

=MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

November 3, 2021, RPBCWD Board of Managers Monthly Meeting

PRESENT:

Managers: Jill Crafton, Treasurer
Larry Koch
Dorothy Pedersen, Vice President
Dick Ward, President
David Ziegler, Secretary

Staff: Amy Bakkum, Administrative Assistant
Liz Forbes, Grant Coordinator
Terry Jeffery, Interim District Administrator and Watershed Planning Manager
Louis Smith, Attorney, Smith Partners
Scott Sobiech, Engineer, Barr Engineering Company

Other attendees: Pat Andrican Tom Lindquist
Patty Duryee John (last name not provided)
Rod Fisher Maya Santamaria
Dave/Shelley Hawkins Marilyn Torkelson
Greg Hawks
Rose Hilk

Note: this meeting was held remotely via meeting platform Zoom in abidance with the District's procedures in response to state COVID-19 actions, mandates, and guidance.

1. Call to Order

1 President Ward called to order the Wednesday, November 3, 2021, Board of Managers Regular
2 Meeting at 7:00 p.m. The meeting was held remotely via meeting platform Zoom.
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2. Approval of Agenda

4 Manager Ziegler moved to approve the agenda as written. Manager Crafton seconded the motion.
5 Manager Koch moved to amend the agenda to remove Consent Agenda items 7a – Accept
6 October Staff Report, 7b – Accept October Engineer’s Report, 7c – Accept October Construction
7 Inspection Report, 7e – Approve Payment Application #1 for the St. Hubert Water Quality
8 Improvement Project, 7f – Approve Resolution 2021-012 Authorizing Membership in the 4M
9 Fund, and 7g – Approve Resolution 2021-013 Authorizing Treasurer to Be Signee for Wells

10 Fargo Account to Transfer Funds. He requested tabling item 6b – Accepting District
 11 Administrator Job Description until the Board could hold a workshop or special meeting to
 12 discuss it, and he requested adding to item 9a report on the status of the litigation unless legal
 13 counsel advises otherwise. Manager Koch said that under 9c he has four items he would like to
 14 bring up under the Manager Report, including status of permits on Lotus Lake, Rules Revisions
 15 status, workplan for 2022, and draft resolutions by legal counsel.

16 President Ward stated the Manager Report is to provide for managers to report items to the Board
 17 and not bring up new items for discussion, so he won't make Manager Koch's requested change
 18 to add four items to the Manager Report. Manager Koch said he will report on his comments on
 19 the four items during the Manager Report, and it isn't up to President Ward to make that decision
 20 and all the managers can make that decision. He said at least two of those items are items he
 21 informed Administrator Jeffery he wanted on the agenda, so why they aren't on the agenda
 22 Manager Koch doesn't know, especially considering that per the District Governance Manual, the
 23 President doesn't have the authority to make decisions. Manager Koch said "if you are under the
 24 mistaken impression that the revised Governance Manual in when was that, in 2020, which as
 25 I've said before, that was an invalid action because proper notice was not given to the managers
 26 as required by statute."

27 Attorney Smith offered the procedural comment that right now as the Board considers the agenda,
 28 the Board separate its discussion of this item, which is approval of the agenda, from discussion
 29 that should take place under the agenda items themselves, such as tabling an item.

30 Manager Koch amended his motion to include striking 6b from the agenda. There was discussion
 31 about Roberts Rules of Order and clarification about the most recent motion.

32 Upon a roll call vote, the motion failed 1-4 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	No
Koch	Aye
Pedersen	No
Ward	No
Ziegler	No

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35 There was additional discussion about Roberts Rules of Order and removing items from the
 36 Consent Agenda as well as discussion about the changes to the agenda. President Ward clarified
 37 that the motion on the table is to adopt the agenda with the removal off the Consent Agenda to
 38 Discussion item 8a the items Manager Koch requested removing, which were items 7a, 7b, 7c, 7e,
 39 7f, and 7g.

40 Upon a roll call vote, the motion carried 4-1 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	No
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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3. Matters of General Public Interest

43 Ms. Maya Santamaria said she lives on Duck Lake at 6823 Lilian Lane. She said a lot of residents
 44 are concerned about the most recent idea of not raising the water level of the lake. She said all of
 45 the residents she has talked with want the water level raised. She said they want the level raised
 46 for habitat and to restore native habitat, because right now only the koi can live in the water at its
 47 current level. She thanked the Board for taking these comments.

48 Mr. Rod Fisher said he lives on the south side of Duck Lake and said the residents are all in
 49 agreement that they want the water level higher. He said he has lived on the lake since the 1990s
 50 and the lake has been higher than its current elevation. Mr. Fisher said he hopes the residents can
 51 get the support of the Board to work with the DNR to raise the level.

