

## MEETING MINUTES

### Riley-Purgatory-Bluff Creek Watershed District

### September 11, 2024, RPBCWD Board of Managers Public Hearing and Regular Monthly Meeting

PRESENT:

Managers: Jill Crafton, Treasurer  
Tom Duevel, Secretary  
Bonnie Nelson  
Dorothy Pedersen, President  
David Ziegler, Vice President

Staff: Zach Dickhausen\*, Natural Resources Coordinator  
Liz Forbes\*, Communication Manager  
Terry Jeffery, District Administrator  
Josh Maxwell\*, Water Resources & Fisheries Manager  
Dylan Monahan, Office Administrator  
Alaina Portoghese\*, Communications Specialist  
Louis Smith, Attorney, Smith Partners  
Scott Sobiech, Barr Engineering Company  
Rachel Whittington, MN GreenCorps

Other Attendees: Joe Bischoff\*, Barr Engineering  
Michelle Frost, CAC  
Larry Koch  
*\*Attended the meeting virtually.*

#### 1. Call to Order of Board of Managers Regular Monthly Meeting

1 President Dorothy Pedersen called to order the Wednesday, September 11, 2024, RPBCWD  
2 Public Hearing and Board of Managers Regular Meeting at 7:00 p.m. at the District Office, 18681  
3 Lake Drive East, Chanhassen, Hennepin County, Minnesota. All managers of the Board were  
4 present, in person.

#### 2. Approval of Agenda

5 Manager Ziegler moved to approve the agenda as written. Manager Duevel seconded the motion.  
6 Manager Crafton pulled from the Consent Agenda the item “Authorize Administrator to Register  
7 up to 2 CAC Members for the Annual Conference.” The motion carried with no managers  
8 opposing.

### 3. Public Hearing on Proposed 2025 Budget and Levy

9 President Pedersen opened the public hearing on the District’s proposed 2025 budget and levy.  
10 She noted the protocol for providing public comments and explained there is another opportunity  
11 to provide public comment on the budget and levy in December.

12 Larry Koch commented he did not see anything posted online as of 9:30 p.m. last night and his  
13 point is this information was not posted in time for any reasonable review of the budget. He asked  
14 if the District is making a presentation about the proposed budget.

15 Administrator Jeffery said he has a short presentation. He displayed the slide presentation  
16 “RPBCWD 2025 Budget and Levy – Annual Reserves and Carryover Funds by Year, August 7,  
17 2024.” He recapped the District’s proposed 2025 levy, budget, and related financial data as  
18 previously presented and as follows:

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- 20 • Total levy amount 2025: \$4,249,905
- 21 • Unspent Monies from 2024: \$4,013,812
- 22 • Other Revenue: \$429,500
- 23 • Total Assets for 2025: \$8,693,217
- 24 • Total Expenditures in 2025: \$6,394,750
- 25 • Reserves at end of 2025: \$2,298,467
- 26 • As proposed, the levy is a 5% increase over 2024.
- 27

28 Larry Koch of 471 Bighorn Drive, Chanhassen, commented he did not receive this information  
29 early enough to make an informed decision and the information was not as detailed as the  
30 information provided in the past regarding the budget and the variations from one year to the  
31 next, especially including carry-overs. He said the information could have been simply provided  
32 to the public. Mr. Koch said the second line says Plan Implementation Levy and lists that  
33 projected for 2024 is \$2,000,000. He said he is not sure why the carryover is \$2,000,000 and what  
34 it includes or does not include. Mr. Koch said he thinks the public would like to know percentage  
35 up and percentage down in any of the budget columns. He objected to the budget because as he  
36 reads it, the District is proposing to spend \$500,000 on an illegal acquisition. Mr. Koch said he  
37 has a lawsuit pending over this entire matter and he thinks it is illegal for four different reasons.  
38 He said he is pretty confident the court will view it as an illegal expenditure.

39 Mr. Koch asked about the level of involvement of the Audit and Finance Committee regarding  
40 coming up or approving this budget. Administrator Jeffery said the Audit and Finance Committee  
41 has seen it once and was not involved in preparing the budget. He said the draft budget and levy  
42 has been brought to the full Board on three occasions for discussion.

