charter.net>

Dear Mr. Valerius,

Welcome to CARPC and the challenges and opportunities you and your colleagues face. You'll work in interesting times.

By way of introduction, I'm most concerned about Badger Mill Creek (BMC), MMSD, and CARPC's role in protecting (I hope) the creek for several reasons.

I'm the vice-president of the Southern Wisconsin Chapter of Trout Unlimited (SWTU). SWTU has devoted 30 years of support for and volunteer efforts on behalf of Badger Mill Creek and thinks that MMSD's decision to stop the flow of effluent to the creek will substantially harm it. I represented SWTU during MMSD's public outreach and decision making process and currently serve as its representative on the MMSD stakeholder effort.

I served for three years on the MMSD Commission. I know MMSD's functions, mission, and governance well. The health of Badger Mill Creek was always one of my concerns as a Commissioner, one which I frequently championed.

I was County Executive Kathleen Falk's Chief of Staff, when she led the negotiations to create CARPC and staffed her in that effort. One of the principal reasons for the replacement of the Dane County Regional Planning Commission with CARPC was to have a regional planning commission better able to make the tough recommendations and decisions needed if Dane County was to preserve its natural resources in the face of continued and high growth. The review of MMSD's decision will test how successful those reforms were.

### 1. Questions.

In the latter stages of MMSD's deliberations re: BMC, several advocates for the creek, myself included, reviewed DNR letters and met with DNR attorneys and staff and CARPC staff regarding CARPC's and the DNR's review of MMSD's decision. The review will occur because MMSD's decision to stop the discharge of its water to BMC requires an amendment to the Area- Water Quality plan. We were

explicitly assured that this review would be public, meaningful, transparent, and not a pro forma exercise. MMSD was not guaranteed approval of its decision.

We were also informed that the review could include more study of the issue. Is this how the review will occur? What details can you now provide regarding the timing of the review and the means by which the public will participate? Will the review be substantial and meaningful-- that is, will CARPC have the option of recommending that the DNR not approve MMSD's decision? Will CARPC be able to seek more information if staff, you, and the Commission believe it's needed?

The MMSD mitigation process has brought to light new information, analysis and conclusions concerning the loss of water in BMC. The MMSD staff report and recommendation suggested that discontinuing the effluent would not hurt the creek and might even benefit it. The DNR Fish Management and Water Quality presentations demonstrated a high probability that that assertion was wrong and that the creek would almost certainly be harmed. The current DNR assessment of BMC shows that it is an improving Class 2 trout stream. The DNR's extensive review of BMC's history demonstrated that the treated effluent was a major factor in the improvement of the creek. One example of the possible effects of the loss of that water occurs downstream of old PB and above Lincoln Street. That segment holds trout and Dane County spent at least \$200,000 in trout habitat restoration. In the future, that might only support a warmwater forage fish community. Will CARPC be able to consider such new information in its discussions and decision?

Will CARPC have the current health of the creek as an important consideration? That might seem like a stupid question with the answer being yes. Lately however the notion that perhaps having the creek revert to its pre-effluent stage is okay or preferable.

That is wrong because it ignores one of the reasons for the transfer of water to BMC and the current value of the stream. The value of the stream is extraordinary. Healthy, improving Class 2 trout streams, in particular those with a decent chance of improving to Class 1, are rare in rapidly growing metropolitan areas. The creek is a convenient source of many forms of high quality outdoor recreation to folks of different ages, economic levels, and ethnicities. I participated in the original discussion regarding BMC and MMSD effluent. One reason the discharge was approved was the hope that it would benefit the creek, which was vulnerable to many of the effects of urbanization. Experts were divided on the likelihood of benefits but those have been clearly realized. Had the policymakers then decided that it was okay to keep BMC in its then current and vulnerable state, the transfer of water would never have been approved. Shutting off the MMSD water will return BMC to that vulnerability, probably made worse by the accelerating growth of the metro area.

