

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

August 2, 2023, RPBCWD Board of Managers Regular Monthly Meeting

PRESENT:

Managers:

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

Staff:

Zach Dickhausen, Natural Resources Coordinator
Liz Forbes, Communications Manager
Terry Jeffery, District Administrator
Joshua Maxwell, Water Resources Coordinator
Mat Nicklay, Natural Resources Technician
Scott Sobiech, Barr Engineering Company
Michael Welch, Attorney, Smith Partners

Other Attendees:

Rod Fisher
Zach Moen
Dylan Monahan
Michael Pressman
Leigh Stoakes, Xcel Energy
Mark Weber

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

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

1 President Ziegler called to order the Wednesday, August 2, 2023, Board of Managers Regular
2 Meeting at 7:01 p.m. He stated the Board is conducting this meeting via Zoom per the Board's
3 procedure due to concern about the Covid pandemic.

4 Administrator Jeffery called attendance for the Board of Managers as follows:

5

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

Pedersen	Present
Ziegler	Present

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Manager Koch raised a point of order. He said when the Zoom recording opened up there was a conversation going on between Mr. Welch and more than a majority of managers were present or listening to a part of that. Manager Koch expressed his objection and stated if that is the case it is a violation of the Open Meeting Law. He said any discussion should be recorded and during Managers’ Reports he plans to bring up other violations of the Open Meeting Law and the Minnesota Data Practices Act. Manager Koch requested pursuant to the Minnesota Data Practices Act a description of exactly what was discussed prior to the commencement of the recording of tonight’s meeting.

Administrator Jeffery said it was he, President Ziegler, and Mr. Welch speaking about the fact that the delegation memorandum has not changed and the resolution has changed and Mr. Welch is prepared to speak on the topic tonight should President Ziegler wish to add it to the meeting agenda. Administrator Jeffery said as Mr. Welch was speaking, Administrator Jeffery saw it was time to start the meeting and admitted everyone into the meeting at the same time.

Manager Koch said this is an after-the-fact explanation so he has severe reservations about that and it something that should not be conducted in any way, shape, or form and he thinks there were people on and speaking before the meeting had been convened. He said he will make a decision on whether to do anything else about it.

2. Approval of Agenda

25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

President Ziegler said there is an opportunity to add to the agenda a discussion item about the delegation of authority. He said Legal has reviewed the memo a second time and is prepared to speak about it. President Ziegler suggested the Board add the discussion item to hear what Legal Counsel has to say and the Board can act on it at the next Board meeting.

Manager Koch moved to approve the agenda with the following changes: remove all Consent Agenda items except 6e – Approve Final Pay Application #11 for \$10,211.04 to Rachel Contracting for Lower Riley Creek - and not take up the issue of delegation until the Board has had the opportunity to review the documents.

Manager Crafton said she would like to have the delegation item on the agenda. The motion died due to lack of a second.

Manager Pedersen moved to accept the agenda with the modification to remove all Consent Agenda items except 6e and adding as part of agenda item 10c - Legal Counsel Report – an item for Attorney Welch to talk about the delegation memo. President Ziegler seconded the motion. Manager Koch asked if the memo is linked in the online agenda. Mr. Welch said the memo has not changed from the last time the managers received it in the previous meeting packet.

40 Manager Koch said the statute is specific about having documents available during the meeting
 41 and he is not going comment on something that he has not had appropriate time to review. He
 42 reiterated manager complaints about wasting time on items in which the documents have not been
 43 made available. He said this should be a matter for a workshop in which Mr. Welch presents the
 44 information. Manager Koch said he objects to this proposed agenda item because it is a violation
 45 of statute.

46 Administrator Jeffery requested removing item 8F - Permit Review for House on Frontier Trail
 47 because the review and information are not yet complete.

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

49

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

50

3. Matters of Public Interest

51 Mr. Rob Fisher, President of the Duck Lake Association and resident on South Shore Lane, Eden
 52 Prairie reported three shoreline properties along Duck Lake have been renovated to native plants
 53 and also one property has installed rain gardens thanks to participating in the District’s cost-share
 54 program.

