

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

January 5, 2022, RPBCWD Board of Managers Monthly Meeting

PRESENT:

Managers: Jill Crafton, Treasurer

Larry Koch, Incoming Vice President (VP)

Dorothy Pedersen, Outgoing VP; Incoming Secretary

David Ziegler, Outgoing Secretary; Incoming President

Staff: Amy Bakkum, Administrative Assistant

Zach Dickhausen, Water Resources Technician II

Liz Forbes, Grant Program Coordinator

Terry Jeffery, Interim District Administrator and Watershed Planning Manager

Eleanor Mahon, Education and Outreach Coordinator

Joshua Maxwell, Water Resources Coordinator

Mat Niklay, Natural Resources Technician

Louis Smith, Attorney, Smith Partners

Scott Sobiech, Engineer, Barr Engineering Company

Other attendees: Chesney Engquist Sharon McCotter

Greg Hawks Ted Mellby

Susu Jeffery Madhura Patil

Aspira Maison Marilyn Torkelson

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 Vice President Pedersen called to order the Wednesday, January 5, 2022, Board of Managers
- 2 Regular Meeting at 7:00 p.m. The meeting was held remotely via meeting platform Zoom.
- 3 Manager Koch said he had several points of order, and he recited that the Board is holding the
- 4 meeting remotely, using Zoom, pursuant to Minnesota Statute 13B.021 Subd 1 paragraph 1,
- 5 because of the pandemic. He said he thinks it's appropriate to take attendance tonight and declare
- 6 a quorum and reflect the fact that Dick Ward is no longer a manager because his resignation from
- 7 the Board was effective December 31, 2021. Manager Koch stated that because the Board is
- 8 governed by Robert's Rules of Order, he would appreciate if everyone would ask Vice President
- 9 Pedersen's permission before going ahead and speaking, so that each person is recognized. He
- 10 said he thinks this would be a good way to start out the new year.

Attorney Smith called manager attendance, and the attendance response was as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Present
Koch	Present
Pedersen	Present
Ziegler	Present

2. Approval of Agenda

Manager Crafton moved to approve the agenda as presented. Manager Ziegler seconded the motion.

Manager Koch moved to amend the agenda, and Interim Administrator Jeffery shared his screen to display the proposed revised agenda that Manager Koch submitted to him. Manager Koch walked through his proposed agenda amendments to remove Consent Agenda items 6a – Accept December Staff Report and 6b – Accept December Engineer’s Report and to move to the Consent Agenda the following items already on the meeting agenda: 7d – Schedule of Regular Meetings of the Board for 2022, 7f – Designation of Official Newspapers for Publication of Notices, 7g– Affirm Smith Partners PLLP as Depository for Performance Bonds and Letters of Credit, 7h – Designate U.S. Bank as Official Depository for Cash Escrows, 7l – Designate TAC Members, 7r – Approve Amendment to Task Order 036A for Bluff Creek Reach 5 Feasibility Study to Include Subwatershed Assessment, and 7s – Authorize Administrator to Create an Internal Calendar of Significant Deadlines and Other Matters, and to add to the Consent Agenda the following new agenda items: Affirm Authorization of Membership in 4M Fund and with US Bank as Depository and Affirm Master Service Agreement with US Bank, and Manager Koch continued by recommending for item 7e – Election of Officers - the Board follows the nomination process and then have a roll call vote, and about item 7m - Standing Committees, he said he is of the position the District’s Governance changes in 2020 were not appropriately approved as required by statute, so we would not have an Audit and Finance Committee, but if a Board majority thinks the Board did approve the Governance changes, then the District’s Governance Manual specifies naming an Audit and Finance Committee, so the Board should consider such a committee as part of the Standing Committee agenda item, and he continued with his motion to amend by proposing to add two new items to the agenda’s Action Items: 7v - Staff to Provide Proposed Resolutions for Action Items per the Bylaws, and 7w – Appoint Interim District Administrator as the Responsible Authority and the Minnesota Data Practices Act Compliance Official for the District as required per state statute cited as follows:

- i. Responsible Authority 13.02 subd 16(b)
923/2018_ <https://revisor.mn.gov/statutes/cite/13/full>

https://www.revisor.mn.gov/statutes/cite/13/full_8/148 (b) “Responsible authority” in any political subdivision means the individual designated by the governing body of that political subdivision means the individual designated by the governing body of that political subdivision as the individual responsible for the collection, use, and dissemination of any set of data on individuals, government data, or summary data, unless otherwise provided by state law. Until an individual is designated by the political subdivision’s governing body, the responsible authority is (1) for counties, the county coordinator or administrator. If the county does not employ a coordinator or administrator. If the county does not employ a coordinator or administrator, the responsible authority is the county auditor; (2) for statutory or home rule charter cities, the elected or appointed city clerk. If the home rule charter does not provide for an office of city clerk, the responsible authority is the chief clerical officer for filing and record keeping purposes; (3) for school districts, the superintendent; and (4) for all other political subdivisions, the chief clerical officer for filing and record keeping purposes.