43 Manager Crafton commented she thinks the Board gave the draft budget a thorough review.

44 Administrator Jeffery commented the budget spreadsheet line item “Plan implementation levy”  
45 regarding the projected 2024 revenues in the amount of \$2,090,306 reflects what the District has  
46 received for levy payments thus far this year.

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#### 4. Matters of General Public Interest

48 President Pedersen announced the protocol for raising matters of public interest and called  
49 for public comment on matters of general public interest.

50 Larry Koch of 471 Bighorn Drive, Chanhassen, said he does not believe this board of  
51 managers is duly constituted. He said he believes its actions are voidable, if not entirely  
52 void, and is a violation of multiple Minnesota Statutes including but not limited to  
53 103D.311 subd. 3. Mr. Koch said it is his opinion that as reflected in the meeting minutes,  
54 Attorney Smith mischaracterized the judge’s ruling, which only had to do with the  
55 injunction. He said he believes Manager Nelson and Manager Crafton are not managers and  
56 this board does not comply with the requirement to have the managers fairly represent the  
57 various hydrologic areas. Mr. Koch stated there are continuing violations of the Open  
58 Meeting Law, not the least of which was the lack of having the presentation available. Mr.  
59 Koch commented there are also continuing violations of the Minnesota Data Practices Act.  
60 He said he has several requests not responded to or responded to in part and not followed up  
61 with. Mr. Koch commented it seems the Board is going to continue to fail to pay him the  
62 compensation expenses due to him and, therefore, that will have to be, unfortunately, settled  
63 in litigation. Mr. Koch said the proposed resolution to delegate authority in the manner in  
64 which it is being proposed violates the Governance Manual and, therefore, would be  
65 ineffective. Mr. Koch said he is continually disappointed in the CAC for failing to  
66 adequately serve the purposes set forth in the statutes. He said he wishes the CAC would  
67 take a more active view in serving the purposes for which it was formed. Mr. Koch said the  
68 District’s accounting practices violates standard accounting principles and the District’s  
69 credit cards are not being processed or reported correctly and the District is treating credit  
70 card companies as vendors, but they are not and instead are a means of financing. He said  
71 the District can continue to violate basic accounting principles and perhaps we will have to  
72 see what the State Auditor has to say about that.

73 Mr. Koch reached his public comment time limit of three minutes.

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#### 5. Reading and Approval of Meeting Minutes

##### a. Approve Minutes of the August 7, 2024, Regular Meeting of the RPBCWD Board of Managers

77 Manager Ziegler moved to approve the minutes of the August 7, 2024, Regular Meeting  
78 of the RPBCWD Board of Managers. Manager Crafton seconded the motion.

79 Manager Crafton noted the following edit: on page 8, line 160 delete the word “we.” The  
80 managers consented to the edit. The motion carried with no managers opposing.

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82 **b. Approve Minutes of the August 7, 2024, RPBCWD Board of Managers Workshop**

83 Manager Duevel moved to approve the minutes of the August 7, 2024, RPBCWD Board  
84 of Managers workshop. Manager Ziegler seconded the motion. The motion carried with  
85 no managers opposing.

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## 6. Committee Reports

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- **Receive Citizen Advisory Committee Report**

88 Michelle Frost of the CAC reported the CAC has been discussing what the CAC  
89 can do to support water conservation efforts in the watershed. She said the CAC  
90 feels it is important to meet with the cities in the watershed district to learn what  
91 they are doing regarding water conservation and to find out how the District can  
92 partner with its cities. Ms. Frost said four CAC members are meeting with District  
93 member cities and will report back, and the CAC will provide the information to  
94 the Board.

95 Manager Nelson commented the City of Woodbury has implemented the water  
96 conservation practice of using moisture sensors. She suggested the CAC talk with  
97 the City of Woodbury, too. Manager Nelson asked the CAC to double check its  
98 upcoming meeting dates, including the date of the bird ecology lecture, as listed  
99 in the CAC minutes.

100 Administrator Jeffery said staff will notice the CAC’s ornithology presentation to  
101 notify the public a quorum of the Board may be attending.

