

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

December 7, 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*

Other Attendees:

Steve Christopher, BWSR** Marilyn Torkelson, CAC
Leslie Stovring Jeff Weiss, CAC

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

***Indicates attendance at only the workshop*

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. Manager Koch stated
2 the Board is holding the meeting via Zoom based on President Ziegler's determination that
3 the Board should not be taking the risk of having an in-person meeting [due to the pandemic].
4

5 a. PRAP Response Letter

6 Administrator Jeffery said this response letter is a required component of the PRAP
7 process, and the letter will go into the final report. He summarized the letter thanking
8 BWSR for their efforts in the District's PRAP. He said the letter communicates the

9 District has already been discussing internally many of the tasks identified in the PRAP
10 and can roll those tasks into the District's strategic planning process and work.

11 Manager Koch said the letter is excellent. He said he would like to be able to associate
12 the comments provided in the PRAP surveys with the role of the commenters, such as
13 were they employees, managers, or outside consultants. He said he does not know how
14 the District would determine how to respond to the comments without knowing where
15 they are coming from. Manager Koch said he would probably put different weight on
16 some of these comments depending upon who they are coming from, although for some
17 of the comments it would not make a difference who they came from.

18 Mr. Christopher said the survey puts respondents into two groups, either a member of the
19 watershed district, meaning staff or Board member, or a partner, so the survey responses
20 do not distinguish the specific entity the response is associated with. He said a potential
21 option the District could pursue is conducting a follow up survey, and BWSR would be
22 happy to assist with it. Mr. Christopher said the follow up survey work could be rolled
23 into the PRAP grant the District is interested in pursuing. He said the survey could help
24 the District get more specific data to help the District make improvements it wants to
25 pursue.

26 Manager Koch said he would like the District to pursue obtaining from BWSR
27 anonymized data of the survey responses to know which of the two groups the responses
28 came from.

29 Manager Crafton said the letter is excellent. She said she is not concerned about who
30 made the comments and she would give equal weight to everybody. Manager Crafton
31 said the important part to her is that the District take those comments and move forward.

32 Manager Pedersen concurred with Manager Crafton. Manager Pedersen said the letter is
33 very well done. She said she is not concerned with who the comments came from, just
34 that we give the comments credence, no matter who they come from.

35 Manager Duevel agreed with Manager Crafton and Manager Pedersen. He said the letter
36 is well written, and he does not see the need to find out who the comments came from,
37 even if they are in buckets or anonymized.

38 Administrator Jeffery said it is staff's intention as the District goes through the strategic
39 planning process to continue to survey the District's stakeholders and partners.

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41 **b. 2023 Board of Managers Meeting Calendar**

42 President Ziegler said some other watershed district boards meet twice a month. The
43 managers and staff considered the idea of meeting twice a month. The managers directed
44 Administrator Jeffery to revise and bring in front of the Board at tonight's Board meeting
45 or the January Board meeting the proposed schedule to reflect a monthly Board meeting
46 on the first Wednesday of the month starting at 7 p.m. except for dates the managers and
47 staff indicated there are meeting conflicts, and a monthly workshop at 7 p.m. on either a
48 Tuesday or a Thursday.

49 **c. Board Meeting Format**

50 President Ziegler said most of the watershed districts he talked to at MAWD said they are
 51 back to meeting in person. He said he learned from Mr. Smith’s MAWD presentation that
 52 there are allowances for a manager to meet virtually three times with a note from the
 53 manager’s doctor. Mr. Smith said the medical reasons only apply under a declared state
 54 of emergency. He added there is also an exception regarding meeting in person for
 55 individuals in military service.

56 Manager Koch said as far as he is aware, the pandemic has not been declared as being
 57 over. He said he would prefer the Board hold its meetings via Zoom until the pandemic is
 58 over, and it is important that the District is consistent throughout and not be arbitrary and
 59 capricious about when to meet via Zoom and when to meet in person. Manager Koch said
 60 he has no problem continuing to apply the pandemic exception because it appears to him
 61 there are no guardrails on making that determination unless the Surgeon General or the
 62 Center for Disease Control determine there is no longer a pandemic.

63 Mr. Smith commented there is still a basis for pandemic conditions and for the Board to
 64 continue monitoring the general conditions and deem it is still prudent to have remote
 65 meetings. He said it would be good for the Board to be consistent. Mr. Smith said it is
 66 always possible that Covid conditions change, and the Board can monitor the medical
 67 data.

68 Manager Duevel asked about the possibility for the District to hold hybrid meetings.
 69 Administrator Jeffery said the District does not have the technology in place to hold
 70 hybrid meetings. He said the Board could direct staff to look into the technology such as
 71 Minnehaha Creek and Nine Mile Creek have installed, at a cost of about \$50,000.
 72 Administrator Jeffery said there is technology like OWL that could provide remote
 73 viewing of a meeting but would not provide virtual participation in meetings. The Board
 74 agreed to have Administrator Jeffery bring feasible options back to the Board at a future
 75 meeting.

76 Manager Duevel said many companies are figuring out modifications to allow hybrid
 77 work and maybe the District considers figuring out a way to do this and maybe it
 78 becomes a model to use.

79 Manager Koch asked about indoor air quality at the District office. Administrator Jeffery
 80 said the office runs individual HEPA filters. He said the District could look into tests for
 81 air quality and perhaps Barr Engineering would have a recommendation. Mr. Sobiech
 82 said he can check with resources at Barr Engineering regarding air quality testing.

83 Manager Koch moved to recess until 7 p.m. Manager Pedersen seconded the motion.
 84 Upon a roll call vote, the motion to recess carried 5-0 as follows:

85

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

Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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The Board recessed at 5:42 p.m.