- ii. Data Practices Compliance Official 103D13.05 subd13 – 23/2018
https://www.revisor.mn.gov/statutes/cite/13/fullhttps://www.revisor.mn.gov/statutes/cite/13/full_18/148 Subd. 13. Data Practices Compliance Official. By December 1, 2000, each responsible authority or other appropriate authority in every government entity shall appoint or designate an employee of the government entity to act as the entity’s data practices compliance official. The data practices compliance official is the designated employee of the government entity to whom persons may direct questions or concerns regarding problems in obtaining access to data practices problems. The responsible authority may be the data practices compliance official. Manager Koch continued by stating he believes Interim Administrator Jeffery has been fulfilling the roles of the District’s Responsible Authority and the Data Practices Compliance Official but isn’t sure those roles have been confirmed past the end of the year.

Manager Koch continued his motion to amend the agenda by proposing to add under agenda item 8a – Attorney Report – an update on the Noble Hills litigation and under agenda item 8b – Engineer’s Report – adding a discussion about the Annual Report of Engineer required under MN Statute 103D.325 Subd. 3 to Chief engineer, as cited as follows:

The chief engineer is superintendent of all the works and improvements undertaken by the district. The chief engineer must make a full engineer’s report to the managers each year, and more often if necessary. A copy of the engineer’s report and all recommendations by the chief engineer must be transmitted to the managers and the director

Manager Koch continued his motion to amend the agenda by proposing to add to Agenda Item 9 – Upcoming Board Topics the following items: 9c – 10-Year Plan Review – Status, Recommended Changes, 9ci – Scorecard, and 9d – Governance Manual and Bylaws and Setting Agendas for Meetings.

There was discussion about version 2 of the meeting agenda that Interim Administrator Jeffery sent out on Monday morning as well as discussion about the amended agenda proposed by Manager Koch and the opinion that the agenda should remain similar to the agenda sent by staff and the Board president and disseminated to the public.

Manager Crafton agreed to amending the agenda to pull items 6a and 6b off the Consent Agenda, but not to the remainder of Manager Koch's motion. Manager Ziegler agreed to amending the agenda to remove items 6a and 6b off the Consent Agenda, and additionally he requested removing from the Consent Agenda item 6d – Approve Payment Application #1 for Rice Marsh Lake Water Quality Project.

Manager Koch's motion to amend died due to lack of a second. There was discussion to clarify which of Manager Koch's proposed changes Manager Crafton and Manager Zeigler accepted as a friendly amendment to their motion to accept the agenda. There was Board consensus on moving off the Consent Agenda items 6a, 6b, and 6d and moving to the Consent Agenda the following action items: 7d – Approve Schedule of Regular Meetings of the Board for 2022, 7f – Designation of Official Newspapers for Publication of Notices, 7g – Affirm Smith Partners PLLP as Depository for Performance Bonds and Letters of Credit, 7h – Designate U.S. Bank as Official Depository for Cash Escrows, 7i – Designate TAC Members, 7r – Approve Amendment to Task Order 036A for Bluff Creek Reach 5 Feasibility Study to Include Subwatershed Assessment, and 7s – Authorize Administrator to Create an Internal Calendar of Significant Deadlines and Other Matters.

Manager Koch moved to amend the motion the Board Consented to add item 7v - Staff to propose resolutions for actions per Bylaws and 7w – Appointment and compliance officer. The motion died due to lack of a second.

Upon a roll call vote at 7:24 p.m., the motion to approve the agenda as amended by the friendly amendments consented to by the Board carried 3-1 as follows:

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

Manager Koch stated he will exercise his right pursuant to statute and Robert's Rules of Order to remove all items from the Consent Agenda. Attorney Smith commented that typically this action would be expressed prior to voting on the adoption of the agenda, but because the Consent Agenda item is still before the Board, managers could pull Consent Agenda items.

Vice President Pedersen asked Manager Koch if that is really what he wants. Manager Koch replied what he really wants is to have managers exercise their duties in the best interest of the District, and quite frankly, if "you" don't want to be cooperative, that's "your" right, and he will exercise his rights. Manager Koch said he doesn't understand the stonewalling that's going on. He said he was actually trying to help move things along, but if "you" don't want to do that and address items he believes clearly need to be addressed per statute having to do with responsible

117 party and responsible authority, then fine, we will “both” do Robert’s Rules of Order step by step.
118 Vice President Pedersen responded she finds Manager Koch’s request unfortunate and if this
119 meeting is still in process at 10:00 p.m., the meeting will need to be continued. Manager Koch
120 said he has a very simple answer: he won’t object to the Consent Agenda items if the Board will
121 add the two items he is asking for and that he believes need to be added because of the District’s
122 Bylaws and because of statute. Interim Administrator Jeffery noted the two items Manager Koch
123 is requesting would be helpful at a staff level.

124 Manager Crafton asked if the additional items Manager Koch proposed could be added to the
125 Board’s next meeting. Manager Koch said he sees no reason to delay them to another meeting, as
126 the agenda will be a full plate next month. He said he doesn’t know why “you” would object to
127 his proposed additions. Manager Pedersen said she thinks the issue is the fact that managers
128 including Manager Koch himself like to have changes in hand before getting to the Board
129 meetings. She said when the managers are presented at the meeting with an agenda that is
130 completely redone and none of the managers have been able to look through the proposed
131 changes, it’s not a fair way of handling this for the public and the Board as a whole.

132 Manager Koch said Manager Pedersen’s argument is a red herring, which is the worst way to
133 counter someone’s opinion. He continued by saying if there is no mechanism for him to provide
134 this type of proposal to the rest of the managers before the meeting, then it is something the
135 Board should discuss as part of its Governance Manual and Bylaws.