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- **Receive Audit & Finance Committee Report**

104 No comments or questions were raised.

105

- **Receive August Staff Report**

107 Manager Crafton asked for more description about the DEI RFP. Administrator  
108 Jeffery said he will ask Eleanor Mahon to reach out to Manager Crafton.

109 Manager Crafton commented about a series by Nature Canada on urban tree  
110 canopy. She said there are metrics for tracking urban tree canopy and results.  
111 Manager Crafton said the recording and materials should be available in about 60  
112 days and the District may be interested in the information about tracking. She  
113 asked if the District doing anything with resiliency. Administrator Jeffery said the

114 modeling is finished and the next step is to apply for a Pollution Control Agency  
115 grant to start working with the cities regarding mitigation techniques. Manager  
116 Crafton said everything she is hearing at the state level is about resiliency and she  
117 thinks the District might want to look at resiliency, not just ecosystem health. She  
118 said resiliency is more dynamic, as ecosystems do not stay the same.

119 Manager Crafton said she thinks the Board needs a conversation about the  
120 managers getting to know each other and strengths and weaknesses, like using the  
121 Strength Finder tool, in order to be ready to move forward as a Board.

122 Administrator Jeffery said the first part of the agenda for the Board and staff's  
123 October 7<sup>th</sup> retreat focuses on ice breakers, and that part of the agenda could be  
124 expanded.

125 Manager Duevel suggested the District explore using social media to connect with  
126 a broader audience. He also suggested the District try to get on the Channel 11  
127 Saturday morning show.

- 128 • **Receive August Engineer's Report**
- 129 • **Receive August Regulatory Report**

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#### 131 **a. Adopt Resolution 2024-053 Receiving the Committee Reports**

132 Manager Duevel moved to adopt Resolution 24-053 Receiving Committee Reports.  
133 Manager Ziegler seconded the motion. The motion carried with no managers opposing.

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#### 135 **b. Confirm Board Representative for CAC Meeting**

136 Manager Nelson volunteered to be the Board representative at the September CAC  
137 meeting.

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## 7. Consent Agenda

#### 139 **a. Adopt Resolution 24-054 to Approve Consent Agenda**

140 Manager Crafton moved to adopt Resolution 24-054 to Approve the Consent Agenda.  
141 Manager Ziegler seconded the motion. The motion carried with no managers opposing.

142 The Consent Agenda included:

- 143 • Approve Permit 2024-056 Hennepin County Regional RR Culvert Lining as  
144 Presented in the Recommended Board Action Section of the Permit Report;
- 145 • Award Lotus Lake Alum Treatment to Solitude and Authorize Administrator to  
146 Enter into Agreement with Advice of Counsel;
- 147 • Authorize Grant Reimbursement to The Preserve Association of \$20,000.

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**8. New Business**

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**a. Items Removed from Consent Agenda**

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**i. Authorize Administrator to Register up to 2 CAC Members for the Annual Conference**

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Manager Crafton said she thinks it is important to send up to three CAC members to the Minnesota Waters annual conference. Administrator Jeffery said the District's budget includes covering two CAC members, so if the Board wants to send three, there would be room to take it out of the managers per diem line item or take it out of the District's reserve funds. The managers consented to authorizing up to three CAC members to attend the Minnesota Waters conference and authorizing the Administrator to take the cost for the additional CAC member to attend out of the District's Reserves.

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**b. Accept August Treasurer's Report**

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Manager Duevel moved to accept the August Treasurer's Report. Manager Crafton seconded the motion. The motion carried with no managers opposing.

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**c. Approve Payment of the Bills**

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Manager Crafton moved to approve payment of the bills. Manager Ziegler seconded motion. The motion carried with no managers opposing.