55

4. Reading and Approval of Meeting Minutes

56 **a. Approve Minutes of the July 12, 2023, Regular Monthly Meeting of the RPBCWD**
 57 **Board of Managers with Continuations on July 17, 20, and 26, 2023**

58 Manager Koch moved to waive the reading of the minutes and to approve as presented the
 59 minutes of the July 12, 2023, Regular Monthly Meeting of the RPBCWD. Manager
 60 Pedersen seconded the motion.

61 Manager Crafton noted edits on the minutes of the July 12th meeting including page 5, line
 62 84 to replace “Donny” with “Bonnie; Page 9, line 174 to replace “comes” with “to come”;
 63 line 207 change “its” to “the.” She noted an edit on the July 17th minutes, line 13, to
 64 correctly identify the manager who seconded the motion.

65 Manager Koch accepted Manager Crafton’s changes. Manager Pedersen accepted
 66 Manager Crafton’s changes. Upon a roll call vote, the motion carried 5-0 as follows:

67

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

68

5. Committee Reports

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

70 Manager Koch moved to table this item to next month’s Board meeting. President Ziegler
 71 seconded the motion. Manager Koch said he does not think it is appropriate to receive
 72 draft the minutes without a CAC representative present to speak about them. Upon a roll
 73 call vote, the motion failed with 3 votes against and 2 votes in favor as follows:

74

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

75

76 Manager Pedersen moved to accept the CAC minutes. Manager Crafton seconded the
 77 motion. Manager Koch objected to accepting draft minutes without a CAC member
 78 present. Upon a roll call vote, the motion carried 4-1 as follows:

79

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

Duevel	Yes
Koch	No
Pedersen	Yes
Ziegler	Yes

80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111

b. Confirm Board Representative for August 21, 2023, CAC Meeting

Manager Duevel volunteered to be the Board representative at the CAC’s August 21, 2023, meeting.

c. Receive Governance Committee Report and Minutes

President Ziegler said the draft minutes were attached to the Board packet.

President Ziegler moved to accept the Governance Committee report as written and provided. Manager Duevel seconded the motion.

Manager Koch said in reading the minutes and having been on the Governance Committee before, he comes away with the presence that Administrator Jeffery is trying to commandeer the Committee and its positions based upon not only delegation of authority but also the Governance Manual and its provisions.

Manager Koch quoted the Committee minutes regarding the topic of delegation of authority and a statement that most metro watershed districts participating in metro-wide regulatory delegate most everything to the administrator except for variances or projects. Manager Koch said he does not know if that is true but he certainly would not take it at face value without having some facts to support that and to know exactly what they are delegating and how and with what limitations. Manager Koch said he puts it to the Governance Committee that before it makes a decision, and maybe Mr. Welch can chime in, that until Manager Koch sees it in writing he has some doubts of substantiations of positions of other the watershed districts similar to the NMCWD.

Manager Koch commented that during the Committee meeting Mr. Welch shared a resolution and Manager Koch does not see the resolution was provided or attached as part of the agenda. Manager Koch asked to be corrected if he is wrong about this. Manager Koch said if the resolution was not attached or provided it is another violation of the Open Meeting Law. He said it seems to be a bad habit of not following the precise statute of making sure a copy is available for review. Manager Koch said he is confident it clearly does not mean the copy on the screen. Manager Koch referenced a Committee discussion about what materials to provide at the meeting. Manager Koch suggested Legal Counsel and the Governance Committee review statute to make sure they are following statutes

112 when deciding what language to include in the Governance Manual regarding retention
 113 and presentation of documentation.

114 President Ziegler amended the motion to include a screen shot of what was shared on the
 115 screen during the meeting but not shared in the notes. Manager Duevel accepted the
 116 amendment.

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

118

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

119

120 **d. Receive Audit and Finance Committee Report**

121 Manager Crafton moved to receive the Audit and Finance Committee Report from the
 122 July 11th Committee meeting. Manager Duevel seconded the motion.

123 Manager Koch said the minutes note the sharing of a report from the Forest Lake
 124 Watershed District and unless the report was posted and available at the time of the
 125 meeting then it is a violation of the Open Meeting Law.

126 Manager Koch stated he thinks there is a misreading and overbroad reading of state statute
 127 103B and the statute actually requires approval item-by-item and as a result should be
 128 reported item by item. Manager Koch said he thinks the District should maintain on its
 129 financial report a monthly budget a project-by-project itemization.

