

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

November 2, 2022, RPBCWD Board of Managers Work Session and 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
 Liz Forbes, Grant Program Coordinator*
 Terry Jeffery, District Administrator*
 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*
 Michael Welch, Attorney, Smith Partners

Other Attendees: Steve Christopher, BWSR Jenny Mocol-Johnson, BWSR
 Greg Hawks Maya Santamaria
 Terry Jorgenson

**Indicates attendance at both the workshop and the monthly meeting*

Note: the Board workshop and meeting were held remotely via meeting platform Zoom because it was deemed not prudent to meet in person due to the COVID-19 pandemic.

1. 5:00 p.m. Work Session

1 President Ziegler called the Board work session to order at 5:00 p.m. Administrator Jeffery
 2 called the roll for the Board of Managers as follows:
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<i>Manager</i>	<i>Action</i>
Crafton	Present

Duevel	Present
Koch	Present
Pedersen	Present
Ziegler	Present

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Manager Koch stated it’s his understanding President Ziegler has decided that in light of the continued pandemic it’s best to hold this meeting via Zoom and not in person. President Ziegler agreed with Manager Koch’s statement.

a. Presentation of PRAP Report and Findings

Ms. Jenny Mocol-Johnson of the Minnesota Board of Water and Soil Resources (BWSR) presented BWSR’s draft 2022 Organizational Assessment, which is a report of BWSR’s local government unit review [BWSR’s PRAP – Performance Review and Assistance Program] of the Riley Purgatory Bluff Creek Watershed District. Ms. Mocol-Johnson said she shared the link to the draft report with District staff and the Board.

Ms. Mocol-Johnson summarized key findings, including commending the District for building partnerships, implementing projects, and investing in staff and programs to increase community engagement and monitoring efforts. She reported that the results of the performance standards checklist indicate the District is compliant with 20 of 20 basic performance standards. She explained performance standards are categorized into either basic standards or high-performance standards, and the basic standards are the items the District is statutorily required to complete.

Ms. Mocol-Johnson said any basic performance standards not met would result in an action item, but the District meets all basic standards, and therefore has no action items to address. She reported the District is accomplishing everything it is statutorily required to accomplish.

Ms. Mocol-Johnson highlighted the resource outcomes section of the assessment, stating she’s never seen as large of a list of projects as the RPBCWD’s list, so she can clearly see the District has been busy. She summarized that the District’s adopted 2018-2027 Management Plan contains 69 action items, 65 of which are ongoing, one that isn’t started, and three that have been completed.

Ms. Mocol-Johnson stated the District is commended for meeting 10 out of 12 high performance standards. She pointed out she’s never seen any organization meet all 12 high performance standards.

Manager Koch reiterated the commendations for staff, managers, and partners for helping the District accomplish all the basic standards and the majority of the high performance standards. He asked if the District will be providing comments to BWSR about the report before it’s finalized. Ms. Mocol-Johnson said there is a placeholder in the report and

39 there is a place in the appendices for the comments the District provides to BWSR. She
40 said BWSR would appreciate receiving a comment letter from the District.

41 Ms. Mocol-Johnson said BWSR has four recommendations for the District. Manager
42 Crafton asked if the District is required to address the recommendations. Ms. Mocol-
43 Johnson said action items are required, but the District has no action items. She said after
44 a two- to three-year period, BWSR will come back to the District to see what it has
45 accomplished based on the recommendations BWSR provided. She explained BWSR
46 will check to see if the District has done what BWSR recommended and that information
47 will go into BWSR's legislative report.

48 Ms. Mocol-Johnson went into a more detailed review of the draft report. She described
49 the four parts of the organizational assessment, including:

50 **Part 1:** Evaluation of the progress made by water management entities toward goals
51 stated in their approved and adopted local water management plans.

52 **Part 2:** Review of the entities' adherence to Level I and Level II standards as directed by
53 statutes, policies, and guidelines via a performance standards certification checklist.

54 **Part 3:** Board member and staff surveys as well as partner surveys to assess internal and
55 external perceptions of performance, communication, partnerships, and delivery of
56 conservation programs and customer service.

57 **Part 4:** Wetlands Conservation Act (WCA) spot check to evaluate WCA program
58 performance and delivery.

59
60 Ms. Mocol-Johnson commended the District for showing strong investment in staff and
61 programs, as is apparent in the District's community engagement efforts and monitoring
62 program. She described a few of the commendations about the District meeting basic
63 performance standards. She highlighted that the District completes the required annual
64 reports, maintains an updated water management plan, and keeps a dedicated website up
65 to date on projects and programs. Ms. Mocol-Johnson said the District's new website is
66 really good and congratulated the District on the nice work done on the new website.

67 Ms. Mocol-Johnson shared the commendations about some of the high-performance
68 standards the District is meetings, such as monitoring hydrologic trends and maintaining
69 cooperative partnerships.

70 Ms. Mocol-Johnson said regarding the assessment's Part 1, evaluating progress made
71 toward the goals in the District's Plan, the District is accomplishing the 65 ongoing items
72 the District identified in its plan. She said the context of the language of how the action
73 item is written in the Plan identifies these items as ongoing action items. She commented
74 the District is accomplishing a lot of work and a lot of the District's work is ongoing with
75 those 65 action items.

76 Regarding Part 2 of the organizational assessment, Ms. Mocol-Johnson highlighted the
77 District's high achievements including:

- 78 • Tracking progress for information and education objectives in Plan
- 79 • Coordination with County, SWCD, City and Township officials
- 80 • Partnerships: cooperative projects/tasks with neighboring organizations,
- 81 such as counties, SWCDs, WDs, tribal governments, Non-Government
- 82 Organizations
- 83 • Water quality trends tracked for key water bodies
- 84 • Watershed hydrologic trends monitored / reported

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86 Ms. Mocol-Johnson presented a summary of Part 3 of the organizational assessment,

87 which included internal and external surveys. She reported that for the internal survey,

88 BWSR received seven responses, which was about a 60% response rate. She said the

89 respondents listed many projects and programs the respondents thought particularly

90 successful over the past few years. She said she hasn't seen such a long list previously.