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**d. Adopt Resolution 24-055 Adopting 2025 Budget and Levy Authorizing the Administrator to Submit to County Auditors**

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Manager Ziegler moved to adopt Resolution 24-055 Adopting 2025 Budget and Levy as presented and Authorizing the Administrator to Submit the Budget and Levy to County Auditors. Manager Crafton seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Nelson	Yes

Pedersen	Yes
Ziegler	Yes

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**e. Approve Modification of Permit 2024-006 to Bifurcate into 2024-006a and 2024-006b**

Administrator Jeffery reminded the Board about the wetland violation that went across two properties. He said the property owners needed to meet the Wetland Conservation Act restoration order and the Prices have met all conditions of the permit. Administrator Jeffery reported the Swansons have raised issues with the maintenance declaration. He explained the Prices applied jointly with the Swansons for one permit application and the bond that is in place covers the entire the property. Administrator Jeffery said District Engineer Scott Sobiech notes the primary structure could be moved to be located on only on the Price property.

Attorney Louis Smith commented the District’s legal counsel, engineer, and administrator do not generally recommend combined permit applications of multiple property owners. He said the property owners wanted to proceed in that manner and one property owner posted the bond as a requirement of the permit. Mr. Smith stated the District requires permit applicants to post financial assurance bonds or a letter of credit to guarantee the District has recourse to cover going onto the property to remedy problems. He said it is fine if the Prices would like to sever their part of the permit, but they posted the bond to cover both properties. Mr. Smith said he is reluctant to allow the release of that bond until the District knows more. He explained right now the violation is sitting on the Swanson’s property and the District’s only recourse a bond posted by the Prices to cover the Prices and Swansons. Mr. Smith it is his opinion it fine for Prices to sever the permit application since they have met all the conditions to proceed with their work but not allow the release of the surety – so the condition is to leave the surety in place.

Administrator Jeffery said the Swansons still do not have a permit, and he thinks the most elegant solution is moving all the work, including the control structure, to the Prices property. President Pedersen commented she is in agreement with that solution.

Mr. Smith said the motion would be to authorize the Administrator to bifurcate the permit to Permit A and Permit B, one for the Prices and one for the Swansons, and approving a permit modification as to moving the structure onto the Price property to allow the work to proceed on the Price property and to direct the Administrator to report back to the Board.

Manager Ziegler moved to approve the modification of Permit 2024-006 to Bifurcate into 2024-006a and 2024-006b as described by Attorney Smith. Manager Nelson seconded the motion with the modification to include the District maintains the surety bond even with bifurcating the permit.. Manager Ziegler agreed to Manager Nelson’s amendment to the motion. The motion carried with no managers opposing.

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**f. Adopt Resolution 24-056 Approving Barr Task Order #39B for Refinement of the North Lotus Lake Concept Plan and Additional Stakeholder Engagement**

Administrator Jeffery said the idea to make the North Lotus Lake Park a stormwater park, instead of just putting a stormwater BMP in the park, came out of discussions with the City of Chanhassen, the Chanhassen Parks and Recreation Committee, residents, and District staff. He reported he asked Barr Engineering for a modified scope of work that would allow for this additional engagement with stakeholders and plan refinement for the Board and stakeholders to consider.

Manager Ziegler moved to adopt Resolution 24-056 Approving Barr Task Order #39B for Refinement of the North Lotus Lake Concept Plan and Additional Stakeholder Engagement. Manager Duevel seconded the motion. The motion carried with no managers opposing.

**g. Adopt Resolution 24-057 Authorizing Administrator with Advice of Counsel to Enter into an Agreement with Landbridge Ecological for Three Years of Maintenance on the Restored Prairie at St. Hubert’s School**

Administrator Jeffery said this topic is regarding the St. Huberts project. He said the District released the last of the retainage in 2023, but the subcontractor has not performed the maintenance on the site after the first year. Administrator Jeffery said a way to move forward is for Mayer Construction to pay Landbridge Ecological to prepare the site, remove the weeds and non-native species, and replant the prairie including the trees as provided in the original specification, and the District will take over the three-years of maintenance of the prairie. He said Landbridge would have two agreements – one with Mayer Construction and one with the District, and the District’s funding would come from its Repair and Maintenance fund.

Manager Ziegler moved to adopt Resolution 24-057 Authorizing Administrator with Advice of Counsel to Enter into an Agreement with Landbridge Ecological for Three Years of Maintenance on the Restored Prairie at St. Hubert’s School. Manager Duevel seconded the motion. The motion carried with no managers opposing.