130 Manager Koch asked for an explanation about the reference to Minnesota Statute 118A
 131 and concerns about the processes of investments.

132 Manager Koch mentioned that under the discussion of per diem payments he has provided
 133 links to the IRS website stating payments to government officials is reported income as
 134 W-2s not 1099s. He asked that anyone advising the District be aware of the IRS
 135 information and to be able to show the District specific authorization for reporting per
 136 diems as 1099s. Manager Koch said he looks forward to a discussion of other forms of
 137 payment like bill.com. Manager Koch said unless someone can show legal authority for
 138 1099s then per diems should be reported as W-2s. He said he thinks it is a good topic for
 139 Minnesota Watersheds to look into. Manager Koch reiterated his point that IRS
 140 documents referring to government officials refer to W-2s not 1099s.

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

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

143

6. Consent Agenda

144 President Ziegler listed the item on the Consent Agenda - item 6e – Approve Final Pay
 145 Application #11 for \$10,211.04 to Rachel Contracting for Lower Riley Creek.

146 Manager Koch to adopt Resolution 23-052 with the insertion of the description for the
 147 approval of pay application to Rachel Contracting as set forth in item 6e of the agenda.
 148 Manager Crafton seconded the motion. Upon a roll call vote, the motion carried 5-0 as
 149 follows:

150

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

151

7. Old Business

152 [No Old Business items on the agenda.]
 153

8. New Business

154 **a. Items Removed from Consent Agenda**

155 **i. Receive July Staff Report**

156 Manager Duevel moved to accept the July staff report. Manager Pedersen
 157 seconded the motion.

158 Manager Koch asked if there is a report or one that can be made for the
 159 managers regarding the grant applications and their status.

160 Manager Koch said he sent staff a number of comments and concerns regarding
 161 clarifications on the website and he has not received a response.

162 Manager Koch said he thinks all of the District’s meetings including Committee
 163 meetings should be posted on the District’s YouTube channel.

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

165

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

166

167 **ii. Receive July Engineer’s Report**

168 Manager Koch moved to accept the Engineer’s Report. Manager Crafton
 169 seconded the motion.

170 Manager Koch said the District should not be giving away its time and asked if
 171 the District tracks the calls staff field regarding permit pre-applications. Scott
 172 Sobiech said pre-application phone calls and emails are assigned to the general
 173 permitting number. Manager Koch asked the engineers and staff to discuss and
 174 consider a method of capturing the information per permit.

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

176

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

Pedersen	Yes
Ziegler	Yes

177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197

iii. Receive July Regulatory Report

Manager Koch moved to accept the July regulatory report. Manager Crafton seconded the motion.

Manager Koch said regarding the Laredo Drive property that did a demo without a permit, he wants to make sure the District recoups all costs the District is incurring for dealing with this matter. He said he heard what sounded like tons of rocks being dumped from a dump truck and he wants to make sure that is investigated.

Manager Koch asked about the April and May items in the report and if the projects are able to proceed. He said his view is the projects should stop until permitted.

Mr. Jeffery summarized the different scenarios of project tasks that can proceed and projects that cannot. He said it would be a good workshop topic for the Board to discuss setting thresholds and determining steps and stages of regulatory action. Manager Koch said the District needs to make it known the District is serious about its rules. Manager Koch asked Mr. Jeffery to put this topic on the Board’s workshop schedule. Manager Koch said the District needs to review its rules and not wait for EHAP to be done before reviewing its rules. 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

198
199
200
201
202

iv. Approve Pay Application #7 for \$4,875 to Sunram Construction for Middle Riley Creek

President Ziegler moved to approve pay application #7 for \$4,875 to Sunram Construction for Middle Riley Creek. Manager Pedersen seconded the motion.

203 Manager Koch raised his concerns about running the vegetation management
 204 term through July 20 instead of at least the full seasonal time period. Mr.
 205 Sobiech responded the term is such because July 20, 2023, marks the first full
 206 year of maintenance.

207 Manager Koch asked to receive a non-locked version of the document.
 208 Administrator Jeffery said staff could provide a non-locked unsigned copy.

209 Upon a roll call vote the motion carried 5-0.

210

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

211

212 **v. Approve Pay Application #7 for \$9,500 to Sunram Construction for**
 213 **Pioneer Wetland Restoration**

214 Manager Crafton moved to approve pay application #7 for \$9,500 to Sunram
 215 Construction for Pioneer Wetland Restoration. Manager Pedersen seconded the
 216 motion.