2. Call to Order of Board of Managers Regular Monthly Meeting

88

President Ziegler called to order the Wednesday, December 7, 2022, Board of Managers Regular Meeting at 7:02 p.m. The meeting was held remotely via meeting platform Zoom.

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President Ziegler said one of the suggestions from the BWSR PRAP review was to limit the amount of time each manager can talk. He said it might make sense to limit each manager to talking for three minutes, which would be fifteen minutes per each topic.

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President Ziegler said another idea for saving time at District meetings is putting in place a process for the District Administrator to administratively approve permits, if legal counsel is ok with it. He said another idea for improving Board meeting efficiency is for each item on the agenda having a complete description including the goal of the item, so staff knows what the item is and what is trying to be accomplished.

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3. Approval of Agenda

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President Ziegler said Manager Koch asked for several things to be added to the draft agenda, and they were added, and some of his items appear to be redundant. President Ziegler said to him it makes sense to talk about the items under the pertinent item already on the agenda.

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Manager Koch requested removing from the Consent Agenda items 7h – Approve Permit 2022-070 Schutrop Addition as Presented in the Proposed Board Action Section of the Permit Review Report; and 7i – Adopt Resolution 22-087 Authorizing Payment on Pay Application #9 for Lower Riley Creek Restoration Project. Manager Koch requested adding to the Consent Agenda item 8h – Adopt Resolution 22-092 Authorizing Administrator to Execute Task Order 40 for Barr Engineering to Conduct the Bluff Creek/Galpin Boulevard Culvert Replacement Analysis.

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Manager Koch moved to approve the agenda with the changes he suggested. Manager Pedersen seconded the motion. Upon a roll call vote, the motion to 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

112 President Ziegler presented the procedure for raising Matters of General Public Interest.

113 Ms. Marilyn Torkelson, resident of Eden Prairie, said she has a question about the Chanhassen
 114 decanting facility, an item listed on the Board’s meeting agenda as Resolution 22-93. She said it
 115 sounds like a facility to separate waste matter from waste water. She asked what happens with
 116 each of those components.

117 Administrator Jeffery said decant facilities are very popular in the northwest region of the United
 118 States. He said he only knows of one other facility in the metro area. Administrator Jeffery
 119 explained the removal process via vacuum truck takes out all the liquids and solids. He said in the
 120 decant facility, the liquids and solids are separated. Administrator Jeffery explained the liquids go
 121 into the sanitary system under the decant system and then go to the blue lake facility in Shakopee
 122 to be treated. He said the solids, depending on the material collected, would be landfilled or if it is
 123 benign, it would be composted.

124

5. Reading and Approval of Meeting Minutes

125 a. Approve Minutes of the November 2, 2022, Workshop and Regular Monthly
126 Meeting of the RPBCWD Board of Managers

127 Manager Crafton moved to approve the minutes of the November 2, 2022, RPBCWD
 128 Board of Managers Workshop and Regular Monthly Meeting. Manager Duevel seconded
 129 the motion.

130 Manager Crafton requested a non-substantive edit, and Manager Koch requested
 131 numerous non-substantive edits.

132 Manager Koch said previously the Board agreed everybody would route their changes to
 133 draft minutes through the Administrator, so the Board isn’t taking up so much meeting
 134 time to go through the minutes. Manager Koch said he provided his comments to
 135 Administrator Jeffery. President Ziegler asked managers try to refer to the minutes’ line
 136 numbers to be more efficient.

137 Manager Crafton and Manager Duevel accepted the edits as friendly amendments.

138 Manager Koch reiterated the Board had agreed to send edits to staff to compile into a set
 139 of minutes to recirculate to the managers, so all the managers could see them, to shorten

140 up the time for reviewing minutes. He said he wants to make that clear. Manager Koch
 141 suggested the minutes get sent to the managers in a Word document.

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

143

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

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145 Manager Koch suggested he and President Ziegler review at the upcoming Governance
 146 Committee meeting the process for circulating edits to the draft minutes and whether the
 147 process should be incorporated right into the governance manual.

148

6. Committee Report

149 **a. Acceptance of the Citizens Advisory Committee Report and Minutes**

150 Mr. Jeff Wiess reported three CAC members attended the MAWD conference. He said the
 151 CAC’s December meeting will be on December 12th. He reported that at the CAC’s
 152 November 21st meeting, the Committee passed three motions:

- 153 1. The CAC suggests to the Board of Managers that a study be implemented to list all
 154 ecologically valuable and/or fragile areas in the watershed for protection and
 155 preservation from development for the education of the general public, including
 156 developers, homeowners, and individuals (This is a renewal of the motion presented
 157 by the CAC to the Board of Managers at the 2/2/2022 meeting).
- 158 2. The CAC asks the Board of Managers to look at the definition of steep slopes in view
 159 of climate change and the possibility of large rain events leading to more slope
 160 instability and how this could be addressed in District Rules.
- 161 3. The CAC suggests a moratorium on developing of the Frederick Miller Spring area
 162 development pending changes in Definition of Steep Slopes.

163 Mr. Wiess explained the idea behind the third motion is that a moratorium, perhaps with
 164 a deadline on it, would provide room for the District to further evaluate its rules and
 165 how they apply to situation like the Noble Hills permit, before another development
 166 proposal comes forward to the District.

167 Ms. Torkleson said there is a statute that allows the District to act even though there is
168 not a specific rule being broken: the Minnesota Environmental Rights Act (MERA),
169 which is Minnesota statute 116B.