52 Mr. Dave Hawkins of 6519 Bay Drive said he has lived there for 30 years and has seen the lake
 53 levels drop and agrees with the previous comments about the drop in the lake level. He raised his
 54 concerns about property values and said he would appreciate the Board’s support to get the lake
 55 level raised.

56 Mr. Tom Lindquist said he lives on Duck Lake and agrees with the comments raised about the
 57 Duck Lake water elevation. He said from around 1995 to 2010 there was great bass fishing on
 58 Duck Lake and the lake level was measured well above even the 914-foot elevation. Mr.
 59 Lindquist said the lake has taken a huge step backward due in good part to the decreased lake
 60 water level.

61 Ms. Patty Duryee of 16710 Baywood Terrace said she lives on Duck Lake and agrees with the
 62 comments shared this evening by the other Duck Lake residents. She said she has been on the
 63 lake since 1975 and has seen a lot of things happen and the watershed’s help is needed.

64 Manager Koch said he would like staff to provide at the next Board meeting preliminary
 65 comments on the situation because he would like to have a better handle on the facts. Interim
 66 Administrator Jeffery said staff is prepared to speak on this topic at tonight’s meeting.

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4. Reading and Approval of Meeting Minutes

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a. October 6, 2021, RPBCWD Board of Managers Regular Meeting

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Manager Ziegler moved to approve the minutes of the October 6, 2021, Board of Managers Regular Meeting. Manager Pedersen seconded the motion. Manager Koch said he thinks it is important that the minutes reflect the questions asked during the meeting and the responses. He suggested the District post the recording of the meetings, because he doesn't think it is in the best interest of the public and in particular the watershed's relationship with its constituents to have the minutes summarize, for example, that Manager Koch asked a question and Interim Administrator Jeffery responded. Manager Koch said he would like to see the watershed in the future do one of those two things he mentioned.

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Manager Crafton noted on page 2, line 22 a correction is needed to correctly identify the manager who seconded the motion. Manager Ziegler noted on page 1 the word "President" should be inserted after Ward, and on line 233 language is missing after the word "project." Upon hearing no other comments or requests for edits, President Ward called for the vote. Manager Koch clarified that the vote is to approve the minutes as amended. President Ward said yes.

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Upon a roll call vote, the motion carried 5-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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5. CAC

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Ms. Marilyn Torkelson reported about the tour of the newly restored section of Riley Creek. She said the CAC is looking forward to more educational field trips in the future in order to be more valuable members of the CAC.

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Manager Pedersen volunteered to attend the November 15th CAC meeting. Manager Koch requested the meeting be recorded so he can have the opportunity to have advanced understanding about the rules and where they might be going. Interim Administrator Jeffery

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94 clarified the presentation to the TAC is about the District's process for permit applications, but he
95 said staff will record the meeting.

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6. Personnel Committee

97 a. Accept August 2021 and October 2021 Minutes

98 Manager Pedersen moved to accept the August 2021 and October 2021 minutes of the
99 District's Personnel Committee. Manager Koch had remarks about item 3 in the August
100 13, 2021, minutes, saying he thinks the District should secure HR consultant services
101 before moving any further with the District Administrator position. He stated that making
102 a decision to reach out to somebody without the approval of the managers is beyond the
103 scope of the Personnel Committee. He stated that his position is that the Governance
104 Committee that was voted on in October of last year or the year before is not valid,
105 proper notice was not given to the managers, and therefore the Governance Manual from
106 back in 2013 or 2017 would be the rules in effect, and under those rules the single role of
107 the Personnel Committee is to be receptive of people's complaints who did not want to
108 go to the Administrator. Manager Koch shared his viewpoint that "we should be tabling
109 this" until we have an HR person engaged on this basis, and he thinks the same issue
110 applies to item number 4 Personnel Handbook and we should get somebody with recent
111 knowledge and experience and training. Manager Koch commented on his knowledge
112 about how personnel handbooks have significantly changed, particularly because of
113 recent Minnesota Supreme Court cases, and so he thinks we need an HR person who is
114 up to speed on that, and he also thinks we need to have Legal Counsel involved who is
115 also up to speed on the contents of personnel handbooks, and so developing a policy is
116 beyond the scope of the Personnel Committee, he thinks, unless we so authorize it, and
117 then regarding number 5 review of personnel grievance process, is in fact in his reading
118 of the Governance Manual in effect is a role of the personnel committee, and to act as a
119 sounding board for all staff and the administrator presents a conflict of interest, if the job
120 of the Personnel Committee is to respond to complaints or issues raised by staff they are
121 uncomfortable raising to the administrator, so he thinks that this Personnel Committee
122 should not be acting as the sounding board if it is going to be handling these types of
123 complaints, because there is an inherent conflict, and he thinks it would be best, as he has
124 said before, to engage an expert professional in HR who can assist in being the sounding
125 board, basically a party that can advise both the Personnel Committee and the
126 administrator to deal with issues that are raised to that administrator.