136 Manager Koch stated he has said in the past the managers should receive materials before Board
137 meetings, but Manager Pedersen in particular has violated that rule, and if he had another
138 mechanism to get his proposed agenda changes before everybody, he would certainly do that. He
139 stated he believes the Board needs to review its method and process for coming up with the
140 agenda and getting people’s input. Manager Koch stated he had proposed such language for
141 inclusion in the District’s Governance Manual and Bylaws, but no, other managers did not
142 consider or vote for such. Manager Koch claimed it is a problem of “your” own creation, and he
143 is sorry, but that is a fact.

144 Manager Koch moved that the agenda be accepted with the items Interim Administrator Jeffery
145 reviewed to be moved to the Consent Agenda, and the items discussed to be moved from the
146 Consent Agenda to Action Items, along with his two proposed additional action items, or
147 otherwise he will insist all items be withdrawn from the Consent Agenda.

148 Manager Crafton said she would be fine with having all items removed from the Consent Agenda.
149 Manager Ziegler said he objects to new items being added to the agenda at this late date.

150 Manager Koch described his changes, and the Board looked again at both marked up versions of
151 the agenda that Interim Administrator Jeffery was displaying on the screen. Manager Koch
152 clarified that the only additional items he is proposing to add to tonight’s agenda is for staff to
153 provide proposed resolutions for action items per the Bylaws and to designate the District’s
154 Responsible Authority and the Data Practices Compliance Official, which is required by law,
155 unless Manager Ziegler wants to take over those responsibilities, because Manager Koch
156 understands those responsibilities default to him if the Board doesn’t do any designations.

Manager Ziegler asked for Attorney Smith to comment about the topics of Manager Koch's two proposed additional agenda items. Attorney Smith offered the procedural comment that Board actions are required to be in the form a written resolution, so Manager Koch's proposal is consistent and in order with that requirement and the District should follow the requirement since it is already in the District's Bylaws, and the Data Practices Act does require a designated Responsible Authority and a Data Practices Compliance Official, which the District has made clear the District Administrator fulfills that role, but it seems Manager Koch's intent is for the District to be clear about these designations due to the interim status of the District's Administrator, so Manager Koch's proposed agenda item on this topic is also in order. Attorney Smith reminded the Board it has already adopted a motion approving the agenda, so now the Board is discussing seeking to reconsider the vote in order to revise the agenda. Vice President Pedersen asked Attorney Smith if the agenda could be revised by moving to amend the agenda. Attorney Smith replied yes.

Manager Koch moved to amend the agenda by adding 7v – Staff to Provide Proposed Resolutions for Action Items per the Bylaws, and 7w – Designate the District's Data Practices Act Responsible Authority and the Data Practices Compliance Official. Manager Ziegler seconded the motion. Upon a roll call vote at 7:37 p.m. the motion carried 4-0 as follows:

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

3. Matters of General Public Interest

Manager Pedersen acknowledged the Board received a letter from Mr. Ted Mellby and noted a copy of the letter was included in the meeting packet. Manger Pedersen reviewed the District's procedure for Matters of General Public Interest.

Ms. Chesney Engquist of 4549 41st Avenue S., Minneapolis, commented she raises a glass of spring water to everyone's health and to acknowledge and appreciate the District's commitment and investments to protecting the water in the District. She said there are folks participating in tonight's meeting who are studying to learn more about the District's efforts, how priorities are discerned, and the best ways to engage in supporting the District's work. Ms. Engquist noted someone wise said to her "Once you understand soil health, there is no going back." Ms. Engquist said once you look at our policies through the lens of soil health, you understand our policies are inadequate, at municipal, state, and federal levels. She said there is a lot of work to do. Ms. Engquist said she is here to help delist the bodies of water that are in your District that are on the

188 state's impaired waters list, and the best tools at her disposal are healthy soil, education and
189 outreach, and regenerative land care practices. Ms. Engquist asked if the meeting attendees know
190 that in one teaspoon of healthy soil there are more microorganisms than there are human beings
191 on planet Earth. She said soil is the life support system of plant Earth and cleans the air, cleans
192 the water, sequesters carbon, transmutes waste, informs slope stability versus runoff and
193 infiltration versus landslides. Ms. Engquist said you have a really great example, a gem actually,
194 in your District, Mniwacam, or Fredrick Miller Spring. She said at the spring today, there is
195 pavement nearly to the water's edge, compacting and preventing those soil microbes from living.
196 Ms. Engquist stated that behind the structure where the faucet is located, there is a very slender
197 sandbar leading up to the first walkway. She explained the sandbar is on average eight feet in
198 diameter and is held together by two organisms: a heritage maple tree and the soil food web. Ms.
199 Engquist said this sensitive and highly dynamic condition is seen all throughout the bluffs and
200 requires our high level of attention. Ms. Engquist invited the group to take a walk at the spring
201 and see that the second walking bridge has already collapsed. She said let's work together to
202 make sure we don't encroach any more on this space and we make wise decisions in order to
203 protect the spring and the creek in this area.

