

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

February 2, 2022, RPBCWD Board of Managers Work Session and Regular Monthly Meeting

PRESENT:

Managers:

Jill Crafton, Treasurer
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
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:

Chesney Engquist*	Jesse Mercado*
Nicole Banks*	Neelam*
Sue Bennett*	Rebecca Prochaska*
Jeff Borowiak*	Paul D. Reuvers*
Paige Carlson*	Otto Strack, PhD. *
Heidi Groven*	Marilyn Torkelson
Susu Jeffery*	Teri Willow*

Note: the Board workshop and meeting were held remotely via meeting platform Zoom in abidance with the District's procedures in response to state COVID-19 actions, mandates, and guidance.

*Indicates attendance at the Board meeting only

1. Workshop

- 1 At 5:02 p.m. on Wednesday, February 2, 2022, Mr. Josh Maxwell, District Water Resources
- 2 Coordinator, started his presentation of the District's 2021 water quality program activities and
- 3 results. He shared the PowerPoint "2021 Water Resources Report." Mr. Maxwell said he will
- 4 present about the water quality of the watershed's creeks, including Bluff Creek, Riley Creek, and
- 5 Purgatory Creek, and lakes, including the Riley Chain of Lakes and Purgatory Creek Chain of
- 6 Lakes. He noted he will address alum treatments, carp monitoring, plant management, and AIS,
- 7 among other updates.

8 Mr. Maxwell talked about the 2021 water quality monitoring program and monitoring sites. He
9 provided details about impaired waters and the creeks' impairments. Mr. Maxwell gave a CRAS
10 update for Middle Bluff Creek.

11 Mr. Maxwell noted the low water flows in 2021, explaining Lake Susan saw an increase in algae.
12 Mr. Maxwell referenced the July and August algae results for Lake Susan, including record high
13 blue-green algae. He reported on the response of Rice Marsh Lake to the alum treatment,
14 explaining the lake responded really well. He stated cores from Rice Marsh Lake will be collected
15 in February, and the data will help determine when the second dose of the alum treatment will
16 take place.

17 Mr. Maxwell talked about zebra mussel population growth in Lake Riley, pointing out the growth
18 is very cyclical with booms and crashes. He said for example in Lake Riley the 2018 plate
19 inspections showed 4 zebra mussels per plate, in 2020 there were 2,623 per plate, and in 2021
20 there were 574 per plate. He summarized the 2021 carp monitoring on Lake Riley. Mr. Maxwell
21 noted there was a higher number of young of year captured in 2021, so the District will want to
22 consider installing a temporary barrier in the spring. Regarding Like Riley aquatic vegetation, Mr.
23 Maxwell said the District will likely perform a treatment for Eurasian Watermilfoil this spring.

24 Mr. Maxwell reported on the Purgatory Creek and Purgatory Creek Chain of Lakes water quality,
25 highlighting that all the lakes in the chain met the state's water quality standard for clarity. He
26 briefly talked about the 2021 alum treatment on Round Lake, and he said the City of Eden Prairie
27 conducted that treatment. He summarized the results of the Lotus Lake alum treatment and the
28 target areas that will be treated next. Regarding the zebra mussels survey for Lotus Lake, Mr.
29 Maxwell reported no veligers have been found since the initial ones were discovered, and in 2021
30 no adults were seen on the 10 plates, the scanning survey resulted in no zebra mussels found, and
31 the eDNA sampling showed evidence in three deep-water sites.

32 Mr. Maxwell ended the presentation with a report on Staring Lake's aquatic vegetation and
33 aquatic invasive species. He reported Eurasian milfoil has been steadily increasing since it was
34 first found, and the District is planning a whole-lake Fluoridone treatment this year.

35 Manager Koch said he has a number of questions and will provide them to Mr. Maxwell as to not
36 take up time now. Manager Koch said he would like to see from Mr. Maxwell his general
37 conclusions based on the data and any recommendations he has, based on the data shared, for
38 continuing as is or modifying the District's 10-Year Plan. Manager Koch commented that future
39 presentations such as this should be recorded, and the District should post the recording on its
40 YouTube channel.

