

**RESOLUTION NO. 22-076**

**RILEY PURGATORY BLUFF CREEK WATERSHED DISTRICT  
BOARD OF MANAGERS**

**September 14, 2022**

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**RESOLUTION OF CENSURE OF MANAGER LARRY KOCH**

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Motion by Manager Pedersen seconded by Manager Crafton to adopt the following resolution:

WHEREAS, during a closed session meeting of the Board of Managers, Interim Administrator Terry Jeffery made a complaint that Manager Larry Koch had created a hostile work environment;

WHEREAS, the in the same meeting the Board of Managers directed legal counsel to bring to the Board a recommendation for an outside law firm to conduct an investigation of this claim, and on April 18, 2022, the Board of Managers voted to retain Jessica Schwie of Kenney & Graven to conduct this investigation;

WHEREAS, on or about June 23, 2022, Ms. Schwie submitted her Investigation Report, which in summary concluded that “the complaint of a hostile work environment within the meaning of the law is not sustained[, but that t]here is evidence, on the other hand, that Manager Koch violated District policies and expectations of behavior in the workplace by generally treating others without respect and dignity;”

WHEREAS, Ms. Schwie’s Investigation Report stated that the facts did not support a legal claim of hostile work environment, primarily because “when taken in the aggregate the alleged instances of mistreatment are not objectively severe or pervasive enough to allow for a finding of a hostile work environment” as that term is defined by law, and moreover, the District took sufficient reasonable remedial action to attempt to remedy the situation;

WHEREAS, Ms. Schwie determined that the investigation of a complaint of hostile work environment should also consider whether the complained of conduct violated any District policies;

WHEREAS, the Investigation Report concluded that while the conduct did not rise to the level of a legal claim for hostile work environment, Manager Koch’s conduct violated the District’s Code of Conduct Policy by his treatment of Administrator Jeffery, Manager Dorothy Pedersen, and Manager Jill Crafton, by statements and behaviors that were dismissive, belittling, shaming, condescending, intimidating and disrespectful; thereby violating the following provisions of the Code of Conduct:

- a. "Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Disrespectful behavior, conduct that does not respect abilities, experience, and dignity toward staff is not accepted."
- b. "It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about District staff, other Board of Managers members, their opinions and actions."
- c. "Board of Managers members are constantly being observed by the community every day that they serve in office. Their behaviors serve as models for proper behavior in the District. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by Board of Managers members, 24 hours a day, seven days a week. It is a serious and continuous responsibility."

WHEREAS, the Board agreed that because the investigation of the complaint of a hostile work environment revealed the violation of the District's Code of Conduct on workplace conduct, it was reasonable for Ms. Schwie to investigate the violation and to include her conclusions in the Investigation Report; and

WHEREAS, the Investigation Report considered whether Manager Koch retaliated against Administrator Jeffery for making his complaint of a hostile work environment, and though found examples of retaliatory intent, concluded that because the District through a quorum vote of its Board of Managers elected to hire him as Administrator notwithstanding Manager Koch's objections, there was no retaliation realized;

WHEREAS, beginning on or about June 27, Manager Koch submitted roughly thirty (30) data requests concerning matters related to the investigation; Manager Koch was promptly provided all of the exhibits to the Investigation Report, and also provided recordings of all of the interviews conducted by Ms. Schwie for the investigation; Manager Koch's other data requests included items such as "all communications concerning Manager Koch," and other expansive requests; District governance policies provide that "[a] manager's request for information that would require more than 15 minutes of the administrator's time must be approved by the board of managers. Cumulative requests that require more than 30 minutes of the administrator's time in one calendar month must be approved by the Board of Managers;" the District confirmed with the Minnesota Data Practices Office that Manager Koch's request may be considered either as a board member and thereby subject to the District governance policies to manage costs of information requests, or as a citizen, whereby pursuant to Minnesota Statutes Section 13.03 the District may charge for the costs of searching for and retrieving the data; the Board of Managers determined under its governance policies not to have the District incur the costs of responding to Manager Koch's outstanding data requests; Manager Koch objected to paying the estimated fees;