204 Ms. Susu Jeffery of 1063 Antoinette Avenue, Minneapolis, said she noticed last month that the
205 Board focused on Upper Riley Creek and Middle Riley Creek. She said Spring Valley Friends
206 focuses on Lower Riley Creek, which is where all the action is to get water and where people go
207 24/7 to get water. Ms. Jeffery wondered why it is not being attended to by the District. Ms.
208 Jeffery stated the District is only focusing on the parts of Riley Creek that are hyper developed.
209 She said that development has caused damage, and yet there is a lot of damage on Lower Riley
210 Creek. She said the creek is falling apart, the hillside is collapsing, and there is sand in the creek.
211 She said it is a wonderful thing, generous, and life giving that the City of Eden Prairie gives this
212 water. Ms. Jeffery asked where the effort is to keep it. Ms. Jeffery said it is the oldest
213 continuously attended to spring in the area since pre-white people time, and yet it's falling apart.
214 She said the soil is being stripped by the growth of buckthorn, which shades native plants. Ms.
215 Jeffery says she also invites the group to take a walk there, get water, and take the path up the hill
216 and look at how collapsed the sides of Riley Creek are. She said the creek is in dire need of help,
217 and she asked the District to take a look and to do something about it. Ms. Jeffery said the creek
218 is collapsing and it's the District's responsibility to do something about it. She said all she sees is
219 the District doing work on Upper Riley Creek and Middle Riley Creek, and yet Lower Riley
220 Creek is where all the action is, except for the development of expensive homes. Ms. Jeffery said
221 please take a look, enjoy the water, and preserve it, because once it's gone, it's gone.

222 Mr. Ted Mellby of 9625 Grand Avenue stated the comment he submitted in writing to the District
223 is that our waters are a mirror of what's happening on the land. He said he speculated that with all
224 the residential development that's occurred in Eden Prairie up to this point in time that
225 development is probably snuggled up to our creeks. Mr. Mellby said today he found aerial
226 photographs, and they confirmed his speculation that development is snuggled up to the creeks
227 and lakes throughout Minnesota. He said that snuggling is going to end up being suffocating and
228 will kill that feature of nature that we have to protect. Mr. Mellby said Noble Hill is just another
229 example of snuggling. He said he is trying to emphasize that we are protectors of these resources,
230 and the Watershed District in particular is responsible to protect our natural resources. Mr.

Mellby said when someone tries to snuggle up to you next time, you better say no, or you will get choked to death. He said he hasn't fact checked another item, but maybe the District can help out. He said he doesn't know of another residential subdivision that is located on the down slope of a bluff leading to the Minnesota River. Mr. Mellby said Noble Hills subdivision is the first and only one he knows of that he understands is located far down the slope going down to the river. He said that fact in and of itself may be a reason to take a hard look at the Noble Hills development.

4. Reading and Approval of Meeting Minutes

a. December 8, 2021, RPBCWD Board of Managers Public Hearing and Regular Meeting

Manager Ziegler moved to approve the minutes of the December 8, 2021, Board of Managers Public Hearing and Regular Meeting. Manager Crafton seconded the motion. She requesting adding the words "at a later date" to line 5, throughout the minutes correcting the spelling of LiDAR, and on line 168 correcting the date of the TAC meeting to December 20th. Attorney Smith suggested clarifying the sentence on line 248 by revising to, "..., and it is for cases..." Manager Ziegler stated the attendee list should include David Benedict, on line 14 the % symbol should be replaced with the number 5, on line 13 include that Manager Koch moved to add items 10g, 10h, and 10k to the Consent Agenda, on line 24 clarify that the comments were about the Duck Lake Outlet elevation change and its effect on the Duck Lake fish population and fishing, on line 121 correct the spelling of "soliciting," on line 356 add that Manager Ziegler seconded the motion, and on line 416 the number should be updated to 10,000.

The managers agreed by consensus to the amendments to the minutes as described. Upon a roll call vote, the motion carried 4-0 as follows:

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

b. December 15, 2021, Continuation of the December 8th RPBCWD Board of Managers Public Hearing and Regular Meeting

Attorney Smith requested the Board defer action on these minutes to the Board's next meeting so Legal Counsel has an opportunity to review them and bring any comments to

the Board. Manager Koch moved to lay over the December 15th minutes to the Board's next meeting. Manager Crafton seconded the motion.

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

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

5. CAC

Ms. Sharon McCotter summarized the CAC's motions, noting the CAC unanimously approved a motion in favor of the work the Board proposed and the District is working on for Upper Riley Creek. She reported the TAC supports the proposal to develop a climate action soil health plan. She said there was talk of bringing in the resource Anne Marie Journey or others that could present to the CAC and Board of Managers as a joint presentation. Ms. McCotter reported the CAC passed a motion to revise the CAC Chair job description to update that the meetings between the CAC Chair and the manager would happen only twice a year, instead of prior to each meeting and that the CAC Chair would coordinate with the District Administrator to schedule joint meetings at least twice a year.

Ms. McCotter said the CAC held its annual officer election, and she announced the CAC's 2022 appointments: President Andrew Aller, Vice President Jim Boettcher, and Recorder Rodey Batiza.

Ms. McCotter said District Education and Outreach Coordinator Mahon did a fabulous presentation to the CAC about the District's Education and Outreach program. Ms. McCotter asked who the Board representative at the CAC's January 24th meeting will be, and Manager Koch said he will attend.

6. Consent Agenda

Manager Koch moved to adopt his resolution to approve the Consent Agenda, and he read aloud his resolution as follows:

Now therefore be it resolved that the Board of Managers hereby approves and adopts the Consent Agenda and all of the actions, resolutions, and appointments provided to the managers with respect thereto.