41 Ms. Liz Forbes, District Grant Program Coordinator, presented on the District website update.
42 She shared a PowerPoint presentation titled "Website Refresh," and she went through the
43 proposed website updates. Ms. Forbes explained how the managers can provide feedback on the
44 proposed changes and asked for comments by February 14th.

45 The workshop concluded at 6:22 p.m.

46

2. Call to Order of Regular Monthly Meeting

47 President Ziegler called to order the Wednesday, February 2, 2022, Board of Managers Regular
48 Meeting at 7:00 p.m. The meeting was held remotely via meeting platform Zoom.

49

3. Approval of Agenda

50 President Ziegler announced the agenda changes requested by District staff. He said staff requests
51 adding an item to discuss a new application to the CAC and an update to the Board by Mr. Paul
52 Reuvers. Attorney Smith clarified his recommendation is the update by Mr. Reuvers take place in
53 closed session and be added to the agenda directly after item 10a – Attorney’s Report. President
54 Ziegler said one more agenda modification from staff is to accommodate the request by Professor
55 Otto Strack for additional time to comment, over the three minutes allotted in the Matters of
56 General Public Interest. President Ziegler said this item would come immediately after the
57 Matters of General Public Interest.

58 Manager Koch suggested the following agenda changes: adding as 6c the approval of new CAC
59 applicant as CAC member, add to 6d his Board liaison update on the past CAC meeting, to table
60 item 7a – Accept January Staff Report - until the Board’s next meeting, move item 7b – Accept
61 January Engineer’s Report – and 7g – Approve Resolution 2022-017 for Grant Agreement with
62 Eden Prairie Schools for a Chloride Reduction Grant Funded by the Lower Minnesota
63 Collaborative, and the item about the Chanhassen grant agreement off the Consent Agenda.
64 Manager Koch requested adding a closed session to discuss Mr. Jeffery’s leave of absence.
65 Attorney Smith clarified one proposed closed session would be related to the performance
66 evaluation of the District’s Interim Administrator, Mr. Jeffery, and the item Mr. Reuvers is
67 speaking to is a closed session to discuss litigation strategy in the Spring Valley Friends.

68 Manager Koch requested moving item 8b – Accept December Treasurer’s Report and 8c –
69 Approve Paying of the Bills – to the Consent Agenda, and tabling 8e -Approval of Final
70 Reconciliation of 2021 Budget – to a future meeting or the continuation of this meeting if there is
71 one, tabling 8f - Approve Fee Schedule and tabling 8g – Lotus Lake Violations Report – until the
72 Board’s next meeting or meeting when staff is prepared to speak on the item. President Ziegler
73 requested moving item 9a – Duck Lake Outlet Elevation off of tonight’s agenda and adding it to
74 the Board’s next meeting. Manager Koch noted he has two items to report under item 10d –
75 Manager Report.

76 Manager Koch moved to adopt the agenda with the modifications just presented. Attorney Smith
77 recommended the Board add to the agenda after item 8a, which is now the closed session
78 Evaluation of the Interim Administrator, a new item – the Appointment of a Temporary Interim
79 Administrator. Manager Koch accepted the recommendation of Attorney Smith as a friendly
80 amendment to his motion. Manager Pedersen seconded the motion. Manager Koch made the
81 friendly amendment to table item 8d – Accept 2021 Scoresheet. Manager Pedersen accepted the
82 friendly amendment.

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

84

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ziegler	Aye

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3. Matters of General Public Interest

86 President Ziegler summarized the District’s process for raising matters of public interest.

87 Ms. Sue Bennett stated it is her goal tonight and the goal of others who will speak tonight to share
 88 information with the Board and informally ask the Board to cancel the Spring Road permit. She
 89 listed the order of presenters and turned the floor over to the next presenter.