127 President Ward stated that the motion on the floor is to accept the minutes, and he
128 appreciates Manager Koch's comments, but this isn't a discussion about an HR
129 consultant. President Ward said any discussion should be about acceptance of the minutes.
130 Manager Koch responded the motion is to accept minutes from a committee outstripping
131 its authority for the reasons that he stated on that basis, and to go on to the next one [next
132 set of minutes]...Manager Koch paused to find his notes. Manager Crafton commented
133 that Manager Pedersen has 20 years of HR experience, and the District is lucky to have
134 Manager Pedersen's experience on the Personnel Committee. Manager Koch retorted first

135 of all, he is sorry, his understanding of Manager Pedersen's work experience in
136 supervising HR is at least decades old, and...President Ward tried to interrupt Manager
137 Koch. Manager Koch loudly talked over President Ward to say he [Manager Koch] has
138 the floor. President Ward said point of order...Manager Koch shouted he has the floor.
139 President Ward said the order of the day is the acceptance of the Personnel Committee
140 minutes. Manager Koch stated again in a very loud volume that he has the floor. President
141 Ward stated that is it. Manager Koch stated he is commenting because President Ward
142 gave Manager Crafton the basis to make her statement, so he thinks he should have a right
143 to respond to that statement. President Ward stated point of order. Manager Koch
144 interrupted to ask President Ward if he is trying to be king and asked if President Ward
145 wants to be king. President Ward said he has called order of the day, and he asked
146 Manager Koch if he knows what that means. Manager Koch stated, "Follow Robert's
147 Rules of Order, would you?" President Ward said order of the day means you follow the
148 agenda item. Manager Koch said that's what he is doing, he is following the agenda items.
149 President Ward called for the vote. Manager Koch said no, he has the floor, and if
150 President Ward wants to vote to cut off discussion, he can do so, but the President can't
151 make that decision. President Ward stated to Manager Koch that he is not following order
152 of the day. Manager Koch responded he is commenting on the motion before the
153 managers. President Ward said if Manager Koch wants to...Manager Koch interrupted to
154 state if President Ward wants to cut off discussion, there is a mechanism in Robert's Rules
155 of Order, and that mechanism is not the president's decision. President Ward stated
156 Manager Koch is totally out of order. Manager Koch responded that President Ward is out
157 of order. President Ward called for the vote. Manager Koch said his comments on the
158 October 21st minutes from the Personnel Committee include that he wants to know who
159 came up with the fact that we go out to use the Baker Tilly description with modifications
160 and what is it and have you circulated it to the managers. President Ward said the motion
161 on the table is to accept the minutes, not dissect them. Manager Koch said that's against
162 the time-honored process for every report, every set of minutes, for managers to be able to
163 ask questions about the reports, the staff report, the engineer report, everything we have
164 been allowed to ask questions about each one of those reports without exception for at
165 least as long as he has been a manager. Manager Koch said, so, that is bluntly done, these
166 are no different. President Ward said we don't ask questions about minutes, we accept
167 them, or we correct them, and that is all we do with minutes. Manager Koch disagreed,
168 saying that isn't what we've done before. President Ward said that is what we've done
169 before. Manager Koch said he disagrees. President Ward said disagreeing is fine.
170 President Ward called for the vote. Manager Koch said he still has the floor, and if
171 President Ward wants to cut off discussion, he needs to go through the proper procedure.
172 Manager Pedersen moved to cut off the discussion. Manager Crafton seconded the
173 motion. President Ward called for discussion. Manager Koch said he doesn't think the
174 Board should be cutting off discussion of these minutes until the managers understand
175 what they say and where this information came from. President Ward started to reply, and
176 Manager Koch interrupted, saying, if you don't care where it came from, then he'll just
177 say shame on you guys. Hearing no further discussion, President Ward called for the vote.
178 Upon a roll call vote, the motion to cut off the discussion carried 4-1 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	No
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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Upon a roll call vote, the motion to accept the August and October Personnel Committee minutes carried 4-1 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	No
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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b. Accept District Administrator Job Description

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Manager Pedersen stated the District had the job description professionally prepared in 2019. She said the description was distributed to the managers at that time as part of the Administrator review process. She described a description Interim Administrator Jeffery drafted based on District Administrator job descriptions from other watersheds. Manager Pedersen talked about the job description that was broader in scope and said she has no problem with having a meeting for everyone to talk about the description and what we're looking for, because she thinks everyone needs to be on board with it. Manager Koch moved to table this item to a special meeting. Manager Pedersen seconded the motion. Manager Pedersen described the information she reached out to Baker Tilly to provide. Upon a roll call vote, the motion carried 5-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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Manager Pedersen reported the Personnel Committee has scheduled a meeting with the benefits representative for a presentation about cost increases and options in the benefits plan for 2022.