**h. Adopt Resolution 24-058 Authorizing the President or Administrator to Enter into a License with Landowners along the Upper Riley Creek Project Area for Purposes of Access, Construction, and Maintenance**

Administrator Jeffery said five of the landowners have tacitly agreed and are reviewing the agreements with their own counsel. Administrator Jeffery said if any of the landowners come back with material changes to the agreements, he will bring them back to the Board.



252 Manager Ziegler moved to adopt Resolution 24-058. Manager Duevel seconded the  
253 motion. The motion carried with no managers opposing.

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255 **i. Approve Resolution 24-059 Setting Administrator’s Delegating Spending**  
256 **Authority**

257 Administrator Jeffery said under the current setting he is authorized to spend up to \$5,000.  
258 He said there have been numerous instances in which this had not been adequate. He said  
259 the proposed resolution is based on Rice Creek Watershed District’s model. Administrator  
260 Jeffery explained the action in the resolution would not delegate authority for the  
261 administrator to spend on any policy matter but instead authorize the spending for day-to-  
262 day operations. Administrator Jeffery said moving forward with this change would require  
263 a modification to the Governance Manual to reference the managers may delegate by  
264 resolution spending authority to the Administrator.

265 President Pedersen asked if the Audit and Finance Committee concur with this change.  
266 Manager Crafton said yes.

267 Manager Nelson asked if the Governance Manual would need to be updated first and if  
268 not, would there be conflict between the Manual and this action.

269 Mr. Smith said you could wait until Governance Manual changes are made, but it seems  
270 the Administrator is saying there are operational needs to proceed sooner than that. He  
271 said in that case, as long as the Board is clear, the Board’s action on this resolution would  
272 be what controls the Administrator’s authority, and we would know the revisions to the  
273 Governance Manual are coming soon. Mr. Smith said the record would note that taking  
274 this action is consistent with what is anticipated in the Governance Manual and the  
275 specific resolution on the administrator’s authority is what will control the administrator’s  
276 authority.

277 Manager Ziegler moved to Adopt Resolution 24-059 Setting Administrator’s Delegating  
278 Spending Authority. Manager Crafton seconded. The motion carried with no managers  
279 opposing.

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281 **j. Authorize Resolution 24-060 Designating Two Delegates and an Alternate for**  
282 **the Minnesota Watersheds Annual Business Meeting and Authorizing the**  
283 **Delegates to Present Resolutions**

284 Manager Pedersen nominated Manager Ziegler as delegate. Manager Ziegler nominated  
285 Manager Crafton as delegate. Manager Crafton nominated Manager Duevel as alternate  
286 delegate.

287 Manager Ziegler moved to Adopt Resolution 24-060 Designating Two Delegates -  
288 Manager Ziegler and Manager Crafton - and an Alternate – Manager Duevel - for the  
289 Minnesota Watersheds Annual Business Meeting and Authorizing the Delegates to

290 Present Resolutions. Manager Duevel seconded the motion. The motion carried with no  
291 managers opposing.

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293 **k. Approve Change Order for Additional Engineering Services Budget on Task**  
294 **Order #32B Upper Riley Creek Project**

295 Mr. Sobiech explained the change order is for extra budget in the amount of \$19,500 for  
296 design, permitting, and agreement support services for the Upper Riley Creek Ecological  
297 Enhancement Project. President Pedersen asked if the District has the funds for the extra  
298 budget. Administrator Jeffery said yes, there is adequate budget for it now and the District  
299 may evaluate if additional funds are needed as part of the 2026 levy.

300 Manager Ziegler moved to Approve Change Order for Additional Engineering Services  
301 Budget on Task Order #32B Upper Riley Creek Project. Manager Duevel seconded the  
302 motion. The motion carried with no managers opposing.

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## 9. Discussion Items

305 **a. Task Orders #47, 48, 49, and 50**

306 Administrator Jeffery said staff and Barr are looking for manager input about the lake  
307 management approach, which is covered through the four task orders, that Joe Bischoff  
308 is going to present to the Board.

309 Joe Bischoff presented the slides “RPBCWD Lake and Watershed Management Plans.”  
310 He recommended breaking the holistic lake and watershed management approach into  
311 three parts:

- 312 • Lake and Watershed Management Plan;
- 313 • District-wide Aquatic Vegetation and Shoreline Plan; and,
- 314 • District-wide Fisheries Management Plan.