91 She said the list clearly shows the District is doing a lot of great projects and great work.

92 Ms. Mocol-Johnson shared that for the external survey, she received 20 responses out of

93 37 invited to participate, which is about a 54% response rate. Manager Koch asked for

94 suggestions on how the District could get ideas about how to get more specific

95 information from partners about issues and about improvements the District could make.

96 Ms. Mocol-Johnson suggested the District consider a customer service survey.

97 Ms. Mocol-Johnson went through the general conclusions of the organizational

98 assessment of the District. She reviewed the commendations based on the achievement of

99 BWSR's high performance standards and called out that these practices reflect above

100 average operational effectiveness and level of effort. She highlighted the following

101 commendations about the RPBCWD:

- 102 • Administrator on staff
- 103 • Staff training: orientation and continuing education plan and record for
- 104 each staff
- 105 • Operational guidelines for fiscal procedures and conflicts of interest exist
- 106 and are current
- 107 • Coordination with County Board, SWCD Board, City/Township officials
- 108 • Meeting the high-performance standards identified in Appendix B of the
- 109 Organizational Assessment

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111 Ms. Mocol-Johnson stated BWSR has four recommendations for the District. She noted

112 the intention of the recommendations is to enhance the District's delivery of effective

113 water and related land resource management and service to the residents of the

114 watershed. She went through the four recommendations:

115 **a. Engage in mediated discussions with a third party to ensure both the**
116 **Board and staff address issues that adversely affect the organization.**

117 Ms. Mocol-Johnson stated multiple survey comments indicated
118 efficiencies due to confusion of Board roles and responsibilities. She
119 noted staff and partners indicated frustration about lack of trust, micro-
120 management, and processes taking excessively long. She recommended
121 the District hire a mediator to evaluate processes and working
122 relationships and said BWSR has grant funding available to support the
123 implementation of this recommendation.

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125 **b. Evaluate options of increased efficiencies at Board meetings.**

126 Ms. Mocol-Johnson reported the survey responses indicated
127 inefficiencies in Board meetings. She said comments received stated that
128 Board meetings were unnecessarily long and a poor use of resources as
129 both staff and consultants attend. Ms. Mocol-Johnson recommended
130 establishing processes to aid in efficiencies. She said tactics the District
131 could consider implementing include assigning a time for each agenda
132 item and tracking the meeting to that time, being clear and concise when
133 presenting items, and clarifying the intent of the items discussed and
134 staying on the task at hand.

135
136 **c. Conduct a strategic assessment to evaluate the mission, vision, and**
137 **establish goals and priorities for the future.**

138 Ms. Mocol Johnson said this recommendation is based on the two high
139 performance standards the District is not meeting. She stated initiating a
140 strategic assessment exercise would give staff and Board members the
141 opportunity to review and evaluate whether the existing mission and
142 vision are relevant or if changes are needed. Ms. Mocol-Johnson said the
143 strategic assessment would give the District the chance to create an
144 organizational roadmap by establishing programmatic goals and setting
145 short- and long-term priorities.

146
147 **d. Establish new and improved working relationships with partners.**

148 Ms. Mocol-Johnson said partner responses indicated communication,
149 contact and being more available and present were potential areas of
150 improvement for the District. She noted internal survey responses
151 indicated the possibility of becoming more involved in partner cities'
152 planning processes, which would enable the District to become more
153 proactive instead of reactive.

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155 Ms. Mocol-Johnson said RPBCWD Board members and staff have been invited to
156 comment on the findings, conclusions, and recommendations included in the draft
157 organizational assessment report. She said the District's comment letter will be included
158 as Appendix E in the final report. President Ziegler asked when she would like to receive
159 the letter. Ms. Mocol-Johnson said by the end of the calendar year because she would like
160 to finalize the report by the end of the calendar year. She said a summary of BWSR's
161 recommendations list included in the final organizational report will be included in the
162 legislative report.

163 Ms. Mocol-Johnson said regarding the WCA report summary and recommendations,
164 under the Administration section of the report, BWSR directed the District to execute an
165 updated resolution delegating WCA decision-making authority to staff.

166 Administrator Jeffery said the resolution to delegate that authority will be on the agenda
167 for the District's December Board of Managers meeting.

168 Mr. Steve Christopher commented he's worked in seven different counties, including five
169 metro counties. He said that over the last nine years, the RPBCWD is routinely among
170 the top of all watersheds he works with in terms of the process of identification through
171 completion of all implementation of programs and projects. Mr. Christopher said the
172 District's programs and projects are always backed in science, and the District has some
173 of the best staff available both on staff within the District as well as within the District's
174 consulting services.

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176 **b. Contract Retainage**

177 Administrator Jeffery said the Board has had previous questions about whether the
178 District's retainage policy is protecting the District to the greatest extent possible. He
179 noted staff sent a memo to the Board in March 2021 about the process. He reminded the
180 Board that contracts currently being paid would likely be under the old system.

181 Manager Koch said his understanding of the conclusion of the March 2021 memo is the
182 direction to set retainage at 5% of the total contract price and that amount is held until
183 substantial completion and then released as required by law.

184 Mr. Welch responded the memo doesn't have any recommendation and instead
185 documents background on how retainage works. He said the implementation of retainage
186 according to statute is part of putting contract bid documents together for projects. Mr.
187 Welch said retainage is incorporated in contract bid documents along with the other
188 details the engineer and legal counsel manage. He said he doesn't think the Board needs a
189 policy on retainage any more than all the other the details incorporated from law into the
190 contract documents, along with the science and engineering that go into the contract
191 documents, which are then subject to Board approval before a project goes out for bids.

