

## MEETING MINUTES

### Riley-Purgatory-Bluff Creek Watershed District

#### September 23, 2022, Continuation of September 14, 2022, RPBCWD Board of Managers Regular Monthly Meeting

PRESENT:

Managers: Jill Crafton, Treasurer  
Tom Duevel  
Larry Koch, Vice President  
Dorothy Pedersen, Secretary  
David Ziegler, President

Staff: Amy Bakkum, Administrative Assistant  
Zach Dickhausen, Water Resources Technician II  
Terry Jeffery, District Administrator  
Scott Sobiech, Engineer, Barr Engineering Company  
Michael Welch, Attorney, Smith Partners

*Note: the continuation of the Board 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 At 9:00 a.m. on Friday, September 23, 2002, the Board continued the September 14, 2022, RPBCWD  
2 Board of Managers Regular Monthly Meeting.

## 10. Committee Reports

### 3 a. Personnel Committee Report

4 Manager Pedersen noted the Committee submitted the minutes from its last meeting and  
5 the Committee has a meeting scheduled for today at 2:00 p.m. Manager Koch asked if  
6 the minutes are complete and reflect all items that were discussed during the meeting.  
7 Manager Pedersen, Manager Crafton, and Administrator Jeffery said they believe the  
8 minutes capture what was discussed. Manager Koch said that's all he'll say at this time.

### 10 b. Governance Committee Report

11 President Ziegler said the Governance Committee minutes were in the Board packet. He  
12 noted that in the current Governance document, on page v4 item 5 Managers' Authority,  
13 item B, it says no individual manager may provide direction, instruction, or  
14 authorization to the administrator unless specifically authorized to do so by the Board of  
15 managers. He said the document goes on to say that a manager's request for information  
16 that would require more than 15 minutes of administrator's time must be approved by

17 the Board of Managers, cumulative requests that require more than 30 minutes of  
18 administrator's time in one calendar month must be approved by the Board of  
19 Managers. President Ziegler said he takes that to mean we have to vote on it and it's  
20 required to be approved before it happens. President Ziegler said if the administrator  
21 feels that any request is going to take any more time than that, he can put it on the draft  
22 agenda. President Ziegler said before we spend time that wasn't authorized by the Board  
23 of Managers, we need to make sure that the managers, at least the majority of managers,  
24 agree.

25 Manager Koch said he believes that restriction is contrary to the law 103D.315, which  
26 has no limitations on it, and it's not within the purview of the governance of this body to  
27 change the law. Manager Koch said that provision is in violation of the Minnesota Data  
28 Practices Act, specifically, and any following of that restriction would be a violation of  
29 those laws, and he reminds everybody of the significant penalties that may imposed for  
30 violating particularly the Minnesota Data Practices Act. Manager Koch submitted that  
31 the provision is illegal, unenforceable, and following it would subject this body to  
32 significant penalties and that provision should be ignored and, upon auto-revision of  
33 that manual, should be deleted or at least made consistent with the statutes that he refers  
34 to.

35 President Ziegler noted the distinction between citizen requests and manager requests  
36 for data.

37 Attorney Welch stated he doesn't agree with Manager Koch that those policies are  
38 unenforceable. Attorney Welch said the Board has wide discretion to manage its own  
39 affairs and to manage the time of its staff. He said to have the Board not have the ability  
40 to manage how its staff spends time would be to abdicate the purpose for having the  
41 Board at all. Attorney Welch said Manager Koch is correct that the Data Practices Act  
42 must be complied with by the Board.

43 Manager Koch said he will not pick up the point of order regarding the conduct of this  
44 discussion, but he will respond to suggest 103D.315 be reviewed, and unless he's  
45 wrong, the law requires each and every one of the managers to be a resident of the  
46 District, and he suggests a review of 103D.315 as well as a review of the Minnesota  
47 Data Practices Act, and this should be a point of discussion also at the Governance  
48 Committee, who can bring it forward to the Board of Managers if we need to discuss it.