217 Manager Koch said he has the same questions and comments on this pay app as
 218 he had on the pay app in the previous discussion. He suggested staff review its
 219 contracts and consider a term that stretches across the end of the season.

220 Upon a roll call vote the motion carried 5-0.

221

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

222

223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253

b. Accept June Treasurer’s Report

Manager Crafton moved to approve the June Treasurer’s report, which was reviewed in line with the District’s internal controls and procedures. Manager Pedersen seconded the motion.

Manager Koch remarked he likes the Valley Branch report format.

Manager Koch said regarding the District’s Visa payments it seems the process is inconsistent and it is unknown if the Board has approved the amounts paid. He said it seems to him not a best practice. Manager Koch suggested the Audit and Finance Committee look at the monthly Treasurer’s Reports before they go out. He said the report about the Visa is an issue. He said the report lists the credit card as the vendor and Visa is clearly not the vendor and he does not think it is a generally accepted accounting standard because it does not show how much the District is spending on a particular vendor and is very hard to spot fraud or other issues unless reviewed in an audit and he is not sure an auditor would even spot it when a credit card is listed as a vendor.

Manager Koch said he thinks the accountant costs for working on the audit should be recorded as an audit cost. Manager Koch stated his concern about the report showing a negative number regarding the US Bank balance.

Manager Koch said he submitted two per diem claims, one at the beginning of June and one at the beginning of July and he has not received payment for either one of them. He said there has been way more than enough time to process the uncontested portions of the claims. Manager Koch referenced the Minnesota Wage Theft law and said he thinks there should be concerns about not paying these wages. Manager Koch said in spite of the fact they are called per diems and there is a set amount to be paid per day, under state statute there is no such thing that limits the amount to be paid only a maximum per day although that is probably superseded by the Federal Minimum Wage laws. He suggested staff, accounting, finance, and legal look into the matter and said he expects to receive interest and whatever other payments entitled to him under the Wage Theft Law to be paid to him no later than the next meeting.

Upon a roll call vote the motion carried 4-1.

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

254
255
256
257
258
259
260
261

c. Resolution 23-053 Approving Payment of the Bills

Manager Crafton moved adoption of Resolution 23-053 Approving Payment of the Bills. Manager Pedersen seconded the motion.

Manger Koch repeated all the comments he made about the bills to be paid that he made in the acceptance of the Treasurer’s Report.

Upon a roll call vote the motion carried 4-1.

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

262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281

d. Approve Variance from Rule B – Floodplain for Placement of Fill within Floodplain

Mr. Sobiech displayed a map “2022-074 Xcel Service Center.” He explained the proposed development is located on 22 acres south of Highway 5 and west of Audubon Road in Chanhassen and the permit applicant is Xcel Energy. Mr. Sobiech said the proposed project would disturb 17 acres and create 9.65 acres of impervious surface. He described the proposed impacts to the four water resources located on the property.

Mr. Sobiech summarized the proposed project is generally compliant with the District’s rules with a lot of the same conditions the District typically sees during permit reviews.

Mr. Sobiech said one unique condition to this permit is a condition under Rule G about a slight design adjustment such as to reduce the flow to the tributary or for the applicant to demonstrate the flows will not result in increased erosion in that water course.

Mr. Sobiech said the applicant is requesting a variance from the District’s flood plain rule. He reminded the Board the project proposes to completely eliminate the wetland located in the southern portion of the property. He said the District’s rules require providing compensatory storage in the floodplain adjacent to that water feature. Mr. Sobiech explained that waterbody will be eliminated so the applicant is unable to provide compensatory storage adjacent to the water feature, which is why the applicant is requesting a variance.

282 Mr. Sobiech went through the District's Rule K - Variance Criteria. He reminded the
283 Board that Rule K requires the Board of Managers to find that because of unique
284 conditions inherent to the subject property the application of rule provisions will impose
285 a practical difficulty on the applicant, and he went through the six criteria the District
286 uses to assess variance requests.