192 Mr. Welch explained retainage is holding money back, and the District implements 5%
193 retainage for all the invoices that come forward in a construction contract and that
194 provision is built into the contract document package for a construction project. He said
195 the RPBCWD, like virtually all contracting entities in the state, is limited to a 5%

196 retainage on any contract amount. Mr. Welch said the state doesn't require 5% retainage,
197 meaning it could be set lower. He said there is a statutory requirement for release of
198 retainage for work that's done. Mr. Welch explained that requirement is basically within
199 60 days of substantial completion of the project, unless you have a very specific reason
200 for retaining some of that money, all of it must go back to the contractor. He said the law
201 provides for release of retainage when the engineer recommends it because work is going
202 well and there's no real need to retain that as an incentive for performance by the
203 contractor. Mr. Welch said we have provided for that at no sooner than 50% of
204 completion.

205 Mr. Welch said there are two other items that are ways like retainage to secure or
206 encourage performance by contractors. He said those ways are bonds, including payment
207 bonds and performance bonds for the entirety of the cost of the construction of the
208 project. He said the bonds are held throughout the process of construction and for, in the
209 case of payment bonds, a year and 90 days after construction is complete. Mr. Welch said
210 also there is payment. He said for example, the project may reach substantial completion
211 but the project still has a few items that are post-substantial completion, such as plant
212 establishment. Mr. Welch said, to continue the example, when a stormwater facility is
213 constructed and is working as it is meant to, that is substantial completion. He said there
214 may still be there years of plant establishment of vegetation around the facility that still
215 needs to be paid, and that work would be paid for after it is completed. He said there is no
216 retainage for that remaining work because it is completed after substantial completion.

217 Manager Koch said during the Board's regular meeting he'll have an item he'd like to
218 add to the agenda regarding retainage. He asked if it would be helpful to have a revised
219 memo including what was discussed including the availability of payment bonds and
220 performance bonds and non-payments, so existing and future managers have an
221 explanation about how we go about payments or what rights we have with respect to
222 contracts.

223 Mr. Welch said those items are mentioned in the existing memo, which is in the Board
224 packet for tonight's workshop. He said he doesn't recommend an action and doesn't see a
225 benefit from an action, as this is all part of putting the contract documents together and
226 bringing them forward to the Board for approval before going out for a bid for a project.

227 Manager Koch said it's obvious he doesn't necessarily agree with Mr. Welch's
228 characterizations or recommendations. Manager Koch said in his view when a statute
229 puts a cap on it, we should decide if we are going to go with the cap or something less
230 than the cap and whatever our policy is. He said this all came up because we had
231 contracts that had 5% of 50% of a contract price. Manager Koch said he thinks we should
232 decide what the provision will be in our contracts going forward, because he has never
233 seen a construction contract and its terms presented to the Board ever. He said he's asked
234 for copies of the two of the contracts up for payment tonight. Manager Koch said he
235 knows of no reason why we wouldn't want to set what our policy is, because we can
236 always authorize exceptions. He said right now we don't have a policy, it sounds like.

237 Manager Koch moved to adjourn or take a recess until 7 p.m. Manager Pedersen
 238 seconded the motion. Upon a roll call vote, the motion to adopt the agenda carried 5-0 as
 239 follows:

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

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242 The work session adjourned at 6:20 p.m.

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2. Call to Order of Regular Monthly Meeting

244 President Ziegler called to order the Wednesday, November 2, 2022, Board of Managers Regular
 245 Meeting at 7:01 p.m. The meeting was held remotely via meeting platform Zoom. Administrator
 246 Jeffery called the roll for the Board of Managers as follows:

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

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3. Approval of Agenda

251 Manager Koch announced his understanding is that pursuant to Minnesota statutes, we've
 252 determined that because of COVID it's not prudent to meet in person and as a result we are
 253 meeting via Zoom.

254 Manager Koch moved to approve the agenda with the following changes: Remove 7e and 7f from
 255 Consent Agenda and add them to item 8a, add 8g regarding retainage, which was the subject of
 256 this evening's Board Workshop, and in accepting the staff report and engineer's report to reserve
 257 the right to discuss the Engineer's Report and Staff Report as part of agenda item 11 -
 258 Administrator Report. Manager Crafton seconded the motion. Upon a roll call vote, the motion to
 259 adopt the agenda carried 5-0 as follows:

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

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4. Matters of General Public Interest

263 President Ziegler presented the procedure for raising Matters of General Public Interest. No
 264 matters were raised.

5. Reading and Approval of Meeting Minutes

a. Approve Minutes of the October 5, 2022, Workshop and Regular Monthly Meeting of the RPBCWD Board of Managers

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 267 Manager Crafton moved to approve the minutes of the October 5, 2022, RPBCWD Board
 268 of Managers Workshop and Regular Monthly Meeting. Manager Pedersen seconded the
 269 motion.

270 Manager Crafton noted an edit to line 7 to correctly spell "any," an edit to line 66 to
 271 replace the word "due" with "do," and a change on line 81 to replace "year" with "years."
 272 Upon a roll call vote, the motion carried 5-0 as follows:

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

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6. Committee Report

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a. Acceptance of the Citizens Advisory Committee Report and Minutes

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Mr. Jorgenson reported the CAC had no motions to bring in front of the Board tonight. He said he is available to answer any questions from the Board.

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Manager Koch moved to accept the minutes of the CAC’s October 17, 2022, meeting.

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Manager Pedersen seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

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

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b. Confirm Board Representative for November 21st CAC Meeting

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Manager Pedersen volunteered to be the Board representative at the CAC’s November 21st meeting.

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c. Accept Personnel Committee Report and Minutes

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Manager Pedersen moved to accept the Personnel Committee report from October 24, 2022. Manager Crafton seconded the motion.