49 Manager Pedersen asked Attorney Welch to clarify a point about the citizen requests  
50 versus manager requests for data, and Attorney Welch clarified his point. Manager  
51 Pedersen responded, at which point Manager Koch said point of order, he is sorry, but  
52 this is a repeated issue particularly with Manager Pedersen of speaking without being  
53 recognized, and he can say that because he has listened to multiple recordings of  
54 multiple meetings, and so he asks everybody that we follow the rules and ask to be  
55 recognized before speaking. President Ziegler recognized Manager Pedersen to speak,  
56 and she shared her follow up comment about the District's policy about manager  
57 requests for information.

58 Manager Koch stated he disagrees with Attorney Welch’s characterization of the status  
59 of the law of the requirements. Manager Koch suggested bringing Attorney Welch’s  
60 view to the Governance Committee with whatever detail he thinks is appropriate to  
61 support his position regarding this.

62 Manager Koch said he repeats what he previously said about a manager being a citizen.

63 Manager Koch said he repeats what he said about 103D.315 as well as the Minnesota  
64 Data Practice Act.

65 Manager Koch pointed out if you read the remainder of the Governance Manual, it talks  
66 about maintaining the records and the cost of complying with the Minnesota Data  
67 Practices Act requests. Manager Koch said he believes in particular he has made  
68 specific requests under both the Minnesota Data Practices Act and 103D.315 and  
69 because they pertained mostly to the investigation of hostile work environment, he sent  
70 them to Mr. Smith with intent to forward to the person who is the responsible authority  
71 or whomever. Manager Koch described how his requests have not been responded to,  
72 which is not in accordance with our own policies.

73 Manager Koch clarified that the Governance Committee minutes in the Board packet  
74 are only draft, and the Committee has to make revisions.

75 Manager Koch raised the discussion topic of the Audit and Finance Committee and  
76 inquired whether it has held any meetings, if the meeting was noticed and if there were  
77 minutes of any meeting. Administrator Jeffery and Manager Crafton said they thought  
78 the Committee held one meeting. Administrator Jeffery said he will look into it.

79

## 11. Discussion Items

### 80 a. Human Resources Consultant

81 Manager Koch said he believes this is on the agenda at his request. He noted he has  
82 made multiple motions to engage a human resources consultant, and he believes the  
83 issues we have been dealing with over the past year could have been ameliorated by  
84 having a human resources consultant. Manager Koch moved to adopt prior resolutions  
85 to submit requests for proposals for human resources consultants.

86 President Ziegler stated this is a discussion item.

87 Manager Koch said he made a motion to prepare a request for proposal for a human  
88 resources consultant. The motion died due to lack of a second.

### 89 b. Information Technology Consultant

90 Manager Koch said he believes this is on the agenda at his request, so he would like to  
91 proceed. Manager Koch brought up points he has raised previously but have not been  
92 acted upon regarding an IT consultant and consultant to advise us on cybersecurity and  
93 cyber insurance. He said perhaps we need an IT committee.

94 Administrator Jeffery talked about the current services provided by the contracted IT  
95 provider.

96 Manager Koch moved that we have Administrator Jeffery prepare a draft request for  
97 proposals for an information technology consultant and bring that proposal back to the  
98 Board of Managers for consideration and possible approval.

99 Manager Duevel asked if the annual audit included an IT review. Administrator Jeffery  
100 said not to his knowledge. Manager Koch stated he doesn't believe the auditors are  
101 competently providing the services they need to provide even as required by law and  
102 much less anything other than the minimum of financial statements. He said we don't  
103 even have adopted policies for the auditors to determine whether or not we are  
104 complying with our very own policies, in spite of his concerted effort starting in August  
105 or September of last year to basically adopt policies upon which the auditors can at least  
106 determine whether or not we are complying with policies, but it has fallen by the  
107 wayside and hasn't been taken up by the Audit and Finance Committee. He said if we  
108 get hacked and we haven't done what we are supposed to, then shame on us.

109 Manager Crafton summarized her conversation with the auditor about our procedures,  
110 including he said he felt we were in good shape and have good internal controls.

111 Manager Crafton said the Board has discussed IT services and she thought the Board  
112 agreed to take it up again when the Board discusses its annual requests for professional  
113 services.