315 Mr. Bischoff explained the four lakes identified for collecting more information on for  
316 project identification are Lake Susan, Lake Lucy, Mitchell Lake, and Red Rock Lake.  
317 He said the expected outcomes include:

- 318 • A list of concept level projects for inclusion in the plan;
- 319 • A road map for aquatic vegetation and shorelines; and,
- 320 • Roles and partnerships for fisheries management.

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322 Mr. Bischoff shared the estimated plan costs:

- 323       ▪ Lake Lucy, Lake Ann, and Lake Susan Plan: \$150, 225;
- 324       ▪ Mitchell Lake and Red Rock Lake: \$135,845
- 325       ▪ Aquatic Vegetation and Shoreline Plan: \$48,145
- 326       ▪ Fisheries Plan: \$21,270
- 327       ▪ Total Estimated Cost: \$355,000

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329       Manager Ziegler asked about the timing. Mr. Bischoff replied the schedule is to be done  
330       by the end of the year. He said ideally it would be completed by September to October  
331       2025. Administrator Jeffery said this project and the 10-Year Plan would happen  
332       concurrently. Manager Ziegler said he would like to see the matrix for determining  
333       priority.

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335       **b. Update on Larry Koch Versus RPBCWD and Terrance Jeffery and Larry**  
336       **Koch Versus Hennepin County, Carver County, RPBCWD, et al. (The**  
337       **Board may go into Closed Session)**

338       Mr. Smith recommended the Board adopt a motion to go into closed session for the  
339       purpose of receiving confidential legal advice concerning litigation strategy regarding  
340       two active lawsuits in which the District is a defendant:

- 341       • Larry Koch vs. Riley Purgatory Bluff Creek Watershed District and Terrance  
342       Jeffery that concerns the Spring Road conservation project; and,
- 343       • Larry Koch vs. Carver County, Hennepin County, Riley Purgatory Bluff Creek  
344       Watershed District, Bonnie Nelson, and Jill Crafton that concerns the  
345       appointment process for two managers.

346       Manager Crafton moved to go into closed session for the purpose of receiving  
347       confidential information as stated by Attorney Smith. Manager Duevel seconded the  
348       motion. The motion carried with no managers opposing.

349       The Board moved into closed session at 9:07 p.m.

350       The Board reconvened the public meeting at 9:23 p.m.

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352 **c. Update on Larry Koch Versus Hennepin County, Carver County,**  
353 **RPBCWD, et al. (The Board may go into Closed Session)**

354 [See 9b.]  
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## 10. Member Reports

357 **a. Manager Reports**

358 Manager Duevel reported on activities he has conducted, not in an official RPBCWD  
359 capacity, such as a coffee meeting with two staff members at the City of Minnetonka  
360 and attending the Sustainability Commission meeting. He said the District could  
361 consider developing a short presentation on its EHAP.

362 Manager Crafton moved to authorize managers to attend the University of Minnesota  
363 Water Resources Conference and for their attendance to per diem eligible. Manager  
364 Zieger seconded the motion. The motion carried with no managers opposing.

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366 **b. Administrator Report**

367 Administrator Jeffery had no report.  
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369 **c. Legal Counsel Report**

370 Mr. Smith had no report.  
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## 11. Upcoming Board Topics

372 **a. Board Workshop on EHAP, October 2, 5 p.m.**

373 **b. Board and Staff Retreat for Strategic Planning Purposes, October 17, 4**  
374 **p.m.**  
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## 12. Upcoming Events

376 **a. August 26<sup>th</sup> MN Watersheds Meeting**

377 **b. December 4<sup>th</sup>-6<sup>th</sup> Minnesota Watersheds Annual Conference**

378 **c. Lower Minnesota River Boat Tour of Minnesota River, Date TBD**  
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### 13. Adjourn

380 Manager Ziegler moved to adjourn the meeting. Manager Crafton seconded the motion.

381 The motion carried with no managers opposing.

382 The meeting adjourned at 9:48 p.m.

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Respectfully submitted,

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Tom Duevel, Secretary