Manager Ziegler seconded the motion. The Consent Agenda included item 6c – Approve December Construction Inspection Report, 6e – Approve Payment Application #2 for Pioneer Wetland Restoration, 6f – Approve Payment Application #2 for Middle Riley Creek Restoration, 7d - Approve Schedule of Regular Meetings for the Board for 2022, 7f- Designation of Official Newspapers for Publication of Notices, 7g – Affirm Smith Partners PLLP as Depository for Performance Bonds and Letters of Credit, 7h – Designate U.S. Bank as Official Depository for Cash Escrows, 7l – Designate TAC Members, 7r – Approve Amendment to Task Order 036A for Bluff Creek Reach 5 Feasibility Study to Include Subwatershed Assessment, and 7s – Authorize Administrator to Create an Internal Calendar of Significant Deadlines and Other Matters.

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

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

7. Action Items

a. Items Pulled from Consent Agenda

i. Accept December Staff Report

Manager Koch noted the reference on the report's page 1 to the annual report and communication. He raised his concerns about the 2020 annual report and communication and said he has created a list of his concerns and asked staff to review the list and address the issues as appropriate. Interim Administrator Jeffery said staff will provide their work on the annual report and communication to the Board for feedback throughout the process of drafting it.

Manager Koch expressed his concern about the shoreline assessment and erosion intensity worksheet and its appropriateness. He said he would like staff to examine whether or not the worksheet should be reviewed, because to his knowledge it was created before there were wake boats. Manager Koch said he wants to make sure the District is accounting for current activities when doing the scoring. Interim Administrator Jeffery said it does need to be updated.

Manager Koch raised a point about the District hydrology modeling mentioned on the report's page 3. He reiterated his request that staff consider validation of the modeling based on 2021 because there was so little rainfall, and he would like to see staff validate for rainfall versus runoff.

Manager Koch provided his suggestions that staff should get input earlier rather than later in the process to update the District's website.

Manager Koch commented on the report's item about Lake Susan spent lime phosphorus removal rate of 41% and asked if that was in the range of anticipated total removal efficiency for that project. Interim Administrator Jeffery said it is lower than anticipated. Mr. Maxwell said it was anticipated to remove 60%-65%, which was achieved in the previous year, but in 2021 the removal efficiency was reduced. He noted he presented on this topic at the MAWD conference, and he summarized some of the possible issues.

Manager Koch raised the topic the report discussed about the Rice Marsh Lake Watershed Load Project #1. He asked for clarification about the installation including installation location of the two Krakens in relation to the downstream manholes mentioned in the report. Interim Administrator Jeffery provided details about the project design.

Manager Koch moved to accept the staff report. Manager Ziegler seconded the motion. Upon a roll call vote, the motion carried 4-0 as follows:

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

ii. Accept December Engineer's Report

Manager Koch asked about the Moments of Chanhassen permit conditionally approved in 2020 and if the District is still trying to get to get the permittee to satisfy the conditions of the permit. Engineer Sobiech said yes, the applicant requested a permit extension. He explained that part of the conditional approval was related to the tire aggregate, and he provided more details about that effort and the applicant's soil testing results leading to further modifications to the project design. Interim Administrator Jeffery said the applicant has a year to meet the conditions of a conditionally approved permit unless the applicant requests an extension. He noted the applicant requested an extension, and the District Administrator has the authority to grant an extension, and the extension was granted.

Manager Koch asked for more details about Permit 2018-006 Castle Ridge. Engineer Sobiech responded with information about the modified permit and the permit holder's phased approach of the site development. Interim

351 Administrator Jeffery noted the applicant fulfilled the requirements on January
352 3rd and the permit was issued today.

353 Manager Koch asked for more details about project scope for the pond
354 dredging. Engineer Sobiech provided details about the project, which is just
355 north of Welter's Way in Eden Prairie and is a DNR public waters wetland that
356 has received a lot of sediment over the years. He explained the City is looking
357 to remove the sediment from the pond, which is part of a historic wetland.

358 Manager Koch noted the report mentioned under the update about Task Order
359 28B that the site was left without temporary stabilization. He asked staff to
360 comment on this situation. Interim Administrator Jeffery said the hydro mulch
361 was not placed on the site before the snow fell, but perimeter protection is in
362 place to protect the downstream resources, and the contractor is aware it will
363 need to come back as soon as the weather forecast is for thaw to put the mulch
364 in place as well as address other issues the District noted to the contractor.

365 Manager Koch asked about the report note about Task Order 29B, item C and
366 the status of the budget. Engineer Sobiech said this information is to inform the
367 Board that the authorized budget has been exhausted, and because Barr
368 Engineering recommended the budget amount, Barr is not asking for additional
369 budget. Manager Koch said he is not trying to say the District shouldn't pay for
370 legitimate work, but he wants the District to get its arms around what it thinks
371 the budget is going to be. He said he thinks there were a lot of lessons learned
372 with this Task Order, and he hopes the District will apply those lessons learned
373 going forward.

374 About Task Order 035, paragraph D, Manager Koch asked if managers will be
375 able to get a copy of the referenced interim project status report, so managers
376 can be kept up-to-date on what is being reported to the MPCA. Engineer
377 Sobiech said yes.