114 Manager Koch talked about how Manager Crafton's conversation with the auditor  
115 doesn't address this issue of what the District's policies are. Manager Koch said as part  
116 of the audit process, the auditors are supposed to determine based on documentation  
117 provided by the client as to what the policies are. He said there is no documentation as  
118 to what our policies actually are. Manager Koch talked about his data requests and the  
119 policy statement he drafted that was supposed to be circulated to the accountants and  
120 auditors. He said he is sorry, Manager Crafton, it doesn't carry the day to have a  
121 conversation when you don't have policies.

122 The motion died due to lack of a second.

123 Manager Koch made the same motion a second time. The motion died due to lack of a  
124 second.

125 President Ziegler suggested the topic of requests for proposals for the IT consultant and  
126 auditor be added to the draft October Board meeting agenda.

127

128 **c. Open Meeting Law**

129 Manager Koch stated he believes this is on the agenda as his request. He said he  
130 believes there have been a number of issues regarding the Open Meeting Law, including  
131 failures to properly notice meetings, particularly special meetings of the managers, and  
132 the Personnel Committee has discussed items not included on the posted agenda.  
133 Manager Koch said he thinks we need to cure those defects.

134 Manager Koch said we have not been making copies of documents available for the  
135 public to review during the discussion.

136 Manager Koch said he wants to know when we will return to live meetings and what  
137 preparation are we doing or has been done to hold meetings in a safe environment.

138 Administrator Jeffery reminded the Board that it is responsible for the decision about  
139 returning to live meetings. He reiterated staff has requested quotes from two providers  
140 regarding furniture arrangement within the Board room. Administrator Jeffery said  
141 those will be brought back to the managers at a future meeting.

142 Attorney Welch summarized a conversation he had this week with the Department of  
143 Administration and the position it advanced that the continuing pandemic basis for  
144 holding meetings virtually is undermined if the office is operating effectively as normal,  
145 like people are coming and going in and out of the office. Attorney Welch said no court  
146 has weighed in on that position, and he offers it as an observation only.

147 Manager Koch said maybe he shouldn't argue against his own positions, but it would  
148 seem to him this issue should be specifically addressed at a meeting and appropriate  
149 resolutions be adopted for the basis for continuing or not continuing to have meetings  
150 via Zoom. He said he thinks we should at a minimum be substantiating why we would  
151 not be holding live meetings, when in fact the office is open. Manager Koch said he  
152 thinks we have to have a plan or reason or basis to avoid being subject to some type of  
153 criticism or lawsuit, which that issue might be added to many other items that could be  
154 in a lawsuit.

155 President Ziegler noted the District's office has the closed sign posted outside of it. He  
156 said given Manager Koch's and Attorney Welch's comments, it seems this topic would  
157 be a good one to add to the draft agenda for the Board's October meeting. Attorney  
158 Welch said whether it's practical and prudent to meet in person is what should be  
159 articulated and carried on.

160 Manager Duevel commented it seems the jury is still out in terms of where the  
161 pandemic is going. He said it seems it should be a point of discussion at a future  
162 meeting, that as long as it complies with the state laws and the Open Meeting law, that  
163 we have some option or flexibility to continue this meeting format.

164

165 **d. MN Data Practices Act MN Statute Chapters 13 and 103D.315**

166 Manager Koch said he believes this is on the agenda at his request. He said he has  
167 already stated but will briefly restate his view that the District is not complying with the  
168 Minnesota Data Practices Act nor is it complying with 103D.315 and in particular is not  
169 complying with the provisions of our very own policy that are to the extent consistent  
170 with the two statutes.

171 Manager Koch said there are multiple and continued violations. He said he thinks we  
172 need to look at how to better respond and to develop a policy. Manager Koch said he  
173 points out there are significant penalties for certain failures to comply with the

174 Minnesota Data Practices Act, and there's a distinctive difference between the  
175 Minnesota Data Practices Act and 103D.315, in particular 103D.315 has no time limits  
176 and no basis for charging costs. Manager Koch referenced the District's policy  
177 regarding how and when to provide documents and referenced items in the District's  
178 Governance Manual regarding records maintenance and making them available  
179 electronically. Manager Koch provided specific detail on the response to one of his  
180 requests. Manager Koch said he thinks Mr. Jeffery, being the responsible authority and  
181 Data Practices Manager, should review those policies. Manager Koch stated he thinks  
182 we need to have the responsible authority and legal counsel review to make sure we are  
183 not only complying with the law but also the policies to the extent they are not contrary  
184 to the law.