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7. Consent Agenda

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Manager Koch moved to accept items on the Consent Agenda as amended earlier in the meeting, include 7d – and 7f – and to adopt the resolutions that have been provided in the packet with respect to 7d and to approve payment of payment application #7. Manager Pedersen seconded the motion. The Consent Agenda included item 7d - Approve Resolution 2021-014 Authorizing the Administrator to Enter into Encroachment Agreements with Metropolitan Council for the Rice Marsh Lake Subwatershed 12a Water Quality Improvement Project for Outlot A and Outlot B. and 7h – Approve payment application #7 for Lower Riley Creek Stabilization.

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Upon a roll call vote, the motion carried 5-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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8. Action Items

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a. Items Pulled from Consent Agenda

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i. Accept October Staff Report

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Manager Koch asked if staff has sent him a copy of the Abdo agreement.

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Interim Administrator Jeffery explained the status of the agreement's execution.

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Manager Koch stated he is asking to see the agreement because he wants to

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make sure it provides that the District has at least 60 days to pay invoices, so

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the District doesn't run into the issue of having to go pay interest, and that is

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why he raised that issue. Interim Administrator Jeffery said he can send

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Manager Koch the draft agreement that was sent to Abdo. Manager Koch asked

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about Interim Administrator Jeffery's discussion with Engineer Sobiech about

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the regulatory program and asked if Interim Administrator Jeffery has anything

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to report on that now or later. Interim Administrator Jeffery replied the meeting

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was more of a brainstorming session, and he is meeting again with Engineer

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Sobiech next week and will provide a report to the Board at the next meeting.

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Interim Administrator Jeffery said the goal is to hold a work session in January

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with the Board on the proposed work plan. Manager Koch asked Interim

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Administrator Jeffery if he received Manager Koch's list of items he thinks are

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worthy of discussion regarding revisions. Interim Administrator Jeffery replied

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yes. Manager Koch said he has a question at the top of page 3 and would like a

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status report on the watershed stewardship grant reporting system and whether

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progress is being made and if we are working on it. Interim Administrator

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Jeffery said he can get that information to Manager Koch. Manager Koch

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wanted to know the reason for the October 31st cut off. Interim Administrator

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Jeffery said a point that staff will bring to the Board in the future is talking

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about a continuous application period divided into four quarters.

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Manager Koch asked Interim Administrator Jeffery if he is working on that

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water resource report. Interim Administrator Jeffery responded correct, staff

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should have it available by the January meeting. Manager Koch asked staff to

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fill in more details about the 2021 numbers of blue-green algae in Lake Susan.

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Interim Administrator Jeffery stated Lake Susan has exceed World Health

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Organization (WHO) levels for phytoplankton. Interim Administrator Jeffery

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said staff proposes doing core testing of the wetland and doing testing earlier so

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the District could issue warnings if necessary.

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Manager Koch asked for more details about the winter sampling on the Riley

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Chain of Lakes and asked staff to explain the program and if there is an

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alternating sampling schedule of the chain of lakes. Interim Administrator

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Jeffery said yes, every three years, so Riley, then Bluff, then the Purgatory

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chain of lakes.

254 Manager Koch asked if because it was such a dry year, runoff would be
 255 basically from what hit pavement, and is staff trying to do correlations of lake
 256 level changes, correlating them to rainfalls so we get better modeling. Engineer
 257 Sobiech stated the short answer is yes, all the monitoring data is going to be
 258 used with the updated hydraulic and hydrologic data.

259 Manager Koch had a comment on page 5 and said he thought the main message
 260 of the postcard was going to be that people need to be aware their projects may
 261 require a permit. He said the reference was so small, he is concerned people
 262 missed the message that their project may require a permit. Manager Koch
 263 asked if there is budget to do another postcard and mailing to residents with that
 264 message. Interim Administrator Jeffery said staff had planned to do another
 265 mailing to go out in January or February. He said the next mailing could
 266 emphasize the message about permit requirements for projects that touch the
 267 shoreline. Manager Koch asked for a report on the three projects on Lotus Lake
 268 that weren't permitted. Interim Administrator Jeffery provided an update.
 269 Manager Koch said he thinks the District needs to find an enforcement
 270 mechanism, and he would like it to be part of the discussions going forward.
 271 Manager Koch asked about any plans to fix the Lake Susan improvement
 272 project. Interim Administrator reported on a meeting with Peterson
 273 Construction, who installed it, and options being considered.