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289 Manager Koch stated it's his understanding the documentation discussed at that meeting
 290 wasn't made available at the time of the meeting in violation of the Open Meeting Law.
 291 He said he makes note that this is not the first time he's brought this to the attention of the
 292 Committee. Manager Koch recommended the Committee comply with the Open Meeting
 293 Law going forward. Upon a roll call vote, the motion carried 4-1 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	No
Pedersen	Yes
Ziegler	Yes

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296 **d. Accept Governance Committee Report and Minutes**

297 Manager Koch moved to lay this over to the next meeting to provide the Governance
 298 Committee time to review and revise the Committee's meeting minutes. Manager Ziegler
 299 seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

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

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7. Consent Agenda

303 Manager Pedersen moved to accept the Consent Agenda. Manager Crafton seconded the
 304 motion. Upon a roll call vote, the motion carried 5-0 as follows:

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

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The Consent Agenda included item 7a – Adopt Resolution 22-082 to approve consent agenda; 7b – Accept October staff report; 7c – Accept October engineer’s report; 7d – Accept October construction inspection report; 7g – Approve Permit #2022-037 Chanhassen 2022 Pond Rehabilitation Project as Presented in the Proposed Board Action Section of the Permit Review Report.

8. Action Items

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a. Items Pulled from Consent Agenda
i. Approve Pay Application #8 for Bluff Creek Southwest Branch Stabilization and Restoration Project

Manager Koch said he was confused about line items 8 and 9 on page 2, regarding why some retainage was released and some held. He asked for an explanation of why there’s still some retainage. Engineer Sobiech said the release was because originally the District had withheld more than the allowed 5%, so some had to be released back to the contractor. Engineer Sobiech said the amount withheld is the 5%.

Manager Koch moved to accept the pay application and approve payment of payment application #8. Manager Pedersen seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

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

Ziegler	Yes
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ii. Approve Pay Application #6 for Middle Riley Creek Stabilization and Restoration Project

Manager Koch said his question is about line item 8 and the \$500 of retainage. He said he was confused about the retainage amount, given the project was \$365,000. Mr. Sobiech said last month the District released the retainage because substantial completion was achieved. Mr. Sobiech explained the \$500 withheld is to encourage the contractor to provide all necessary close out documentation once the vegetation management is complete.

Manager Koch moved to accept payment app #6 for Middle Riley Creek and to approve the payment of that amount. Manager Pedersen seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

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

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b. Accept September Treasurers' Report

Treasurer Crafton moved to accept the September Treasurer's Report. She reported it has been reviewed in accordance with our internal controls, practices, and procedures. Manager Pedersen seconded the motion.

Manager Koch said he has questions about the fund analysis report. He said there are items over 75% expended, such as Middle Riley Creek. Manager Koch asked the staff and Treasurer to review the budget in light of the overages and to present the Board with a refined budget next month.

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Manager Koch said he understands the District has payments coming in from St. Hubert over a period of time, and he doesn't know if they are reflected in the balance sheet. He said he would like there to be a conversation about it with the accountants to see if the St. Hubert receivables should be reflected in the balance sheet. He also asked to find out from the accountants if the payables for the Duck Lake project should be reflected on the balance sheet, at least a footnote to state we're making payments.

355 Manager Duevel asked what the accounting cutoff is on a month-to-month basis and
 356 how soon does the accountant turn around the statements. Manager Crafton said it's
 357 usually a two-month lag time. Manager Duevel said why is there a two-month lag,
 358 because they are already accounting for what happened at the end of the month. He said
 359 this can be a topic of a future discussion. Ms. Bakkum said invoices up to the week
 360 before the Board packet are included. She said for example for this month invoices
 361 received up to October 21st were included.

362 Administrator Jeffery said he could set up a call with Manager Duevel and the
 363 accountant to discuss.

364 Manager Koch said if the District has cutoffs and procedures, he has never seen them.
 365 He said we should be documenting all of our accounting procedures and he doesn't
 366 think they are all accounted for. Manager Koch said we had several calls last year with
 367 the auditors to have a statement of our procedures to include in the audit, but his
 368 recollection is nothing ever happened to that. He said there's no formal adopted
 369 financial fiscal policies for our accounting with the exception of one policy about
 370 processing certain invoices or requests for payments. He said if there is a call with the
 371 accountants, he'd like to participate in that call as well.

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

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

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376 **c. Adopt Resolution 22-083 to Approve Paying of the Bills**

377 Manager Crafton moved to adopt Resolution 22-083 to approve paying of the bills.
 378 Manager Pedersen seconded the motion. Upon a roll call vote, the motion carried 5-0 as
 379 follows:

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

Koch	Yes
Pedersen	Yes
Ziegler	Yes

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d. Consideration of Manager Koch’s Data Requests

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Administrator Jeffery said Governance Manual has one policy about staff commitment of time by one individual manager, and there is the Minnesota Data Practices Act, and District staff needs clarification from managers on how to proceed.

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Mr. Smith said he thinks the memo lays this out in a pretty straightforward way, and he thinks these issues have been before the Board in the past. He said the overriding question is the Board’s authorization of the request under your Bylaws. He said there’s a series of questions and he recommends taking the question one at a time.

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Mr. Smith said the first question is does the Board find that Manger Koch’s duties require access to public data responsive to the data request. President Ziegler said he doesn’t see that Manager Koch needs that information for his position. President Ziegler moved to treat Manager Koch’s request as a request from the public. Manager Pedersen seconded the motion. Mr. Smith repeated the question in front of the Board, which is does the Board find that Manager Koch’s duties require access to public data responsive to the data request. Mr. Smith said he understands the motion to be the answer is no. President Ziegler confirmed Mr. Smith’s understanding and said Manager Koch doesn’t need that information.

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Manager Koch stated he views this and the other questions to be intentional and repeated violations not only of the Minnesota Data Practices Act but a violation of Section 103.d.315 and the applicable subdivisions which provide for access to that information. He commented he believes this action is retaliatory action in violation of Minnesota law. Manager Koch said if he’s not entitled as part of his duties to any of this information, then nobody else is either. He said there is no distinction in the law in how long managers have to vote on issues. Manager Koch said in order to do his duties to the best of his ability, he can’t do that without the requisite information. He pointed out none of this information is private data, and even if it was private data, the Minnesota Data Practices Act itself allows for access to the information for discussion at a meeting.