90 Ms. Chesney Engquist said she will be speaking tonight on biological imperative and ethical
 91 imperative. She said regarding biological imperative, biological imperative number 1 is she
 92 drinks water out of Minneaquan, which is sometimes known as Fredrick Miller Spring. Ms.
 93 Engquist said by compositions she is 70% water that comes from the watershed district this Board
 94 protects. She said it’s essential to her to understand the implication and impacts of any given
 95 project, action, or permit taken or granted by the Watershed Board. Ms. Engquist said she
 96 believes that in the District’s strategic action plan there’s an opportunity to examine the
 97 infrastructure rating of the segment of the creek that surrounds the spring. She said it is ranked
 98 quite lowly and as far as drinking water goes, we might want to examine that level of
 99 infrastructure and pay a little more attention and prioritize that segment of the spring. She said
 100 biological imperative number 2 is the situation where carbon cycling on the planet is out of
 101 balance to the tune of way too many parts per million of carbon dioxide in the atmosphere. She
 102 said it is her biological imperative to make sure we are considering any amount of canopy tree
 103 cover mycorrhizal network, which is sequestering the carbon and cycling oxygen into the air. Ms.
 104 Engquist said this project also would impact greatly in terms of deforestation and our carbon
 105 impact-footprint. She said what you have is a priority corridor of natural resource protection, and
 106 she referenced the county GIS map of the corridor along the river. Ms. Engquist said the parcel in
 107 question is an open green space where surrounding it is quite a bit of land that is a high
 108 percentage of impervious surface, and she doesn’t believe the cumulative impacts of that
 109 impervious surface increase has been studied, and she believes that needs to be considered. Ms.
 110 Engquist said regarding ethical imperative, her family has been in this land for five generations
 111 and has profited from the euro-colonial-industrial-centric practices for that time, and it’s
 112 appropriate and time now to give back and to make that right. She said she is here to
 113 acknowledge that this area is Dakota territory and sacred land, and it is not for her to profit or for
 114 any of us to profit, so we need to make that right and take into consideration the cultural
 115 significance of this place. Ms. Engquist said regarding the second ethical imperative, she is an

116 engineer, so when she learned about the potentially catastrophic design shortcomings and
117 inadequacy of the safety analysis, she read Dr. Strack's reports and reached out to her civil
118 engineering colleagues from the U and government agencies, and they have all reiterated and
119 confirmed Dr. Strack's preeminence in his field. She said she appreciates the Board taking time
120 this evening to hear what Dr. Strack has to say and his insights. Ms. Engquist said she believes
121 the Board will have enough information after that report, but if the Board doesn't, she suggested
122 the Board spend time in a special meeting with Dr. Strack to come to an understanding of what is
123 essential to make sure this project that is proposed is safe, and right now it is not. She urged the
124 managers to adhere to the hundreds of letters of petition as well as the months-long series of
125 testimonials from the public that the right thing to do and what we are called to do based on our
126 biological and ethical imperative is to cancel this permit and to make sure we are protecting the
127 land. She said she hopes that after this evening, we have an opportunity to move forward and
128 begin examining the critical infrastructure and cultural significance around this portion of the
129 creek that's adjacent to the spring. She thanked the Board for its time.

130 Ms. Nicole Banks thanked the Board for this opportunity to speak. She said she knows there are
131 many perspectives on this topic, and one perspective she represents is that of the American E
132 movement. She said there is new evidence showing this is a sacred site. She said we would like to
133 ensure the future generations get to enjoy the resources and have the history connected to our past
134 recognized and heard. Ms. Banks said she would like the Board to cancel the permit. She said
135 building here is not something we want, and we are going to continue to monitor what happens.
136 Ms. Banks said so if this just way to find a loop to get rid of the lenses, there is more interest in
137 the community, and leaders have asked her to be the point of contact for what happens in this
138 situation. She asked for that land to be protected, and she thanked the Board for listening.

139 Ms. Rebecca Prochaska thanked the Board for the opportunity to speak. She said she sent an
140 email earlier today addressed to all of the managers. She explained the email was a summary of
141 her concerns. Ms. Prochaska said she won't go into detail about the information in her email, but
142 she wants to preface Dr. Strack's presentation by stating that a lot of the prior discussion and
143 assessment on this permit was solely on the slope stability study back in August. She said what
144 was overlooked was the placement of the infiltration basins, which is another serious safety
145 concern as it relates to the engineering design. Ms. Prochaska remarked she is happy the Board
146 will hear Dr. Strack speak on that topic as he definitely has the experience and credentials. She
147 pointed out she has done further homework and found specific watershed rules, C, D, and J, are
148 not being met. Ms. Prochaska said she heard the sellers are trying to cancel the purchase
149 agreement, and with that along with the safety issues and the non-conformity to rules, she is
150 asking the watershed to cancel permit 2021-012. She said if the stance is being taken that the
151 project is being abandoned, then why would the Watershed District want to spend more time,
152 money, and resources on something that's not going to happen. Ms. Prochaska asked why the
153 District wouldn't just cancel the permit and why would the District keep the permit in place. She
154 asked again for the District to cancel the permit because it is still alive and can be transferred. Ms.
155 Prochaska said the Board will hear from Dr. Strack on why that's a bad idea.