274 Manager Koch gave his opinion about using drones and/or a cam for pictures
 275 and video footage of the lower creek. He asked staff for more details about the
 276 pullout on Middle Creek at Bearpath. Interim Administrator summarized that
 277 Hartman was hired as a subcontractor due to a requirement that the contractor
 278 must have demonstrated experience working on a golf course. He described an
 279 onsite meeting with Sunram and the decision for Ryan to do the work. He noted
 280 Bearpath has agreed to have Sunram construct the wall. Manager Koch asked
 281 staff and Legal Counsel to memorialize that to the extent Legal Counsel thinks
 282 appropriate. Interim Administrator Jeffery said he has asked Attorney Welch to
 283 review the agreement. Manager Koch said he has a question about the Silver
 284 Lake Restoration unless staff will talk about it later in this meeting.
 285 Administrator Jeffery said he will be talking about it later in the meeting.

286 Manager Ziegler moved to accept the staff report. Manager Pedersen seconded
 287 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	Aye
Koch	Aye
Pedersen	Aye

Ward	Aye
Ziegler	Aye

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ii. Accept October Engineer’s Report

Manager Koch reiterated his opinion that the District should do drone flights and that others doing drone flights seem to get permission. He had a comment on page 2 of 6, item G, and said he looked on Google maps or Zillow for the address listed and it looked like there is rip rap there already. Engineer Sobiech said yes, there is rip rap along most of the shoreline already, and the project is rip rap repair and native plantings. Manager Koch said he thinks the District should look at requiring berms to protect the water from some of the bigger rains on that basis, and he has that naturally on his property. He said he thinks it would be worth thinking about as a best management practice to have some sort of mechanism to hold back some of the water instead of having it go right into the lake.

Manager Koch moved to accept the October Engineer’s report. Manager Ziegler seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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iii. Accept October Construction Inspection Report

Manager Koch said he pulled this because of his concern on the three permitting issues and to which staff has already provided an update in this meeting. Interim

Administrator Jeffery asked for manager feedback on the report’s format. Manager Pedersen requested addresses be added. Manager Koch said the photos are helpful and agreed addresses would be helpful as well. He said if it goes more than a month, he’d like to know what action, if any, has been taken to correct it.

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Manager Ziegler moved to accept the October Construction Inspection Report. Manager Koch seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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iv. Approve Payment Application #1 for the St. Hubert Water Quality Improvement Project

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President Ward said this payment application is for an amount just over \$263,000. Manager Koch said the documentation received isn't consistent with documentation received for other projects. He said he thinks the District's process should be that for projects Barr is working on, that when there is a request for payment the Engineer must give the District some type of certification that they have reviewed the work and then certify to the best of their knowledge work has been in accordance with project. Manager Koch said he would like the District to consider revising or having a template schedule that has a certification by the contractor saying they've done the work and incurred the expenses, so the District has on record that they say they have done the work.

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Interim Administrator Jeffery addressed the idea of using a templated industry standard form. He talked about the documentation, including the memorandum, for this pay application. Interim Administrator Jeffery stated he is comfortable with the documentation and knows they have fulfilled their obligation and SRF concurs.

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Manager Crafton moved to approve the pay application #1 for the St. Hubert Water Quality Project. Manager Ziegler seconded the motion.

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Upon a roll call vote, the motion carried 5-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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v. **Approve Resolution 2021-012 Authorizing Membership in the 4M Fund**

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President Ward said this resolution would memorialize the action the Board took previously about the 4M Fund. Manager Koch said he is concerned that the documentation for the names of who has signing authority is blank, and he has a rule that he doesn't approve things that are blank. He said his other concern is he thinks we need to have an understanding of exactly how we are going to move this money, where it's going to be, and who is doing what. Manager Koch said he thinks it would be beneficial to have two accounts, including an investment account, which would be different than U.S. Bank. He said he'd like to see a different account that would hold financial assurances for accounts so they wouldn't be comingled and would be easier for accounting and reporting. Manager Koch said he doesn't know that this item is urgent, so he would like a plan to be developed and brought back, so he has an understanding of exactly how we are going forward, and he understands who has authority to do what. He said with no disrespect intended toward Mr. Jeffery as the Administrator, but Manager Koch really thinks to the extent we have approvals by anybody, he thinks there needs to be additional sign off by the Treasurer or some other officer because a double-check is always needed when it comes to money, so no one person can expend money without the right approval. Manager Koch restated he would like to see this come back next month.