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Manager Koch said those are his comments and he requested his comments are looked at. He said he is being very blunt and very pointed in saying he hopes this is not a case as Manager Crafton is on record saying let Mr. Koch speak we’ll just ignore him and then boom. Manager Koch said he thinks anyone listening to the recordings or a number of the recordings over the past year, particularly since June or July of last year, once somebody knew the background, they would conclude that it may well be that Manager Crafton, Manager Pedersen, and Administrator Jeffery are following that line as that

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417 statement was made at a Personnel Committee meeting and at that time neither Manager
 418 Pedersen nor Mr. Jeffery objected in any manner, shape, or form, so he can only
 419 conclude that they adopted that philosophy. Manager Koch said, so that's what he'll say
 420 about that, and he'll be surprised if anyone actually read the requests. Manager Koch
 421 said those are part of his duties, and even if they aren't there's the Minnesota Data
 422 Practices Act and 103d.315, and if you're trying to impose a fee, no one's come up with
 423 a method or calculation of that fee or directed me to any policy we adopted determining
 424 how that amount would be determined. Manager Koch said therefore he would have to
 425 conclude that any calculation of an amount of any fee to charge him if this was not
 426 within his duties would be arbitrary and capricious and therefore in violation of
 427 Minnesota law. He said that's all he has to say at this time. He said he reserves any
 428 further comments depending upon the actions of the Board.

429 President Ziegler asked Mr. Smith if he has any comments. Mr. Smith said he thinks
 430 Manager Koch has stated these concerns and arguments before, and legal counsel's
 431 response to them continues to be the same.

432 Manager Koch said if he understood Mr. Jeffery's statement about data requests,
 433 Manager Koch thinks there was a request by the Star Tribune and one by the Noble
 434 Hills group. Manager Koch asked if we received requests from them and what was
 435 provided to them and what charges were made to them.

436 Administrator Jeffery said he doesn't recall verbatim what was requested, but each
 437 requested one item, which was provided electronically at no cost to them. Manager
 438 Koch said it would seem to him that the responses to his requests are contrary to the
 439 District's very own data practices policy as was basically confirmed by Mr. Jeffery's
 440 statement as to his responses to the other two requests.

441 Upon a roll call vote, the motion carried 3-1 with one abstention as follows:

442

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Abstain
Koch	No
Pedersen	Yes
Ziegler	Yes

443

444 Mr. Smith said because you answered question 1 in the negative, there's no need to
 445 consider question number 2 and that brings us to question number 3: Do you find that
 446 Manager Koch's duties require that he have access to private personnel data on the
 447 current and former administrator?

448 President Ziegler moved that Manager Koch does not require that information for his
 449 job. Manager Pedersen seconded the motion.

450 Manger Koch said he repeats all his prior statements with regard to the first question.
 451 He said in addition, his requests having to do with former and current administrators
 452 had specifically and directly involved allegations against him as a manager, and he can't
 453 think of anything that falls more pointedly within his duties as a manager than to
 454 evaluate allegations against him as a manager, and therefore he should have access to
 455 that information as a manager as well as pursuant to the statutes, which he reiterates.
 456 Manger Koch said he points out that specific allegations were made. He said the
 457 former administrator allegedly made statements about him, and if that is the case, that
 458 was part of the request, for that information directly affects him and his duties as a
 459 manager and how else is he supposed to vote on an item if he doesn't have the data or
 460 the information on which to make a decision on how to vote or proceed as a manager.

461 Upon a roll call vote, the motion carried 3-1 with one abstention as follows:

462

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Abstain
Koch	No
Pedersen	Yes
Ziegler	Yes

463

464 Mr. Smith said with the answer to question #3 being no, there's no need to consider
 465 question number 4. He said legal counsel and Mr. Jeffery will proceed in responding to
 466 the request pursuant to the Board's direction.

467 Manager Koch stated he knows that there was a follow up letter from Mr. Jeffery to
 468 Manager Koch about the data requests and referral to the Board, and now that you've
 469 made these decisions in reference to that letter, Manager Koch would like to reiterate
 470 that Mr. Jeffery is the responsible authority and as the responsible authority it's his
 471 responsibility to make those decisions in compliance with the law, and it is not the
 472 Board's duty or directive to make that and should there be disagreement with his
 473 decisions, that will fall on him.

474

475 e. **Adopt Resolution 22-084 Authorizing Staff to Solicit Applicants for CAC**
476 **Members Including a Student/Youth Representative**

477 Manager Crafton moved Resolution 22-84 Authorizing Staff to Solicit Applicants for
478 CAC Members Including a Student/Youth Representative. Manager Pedersen seconded
479 the motion.

480 Manager Koch said there's no form of solicitation provided to the managers. He said
481 there should be a form of solicitation in front of the Board for the Board's
482 determination, particularly because he knows there was discussion and consideration
483 about what to include and not include in that solicitation. Manger Koch said he is
484 concerned the solicitation would not be appropriate any may contain other inappropriate
485 comments and he is on record with respect to that.

486 Manager Koch said the resolution is not consistent with what is being looked at,
487 particularly the solicitation for the youth representative, there is position provided in
488 statute for such.

489 Administrator Jeffery said the CAC brought forward the idea of a student
490 representative. He said several city councils have student representatives on their
491 council. Administrator Jeffery said he thinks a youth representative is a good idea and
492 an appropriate utilization of CAC membership. He noted the representative would need
493 to be a resident in the watershed

494 Manager Crafton said she has asked questions to BWSR about the Board's discretion
495 regarding the District's CAC, and she has learned that the Board has quite a bit of
496 discretion regarding its CAC. She said she doesn't see issues with having a youth
497 member, and it's becoming more common to have youth members as groups are
498 working to become more inclusive. Manager Crafton said she thinks this is definitely
499 within the Board's parameters to be able to support this.