185

186 **e. File Organization and Online Access**

187 Manager Koch said this is related to the Minnesota Data Practices Act as well as 103D,  
188 but this goes more toward our Governance Manual, which states we are going to do our  
189 best to have documentation online and available online. He commented on his review of  
190 our website, saying it appeared we weren't necessarily complying with our own  
191 Governance Manual regarding what we were going to make accessible. Manager Koch  
192 said it thinks it appropriate for staff to review the Governance Manual and its  
193 requirements regarding access to documents and making sure we're complying with the  
194 Governance Manual.

195 Administrator Jeffery reminded the managers of the checklist staff provided them of all  
196 the things staff looked at for compliance with statute and rules. He reminded the Board  
197 the website is a living document and changes can be made.

198 Manager Koch said he would like access to the comment tool to make his comments  
199 about the new website and he would appreciate getting a copy of the checklist. Manager  
200 Koch said he has requested a list of the comments he made and whether or not they  
201 were made as well as those of the other managers and other people, and he hasn't  
202 received that yet.

203 **f. Status of 4M and US Bank Accounts**

204 Manager Koch said he believes this was covered in the conversation about the  
205 financials.

206 **g. US Bank NSF Issue**

207 Manager Koch said he raised this point previously about making sure the District  
208 reaches out to those people whose checks were returned. Administrator Jeffery said he  
209 understands the Board direction.

210 **h. Per Diem Payments**

211 Manager Koch said he believes this item is on the agenda at his request. He said he has  
212 a number of per diem claim forms that haven't been paid timely. Manager Koch said he

213 wants to know if we have a procedure and if there is a reason these per diem claims  
214 aren't being timely paid.

215 Administrator Jeffery said we do not have a policy in place for the managers to submit  
216 their per diems. Regarding payment of per diems, Administrator Jeffery said we need  
217 three things to align, the submittal of the request, the paying of the bills, and payroll as  
218 this goes through the payroll account. Administrator Jeffery said it appears Manager  
219 Koch has been paid monthly and two claims were paid two months after the fact, but  
220 Manager Koch has received payment every month. Administrator Jeffery said this is  
221 more about the managers deciding what is the submittal schedule, because right now  
222 there is no consistency with how the managers do it.

223 Manager Koch said he would like to see on the agenda for the Administrator and or the  
224 Treasurer to come back and tell us here's going to be the process for dealing with claim  
225 forms.

226 Manager Crafton commented that there have been some items the payroll provider  
227 hasn't given the accountant in a timely manner. She said as we look at things, we should  
228 figure out our payroll provider for the year ahead.

229 Manager Koch said he would like to see this item on the October or November meeting  
230 agenda.

231

232 **i. Review of Administrator Jeffery (Closed Session)**

233 President Koch asked Manager Koch if this was an item he requested be on the agenda.  
234 Manager Koch said yes, his intent with this item was to actually have a review given the  
235 time period Mr. Jeffery has been the Administrator. Manager Koch said he thinks it is  
236 time for a review and he put it on the schedule to have a review. He said it is on the  
237 agenda, but he doesn't have a problem carrying this item over to the next meeting.  
238 Manager Koch said he has a number of items to cover.

239 Administrator Jeffery said it was put into the record regarding his hire as Administrator  
240 on June 15 that a review would happen at six months, which would be either the  
241 December or January meeting. He said he recognizes the Board can hold a review of the  
242 Administrator when it feels it is appropriate, but the six month review was stated in the  
243 hire letter.

244 Manager Pedersen spoke about processes used in previous administrator reviews to  
245 collect manager feedback in preparation for the administrator review. She said maybe  
246 we are at the point where we want to discuss how we want to do the performance  
247 review.