170 Ms. Torkelson read

171 This legislature finds and declares that each person is entitled by right to the
172 protection, preservation, and enhancement of air, water, land, and other natural
173 resources located within the state, and that each person has the responsibility to
174 contribute to the protection, preservation and enhancement thereof. The legislature
175 further declares its policy to create and maintain within the state, conditions under
176 which human beings and nature can exist in productive harmony, in order that the
177 present and future generations may enjoy clean air and water.

178 Ms. Torkelson said the statute continues on, and she thinks this statute provides a way for
179 the Board to act in situations when it knows a proposed development would be bad for
180 the environment but cannot point to a specific regulation in the watersheds permitting
181 rules.

182 Manager Crafton said this statute was brought to her attention by a former employee of
183 the Minnesota Pollution Control Agency, who said the Board is well within its rights to
184 use this statute.

185 Manager Crafton shared that in a conversation with the Lower Minnesota River
186 Watershed District she learned their CAC is very interested in pursuing something to
187 protect steep slopes. Manager Crafton said she suggested the Lower Minnesota River
188 Watershed District reach out to the RPBCWD CAC on the topic. She said the more
189 support the District can get from other watershed districts, the better, and people are
190 concerned about protecting the Minnesota River.

191 Mr. Weiss noted seven CAC members have terms about to expire, and six of those
192 members have opted to renew, including: himself (Jeff Weiss), Marilyn Torkelson,
193 Andrew Aller, Jessica Willey, Jim Boettcher, Terry Jorgensen, and Rodey Batiza.

194 Mr. Weiss reported that leaves the CAC with 10 existing members for next year,
195 including the four members whose terms are not expiring, and the CAC is aware that
196 CAC applications are due at the end of the month.

197 Mr. Weiss said CAC is working to make edits to its bylaws. He said the Committee
198 talked about whether it wants to operate with one vote per member or one vote per
199 household, and the CAC decided to keep it as one voter per member. He said the CAC
200 also discussed thresholds for making recommendations to the Board of Managers for
201 removing CAC members, if appropriate.

202

203 Manager Koch moved to refer the three motions from the CAC to the staff for staff to
204 review and bring comments back to the Board to address at a later meeting, but not too
205 much later. Manager Crafton seconded the motion.

206 Mr. Smith commented that he did not want there to be an impression that the District’s
 207 legal counsel wasn’t aware of the Minnesota Environments Rights Act. He said in fact it
 208 was carefully considered throughout the entire process of reviewing that project. Mr.
 209 Smith said MERA is also the basis of the claim that the opponents to the project tried to
 210 use in going to court to challenge the project. He said he appreciates the ongoing
 211 application of those considerations.

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

213

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

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215 Manager Koch said [regarding the Board’s review of the Noble Hills permit application]
 216 there was a professor from the University [of Minnesota] who had issues with the slope
 217 issues that Manager Koch brought up. Manager Koch said he had meetings with people
 218 from Barr. Manager Koch said his view was we did not have the information and did
 219 not have an opportunity for Barr to take the information into account but nevertheless
 220 the majority of the Board approved going forward with a permit to build. Manager Koch
 221 said he wants to make sure the record is clear from his perspective.

222

223 **b. Confirm Board Representative for December 12, 2022, CAC Meeting**

224 Manager Duevel volunteered to be the Board representative at the CAC’s December 12th
 225 meeting.

226 **c. Accept Personnel Committee Report and Minutes [no meeting held]**

227 [No discussion.]

228 **d. Accept Governance Committee Report and Minutes [no meeting held]**

229 [No discussion]

230

7. Consent Agenda

231 Manager Koch moved to accept the items on the Consent Agenda, accept the staff reports,
 232 and adopt the proposed resolutions contained in the Board packet pertaining to the three
 233 permits and Task Order #40, including adopting Resolution 22-092. Manager Pedersen
 234 seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

235

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

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237 The Consent Agenda included item 7a – Adopt Resolution 22-086 to approve consent
 238 agenda; 7b – Accept November staff report; 7c – Accept November engineer’s report; 7d –
 239 Accept November construction inspection memo; 7e – Approve Permit 2021-088 Pioneer
 240 Trail Reconstruction as Presented in the Proposed Board Action Section of the Permit
 241 Review Report; 7f – Approve Permit 2022-065 Round Lake Park Building Improvement
 242 Project as Presented in Proposed Board Action Section of the Permit Review Report; 7g –
 243 Approve Permit 2022-069 921 Carver Beach Road Project as Presented in the Proposed
 244 Board Action Section of the Permit Review Report; 8h – Adopt Resolution 22-092
 245 Authorizing Administrator to Execute Task Order 40 for Barr Engineering to Conduct the
 246 Bluff Creek/Galpin Boulevard Culvert Replacement Analysis.

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8. Action Items

248 a. Items Pulled from Consent Agenda

249 i. Approve Permit 2022-070 Schutrop Addition as Presented in the 250 Proposed Board Action Section of the Permit Review Report

251 Manager Koch asked if this action is to approve a permit to divide this lot and
 252 not to authorize any particular building on that block. Mr. Sobiech said yes, that
 253 is the intent. He said the City of Chanhassen is requiring the developer to show
 254 proof of concept that there is adequate space for stormwater management. Mr.
 255 Sobiech said the approval of the permit would allow the developer to build a
 256 structure that aligns with these percent imperviousness on the site.

257 Manager Koch said he has concerns about approving a permit that might in any
 258 way imply we are giving a permit to build any particular structure, without
 259 knowing what rules are covered. He recommended the proposed resolution or
 260 recommendations be amended to clarify this is for the purposes of dividing
 261 those two lots. He said he does not know how we can approve the permit when
 262 we do not know what is going in there.

263 Administrator Jeffery said the stipulations on pages 8 and 9 detail the applicant
 264 must provide as-built drawings and other additional close out materials to show
 265 the developer has constructed something that is consistent with what is being
 266 approved in this plan. He said the applicant must demonstrate meeting the
 267 standards within the District’s rules, through the as-built permit and any
 268 surveying the developer provides the District.