WHEREAS, the Board of Managers initially sought to schedule a special meeting for consideration of the Investigation Report in the month of July, and in response to Manager Koch's request for more time to prepare, held the special meeting on August 10; on August 4, 2022, the District notified Manager Koch pursuant to Minnesota Statutes Section 13.04, subdivision 4, of his right to contest the accuracy or completeness of the investigation report, and

that to exercise this right, it is required to submit a statement in writing describing the nature of the disagreement;

WHEREAS, at the closed session of the special meeting of August 10, Manager Koch read a prepared statement objecting to the process and to the content of the Investigation Report, which objections included improper notice of the August 10 special meeting due to failure to send notice by mail; that the scope of the Investigation Report improperly extended beyond consideration of the legal elements of hostile work environment to consider District policies and therefore all such content of the Investigation Report must be destroyed; that data he requested had not been provided pending payment of costs, and under Minnesota Statutes Section 103D.215, subdivision 5, District records must be open to inspection without limitation or requiring payment of fees; Mr. Jeffery never made a claim of retaliation; Ms. Schwie's interviews involved leading questions; and Ms. Schwie declined to appear before the Board of Managers to respond to questions about her Investigation Report;

WHEREAS, the Board of Managers has considered Manager Koch's comments and concerns about the investigation and process, and concludes that the August 10 meeting was duly noticed; the Investigation Report was within the authorized scope as it was reasonable for Ms. Schwie's investigation to consider the District's Code of Conduct policies; the findings in the Investigation Report are supported by substantial evidence and the Report makes reasonable conclusions; that Manager Koch was provided with the entire file of exhibits and interview recordings included in Ms. Schwie's investigation; the District's responses to Manager Koch's data requests reasonably complied with the provisions of the Data Practices Act and advice from the Minnesota Department of Administration Data Practices Office;

WHEREAS, the Board of Managers has no disciplinary authority concerning a board member, other than censure or criticism of conduct not in keeping with Board's policies;

THEREFORE, BE IT RESOLVED that Board of Managers hereby adopts the following conclusions:

1. The Investigation Report reasonably and properly concluded that the complaint of a hostile work environment within the meaning of the law was not sustained;
2. The Investigation Report reasonably and properly concluded that Manager Koch violated the District's Code of Conduct provisions related to respectful workplace conduct by statements and behaviors that were dismissive, belittling, shaming, condescending, intimidating and disrespectful of others; and thereby warranting this resolution of censure; and
3. The Investigation Report reasonably and properly concluded that there was no retaliation against Mr. Jeffery for making a complaint of a hostile work environment;

BE IT FURTHER RESOLVED that the Board of Managers concludes pursuant to Minnesota Statutes Section 13.04 that the Investigation Report is correct; Manager Koch is invited to provide a written copy of the statement he read on August 10, or a transcript of his comments shall be prepared, so that it is made a part of the record and this data shall be disclosed only if his statement of disagreement is included with the disclosed data;

BE IT FINALLY RESOLVED that the Board of Managers directs its legal counsel, pursuant to Minnesota Rule 8410.0040 to transmit this Resolution to the Carver County Administrator and Board of Commissioners as the appointing authority, for the Commissioners' due consideration of any further action to be taken in light of this Resolution.

The question was on the adoption of the resolution and there were 3 yeas, 1 nay, and 1 abstention as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
<b>CRAFTON</b>	<b>X</b>			
<b>DUEVEL</b>			<b>X</b>	
<b>KOCH</b>		<b>X</b>		
<b>PEDERSEN</b>	<b>X</b>			
<b>ZIEGLER</b>	<b>X</b>			

Upon vote, the president declared the resolution adopted.

Dated: September 14, 2022.

  
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 Dorothy Pedersen, Secretary

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I, Dorothy Pedersen, secretary of the Riley-Purgatory-Bluff Creek Watershed District, hereby certifies that I have compared the above resolution with the original thereof as the same appears of record and on file with RPBCWD and find the same to be a true and correct transcription thereof.

IN TESTIMONY WHEREOF, I set my hand this 16<sup>th</sup> day of Sept, 2022.