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Interim Administrator Jeffery said the forms were filled out, but in copying over the form into the packet, the inserted information did not come through. He said the form includes the information designating President Ward and Manager Crafton as signatories and himself as an alternate in case of an absence. President Ward and Manager Crafton said the copy of the forms they have include the information filled out. President Ward reiterated that the forms designate the signatories as himself, Treasurer Crafton, and the Administrator.

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President Ward said all this document is doing is designating U.S. Bank as the depository for the District for the 4M Fund. Attorney Smith concurred. President Ward said the issues Manager Koch raises about a second account and who is going to do what is separate from these resolutions and are matters that

376 should be discussed and resolved, but that can happen at the December Board
 377 meeting because it has nothing to do with these two resolutions. Attorney Smith
 378 said the resolution spells out the actual transfer and Manager Koch’s comments
 379 go to the logistics of how this will operate.

380 Manager Koch said he does not want to authorize Administrator Jeffery to sign
 381 any other documents without at least the approval by the Treasurer or Mr.
 382 Smith. Manager Koch said the resolutions at minimum should be changed to
 383 require approval of the Treasurer or Counsel for Administrator Jeffery to sign.

384 Manager Koch moved to adopt the resolutions with the following changes that
 385 the Administrator can execute the documents with the approval of Counsel and
 386 the approval of the Treasurer, and the word funds is inserted in the second to the
 387 last line in the second resolve. President Ward said the word funds was inserted
 388 in the version the managers were provided on Monday. Manager Pedersen
 389 seconded the motion Attorney Smith said the District’s Legal Counsel doesn’t
 390 act as an authority of approval but as to form and execution. He asked Manager
 391 Koch if he would amend his motion to include approval of Legal Counsel for
 392 form and execution, which is legal counsel’s confirmation that the document is
 393 in proper order and that the person has authority to sign it. He added that legal
 394 counsel doesn’t have an opinion about the transaction. Manager Koch and
 395 Manager Pedersen agreed to Attorney Smith’s friendly amendment.

396 Upon a roll call vote, the motion carried 5-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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399 **vi. Approve Resolution 2021-013 Authorizing Treasurer to be Signee for**
 400 **Wells Fargo Account to Transfer Funds**

401 Manager Koch said he doesn’t have a problem approving signatories, assuming
 402 they are the Administrator and the Treasurer, etcetera, but when he read the
 403 resolution, it just did everything, like open accounts and everything. He said he
 404 thinks a more appropriate resolution would be to designate signatories as the
 405 Administrator, Treasurer, and President and authorize the Administrator and the
 406 Treasurer to take whatever actions are necessary or appropriate to transfer the

407 funds at Wells Fargo to either the 4M Fund or U.S. Bank as appropriate.
 408 Attorney Smith said he has a feeling the language included is what Wells Fargo
 409 wants in order to accomplish the transfer. He noted Wells Fargo didn't have on
 410 record current authorizations, so this resolution is doing some clean up as well.

411 Manager Koch said perhaps the Board could adopt a separate resolution to
 412 specify it takes two out of the three designated, the Administrator, the
 413 Treasurer, and President Ward, to take any action pursuant to these resolutions
 414 the Board is adopting for the benefit of the bank. Attorney Smith said he
 415 doesn't see why the Board couldn't do so. Manager Koch moved to adopt
 416 Resolution 2021-013 as presented plus the additional resolution that it would
 417 take the approval of two of the Administrator, the Treasurer, and the President
 418 to take any action pursuant to the foregoing resolutions required by Wells
 419 Fargo. Manager Crafton seconded the motion.

420 Upon a roll call vote, the motion carried 5-0 as follows:

421

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

422

423 **b. Accept September Treasurer's Report**

424 Manager Crafton stated the report has been reviewed in accordance with internal
 425 controls and procedures. She moved to accept the September Treasurer's Report.
 426 Manager Pedersen seconded the motion.

427 Manager Koch said if his math is correct, normally the items in the September report
 428 would be at 75% of budget. He asked if the Treasurer or Administrator could comment
 429 on those items that are over 75% and if they believe at the end of the year those items
 430 will be over budget. Treasurer Crafton said the audit costs are over because the District
 431 kept making additional requests. President Ward said there shouldn't be any more audit
 432 costs. Manager Koch noted insurance and bonds is up 132%, and the number is the
 433 number, and he asked if there could be a motion at the Board's December meeting to
 434 get these accounts squared to make sure the budget numbers match the spend. Manager
 435 Koch said Engineering Services is at 86%, and Administrator Jeffery said some of that
 436 is due to the Silver Lake project and some due to the Middle Riley Creek project, and he
 437 relies on Engineer Sobiech for the budget numbers. Manager Koch said he has the same
 438 point about the percentage of budget already expended for legal services. He said he is

439 fine if staff wants to come back in December to address his questions. The Board
 440 directed Administrator Jeffery to prepare that information to bring back to the Board at
 441 its December Board meeting.