378 Manager Koch moved to accept the December Engineer's report. Manager
379 Ziegler seconded the motion. Upon a roll call vote, the motion carried 4-0 as
380 follows:

381

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

382

iii. **Approve Payment Application #1 for Rice Marsh Lake Water Quality Project**

Manager Ziegler commented he saw the retainage was listed twice, once by Barr Engineering at \$14,834.61 and once by the contractor at \$21,608.88. He asked if the District is safe with the \$14,834.61 retainage amount. Engineer Sobiech said the reason for the difference is the contractor computed the retainage as 5% of the work they had completed to the date. Engineer Sobiech explained the contract language states it's 5% of the work up to 50% of the work complete, so there would be no more retainage after 50% of the work has been completed in accordance with the agreement. He continued by saying the retainage amount is 5% of half the contract amount because they are past 50% of the work completed, which equates to \$14,834.61.

Manager Ziegler moved to approve Payment Application #1 for Rice Marsh Lake Water Quality Project as recommended by the Engineer and with any conditions as specified. Manager Crafton seconded the motion. Upon a roll call vote, the motion carried 4-0 as follows:

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

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

Treasurer Crafton stated the report has been reviewed in accordance with internal controls and procedures. She moved to accept the November Treasurer's Report. Manager Ziegler seconded the motion.

Manager Koch asked for clarification of the Aspect Design/build expenditure. Interim Administrator Jeffery responded it's a permit fee refund to Aspect Design and Build. Manager Koch asked for more details about the invoices from Fortran Consulting and HDR Engineering.

Manager Koch said in his review of the fund performance analysis, he noted the District as of the end of November was at 100% of budget for audit and accounting, similar with the legal fees, and significantly over for permit review and inspection. Interim Administrator Jeffery said yes, permit review and inspection is over budget due to the Noble Hills permit review and cost for the slope analysis for which the District has not yet received the reimbursement from Pulte to make up for much of that overage. Manager Koch noted professional services are also slightly over budget. Manager Koch

said Data Collection and Monitoring is at 126%, and he asked for an explanation. Mr. Maxwell said one of the bigger purchases that made this budget item go over was the truck purchase. Manager Koch said he would like to see the final expenditures at next month's meeting and recommendations for moving funds from of the reserves, so everything is equal to the amount budgeted. Manager Koch said the Wetland Management expenditures are at 167% of budget. Interim Administrator Jeffery said the District hasn't yet received the grants, which will bring that overage down. Manager Koch asked staff to go over this in more detail next month. Manager Koch commented Middle Riley Creek is at 205% and St. Hubert's is at 236%, and he said he is really concerned about whether the District's projections for 2022 are going to be realistic. He said he would like this to be addressed in February about whether the District will be out of budget or whether funds will need to be moved around. Interim Administrator Jeffery said grant funds will be coming in, and fund transfers the District has already approved are not yet reflected in the report.

Manager Koch asked staff to provide more information next month about the 2021 expenditures for the wetlands management multi-year project, the Rice Marsh Water Quality I project, and the Middle Riley Creek project.

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

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

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 4-0 as follows:

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

d. Election of Officers

- i. Manager Koch nominated Manager Pedersen for RPBCWD Board President. Manager Crafton nominated Manager Ziegler. Upon a roll call vote, Manager Ziegler received three votes and Manager Pedersen received one vote as follows:

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

Attorney Smith stated there were three votes for Manager Ziegler and one vote for Manager Pedersen, so Manager Ziegler is elected president.

- ii. Manager Koch nominated himself for Vice President. Upon a roll call vote, Manager Koch received four votes as follows:

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

Attorney Smith stated there were four votes for Manager Koch, so Manager Koch is elected vice president.

iii. Treasurer

- Manager Pedersen nominated Manager Crafton for Treasurer. Upon a roll call vote, Manager Crafton received four votes as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Crafton

Koch	Crafton
Pedersen	Crafton
Ziegler	Crafton

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Attorney Smith stated Manager Crafton received four votes, so Manager Crafton is elected Treasurer.

iv. Secretary

Manager Koch nominated Manager Pedersen for Secretary. Upon a roll call vote, Manager Pedersen received four votes as follows:

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

Attorney Smith stated Manager Pedersen received four votes, so Manager Crafton is elected Treasurer.

e. Approve Signees for Banking

Interim Administrator Jeffery stated this agenda item is actually an amendment to the signees. He said the Bylaws state the President and Treasurer should be the signees. Manager Koch moved to adopt the resolution to the effect that the people holding the offices designated in the District's bylaws be approved as signatories over the account and that the Board Secretary and staff revise the proposed resolution before the Board accordingly [to identify the President and Treasurer] and get the proper people to sign it. Manager Crafton seconded the motion. Manager Koch amended his motion to provide that the Secretary and Legal Counsel review the District's Bylaws to confirm the positions the District's Bylaws state should be the signatories and that Interim Administrator Jeffery and Manager Pedersen as Secretary complete the resolution required by the bank consistent with the District's Bylaws and with the Board's officers. Manager Crafton agreed to Manager Koch's friendly amendment. Upon a roll call vote, the motion carried 4-0 as follows:

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

f. Review Insurance Needs and Current Coverage

Interim Administrator Jeffery reported on the review, saying the review was done by North Risk Partners and Attorney Welch, and no changes are recommended at this time. He said Manager Koch recommended the District's Audit and Finance Committee conduct a review. Manager Koch moved that should an Audit and Finance Committee be approved, the District Administrator and the District's insurance carrier provide a report of coverage to that Committee, for the Committee to decide if there are any recommendations going forward. The motion died due to a lack of a second. Attorney Smith said the District's Governance Manual requires a list of annual business items, including the review of insurance coverage. He said this meeting makes a record that the review has been completed by the parties who Interim Administrator Jeffery identified, so the minutes will reflect the review has been completed and the recommendation is no changes as the current coverage is adequate. Attorney Smith noted he thinks this review is a good practice.

g. CAC Appointments

Interim Administrator Jeffery reported Kim Behrens and Jan Neville resigned from the CAC, leaving the CAC with twelve members. He said the District has advertised for applications to the CAC, and he will bring any applications to the Board in February. Manager Koch asked where the current CAC members are located in the District. Interim Administrator Jeffery provided the information he had, and he said Minnetonka is the one area that is not strongly represented on the CAC.