269 Manager Koch said it seems the District should require a preliminary drawing
 270 and plat map to review prior to construction. He said he would like to see this
 271 point as a condition of the permit approval.

272 Mr. Sobiech said the applicant provided such documents already, as shown on
 273 sheet C501.

274 Manager Koch moved to adopt the proposed resolution set forth in the staff
 275 packet pertaining to permit 2022-070. Manager Pedersen seconded the motion.
 276 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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280 **ii. Adopt Resolution 22-087 Authorizing Payment on Pay Application**
 281 **#9 for Lower Riley Creek Restoration Project**

282 Manager Koch asked if this permit was approved in 2021. Mr. Sobiech said it
 283 was approved for construction in 2019. Manager Koch asked if it is possible to
 284 add the District’s project number on pay applications. Administrator Jeffery
 285 said staff is working on developing nomenclature coincidental to what Barr
 286 Engineering uses.

287 Manager Koch moved to adopt Resolution 22-087. Manager Crafton seconded
 288 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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291 **b. Accept October Treasurers' Report**

292 Treasurer Crafton moved to accept the October Treasurer's Report. Manager Pedersen
 293 seconded the motion. Manager Koch asked if the staff, Treasurer , and Accounting and,
 294 Finance Committee have taken into account the likely numbers the budget will be at,
 295 especially including the overages in the various line items, in determining the budget
 296 and the reserves.

297 Administrator Jeffery explained the process he used and said yes, they have been
 298 accounted. Manager Koch asked if the District is still carrying balances at Old National.
 299 Administrator Jeffery said yes, and the balances will be transferred to U.S. Bank for
 300 investment income.

301 Manager Koch asked about amounts due [to the District] from other governments and if
 302 there is a detailed ledger, and if so, if Administrator Jeffery would provide it.
 303 Administrator Jeffery responded yes.

304 Manager Koch said he wants to make sure the long-term liability and amount due on the
 305 Duck Lake Bridge gets reflected at least in the District's annual financial statement, as it
 306 is a significant amount of money, notwithstanding what the District's auditor previously
 307 said, because Manager Koch does not believe that was proper accounting and he would
 308 like that brought to their attention and addressed specifically. Manager Koch requested
 309 staff look into with the accountant why November credit charges are listed under the
 310 Visa activity on the October report and look at having appropriate accrual accounting
 311 for these items.

312 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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c. Accept Comment from Public on 2023 Budget and Levy

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President Ziegler called for public comments. Upon hearing no comments, Manager Koch stated he has comments. Manager Koch expressed his concern about not knowing what staff is going to do about reconciling where the District spent money and where the District did not spend money and how much we have left over at the end of the year.

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Manager Koch asked why in the 2023 budget and levy there is anything other than zero on line 418 in the column “Proposed 2023 budget,” Administrator Jeffery explained what would be put into the reserve budget. Manager Koch provided his suggestions for reformatting. Manager Koch listed budget items he would like Administrator Jeffery to review and adjust, including the \$114,000 budget listed under partners and other resources.

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Manager Koch moved to adopt a resolution authorizing the Administrator to sign and provide whatever levy certifications may be necessary

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Mr. Smith clarified the Watershed Act requires the Board to adopt a budget and certify its tax levy on or before September 15th of each year. He said the Board has done that.

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Mr. Smith said the Truth in Taxation law provides that all local units of government provide the public an opportunity to review tax levies and comment, and so this item is the informational opportunity on your agenda. Mr. Smith said if the Board receives public input or otherwise wants to consider the District’s budget and levy, the Board could lower the budget and lower the levy, but not increase it. He explained if the Board takes action to lower the District budget and/or levy, the District needs to submit new resolutions to Hennepin and Carver counties; otherwise, the counties have everything they need from the District to proceed. Mr. Smith said the District can send the counties a communication of reassurance that yes, what the District submitted in September is the Board’s approved budget and levy, but legally there is no further action that needs to be taken and no questions about it unless the Board wants to decrease it.

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Manager Koch withdrew his motion.

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d. Adopt Resolution 22-088 to Approve Paying of the Bills

Manager Crafton moved to approve paying of the bills. Manager Pedersen seconded the motion. Manager Koch made the friendly amendment to adopt Resolution 22-088.

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Manager Crafton and Manager Pedersen accepted the friendly amendment. 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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e. Adopt Resolution 22-089 Delegating WCA Decision-making Authority to Staff and Designating the Board of Managers as the Appeals Board.

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Manager Crafton moved to adopt Resolution 22-089 Delegating WCA Decision-making Authority to Staff and Designating the Board of Managers as the Appeals Board.

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Manager Pedersen seconded the motion.

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Manager Duevel asked for background on this action. Administrator Jeffery explained the process by which the RPBCWD assumed the WCA authority for all of the City of Deephaven and all of the City of Shorewood, even those portions of those two communities not in the Riley Purgatory Bluff Creek Watershed but in the Minnehaha Creek Watershed District. He explained this is why the Minnehaha Creek Watershed District had to enter as a party to the resolution.

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Administrator Jeffery explained that as part of the WCA authority designation, it needs to be determined how it will be applied and who will be responsible for it. He said this determination was not done at the time the District assumed the authority, and the PRAP brought this to the District’s attention.

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Administrator Jeffery explained this allows District staff, with assistance of a convened Technical Evaluation Panel, to make determinations on wetland boundaries and types. He said this resolution documents the procedure staff has been doing for the past couple of years since assuming WCA authority for the communities mentioned.