442 Upon a roll call vote, the motion carried 5-0 as follows:
 443

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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c. Approve Paying of Bills

Manager Crafton moved to pay the bills. Manager Ziegler seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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d. Authorize MAWD Delegate Selection

Manager Pedersen nominated Manager Crafton and Manager Ziegler as the MAWD delegates. Manager Koch moved to amend the motion to add the approval of payment of the fee for the managers and possibly CAC members to attend the MAWD convention. Manager Pedersen and Manager Ziegler agreed to the friendly amendment.

Upon a roll call vote, the motion carried 5-0 as follows:

458

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

459

460

e. Silver Lake Status Report

461

Administrator Jeffery stated Molnau Contracting mobilized on to the site on October 15, 2021. He reported on project progress. President Ward asked how much bituminous work needs to be done. Engineer Sobiech responded about 120 feet by 11 feet. President Ward noted the hot mix plants close three weeks from today.

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Manager Koch asked if staff has had discussions with the bonding company about the extra costs incurred because Engineer Sobiech and Barr Engineering had to put in more time and about whether the District is going to be covered for those additional costs. Manager Koch said if that conversation hasn't happened, he thinks it needs to be explored, because if those costs aren't covered by the bond, they need to be covered by the contractor. Attorney Smith said staff is documenting those costs, and they are covered by the contract. Attorney Smith stated that based on the Board's direction at its last meeting, the District did submit a formal notice to the bond company and that triggered a conference this morning and was likely helpful in facilitating the progress that was made.

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f. Permit 2019-004 Duck Lake Road Improvement

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Administrator Jeffery gave a brief history of the outlet structure elevation, explaining that when the District, City of Eden Prairie, and the DNR met, the DNR said the outlet structure needed to be returned to its original elevation of 914.4. Engineer Sobiech stated the current elevation is 913.28. He said in recent weeks, the DNR informed the District that because the elevation has been 913.28 for such a long period of time, the DNR is not requiring the City to return it to 914.4. Administrator Jeffery said the elevation has only been 913.28 since 2014, and he reported on communications going back and forth about the appropriate response to this issue. He said under the general permit the District has with the DNR, the District does not have the authority to set an OHW for a lake.

487

488

Engineer Sobiech displayed slides to summarize how the outlet has changed over the years and how that has impacted lake levels. He talked about the different Duck Lake

489 outlet structure configurations since 1969 and how the configurations have affected the
490 Duck Lake measured lake levels recorded by the DNR, lake levels as collected by the
491 District, and lake elevation. He pointed out how variable the lake levels have been
492 historically, and when the original 1969 outlet structure was in place, there were
493 extended periods where the water level was maintained at or above 914.4.

494 Engineer Sobiech pointed out that after the outlet was replaced, the bounce up for those
495 durations have not occurred. He said the outlet has been functioning differently since
496 the time the outlet was replaced. Engineer Sobiech explained the new outlet included
497 design attributes to limit the potential for plugging, and the outlet functions more
498 efficiently than the outlet it replaced. He said in his opinion, the lake level that the lake
499 will be experiencing going forward will be lower than it has experienced in the past. He
500 said this has potential to lead to reduced habitat and increased fish kills. There was
501 discussion about Duck Lake as a groundwater recharge area. Engineer Sobiech said
502 groundwater seepage out of Duck Lake does occur. Manager Crafton stated Duck Lake
503 residents could help by landscaping with native vegetation to help infiltration. Engineer
504 Sobiech said yes, to help with groundwater recharge.

505 Manager Koch said he doesn't think this is enough data or data correlation to make a
506 recommendation one way or the other. He asked for analysis on what is the average
507 elevation through these periods of time, and asked that correlations with weather events
508 be considered, so we can decide whether or not we want to make a recommendation.

509 Manager Ziegler talked about the reason this watershed district was developed, and said
510 the lake hasn't been dry, at least since he has lived on the lake since 1985. He shared
511 about his observations over the years about the outlet and the lake level. Manager
512 Ziegler said the outlet elevation has been killing the fish every year since the outlet
513 reconstruction, which lowered the lake level 12 inches. He pointed out the drought only
514 lowered the lake level four inches. He said the motion the District approved for the
515 project included returning the elevation to the original elevation and that the District
516 would need to review and approve any project changes that would affect water quality
517 and/or habitat in the lake. There was discussion about what additional information the
518 Board is asking for, and Engineer Sobiech said he could have additional information
519 prepared in time for the Board's December meeting.