248 Manager Koch commented we seriously lack appropriate operating procedures for most  
249 of what we do. He said we should be having the procedure for conducting reviews.

250 Manager Koch said he worked in the military and everything was driven by a  
251 procedure. Manager Koch said he has a number of items from asking how things are  
252 going to asking questions about this thing and this thing, etcetera, and it's on the agenda

253 as an action, and he thinks we should proceed, and if there's going to be a procedure, he  
254 thinks the Personnel Committee should put together a procedure for us to review and  
255 adopt on how these proceedings are going to be conducted.

256 Manager Koch stated he voted against the offer letter and the agreement with Mr.  
257 Jeffery for a number of reasons, but mostly having to do with the various terms put into  
258 that agreement, which are generally just not put into an engagement letter or a contract,  
259 but he also made suggestions about additions that are generally included, but of course  
260 if he recalls correctly it wasn't seconded and there wasn't a vote on that, and that's all  
261 he'll say at this point and it's up to the President to proceed.

262 Manager Crafton stated this topic is a discussion item and we've heard from Manager  
263 Koch that he'd like this on the agenda at some point, and we've heard from the Chair of  
264 the Personnel Committee and it has been noted.

265 Manager Koch moved to go into closed session to have a review of Administrator  
266 Jeffery. The motion died due to lack of a second.

267 Manager Duevel asked Manager Pedersen about the format of the review, if it takes  
268 place. Manager Pedersen talked about past procedures used for annual reviews, noting  
269 this would be the first six-month review. Manager Pedersen said she would like the  
270 Personnel Committee to discuss this at its next meeting and have a discussion about it at  
271 the next Board meeting for the Board to make a decision as to that procedure.

272 Manager Koch moved to put the matter of reviews on the agenda for the October  
273 meeting and direct the Personnel Committee to present for the Board's review a  
274 proposed procedure for conducting the review and possible action. The motion died due  
275 to lack of a second.

276 Manager Koch asked why there wasn't a second to his motion. He said he thinks it's  
277 important to get that on the record.

278 [The Board did not move into closed session.]

279

280 **j. Communications**

281 Manager Koch confirmed this agenda item was his as well. He said he'd like to see  
282 coordination with the various cities, counties, watershed districts, so that we get our  
283 information across to them. He shared examples of items he thinks the District should  
284 communicate and channels to communicate through, noting he is available to review the  
285 materials before they go out.

286 **k. District Organization**

287 Manager Koch asked that we have a workshop to discuss District organization to better  
288 understand how the positions would interact and what the qualifications of various  
289 people would be. He talked about his personal experience with such matters of  
290 organization based on all his years working with businesses. Manager Koch stated not



291 having an HR person is certainly not a best management practice anyone would agree  
292 with.

293

294 **l. District Policies**

295 Manager Koch said he raises this topic because it has come up several times. He said he  
296 is looking for a status update from Administrator Jeffery regarding looking for the  
297 policies, in particular so the Governance Committee can look to see if it has any  
298 recommendations on those policies and how those policies would be available to whom.

299 Administrator Jeffery provided an update about the SharePoint page, which is a good  
300 starting place for the Governance Committee to see what is out there, and he will be re-  
301 sharing the link to the SharePoint page to the Governance Committee.

302

303 **m. 10-Year Plan Status Update**

304 Manager Koch said he believes this item was put on the agenda at his request. He asked  
305 about the status of the 10-Year Plan five-year review. He said he thinks there should be  
306 a workshop to discuss this plan and where we're at.

307 Manager Crafton stated we have discussed this. She said the District adopted its 10-  
308 Year Plan in 2018, and the five-year review would be in 2023, and so we would be  
309 looking at doing this next year, and she thinks 2023 would be the appropriate time to  
310 look at this, in her opinion.

311 Manager Koch talked about what he would like from staff, including he'd like staff to  
312 verify the plan adoption and come up with a calendar of workshops or meetings to  
313 review the existing plan and any variations from it and any proposed changes.