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Manager Koch said he understands Administrator Jeffery has the requisite training, but the resolution doesn’t state any caveats, and he is not sure the Board wants to delegate the authority to an Administrator of the District who might not have the necessary training. Manager Koch suggested the development of a rules and procedures guidebook, and then the Board adopt the guidebook, as opposed to laying them all out in a resolution. He said that from a governance point of view, he thinks the Board needs to make sure all resolutions get into the right place or are maintained in a proper place in the governance manual, or this resolution be restructured so that policies and procedures are set forth in a manual or document.

378 Manager Crafton disagreed with the approach Manager Koch suggests and said it is a
379 trust issue that the Board can depend on staff's expertise.

380 Manager Koch said maybe Manager Crafton isn't listening. He said maybe this is a case
381 of let Manager Koch talk and we will ignore him. Manager Koch said he did not say
382 Mr. Jeffery was incompetent. Manager Koch said he said the policy refers to the
383 administrator without any reference to qualifications. He said should there be a caveat in
384 there about if the administrator does not have certain qualifications then the delegation
385 does not apply. Manager Koch said he does not want to be in the position of having to
386 remember that oh, wait a minute, we have to go in and now remove that authority.
387 Manager Koch said he thinks Manager Crafton conflated two different statements
388 Manager Koch made and he would appreciate it if she would not do that.

389 Manager Crafton said that she expressed her perspective and she and Manager Koch can
390 definitely disagree, respectfully.

391 Manager Koch asked if the resolution should go back to the original delegating LGU
392 (local governmental unit) and ask them to agree to that further delegation, since this is
393 different than what they originally agreed to. Mr. Smith said in the case of the
394 Minnehaha Creek Watershed District, there is a joint powers agreement that agrees on
395 the details.

396 Administrator Jeffery said the resolution entered into with Deephaven and with
397 Shorewood was simply to waive WCA authority to the Riley Purgatory Bluff Creek
398 Watershed District and was silent on anything else with the understanding that the
399 Wetland Conservation Act has a number of requirements already on who could or could
400 not administer the WCA.

401 Manager Koch noted that waving and delegating are two different things. He asked
402 would it not be appropriate to ask the two entities to pass a resolution agreeing to our
403 process and procedure. Administrator Jeffery reiterated the District is the WCA
404 authority for Deephaven and Shorewood, and the state is the one that could rescind that
405 authority.

406 Mr. Smith said there are two things he thinks would be appropriate if the Board adopts
407 this resolution. One, he said, is he thinks it would be good to have the Board direct this
408 resolution be filed in the District's Governance Manual, to have another place where the
409 authority being exercised is visible. Mr. Smith said secondly he thinks sending the
410 adopted resolution to the parties would be good communication so they see the District
411 has gone further and taken the step of delegation. He said he views this communication
412 as a courtesy but an appropriate communication to address.

413 Manager Koch moved to amend the resolution to provide that a copy of this resolution
414 as adopted be included in the Governance Manual and a copy of the resolution with the
415 additions he mentioned be forwarded to the LGUs that delegated their WCA authority
416 to the District. Manager Crafton and Manager Pedersen accepted the friendly
417 amendment.

418 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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421

f. Adopt Resolution 22-090 Adopting the Updated Salary Schedule

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Manager Pedersen moved to adopt Resolution 22-090 Adopting the Updated Salary Schedule for the 2022-2023 year. Manager Crafton seconded the motion.

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Manager Koch said he thinks changing the schedule requires more discussion and fleshing out before the Board. He said he wants to know where our staff will fall on the proposed scale and where will they fall in 2023. He said he wants to make sure staff are adequately compensated, and he can't say if a 5% increase is adequate. Manager Koch said he would like to see this brought back with more information.

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Administrator Jeffery reminded the Board of the salary freeze it had enacted, noting cost of living has increased while staff salaries have not. He said the budget has enough to make the changes in the proposed updated salary schedule and then leaves enough set aside for discretionary raises of 3% to 5% throughout the 2023 year. He said the Personnel Committee did not adopt a resolution per se, but the updated salary schedule is the recommendation from the Personnel Committee.

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Manager Pedersen provided details about the compensation structure and pay scale, which is based on grade levels and within each level, a minimum, midpoint, and maximum. She also provided a historic look at the District's compensation structure. Manager Pedersen explained the Personnel Committee's reason for recommending the Board adopt a 5% increase, pointing out the District hasn't increased salaries in two years, and the District wants to remain competitive in the market and retain staff.

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Manager Koch said he does not think he has been provided enough information to make an adequate decision. He said he did this type of work for over 26 years in his firm. He said one has to check not just within the bubble but check outside the bubble, which is with private industry. Upon a roll call vote, the motion carried 4-1 as follows:

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445

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

Duevel	Yes
Koch	No
Pedersen	Yes
Ziegler	Yes

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447

g. Adopt Resolution 22-091 Adopting the 2023 Meeting Calendar

448

Administrator Jeffery said regarding the updated proposed 2023 meeting calendar, he heard from President Ziegler, who has a conflict on April 5th and asked for the April meeting to be moved to April 13th. Administrator Jeffery noted he did not schedule a second meeting on the proposed meeting calendar for November due to Thanksgiving.

451

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The managers and staff considered cutoff dates for bring items forward at a meeting and discussed whether to hold two meetings a month or a meeting and a workshop.

453

454

President Ziegler said the resolution words the second meeting of the month as a workshop. Manager Koch said he'd like Administrator Jeffery to come up with a list of tentative topics for the workshops.

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Manager Koch reminded the group that state statute requires meeting materials to be accessible at the meeting.