To what extent is MMSD's process in making its decision relevant to CARPC's review? In my judgment that process was as bad as I've encountered in 30 years of public service at the state and local levels. The MMSD Commission was not involved in the process as it had been when it approved Adaptive Management for the Yahara watershed. Staff misrepresented or did not report the DNR Fish Biologists' concerns about withdrawing the MMSD water from BMC. MMSD management stated that Adaptive Management was not possible in the BMC/Upper Sugar River watershed, which is not what advocates for the creek (including me) and local officials heard directly from DNR staff who run that program. MMSD staff failed to note the work of their own consultant, whose report stated that the loss of effluent would possibly harm trout spawning in BMC, one of the most critical factors in a healthy trout stream.

I'll cite a couple more critical flaws but one could fairly note that a bad process does not necessarily produce a bad result. With all the budgetary, energy-using, and conservation factors the MMSD Commission had to consider, perhaps shutting the water off is the responsible choice. The problem with the flawed process is that it did not present the Commission with the information to make that difficult decision responsibly. The Commission believed it could stop the water and not hurt and probably improve the creek. The \$1 million to maintain or improve the creek was insurance that the creek would not be harmed. I attended the public hearing and Commission meeting during which the Commission deliberated and then voted on its recommendation. The Commission would not have decided to stop the water to BMC if the staff report had indicated the loss of water would hurt the creek.

Critical flaws enabled the report to erroneously provide those assurances to the Commission. The staff asserted that increased baseflow from increased precipitation and increased infiltration was the reason for the creek's improvement. Climate change would produce more precipitation and thus more infiltration, more baseflow, and a stable or improving BMC. The effluent brings more water to BMC than the increased precipitation and infiltration. As noted, the DNR analysis shows that the effluent has been critical to BMC's improvement. As the staff report reached the Commission, this region was in the midst of a 2.5 year drought. That illustrates how climate change is really occurring. Our region will have years of increased precipitation but also years of heat waves and drought. In some years the precipitation will largely infiltrate and increase baseflow. In other years the precipitation will occur in downpours or other extreme events. Not much infiltration and some destructive floods will occur during those years. Advocates for BMC begged MMSD staff to include a more thoughtful and nuanced analysis of the effects of climate change on the creek to no avail.

The stakeholders have spent much of our time on flow augmentation and increased groundwater recharge because many of us are convinced that the loss of water will hurt the creek. Unfortunately, it doesn't appear that any option or combination of options will offset the water MMSD will withhold.

## 2. Public Trust.

At the first session of the stakeholder process, Laura Hicklin, Director of the Dane County Land and Water Department, Mike Sorge, Water Quality Supervisor for the Southern District of the DNR, and I spoke of the extreme damage MMSD's process and decision did to the public's trust in MMSD (we spoke independently without any prior discussions with one another), Michael Mucha acknowledged and apologized for that damage at the next meeting. However, he did not recognize how MMSD failed. One problem was the flawed process MMSD staff, management, and Commission followed. Another was the incredible lack of response to the public during MMSD's outreach. Many questions in many settings were ignored. At one meeting with BMC advocates and local government officials, including the Mayor of Verona, MMSD completely ignored that group's offer to help MMSD explore the possibility of Adaptive Management. At meeting after meeting MMSD staff promised they had not yet decided what option to recommend to the Commission. After each of those meetings advocates would discuss the proceedings and what they heard from other attendees. I've never heard anything like those responses and reports-- absolutely no one believed MMSD staff. Everyone believed that MMSD staff and management had decided to recommend stopping the discharge.

All that may seem to be MMSD's problem. It also creates a challenge for CARPC. Many folks now look to CARPC for a fair and meaningful review of the phosphorus compliance options MMSD has. We hope and expect CARPC will give BMC a fair shake after MMSD has failed to do so. We don't think MMSD has justified its request for an amendment to the Area-wide Water Quality Plan. The reasons

for approving the transfer of water back to the Sugar River basin via the discharge of treated effluent to Badger Mill Creek are still valid today.

For its own credibility CARPC has to learn from MMSD's mistakes. It should offer a fair and transparent process with ample opportunity for public input and more study of BMC if that's needed. CARPC must show a genuine concern for the health of BMC and value it as one of Dane County's important natural resources. Any CARPC process that strikes the public as pro forma or pre-determined in MMSD's favor will hurt CARPC badly.

Thank you for your patience in reading this and for your consideration of my concerns. Will you please share this with the CARPC Commissioners early in their deliberations about MMSD and Badger Mill Creek?

Thank you,

Topf Wells