314 Manager Crafton said she thought this was going to be part of our PRAP work.  
315 Administrator Jeffery said part of the PRAP will be looking at what we have done so far  
316 with our implementation plan. He said it's in the 2023 budget to begin the plan update,  
317 such as the ancillary parts like the CIP, the project decision tree, and considering  
318 changes to the regulatory program. Administrator Jeffery said he agrees putting together  
319 a Gantt chart for how we see moving forward with this project makes sense, and his  
320 goal is to start after the PRAP project and then next year look at the plan update.  
321 Administrator Jeffery reported the PRAP presentation is planned for the Board's  
322 November 2<sup>nd</sup> meeting. Manager Koch said he'd like the presentation to be at the  
323 workshop and any action items could be on the regular meeting agenda. Administrator  
324 Jeffery said he agrees.

**12. Manager Reports**

325 President Ziegler reported the City of Eden Prairie would like to do a grand opening of  
326 the Duck Lake Road bridge in the spring after plantings are in place and vegetation's  
327 growing. He noted the road will be open starting in October. President Ziegler said it

328 seems it would be an education and outreach opportunity for the District to partner with  
329 Prairieview Elementary and the City of Eden Prairie on the event.

330 Manager Koch mentioned the articles in the Star Tribune regarding urban forestation  
331 and/or lack thereof. He said he'd like to see our rules and grants requiring more trees, tree  
332 planting and conservation, because trees affect climate.

333 Manager Pedersen commented that each city has its own rules regarding development  
334 and redevelopment, and the District would need the science to support rule changes.  
335 Manager Koch responded he would like to see legal counsel to come back and give us an  
336 idea where we might have regulatory authority or authority to impose requirements into  
337 cities' water quality plans, which they have to submit to us.

338 Manager Crafton talked about the proposed new program from BWSR called watershed-  
339 enforced restoration, which will be coming forward, and we will be hearing more about  
340 it.

341 Manager Duevel commented that at the CAC meeting he attended Monday, the CAC  
342 went through a long list of projects, and a lot had to do with trees and shrubs and seem to  
343 have a lot to do with the discussion we were just having.

344 Manager Duevel said another point from the CAC meeting is the CAC is sending to the  
345 Board the CAC-Board of Managers communication chart the CAC adopted. He said it  
346 seems like there are a lot of resources there not connected very well to what the Board is  
347 doing, and there are potential resources available at the CAC level. Manager Duevel said  
348 the Board should expect to see that for review at its next meeting regarding the CAC-  
349 Board of Managers communication link.

350

### 13. Administrator Reports

351 Administrator Jeffery reported on lodging reservations details for the MAWD  
352 conference.

### 14. Legal Counsel Reports

353 **a. Spring Valley Friends, LLC v. RPBCWD Update (closed session)**

354 Administrator Jeffery said the Board was updated at its last meeting, and nothing much  
355 has changed. [The Board did not move into closed session].

### 15. Upcoming Board Topics

356 **a. UofM Pond Study Findings**

357 **b. Hennepin County – Climate Action Plan**

358 **c. Contract Retainage**

359 **d. Rules and Plan Review**

360 Manager Koch asked that for upcoming Board topics we put a guesstimate as to dates. He  
361 said in the future he'd like to see us find months that we are going to look at these issues.  
362 Manager Koch asked to be sent a link to the Hennepin County Climate Action Plan.  
363 Administrator Jeffery said he has forwarded it previously to the Board, and he can resend  
364 the link.

**16. Upcoming Events**

- 365 a. Tree and Shrub Give Away, 10/7/22  
366 b. Cycle the Creek (Bluff), 10/9/22  
367 c. MN Water Resources Conference, 10/18/22-10/99/22  
368 d. North American Lake Management Society (NALMS), 11/14-11/17/22  
369 e. MAWD Annual Conference 11/30/22 – 12/3/22  
370 • Each manager commented she or he plans to attend the MAWD Annual Conference.

**17. Adjournment**

371 Manager Pedersen moved to adjourn the meeting. Manager Crafton seconded the vote.  
372 Upon a roll call vote, the motion carried 5-0 as follows:

373

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

374

375 The meeting adjourned at 11:33 a.m.

376

377

Respectfully submitted,

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380

Dorothy Pedersen, Secretary