500 President Ziegler asked Mr. Smith if he sees any legal issues with the solicitation of
501 applicants with the language as explained to include solicitation for a high school
502 representative to the CAC. Mr. Smith said the requirement in the statue requires that
503 members of the advisory committee must be residents of the watershed district. He said
504 the CAC is an advisory committee. He said certainly someone who is not an adult
505 would not be appointed to serve on the Board of Managers, but he thinks it would be
506 legally appropriate to have a youth representative on the advisory committee if that's
507 the wish of the Board.

508 Manager Koch said he disagrees with Mr. Smith. Manager Koch said the CAC can
509 organize themselves any way they want to. He said our role is strictly limited by statute
510 to appointing members to the CAC. He said he would be shocked if any interpretation
511 of any law setting up any committee would allow for a non-adult to be appointed to any
512 such type of committee unless the statute authorizes it. Manager Koch said he doesn't
513 think that would be within the purview or the intent of the statute.

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

515

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	No
Pedersen	Yes
Ziegler	Yes

516

517

518

f. Adopt Resolution 2022-085 Authorizing Administrator to Apply for PRAP Grant to Hire Third-Party Facilitator to Work with Board and Staff on Strategic Planning Effort

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520

521

Manager Pedersen moved to adopt Resolution 2022-085 to authorize the Administrator to apply for a PRAP Grant to hire a third-party facilitator to work with us on our strategic planning efforts. Manager Crafton seconded the motion.

522

523

524

Manager Koch asked if we are voting on Resolution 2022-085 or what Manager Pedersen said. President Ziegler said he believes we are voting on Resolution 2022-085. Manager Koch asked if we could have confirmation from the mover and seconder. Manager Pedersen said yes. Manager Crafton said yes.

525

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528

Manager Koch asked Administrator Jeffery to display the revised language Manager Koch sent to Administrator Jeffery. Manager Koch said he is moving to amend the resolution to conform to what he sent to Mr. Jeffery. Manager Koch explained the purpose of the amendment, he thought it [the resolution] left out what we were going to do afterwards, so he highlighted [the following] additional language he proposes we add: “and bring to the managers a report on potential candidates to assist in addressing such recommendations and such other recommendations as to how to proceed as they deem appropriate.”

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Manager Pedersen agreed to Manager Koch’s suggested amendment. Manager Crafton did not. Mr. Smith said the mover and seconder of the motion didn’t both agree to the proposed amendment, so Manager Koch’s proposed amendment would need a second. Manager Pedersen seconded the motion to amend if her understanding of the change is that it’s to have the potential people to do this to come to us and tell us how they would recommend we would actually do this thing. Manager Koch said that would be part of the input but also that our staff and Mr. Smith would come back and provide recommendations, because my whole point is someone comes back with a report and a recommendation on how to proceed. Manager Koch said his intent is that we would apply for the grant and that the Board and counsel and whoever else would come back

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546 with identifying people with knowledge of the process and we'd get a recommendation
 547 from that group on potential candidates and how to proceed. He said he wants someone
 548 to tell us how to proceed.

549 Upon a roll call vote, the motion to amend carried 4-1 as follows:

550

<i>Manager</i>	<i>Action</i>
Crafton	No
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

551

552 Upon a roll call vote, the motion to adopt Resolution 22-085 carried 5-0 as follows:

553

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

554

555 **g. Contract Retainage Policy**

556 Manager Koch said he proposes a resolution that our policy is that all construction
 557 contracts for which we can require a retainage that we retain the maximum amount
 558 allowed by law and that such retainage basically be paid as statutorily required by law.
 559 Mr. Smith commented the language proposed by Manager Koch is straightforward and
 560 this policy is well within the Board's authority to direct how the Board would like to see
 561 contracts administered. Mr. Smith said it's at a level of operational detail that is much
 562 more specific and directive than most of your policies. He said he feels as though the
 563 contracting process with the engineer and legal counsel and the Administrator works
 564 pretty smoothly. Mr. Smith said he's not sure the Board needs a policy but it's within
 565 the Board's authority to adopt it if you wish.

566 Administrator Jeffery concurred with Mr. Smith's statement that he doesn't know that
567 such a policy is necessary. Engineer Sobiech said the current contracts the District has
568 in place allowed for the flexibility of stopping retainage at the 50% mark. He said his
569 understanding is the memo discussed in tonight's workshop suggests not following that
570 practice as done in the past and instead going forward doing what Manager Koch has
571 laid out in his proposed policy, which is retaining 5% through substantial completion.

572 Manager Koch said contract administration is important and it's a best management
573 practice for us to state this will be our policy on all our contracts. He said we always
574 have the ability when a contract comes before us to say no, you know, we'll adopt a
575 different policy, but everything presented tonight goes to show that we do not have a
576 clear policy. Manager Koch said he thinks we would be remiss in not adopting a policy
577 to guide staff and the engineer in their contracts as to what provision to include,
578 otherwise we have not told them what to include in the contract.

579 President Ziegler said we have a motion on the table and asked if there is a second.

580 Manager Duevel asked if anyone could give an example of why the current method
581 would be better than something a little more straightforward. He also asked if the
582 current environment necessitates flexibility.

583 Engineer Sobiech said he can't speak to the prior practice as that was put in place before
584 his work with the District started. He said in talking with contractors, he learned it
585 provides no benefit to the District in terms of stopping retainage at 5% and the
586 contractors really don't even look at that when preparing bids. Engineer Sobiech said he
587 hasn't seen any shift in contractors processes or bidding processes given the current hot
588 construction industry. He clarified contractors typically don't factor in retainage when
589 coming up with their pricing.

590 The motion died due to lack of a second.

591 Manager Koch said he wants to be clear the District has no policy as to the amount of
592 retainage on a construction contract, and if we have no policy, to impose one is in his
593 view arbitrary and capricious and we would be opening a door for contractors to argue
594 you put one in one place and not in another and then you have those issues. Manager
595 Koch asked why we are creating an issue.