Manager Koch moved to appoint all CAC members listed except Kim Behrens and Jan Neville to the CAC for 2022. Manager Crafton seconded the motion. The individuals appointed to the District's Citizens Advisory Committee included: Heidi Groven, Jim Boettcher, Marilynn Torkelson, Andrew Aller, Rodney Batiza, Michelle Frost, Samuel Griffin, Pete Iverson, Terry Jorgenson, Sharon McCotter, Jeff Weiss, and Jessica Wiley.

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

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

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h. Standing Committees

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Manager Koch nominated himself and Manager Ziegler as members of the Governance Committee. Upon a roll call vote, the motion carried 4-0 to appoint Manager Koch and Manager Ziegler to the Governance Committee as follows:

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

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Attorney Smith reported Managers Koch and Ziegler are appointed to the Governance Committee.

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Manager Koch nominated Managers Pedersen and Ziegler to the Personnel Committee. Manager Pedersen nominated herself and Manager Crafton. Upon a roll call vote, Manager Crafton and Manager Pedersen were appointed to the Personnel Committee with three votes for Manager Crafton/Manager Pedersen and one vote for Manager Pedersen/Manager Ziegler as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Vote for Crafton and Pedersen
Koch	Vote for Pedersen and Ziegler
Pedersen	Vote for Crafton and Pedersen
Ziegler	Vote for Crafton and Pedersen

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Attorney Smith reported Manager Crafton and Manager Pedersen are appointed to the Personnel Committee.

Manager Koch moved to nominate Manager Crafton and himself as members of the Audit and Finance Committee. Manager Ziegler moved to nominate himself and Manager Crafton. Upon a roll call vote, Manager Crafton and Manager Ziegler were appointed to the Finance and Audit Committee with three votes for Manager Crafton/Manager Ziegler and one vote for Manager Koch/Manager Ziegler and no votes for Manager Koch/Manager Crafton as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Vote for Crafton and Ziegler
Koch	Vote for Koch and Ziegler
Pedersen	Vote for Crafton and Ziegler
Ziegler	Vote for Crafton and Ziegler

Attorney Smith reported Manager Crafton and Manager Ziegler are appointed to the Finance and Audit Committee.

i. Review of District Fees and Permit Security Schedules

Interim Administrator Jeffery talked about the \$3,000 application fee for utility companies for directional drilling, and he concluded by saying he has no recommendation for changes to the District's fees and permit security schedules. Manager Koch asked if the hourly fee schedule goes back to 2019. Interim Administrator Jeffery said 2018. Manager Koch moved to approve the current schedule with the exception that the hourly rate for staff be adjusted to account for inflation from the time of the adoption of the current hourly rate through today. Manager Ziegler seconded the motion. Upon a roll call vote, the motion carried 4-0 as follows:

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

j. Review of Governance Manual

Manager Koch moved to refer this item to the Governance Committee with direction to the Governance Committee to review the Governance Manual and make such recommendations for changes to the Manual and bring to the managers for consideration in accordance with the terms of the District's Bylaws. Manager Ziegler seconded the motion with the friendly amendment to direct staff to set up the meeting with Legal Counsel and the Governance Committee and the Administrator. Manager Koch agreed to the friendly amendment. Upon a roll call vote, the motion carried 4-0 as follows:

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

k. Order Upper Riley Creek Ecological Enhancement Project

Interim Administrator Jeffery said this item is to authorize Barr Engineering to do the design to be able to present to the City of Chanhassen to facilitate the ordering of the project and the cooperative agreement with the City. He noted the correct resolution number is the number listed in the Barr task order. Attorney Smith said Legal Counsel's perspective is that the Board is in a position to order an improvement/project, and once the Board has received information from the Engineer in the form of a feasibility report, the Board knows it has carefully identified a problem and considered alternative solutions and has a feasible project to consider, at which time it is prudent to go forward in a more detailed design. He said what's unique about the history of this project is that it's a vision of a dynamic ecological enhancement effort that Dr. Bleser had framed. He said notwithstanding that vision, the Board still wants to be confident it has a viable project that's worthy of investing dollars in the design process.

Manager Koch raised his concern about the estimated cost and the District's 2022 budget, and he asked for more details about the estimated cost and timing of budgeting for the cost. Attorney Smith said the District has the ability to order a project and proceed to implement it over a period of years in which multiple levies would produce the necessary funds. Attorney Smith said the District wants to make sure it has a budget in place that can cover the cost of engineering design, and from there the Board can do other financial planning given the schedule of implementation and schedule of levies.

Manager Koch asked the cost of the task order for Barr Engineering to do the design work. Interim Administrator Jeffery said \$339,700. Manager Koch said the District has adequately budgeted for that task order.