520 Manager Koch moved to authorize staff to work with Barr Engineering and bring back a
521 more detailed report to the managers concerning the status of the lake, the history of the
522 lake elevation, and any recommendations they may have concerning the elevation of the
523 lake and with any permitting or regulatory hurdles or requirements in order to affect the
524 level of the lake regardless of whether it's higher or lower. Manager Ziegler said he
525 would amend Manager Koch's motion to include directing staff to draft a letter to the
526 DNR stating the District isn't in agreement with the lower lake level and never has
527 been. Manager Koch didn't accept the friendly amendment to his motion. The motion
528 died due to lack of a second.

529 Manager Ziegler moved to authorize staff to further investigate the water level of Duck
530 Lake and options moving forward, with the goal of staff drafting a letter to the DNR

531 that makes a recommendation and puts the watershed District in a position of
 532 recommending what the DNR should do, which is to restore the lake to the 914.4 level
 533 with the approved outlet structure. Manager Crafton seconded the motion.

534 Manager Koch said Manager Ziegler’s approach isn’t scientific, and he doesn’t want to
 535 be associated with a process where the District looks for data to justify a result, and
 536 instead he wants the District to gather the data, which will guide the result.

537 President Ward asked Manager Ziegler to restate his motion. Manager Ziegler said his
 538 motion is to authorize staff to investigate the water level on Duck Lake, the benefits of
 539 having it at whatever level is best for the environment and fish habitat, and the level that
 540 the District will recommend or insist on, given the two levels - the current level and the
 541 DNR-approved level.

542 Upon a roll call vote, the motion carried 4-0 as follows:

543

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Abstain
Pedersen	Aye
Ward	Aye
Ziegler	Aye

544

9. Discussion Items

545 **a. Attorney Report**
 546 No attorney report.

547 **b. Administrator Report**
 548 No administrator report.

549 **c. Manager Report**
 550 No manager report.

10. Upcoming Board Topics

551 The Board and staff discussed the MAWD convention, which is December 1-3. The Board and
 552 staff discussed the date of the District’s December Board meeting. President Ward said the Board
 553 will discuss at that meeting the District’s levy amount. Attorney Smith detailed the requirements
 554 of the Truth in Taxation law, noting the District is required to hold an informational meeting on
 555 its budget and levy and receive additional public information, if there is any, on the budget and

556 levy. Manager Koch moved to set the District’s December Board meeting for December 8th at 7
 557 p.m. and to direct staff to send out the requisite notices as needed and to set the agenda before the
 558 notice is sent. Manager Pedersen seconded the motion. President Ward said upcoming Board
 559 topics isn’t an action item and the Board would need to approve by consensus. Manager Koch
 560 moved to amend the agenda to allow the Board to adopt this motion because the Board can’t set
 561 meetings without approval of the Board. Manager Koch amended his motion to open the agenda
 562 to allow for the setting of a special meeting. Manager Pedersen seconded the motion. Manager
 563 Ziegler amended that if the meeting is already scheduled for December 8th, then this action isn’t
 564 necessary. Manager Koch and Manager Pedersen agreed to Manager Ziegler’s friendly
 565 amendment.

566 Upon a roll call vote, the motion carried 5-0 as follows:

567

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

568

569 The Board discussed setting a date for the special meeting it approved earlier in this meeting to
 570 discuss the District Administrator position. Administrator Jeffery said he will work with the
 571 managers to coordinate the meeting date and time.

11. Upcoming Events

572 President Ward described upcoming District events as listed on the meeting agenda.

12. Adjournment

573 Manager Koch moved to adjourn the meeting. Manager Pedersen seconded the motion. Attorney
 574 Smith clarified that the Board is directing there will be a special meeting sometime in the next ten
 575 days. President Ward said that is correct. Attorney Smith asked if the Board is in consensus with
 576 holding a special meeting sometime in the next ten days. The managers responded yes. Manager
 577 Koch stated the Board adopted a motion in tonight’s meeting to this effect, but if he is wrong, he
 578 will make the motion now. Attorney Smith recommended the language in the motion as setting a
 579 Special Meeting of the Board of Managers at the call of the Administrator after the managers
 580 consult their calendars. Manager Pedersen seconded the motion. . Upon a roll call vote, the
 581 motion to set a special meeting of the Board of Managers carried 5-0 as follows:

582

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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Manager Crafton stated that at the Board's January 6, 2021, meeting, the District approved the District's annual meeting schedule provided in the calendar in meeting packet, and the calendar specified the Board's December meeting will be December 8th.

Upon a roll call vote, the motion to adjourn the meeting carried 5-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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The meeting adjourned at 10:01 p.m.

Respectfully submitted,



David Ziegler, Secretary