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Manager Pedersen moved to adopt Resolution 22-091 Adopting the 2023 Meeting Calendar with the idea of having more workshop-type materials for the second meeting. Manager Crafton seconded the motion. Manager Pedersen amended the motion to set the April meeting for April 13th. Manager Crafton seconded the motion. Manager Koch pointed out the Board cannot take action at the workshops without the requisite three-days' notice.

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Upon a roll call vote, the motion to amend 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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h. Adopt Resolution 22-093 Authorizing Administrator to Execute Amendment 1 to Barr Engineering’s Task Order 32B to Prepare Chanhassen Decant Facility Plans and Specifications

Administrator Jeffery explained there is not an agreement in place yet, just a handshake, and this will be a cost share, so the City would be responsible for 50% of all expenses. He said this information will be worked into the Cooperative Agreement for the overall project.

Administrator Jeffery explained this project came forward because the boneyard sits immediately adjacent to the stormwater pond that goes directly into Riley Creek. He said with the decant, it gives them a place to go with the waste and it is an exceptional practice for keeping water clean and reducing maintenance costs.

He said the reason Barr is doing the work is because Barr was already doing the work on the Upper Riley Creek project and this decant work be rolled that plan and bid package, but it will be bid alternate compensated through some cost-share package with the City of Chanhassen to be determined once we have prices.

Manager Koch said he thinks this would be a separate task order, not an amendment to an existing one because his understanding is this new work is materially different.

Manager Koch moved to adopt the resolution with the amendment that it be put into its own separate task order. President Ziegler seconded the motion. Manager Koch made the friendly amendment that District legal counsel, Mr. Jeffery, and Barr work on preparing the appropriate changes to the paperwork to make it a separate task order.

Mr. Smith asked what the posture is of this project in the District’s 10-Year Plan. He asked if this is part of a cost-share program or part of some project to be developed and amended into the Plan. Administrator Jeffery said there is not a separate capital project in the District’s 10-year Plan under which this project would fit. He said it would fall under municipal cost-share, but then the City would need to apply.

Manager Koch suggesting looking under the District’s opportunity funds.

Administrator Jeffery said he will work with Mr. Smith regarding the best way to incorporate this project into the District’s Plan. Administrator Jeffery said if this project is handled as an opportunity project, the District would need to do a minor plan amendment.

President Ziegler accepted the friendly amendment.

Upon a roll call vote, the motion to amend 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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At 9:29 p.m. President Ziegler declared a five-minute recess. At 9:34 p.m. President Ziegler reconvened the meeting.

9. Discussion Items

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- a. MAWD – HR Consultant (Koch)**
 Manager Koch asked for a summary from the HR consultant session presented at the MAWD annual meeting. Administrator Jeffery said he has a request in with Mike Kinney of Comfort Lake Forest Lake Watershed District to share those materials. Administrator Jeffery talked about the information shared in the session such as the RFQ. Manager Koch asked Administrator Jeffery to share those materials with him.
- b. E&O Workplan (Koch)**
 Manager Koch said he has suggestions for changes to the District’s website. Administrator Jeffery said Manager Koch can send his website ideas to him, and staff will discuss in the weekly staff meeting.
 Manager Koch said he did not see an announcement on the website about winning the award and participating in the winning project. He asked if the District could announce it on the District website and perhaps include links to BWSR’s announcement and MAWD’s announcement. Administrator Jeffery said staff can get the news up in the news feed.
 Manager Koch asked about the District’s education and outreach plan. Administrator Jeffery said staff plans to present it at the January Board meeting.
 Manager Koch suggested staff share the news of the award with Dr. Bleser.
- c. Low/No Salt (Koch)**
 Manager Koch asked if the low salt - no salt program will be an ongoing education and outreach program. Administrator Jeffery said yes, the entire working group is planning on moving forward with this.
 Staff Forbes said the HCI [Hennepin Chloride Initiative] group meets in the next week and trial presentations are being tested out with groups. She said once items are wrapped up, she would be happy to do a presentation.
 Manager Koch asked if District permitting requires a salt plan. Administrator Jeffery said the District requires a chloride plan, which requires they have someone who has

533 successfully completed the MPCA chloride applicators program and have someone
534 assigned to be responsible for the chloride plan.

535 Administrator Jeffery to look into if it would be possible to include some elements of
536 that site design for minimal salt application into the District's rules. Manager Koch said
537 he would endorse this.

538 **d. Rule Revisions – Tree Removal (Koch)**

539 Manager Koch said he would like to see the District have a discussion about the extent
540 to which we can and should have rules regarding maintaining trees, tree removals and
541 plantings. He said he also thinks the District should look at what it can do regarding
542 requiring street sweeping through the District's rules and/or encouraging street
543 sweeping, including sweeping up leaves, such as through grants.

544 **e. IT Providers (Koch)**

545 Administrator Jeffery said in evaluating the amount of money the District is spending
546 on IT services, about \$1,750 per month, he said he would like to investigate IT services
547 provided on an a la carte basis or fee-per-service basis. Manager Koch said he thinks the
548 District should have a conversation with its current IT service provider and get their
549 response. He said he thinks the District still needs an IT consultant and should have an
550 evaluation done of the District's IT systems and plans, like a back-up plan and a disaster
551 recovery plan.

552 Manager Koch said he thinks MAWD should be trying to come up with IT advisors,
553 collective service providers, model exercises, and recommended equipment.

554 Manager Koch said he doesn't think the District should go without an IT consultant but
555 find the right one.

556 Manager Koch said he will send his notes to Administrator Jeffery. He said he would
557 like to see staff bring a recommendation and detailed plan to the Board in January or
558 February, or this could be a topic at a Board work session, regarding the right IT support
559 and disaster preparedness plan. Manager Koch recommended staff consider having the
560 back up files backed up to a server.