287 Mr. Sobiech summarized the rate control analysis, abstraction analysis and water quality
288 assessment submitted demonstrate compliance with the District's rules as well as
289 indicate no off-site adverse effects or impacts on government services. He reported that
290 because the project involves a net increase of storage below the 100-year flood
291 elevation of the wetland being filled, the proposed alterations are not likely to adversely
292 affect offsite governmental services, water resources, flood levels, or neighboring
293 properties and the proposed variance only impacts the applicant's property. Mr. Sobiech
294 noted the applicant created the circumstances requiring the variance but did so with
295 approval of the City of Chanhassen, which is the LGU [Local Governmental Unit].

296 Manager Koch said he is hearing that the water retention will be in the same general
297 area as the existing 30-square foot wetland. Mr. Sobiech said yes.

298 Manager Koch said he is concerned that the need for the variance is created by the
299 applicant. He said even though the WACA authority approved it, he is not sure that
300 approval absolves the applicant of responsibility.

301 Manager Koch said he is not sure the District's rules allow this and he thinks there is
302 room for reconsidering this District rule and to consider that even through the applicant
303 might have created it and increased storage, there should be something in the District's
304 rules other than this blatant statement that the applicant created the need for the
305 variance. He said he thinks this is a logical issue and he does not see room for
306 exceptions in the District's existing rules. Manager Koch said he thinks the District's
307 rules need to be changed and he is hesitant to approve this variance because of the
308 language in the District's rules. He asked if the District's rules have any type of
309 balancing language in its variance rule to allow the District to ignore one rule because
310 of another rule.

311 Mr. Sobiech said the only path the applicants have to not comply with the District's
312 criteria is a variance approved by the Board or the exception provision provided in Rule
313 K.

314 Manager Koch said his understanding is that the proposed project will provide better
315 protection and the Board should include that point as one of the bases for granting the
316 variance. Mr. Sobiech responded the proposed project will reduce the runoff rate greater
317 than is provided on the property today, but the District already requires that to meet the
318 District's stormwater criteria.

319 Mr. Welch said a variance request is required for this proposed project because the
320 project does not meet the District's rules for compensatory storage. He said the
321 proposed design, approved in part by the City of Chanhassen, creates the problem, but
322 the managers' hands are not tied. He said the District's variance factors are factors

323 instead of a checkbox of technical criteria. He said this is within the Board's
324 determination to make the decision and he thinks Mr. Sobiech is very comfortable with
325 the technical basis on which the managers could base their approval of this variance.

326 Manager Crafton asked Mr. Jeffery if no wetland functions are being lost in this
327 proposal. Mr. Jeffery said yes in this specific instance because of the degraded nature of
328 the existing wetland, which provides no habitat and has limited rate control and limited
329 storage. Manager Crafton said the water cycle is being disrupted and she is concerned
330 about it and she hopes that Xcel and future facilities would try to protect wetlands or
331 enhance them instead of filling them in. She said wetlands are very important to the
332 environment and she is very disturbed this project has been designed this way. She said
333 she will vote against this in terms of justice.

334 Mr. Welch said Zach Moen represents the applicant and is present at tonight's meeting.
335 Mr. Moen introduced himself and said Lee Stokes, the project manager with Xcel, is
336 also in attendance. Mr. Moen described the WACA process the project went through.
337 Mr. Stokes pointed out the storage pond provides more storage than the existing
338 wetland.

339 Manager Crafton encouraged the project to enhance the wetlands to make them more
340 functioning.

341 Manager Pedersen referred to variance applications in general and the amount of
342 pervious surface being lost because of what the District is allowing to be permitted. She
343 said she thinks the Board will be tested time and time again with projects that come in
344 front of the Board for permits. Manager Pedersen said climate change is not getting any
345 better. She said she is not seeing in the proposal a lot of native trees that should be
346 included. Manager Pedersen said she understands the proposal provides additional
347 compensatory storage but she would like Xcel to work to improve the wetland and use
348 native vegetation materials.

349 Manager Koch moved to adopt the resolution on page 1 of the report, which reads Be it
350 Resolved that the variance request for Permit 2022-074 from compliance with Rule B,
351 subsection 3.2b is approved, based on the facts and analysis provided by the RPBCWD
352 engineer below and the information provided by the applicant and placed in the record
353 at the August 2, 2023, meeting of the managers, and the managers find based on all the
354 facts and circumstances that this variance should be approved. President Ziegler
355 seconded the motion with the amendment of making the footprint of the two stormwater
356 BMPs larger, meaning more acres, and having the engineers work together to maximize
357 the area of those BMPs. Manager Pedersen moved to amend the motion to incorporate
358 her comments about using better native plant materials.