Manager Koch moved to approve the resolutions for ordering the Upper Riley Creek Ecological Enhancement Project with the appropriate resolution number inserted by the secretary. Manager Crafton seconded the motion. Upon a roll call vote, the motion carried 4-0 as follows:

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

I. Approve Task 032B for the Design, Permitting, and Agreement Assistance for the Upper Riley Creek Ecological Enhancement Project

Manager Koch moved to approve Task Order 032B for the Design, Permitting, and Agreement Assistance for the Upper Riley Creek Ecological Enhancement Project. Manager Crafton seconded the motion. Upon a roll call vote, the motion carried 4-0 as follows:

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

m. Staff to Provide Proposed Resolutions for Each Agenda Item

Manager Koch moved that we confirm with staff in accordance with the District's Bylaws that we receive proposed written resolutions for each action item in our agendas for each meeting. Manager Ziegler seconded the motion. Interim Administrator Jeffery asked if he should write a separate resolution for each item on the Consent Agenda in case any Consent Agenda items are pulled off the Consent Agenda and moved to action items. Manager Koch said his thought, which is consistent with the Bylaws, is that

someone should prepare a resolution for each action item, and hopefully there will be templates prepared, perhaps with the assistance of Legal Counsel. Attorney Smith suggested that given the wide nature of items on the Consent Agenda and the Board's practice of pulling Consent Agenda items, each action item should have a written resolution of Board action that would be taken if that item is approved.

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

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

n. Appoint Interim District Administrator as the Responsible Authority and the Data Practices Compliance Official for the District

Manager Koch moved to designate the District's Interim Administrator or District Administrator as the Responsible Authority for purposes of Minnesota Statute 13.02 subd 16, paragraph B, and the Interim Administrator or District Administrator will also be the Data Practices Compliance Officer pursuant to 103D13.05 Subd 13. Manager Ziegler seconded the motion. Upon a roll call vote, the motion carried 4-0 as follows:

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

8. Discussion Items

a. Attorney Report

Attorney Smith said there is no further news on the Noble Hill litigation matter, and the court hearing on the motions to dismiss remains set for February 18th.

b. Engineer Report

Engineer Sobiech said he had no new items to report. Manager Koch commented about the state statute requiring the chief engineer to provide a report at least annually about all the works undertaken by the District. Manager Koch said he doesn't know if the District has ever had that, and if it is a statutory requirement, the District needs to figure out if it does have that report and if there is a better way to do it. Manager Koch made suggestions on how this report could be done and included in the District's annual report.

Attorney Smith said this statutory requirement has been in the watershed law since the beginning. He said he views this as stating a minimum requirement that each watershed district must have an engineer, and the engineer must report at least annually on the work conducted. Attorney Smith said he feels the District Engineer's monthly report fulfills the requirement, but there is nothing wrong with the idea of rolling those reports up into an annual report. Interim Administrator Jeffery stated Staff Forbes is working on project sheets for each project. He said staff will post the sheets on the District's website. He said perhaps those sheets could be compiled into a report. Manager Koch said the District just needs to decide and be able to say here is our report.

c. Administrator Report

Interim Administrator Jeffery reported on the rules revisions process and timeline, commenting the process is a month behind, so the process will extend to January 2023. He commented that the result of this process may be that no changes are recommended. Interim Administrator Jeffery said the rules need to be evaluated, but he wants to make sure the managers understand staff isn't recommending an overhaul of the rules. Manager Koch requested staff think about the District's process to solicit comments on the rules.

Interim Administrator Jeffery said the Riley Purgatory Summit will be held later this month on Zoom to discuss different findings and projects going about Riley Creek and Purgatory Creek. Manager Koch asked if he could attend and/or if it would be recorded or if there will be a report that Interim Administrator Jeffery could share. Interim Administrator Jeffery said managers can attend as long as the number of managers isn't a quorum, and he will see if the attendees agree to the meeting being recorded.

d. Managers' Report

Manager Koch asked Administrator Jeffery to report at the Board's next meeting about the three permit violations along Lotus Lake. Manager Koch remarked to the Audit and Finance Committee that he hasn't seen a response or a review of the financial policies that he and Manager Crafton initiated with the auditor and Interim Administrator Jeffery last fall. He said he hopes the Audit and Finance Committee will work toward the District having financial policies it can review and adopt so the auditor and everyone knows what the District's financial policies are.

He also commented he had been contacted by Mr. Mellby, and Manager Koch referred him to Interim Administrator Jeffery.

Manager Ziegler said at the MAWD conference, there was talk about the proposal to be able to continue with Zoom meetings. He summarized the discussion and conclusion that water organizations should commit to meeting face to face once the pandemic is over. He said he isn't sure anyone considered special meetings and committee meetings when concluding managers should meet in person at least nine times. Manager Crafton said she can ask MAWD for clarification. Manager Koch said he is convinced using Zoom is the way to get public participation.

e. Human Resource Consultant Update

Manager Pedersen provided an update about the referrals from MAWD and the League of Minnesota Cities and the calls she has made off of the executive search firm list provided by the League of Minnesota Cities. She said she would like to have a Personnel Committee in the next two weeks and have a core group from the list come. Manager Pedersen said she will give an update at the February meeting.

9. Upcoming Board Topics and Events

Manager Pedersen noted upcoming Board topics and events are listed in the meeting agenda.

10. Adjournment

Manager Koch moved to adjourn the meeting. Manager Crafton seconded the motion. Upon a roll call vote, the motion carried 4-0 as follows:

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

The meeting adjourned at 9:48 p.m.

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Respectfully submitted,

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Dorothy Pedersen, Secretary