561 **f. Accounting Procedures (Koch)**

562 Manager Koch said he has proposed a set of accounting policies and procedures that
563 were to be sent to the accountant and auditor, but he hasn't heard anything back, and he
564 would like the Accounting and Finance Committee to follow up about the District's
565 adopted accounting policies and procedures.

566 **g. Withholding for Documentation (Koch)**

567 Manager Koch asked what our basis is for withholding payment for not providing
568 documentation. He asked how we set that amount. Administrator Jeffery will come back
569 in front of the Board with the financial assurance schedule for the Board's re-evaluation.

570

571 **h. Contract Retainage (Koch)**

572 Manager Koch said the memo said staff determined it would be easier to withhold the
 573 full 5% and return it at the end. He said his understanding is the Board did not adopt it
 574 as a policy and he believes the Board should adopt it as a policy, notwithstanding Mr.
 575 Welch’s comments, because the Board should be giving staff direction on what to
 576 include in contracts, and the Board should direct staff to withhold the full 5% and
 577 release that only as required. Manager Koch said he provided a resolution to Mr. Jeffery
 578 directing staff to withhold the full 5%.

579 Manager Koch moved to adopt his resolution directing staff to withhold the full 5% and
 580 to release retainage as required by law. President Ziegler asked if he seconds the motion
 581 and it gets voted down, will the Board need to discuss this again next month. Manager
 582 Koch said he doesn’t know. Manager Crafton said the motion seems redundant and
 583 that’s why she thinks Manager Koch’s motion last month was not seconded and not
 584 supported.

585 Manager Koch said he doesn’t think Manager Crafton quite understands the issue or
 586 what was done. He said in fact nothing was done, and he is asking staff to include the
 587 full 5% retention, which staff is in favor of, in our contracts. Manager Koch said the
 588 Board has not directed staff to do that, and his motion is exactly what is intended to be
 589 done, so the Board should make it the District’s policy.

590 Manager Crafton said she thought these items are information only and the Board was
 591 not going to vote on these items.

592 Manager Ziegler seconded the motion to bring it to a vote.

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

594

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

595

596 Manager Koch stated we have no policy. President Ziegler said we have the policy we
 597 had before, and staff and the lawyers are happy with it. Manager Koch told the group to
 598 read the memo included in the Board packet, noting you do not want to follow best
 599 practices, that is your decision.

600

601 **i. PRAP Report**

602 Manager Koch said the Board should hold a workshop to go through the PRAP report in
603 some detail and decide what if any of the recommendations we are doing to do and how
604 to deal with them. Manager Koch suggested the PRAP report be the subject of a
605 workshop.

606 Administrator Jeffery suggested discussing the PRAP report at the February work
607 session at the earliest and March is preferred. President Ziegler directed staff to fit this
608 topic into the workshop schedule.

609

10. Manager Reports

610 Manager Koch said he thinks it would be a good idea to send a letter of appreciation to all
611 those involved in putting together the booth to congratulate them on the good job they did
612 and for receiving the award.

613 Manager Koch said he has not seen any status update on the rules violations on Lotus Lake.
614 Administrator Jeffery said they have until December 23rd to come forward with their
615 completed application, and everything that is required with that in compliance with District
616 Rule C and Rule J. He said if they do not come forward with everything required by that
617 date, he will direct staff to initiate enforcement action, which will include setting and
618 notifying the Board of a date for an enforcement hearing before the RPBCWD Board of
619 Managers, which Administrator Jeffery would anticipate would be held at the Board's
620 February meeting.

621 Manager Koch said he appreciates the update and asked staff to include this type of
622 correspondence in Board packages going forward.

623 President Ziegler reported there is a property going up for sale on the northeast corner of
624 Duck Lake. He said it might be a good place for a permanent watershed home or a wetland
625 restoration. President Ziegler said he does not know if it would make sense to have District
626 staff find out what the price would be and talk to the City to see if zoning would be
627 appropriate for the watershed district.

628 Manager Koch said he thinks the District has other things to spend money on, and there is
629 always a liability concern about owning any property abutting standing water or water
630 bodies. He said the District could consider reaching out to the Nature Conservancy and the
631 Minnesota Land Trust to see if they would want to contribute to the acquisition of that
632 property and for it to be maintained as a park by the City. Manager Koch said there is
633 money out there and the District should make applications and help look into the property
634 being acquired by an entity, but he does not think we should be owning property like that
635 for the reasons he stated.

636 Manager Crafton said she thinks the Board should ask staff to explore the opportunity. She
637 said there might be some options out there to help the District pay for it and if the District

638 developed a project to improve the property, the District could apply for Clean Water funds.
639 Manager Pedersen supported staff looking into it.

640 Manager Koch said he thinks the District could get more leverage by requiring
641 developments to implement conservation practices and soil health practices.

642 Manager Duevel said it seems more and more that governmental units have a role in things
643 like these and play a nontraditional role, so he thinks it is worth taking a look at. He
644 commented the City of Minnetonka is looking at acquiring a facility and it seems like it
645 serves the public interest in a way that commercial interest would not, and this idea the
646 Board is discussing might be an offshoot of that.

647 President Ziegler said the first thing to do is have staff look into it without spending too
648 much time and money and see what opportunities it might present as well as investigating
649 grants for what could be done with the property, what we spend today for the District office,
650 and what it could cost to build on the property.

651 Manager Crafton reported about the Strategic Committee that she and President Ziegler both
652 sit on, and she talked about the Committee's new vision, organization, and expanded scope.