596 Manager Koch said maybe there is just a lack of experience with these types of
597 contracts, but you want to nail it down as to what your rights are. He said if you release
598 it on one and you don't release it on another, then you're going to have somebody with
599 the argument that you're being arbitrary and you should release it. Manager Koch said
600 his view is you never want to give a lawyer on the other side any ammunition, and that's
601 exactly what we would be doing. He said if that's what you're deciding, that we have no
602 policy, then we have no policy, and then he asks staff, if you don't have a policy, what
603 are you going to do – you have no direction, you have no authority, what are you going
604 to do?

605 Administrator Jeffery said staff will work with the attorney and follow state law and
606 then have the retainage released as the contract is executed. Manager Koch said we

607 don't see the contracts, we see nothing other than a resolution. He said we don't even
608 know what the contract says. Manager Koch said shame on him for ever approving a
609 contract where he doesn't know the terms of the contract and he doesn't know if we're
610 being protected or not. Mr. Smith said the policy would be to follow the statute in the
611 memorandum provided to Board.

612

9. Discussion Items

613 a. Debrief of October 11, 2022, Project Tour

614 Administrator Jeffery said staff can answer any questions managers may have that are
615 left over from the tour.

616 President Ziegler said he heard feedback that the tour should be an annual event. He
617 suggested holding it earlier in the year rather than late fall when everything's covered
618 with leaves.

619 Manager Pedersen said it was a great idea and is in favor of it occurring on an annual
620 basis.

621 Manager Crafton concurred and said it was really informative and helped bring into
622 focus exactly how things work.

623 Manager Koch commented he though it was well organized but we need to find a
624 different provider of vans, and we should ask for a refund since the air conditioning
625 didn't work in two of vans, and we should look for a different vendor. He said he liked
626 the idea of the food and the get together, but he was disappointed in his sandwich as he
627 thought it was particularly dry.

628 Manager Koch said he though staff did a great job. Manager Koch said when we looked
629 at the Bearpath Project, he didn't appreciate some attitudes. He said he thought the
630 project had room for better design of controlling water going down those very steep
631 slopes, and we spent a lot of money for a very short distance. Manager Koch said he had
632 wondered why it was so difficult to work with them but after the meeting he kind of
633 understood why. He said before looking at a project after-the-fact, he would like to go
634 out and visit a proposed project and see what's being proposed.

635 Manger Koch reiterated he thinks the payments due from St. Hubert should be reflected
636 in our accounting. He suggested the St. Hubert kids figure out a project to enrich the
637 soils where they have that seating arrangement set.

638 Manager Koch said he thinks it's a good idea at Rice Marsh Lake to have a couple of
639 panels explaining the District and its contribution to this and what we tried to
640 accomplish. He noted it seemed like there was a lack of effort to preserve the vegetation
641 down slope. He said in the future we should build in the option for watering these
642 projects when they get planted. Manager Koch said it seemed to him there was room for
643 some downslope water retention like ponds, to capture the surface water.

644 Manager Koch said regarding the Pioneer Trail Wetland Restoration, if there is any
645 possibility at looking at some of the properties to the north and renting or leasing or
646 having some limited number of animals in that area would be helpful. He commented
647 that in the BWSR report he believes there's a statement in there that the District owns
648 the property and he believes that's not correct anymore. Manager Koch said he's
649 concerned that the project is surrounded by properties that have invasives.

650 Manager Koch said he liked having the tour in the fall because of the site view of the
651 topography. He said also if we don't go visit these projects beforehand to make sure we
652 take pictures and video of the sites before, during, and after and post them to our
653 YouTube channel and onto our website.

654 Manager Duevel said with the dryness you get to see what's bouncing around out there.
655 He said he likes the notion of the communication amongst the CAC members and the
656 Board members and anyone else who comes by to see what the group is doing. Manager
657 Duevel said it seems it should be a necessary part of the Board's review to see the
658 projects as they're coming along and at least once a year.

659 Manager Pedersen said next year she'd like to see the wetland restoration project
660 comprising the three properties the District purchased.

661 Manager Koch said while it's still dry it's an excellent opportunity to do a GoPro video
662 of all our creeks that are possible and do it with GPS so we can do it repeatedly. He said
663 he knows of a company using artificial intelligence that uses a computer program that
664 shows differences between photos and video and doesn't need the same GPS
665 designations.

666

10. Manager Reports

667 Manager Koch noted we're still having Zoom meetings, and his understanding is cities and
668 counties are going to in person. He said he is concerned about not going back to in person
669 meetings, even though he prefers Zoom meetings. He said he hasn't seen any report as to
670 plans for when we return in person. He said he'd like to see a workshop or report on that.

671 Manager Koch said he's already mentioned the issue with Open Meeting Law violations
672 with the Personnel Committee.

673 Manager Koch said with respect to the website, he's requested either copies of web pages or
674 use of that tool so he could make comments on the website, but to his knowledge he hasn't
675 received a response to that request. He said there's specific issues of organization he thinks
676 we can improve on and address. Manager Koch asked how we are archiving the Board
677 packet and if appropriate we could have a presentation or discussion on how we're going to
678 go forward because that impacts the work we're going to be doing at the Governance
679 Committee.

680 Manager Koch said he thinks the District is in continued and repeated violation of the
681 Minnesota Data Practices Act and Section 103d.315, so in light of the fact we're not holding

682 meetings in place, he doesn't know what the proposal is for reviewing documentation in
683 place, and given that inconsistency, he thinks it would be appropriate to flesh that, what
684 appears to him an inconsistency, out.

685 Manager Koch said he hasn't heard anything about the rules violations on Lotus Lake.

686 Manager Koch said with respect to minutes of meetings, we've done it at the Governance
687 Committee meetings, he thinks it's a best practice at least on the public side of the meetings,
688 to have a section of the business at the meeting about old business. He said it should be a
689 separate section of the agenda going forward and hopefully we'll be discussing that at the
690 Governance Committee meeting, so if staff could consider implementing that he thinks it
691 would be an improvement.