359 Manager Koch said unless there is something in the District's rules requiring the
360 applicant to expand the ponds or requiring a different list of vegetation then the Board
361 cannot impose those things on the applicant. Manager Koch said he does not accept the
362 suggested amendments to the motion.

363 Manager Duevel seconded the motion as made by Manager Koch.

364 Mr. Welch said if the applicant comes forth with an application and a plan that the
 365 engineer finds meets the rules, then the applicant gets the permit. He said the managers
 366 can certainly ask for the applicant to try to maximize the areas of the BMPs and to ask
 367 for a review of the materials and improving the plants as they can. Mr. Welch said if the
 368 applicant agrees to those requests as additions to the action by the Board of Managers
 369 then he thinks legally the Board stands to solid legal ground to include those requests.

370 President Ziegler moved to amend the motion to request that the applicant consider
 371 maximizing the BMPS especially the wetland characteristics of the BMPs and include
 372 Manager Pedersen’s recommendation to request that the engineer/architect look closely
 373 at the plant materials and choose native materials more appropriately. Manager
 374 Pedersen seconded the motion.

375 Mr. Welch recommended hearing from the applicant as to their disposition as to the
 376 amendment.

377 Mr. Stokes of Xcel Energy said the applicant agrees to those amendments.

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

379

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

380

381 Upon a roll call vote, the motion to approve the variance carried 5-0 as follows:

382

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

383

384 Manager Koch commented the discussion highlights the Board’s need to review and
 385 discuss the District’s rules.

386
 387 **e. Approve Permit 2022-074 Xcel Energy Facility as Presented in the Proposed**
 388 **Board Action Section of the Permit Review Report**

389 Manger Koch moved to adopt the proposed resolution set forth at the bottom of page 1
 390 as they pertain to application for Permit 2022-074. Manager Pedersen seconded the
 391 motion. Upon a roll call vote, the motion to approve the permit carried 5-0 as follows:

392

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

393

9. Discussion Items

394 **a. Presentation of Proposed 2024 Draft Budget and Levy**
 395 Administrator Jeffery shared a PowerPoint presentation “Draft Budget and Levy
 396 Discussion – RPBCWD BOM Regular Meeting, August 2, 2023.” He said the proposed
 397 timeline for adopting the District’s 2024 budget is for the Board to adopt it after the
 398 budget public hearing at the Board’s September Board meeting. He said the draft budget
 399 for 2024, and moving forward to 2028, is predicated on an increase to the District’s
 400 opportunity projects for \$420,000 per year.

401 Mr. Jeffery summarized District projects to be implemented or modified per budget year
 402 from 2024 to 2028 and proposed an 8% levy increase in 2024, 9% levy increase in
 403 2025, 11% increase in 2026, 11% increase in 2027, and 14% increase in 2028.

404 Mr. Jeffery went through his revenue projection for 2024, for a total projected revenue
 405 of \$9,717,646.00 with revenue sources including the plan implementation levy, permits,
 406 grant income, investment income, past levies (carry overs), miscellaneous income,
 407 reimbursements, and partner funds.

408 Mr. Jeffery said regarding 2024 projected administrative costs, staff costs are proposed
 409 to increase by \$165,629 to pay for two new fulltime positions and the 0.75% time office
 410 assistant. He said manager per diems are proposed to increase by 14% and all other
 411 administrative costs are proposed to increase by 2%.

412 Manager Koch asked if changing project years for District projects requires a watershed
 413 management plan amendment. Mr. Welch said the Minnesota Board of Water and Soil
 414 Resources usually does not see changing project years as requiring a plan amendment.
 415 He added that it would not hurt to include the year changes in the plan amendment if the
 416 District does a plan amendment, for example to add capital projects into the plan.
 417 Manager Koch said he would prefer to present the plan with amendments and go
 418 through the change process.