653 Manager Duevel asked for details about the upcoming MAWD legislative conference.
654 Manager Crafton shared details.

655

11. Administrator Reports

656 a. Update on meeting with Duck Lake Association representatives

657 Administrator Jeffery said he and Staff Forbes met with the technical committee of
658 the Duck Lake Association. He reported the group talked about the three possibilities
659 for the outlet to Duck Lake, including leaving as it is, trying to increase its elevation
660 to its 1974 or 1969 level, or restricting the orifice and trying to mimic the conditions
661 there before the structure was modified. He said the third option would be easiest to
662 permit. He said he will be meeting Robert Ellis of the City of Eden prairie to discuss
663 the outcome of this meeting and discuss next steps. Administrator Jeffery said we
664 will need Barr to put together a Task Order to come back to the managers regarding
665 designing a restricted orifice outflow on Duck Lake and to model that and go through
666 the permitting process. He said the chair of the Duck Lake Association sent the
667 District a letter of support for that, which he will share with the Board at its next
668 meeting along with, hopefully, a task order for the Board to consider.

669 Administrator Jeffery said the Duck Lake Association seems very receptive to
670 looking at a whole lake management plan. He said he thinks it is a good opportunity
671 to look not only in-lake but the upland surrounding the lake as well.

672

673 **b. Lotus Lake Conservation Alliance Partnership Update**

674 Administrator Jeffery reported staff met with the Lotus Lake Conservation
675 Alliance (LLCA). He said staff will meet again next week with the LLCA to
676 get their input on the plan and incorporate feedback into the plan, and then
677 Staff Maxwell will apply for the grant for Eurasian watermilfoil control on the
678 lake.

679

680 **c. Mitchell Lake Association Meeting Update**

681 Administrator Jeffery reported he is meeting with the Mitchell Lake
682 Association next Tuesday to talk about the lake management plan and discuss
683 responsibility for Curlyleaf pondweed harvesting.

684 Administrator Jeffery said staff is holding a lake association conclave in
685 February to share perspectives, talk about what different lake associations are
686 doing, and foster partnerships.

687 President Ziegler said he believes some of the Clean Water funds are available
688 to nonprofits like lake associations that are not available to LGUs, so it seems
689 the District should make sure the lake associations know they can apply for
690 those funds.

691

692 **d. IT Vendor**

693 President Ziegler noted this item was discussed earlier in the meeting.

694

12. Legal Counsel Reports

695 Mr. Smith reminded the Board that earlier this year Spring Valley Friends brought a law
696 suit against the District concerning the Noble Hills development, and the law suit was
697 dismissed by the district court He said there were two claims, one relating to the untimely
698 appeal of our permit decision and the other regarding their MERA claim, which was
699 dismissed because they failed to follow the proper process, and that was dismissed
700 without prejudice to bring that again.

701 Mr. Smith reported Spring Valley Friends appealed the whole district court decision on
702 both issues to the Minnesota Court of Appeals. He explained the Minnesota Court of
703 Appeals identified the dismissal of the MERA claim without prejudice is not appealable.
704 Mr. Smith said there will be further briefing on that, and the court is likely not to accept
705 appeal on that but likely will accept the appeal of the Watershed District permit decision
706 and that will probably take at least nine months to be addressed by the Minnesota Court

707 of Appeals. He said if the managers have more questions or want more discussion on this,
708 it may be appropriate for closed session.

709 Manager Koch asked when the permit expires. Administrator Jeffery said the permit
710 holder filed for an extension, and the permit expires in August 2023.

711 Manager Koch suggested the District look into an easement to a land trust or conservancy
712 if not an outright property purchase of the Noble Hills area, particularly the slope area.

713 Manager Crafton said she supports Manager Koch's comments and his idea of
714 researching something.

715 Manager Koch asked about the status of the suit against Eden Prairie. Mr. Smith said it
716 was proceeding to trial but there was a delay. Administrator Jeffery said it is delayed until
717 March 2023.

718 Manager Koch said if the property owner did some conservancy easements, there could
719 be tax benefits. President Ziegler asked if Administrator Jeffery has resources to look into
720 these things like the easement to a land trust or conservancy or outright property
721 purchase. Administrator Jeffery said he would first talk to legal counsel to see what the
722 implications are of inquiring at this time and then look into the Minnesota Land Trust.

723

13. Upcoming Board Topics

- 724 a. **Review of 2022 Project and Program Activities – January 2023**
- 725 b. **Hennepin County – Climate Action Plan – January 2023**
- 726 c. **Rule Review Status Report – January 2023**
- 727 d. **District 2023 Work Plan – January 2023**
- 728 e. **Appointment of Officers and Board Committee Members – January 2023**
- 729 f. **UofM Pond Study Findings – February 2023**
- 730 g. **Appointment of CAC Members – February 2023**
- 731 h. **Strategic Planning – February 2023**
- 732 i. **U of M Pond Study Findings – December 2022**

733 Manager Koch asked staff to look at the Board topics and figure out which would be
734 appropriate for the Board's January and February work sessions.

14. Upcoming Events

- 735 • RPBCWD – Volunteer Recognition Event – January 13 or 20, 2023
- 736 • Chanhassen Feb Fest – February 4, 2023
- 737 • RPBCWD – Lake Associations Summit – February 9, 2023

- 738 • Riley Purgatory Summit – TBD

739 Manager Koch asked if there are details available for the volunteer recognition event.
740 Administrator Jeffery said it will be held at the Staring Lake Center and there will be more details
741 to come. Manager Koch said for the Chanhassen Feb Fest, the District needs an elevated sign, not
742 just a table skirt. He recommended staff get yellow vests to wear while walking around and also
743 suggested staff set up a schedule of volunteers for the event.
744

15. Adjournment

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

747

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

748

749 The meeting adjourned at 11:09 p.m.

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Respectfully submitted,

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Dorothy Pedersen, Secretary

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