692 Manager Koch said if we're going to change IT providers we need to be soliciting bids. He
693 said he hasn't seen a disaster response plan or a hacking response plan and he thinks any IT
694 person you talk to recommends both.

695 Manager Koch said he thinks we need to go out for bids for a new transcriber for our
696 meetings. He said he has no confidence in the accuracy of the transcriptions. Manager Koch
697 said he questions whether or not he should vote to approve any of the minutes. He shared
698 his opinion that one set of minutes had conjectural opinions inserted in them, which are no-
699 nos for a transcriber of minutes or recordings.

700 Manager Koch said we're still not getting the minutes in accordance with the procedure that
701 we previously adopted several years ago, which was we were supposed to get the minutes
702 one week after the meeting and we're supposed to all provide our comments to the
703 Administrator to collate the changes and include them in the packet. Manager Koch said this
704 goes directly to the comment in the PRAP about our meetings being more efficient, and he
705 thinks this is one area where we could speed things up.

706 President Ziegler asked if Administrator Jeffery knows if other watersheds are meeting in
707 person. Administrator Jeffery said to the best of his knowledge we are one of the last
708 watersheds to be still meeting virtually. President Ziegler asked if that topic could be added
709 to a workshop agenda for discussion. Administrator Jeffery said yes, he can do that.

710 Manager Crafton commented about a discussion she had with University of Minnesota
711 Professor Lee Frelich about our area and his studies on urban forests. She said she thinks
712 there's opportunity to do restoration. Manager Crafton said maybe we should look at
713 projects our Master Water Stewards could do, such as removing buckthorn and garlic
714 mustard and putting in native plants and doing tree inventories.

715 Manager Crafton announced she put in her application for reappointment to BWSR.

716 Manager Koch said that development we saw made him sick to his stomach to think of all
717 the trees that must have been removed from that project. He said if we really want to do
718 something for the environment, we need to start requiring the preservation of trees and
719 substantial tree plantings. Manager Koch said there are things like restricting tree removals
720 and requiring tree plantings that we should be looking at in our rules and requiring cities to

721 adopt. He said if we really want to do something about soil health, we need to build it into
722 these developments and requirements for entire subdivisions.

723

11. Administrative Reports

724 Manager Koch said he understands the report to say there isn't any eDNA for zebra
725 mussels in Lotus Lake. Administrator Jeffery said there was no eDNA on the one site that
726 was tested. He reported District staff is reaching out to the DNR to find out if there is a
727 process for delisting. Administrator Jeffery said today Mr. Maxwell was at Lotus Lake
728 inspecting for zebra mussels.

729 Mr. Maxwell said he went to the site where he found them before, and he found a dock
730 with some larger zebra mussels on it and the lift itself had thousands of zebra mussels. He
731 said the lift immediately adjacent had zero and he didn't find any at any other location,
732 and he guesses it was moved from another location to that spot.

733 Administrator Jeffery said it seems that someone transported AIS and the District will
734 provide that information to the DNR to follow up. Manager Koch said he thinks it's
735 important to follow, and especially regarding lake service providers, he's sorry, he
736 doesn't hold them in the highest regard, but something has to be done if someone
737 transported that.

738 Manager Koch asked what, if anything, are we looking to do at Fredrick-Miller Spring.
739 Administrator Jeffery said there had been displacement of the scarp but it has revegetated
740 and stabilized. He said he thinks we do need to continue to monitor it, but it hasn't risen
741 to the level of some of the other stream issues.

742 Manager Koch said we have to do something about the Lotus Lake violations. He said we
743 can't let people violate the rules as they are, and he would like to see a more pointed
744 postcard to residents around the lakes telling them you need a permit before you do this.
745 He said it would be nice to have some type of postcard to send to these contractors to say
746 you need a permit before you go touch this lakeshore.

747 Manager Koch asked if the National Association of Lakes annual conference has
748 happened. Administrator Jeffery said no, it's happening at the end of November and Mr.
749 Maxwell is attending. Manager Koch asked to be shared the conference materials.

750 Manager Koch asked Administrator Jeffery where we stand with the agreement for
751 Middle Riley Creek. Administrator Jeffery said he's contacted their legal counsel and the
752 documents are drafted and just need to be recorded. He said we have the final agreement,
753 and it just hasn't been executed because the documents haven't been recorded.

754

12. Legal Counsel Reports

755 Attorney Smith said legal counsel has no report this evening.

756

13. Upcoming Board Topics

- 757 a. **U of M Pond Study Findings – December 2022**
- 758 b. **Setting 2023 Calendar – December 2022**
- 759 c. **Review of 2022 District Accomplishments – January 2023**
- 760 d. **Hennepin County – Climate Action Plan – January 2023**
- 761 e. **Rule Review Status Report – January 2023**
- 762 f. **District 2023 Work Plan – January 2023**
- 763 g. **Appointment of Officers and Board Committee Members – January 2023**
- 764 h. **Appointment of CAC Members – February 2023**
- 765 i. **Strategic Planning – February 2023**

766

767 President Ziegler announced he shared the link and information with Administrator
768 Jeffery regarding the registration for the November 9th Moos Family Speaker webinar and
769 the topic is “What is the Critical Zone.”

770 Manager Koch suggested the Hennepin County Climate Action Plan be a topic at a Board
771 workshop instead of the Board’s January meeting.

772 Manager Koch said he like to see something in December regarding the District’s 2023
773 work plan, even if it’s just a sketch outline.

774

14. Upcoming Events

- 775 • North American Lake Management Society (NALMS), 11/14-11/17/22
- 776 • Raingarden and Shoreline Buffer Workshop, 11/29/22
- 777 • MAWD Annual Conference, 11/30/22 – 12/3/22

778

779

15. Adjournment

780

Manager Koch moved to adjourn the meeting. Manager Pedersen seconded the motion.

781

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

782

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

783

784

The meeting adjourned at 9:20 p.m.

785

786

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788

Respectfully submitted,

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791

792

Dorothy Pedersen, Secretary