419 Manager Koch said the proposed 8% levy increase would probably make sense given
 420 inflation. He said as a taxpayer he would have concerns with levy increases of 9%, 11%,
 421 and 14%. Manager Koch said he would like to see Administrator Jeffery’s budget
 422 spreadsheet outline the breakdown of year-by-year, category-by-category so the
 423 managers can see what is going to be spread over future years. Manager Koch said he
 424 would also like to see a breakdown of estimates of what the District will spend per
 425 project in 2024 and another column in the overall one-page budget sheet to list the
 426 estimated spend in future years of funds already levied.

427 At 10:10 President Ziegler called for a five-minute recess. The Board recessed at 10:10
 428 p.m. and readjourned the meeting at 10:16 p.m.

429

b. Fall Tour

431 Administrator Jeffery suggested holding the District’s fall tour the last week of
 432 September and asked the managers to email him with dates that work during that week.
 433 Manager Pedersen said any day works for her except September 25th.

434 Manager Koch moved to have managers email Mr. Jeffery with their availability for the
 435 fall tour and for the Board to skip over the remaining agenda items through item 9e -
 436 Closed Session to Discuss the Potential for Acquisition of Property Located at 9955 and
 437 9875 Spring Road, Eden Prairie, MN and PID 2811622320005. Manager Pedersen
 438 seconded the motion. Mr. Welch recommended the Board receive a brief update on the
 439 Spring Valley Friends vs. RPBCWD, which is meeting agenda item 9d. Manager Koch
 440 amended his motion to include on the agenda a brief update from Legal Counsel on
 441 Spring Valley Friends vs. RPBCWD. Manager Pedersen agreed to the amendment.
 442 Upon a roll call vote the motion carried 5-0.

443

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

Ziegler	Yes
---------	-----

444

445

c. Lake Ann

446

[Item skipped per Board action in agenda item 10b.]

447

448

d. Update on Spring Valley Friends vs. RPBCWD

449

Mr. Welch said the Minnesota Court of Appeals on Monday [July 31, 2023] released its decision on the appeal from Spring Valley Friends to that court in the matter of contesting the District’s issuance of a permit for the Noble Hills development. Mr. Welch said he describes the Court of Appeals’ opinion as hitting the ball down the pipe in favor of the District and in favor of the appeal of the District’s permit decision being dismissed. Mr. Welch summarized that the Minnesota Court of Appeals upheld the District Court’s dismissal on the permit grounds. He said it is an unpublished decision. Mr. Welch said the appellants have 30 days to file for a writ of certiorari to the Minnesota Supreme Court to hear further appeal of the matter. He said Legal Counsel has not received any information yet from the appellant regarding their intent in that regard. He said at this point the appellant has not filed for a writ of certiorari.

450

451

452

453

454

455

456

457

458

459

460

Mr. Welch said the Court of Appeals’ decision means the District’s permitting decision challenge is dismissed. He said remaining is the possibility of refileing the complaint under the Minnesota Environmental Rights Act but Legal Counsel has not received any information at this time regarding this intent.

461

462

463

464

465

e. Closed Session to Discuss the Potential for Acquisition of Property Located at 9955 and 9875 Spring Road, Eden Prairie, MN and PID 2811622320005

466

467

Manager Koch moved to go into closed session for the purpose of developing terms for the potential acquisition of property located at 9955 and 9875 Spring Road, Eden Prairie, Minnesota and Minnesota Property ID (PID) 28116223220005. Manager Pedersen seconded the motion.

468

469

470

471

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

472

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

Ziegler	Yes
---------	-----

473

474

The Board moved into closed session at 10:23 p.m.

475

The Board reconvened the public regular monthly Board meeting at 10:48 p.m.

476

Manager Koch moved to continue the meeting to 6:30 p.m. on Thursday, August 17.

477

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

478

follows:

479

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

480

481

At 10:49 p.m. the Board continued the meeting to Thursday, August 17, 2023, at 6:30

482

p.m.

483

10. Member Reports

484

a. Manager Reports

485

[Continued to August 17.]

486

487

b. Administrator Reports

488

[Continued to August 17.]

489

490

c. Legal Counsel Reports

491

[Continued to August 17.]

492

11. Upcoming Board Topics

493

[Continued to August 17.]

494

12. Upcoming Events

495 [Continued to August 17.]

496

13. Adjournment

497 [Continued to August 17.]

498

499

500

Respectfully submitted,

501

502

503

Dorothy Pedersen, Secretary