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4. Dr. Paul Strack Comments

159 Mr. Paul Strack, PhD., shared his screen to show illustrations depicting soil with water in its
160 pores and the pores interconnected, noting that as pore pressure (water pressure) increases, the
161 pressure pushes the solid particles apart, which weakens the soil. He said this is a problem in
162 dealing with tremendous rainstorms and the resulting runoff. Dr. Strack said a solution being
163 utilized to deal with all the runoff is trying to capture some of the rainfall in a catch basin and
164 infiltrate it into the ground. He said this is a good idea, but the problem is if it is done in a slope,
165 it's no longer such a good idea.

166 Dr. Strack provided an explanation about soil particles, water movement, and soil stability, as
167 depicted in his illustration. He said regarding infiltration on a slope, when the pressure on soil
168 pores from water increases, the pressure pushes the soil particles apart, and the soil becomes
169 weaker. He explained if a basin is filled with water very rapidly, then the pressure in the soil and
170 on the slope also increases very rapidly, before the water can flow away, inducing weakness.

171 Dr. Strack said examining the stability of a slope is very difficult. He said it needs to be done
172 using very sophisticated field programs, such as FLAC3D as used by Barr Engineering. Dr.
173 Strack said in his opinion, before doing a project like the one proposed in Eden Prairie and before
174 building these kinds of slopes with infiltration ponds, quite a bit of research needs to be done. He
175 stated the evaluations that have taken place are standard engineering practice, but the problem is
176 that's no longer good enough. Dr. Strack said things like he has described can drastically change
177 what can happen in these slopes. He said as an engineer, he is really worried about the proposed
178 building on the slope and being faced with a collapsed slope with buildings on it, which is a risk
179 that can't be taken.

180 Dr. Stack said he is not saying he is certain that the building can't be done, but he is certain it
181 hasn't been examined carefully enough. He commented he has been involved in a project similar
182 to this one, and in that case, the project was cancelled because of this issue. Dr. Strack said
183 whatever happens here, he will try to get money to do the analysis for the state and get
184 engineering practices updated. He said as conditions changes, engineering practices need to be
185 changed. Dr. Strack said it is out of concern for safety that he shares this information. He said he
186 is not certain the slope would fail, but he is certain it would make the slope a lot less stable.

187

5. Reading and Approval of Meeting Minutes

188 a. **January 5, 2022, RPBCWD Board of Managers Regular Monthly Meeting**
189 Manager Ziegler moved to approve the minutes of the January 5, 2022, Board of
190 Managers Regular Meeting. Manager Crafton seconded the motion. Manager Pedersen
191 noted a correction to be made to the recorded votes on page 16 regarding the banking
192 signatures, to replace the word Pedersen with Ay. She said on line 688 to insert the word
193 "meeting" after "Personnel Committee" and later in that section add "to recommend to

194 the Board.” Manager Crafton noted on line 244 to remove TAC and insert CAC and again
 195 on line 268. Manager Ziegler and Manager Crafton concurred to the changes requested.

196 The managers agreed by consensus to the amendments to the minutes as described. Upon
 197 a roll call vote, the motion carried 3-0 with one abstention as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Abstain
Pedersen	Aye
Ziegler	Aye

199

200 **b. Board of Managers December 15 Continuation of December 8, 2021 Public**
 201 **Hearing and Regular Meeting**

202 Manager Crafton moved to accept the minutes of the December 15th continuation of the
 203 December 8th public hearing and regular meeting. Manager Pedersen seconded the
 204 motion. Manager Ziegler noted changing lines 218 and 219 to “...treatments available to
 205 melt ice, and a liquid ice melt is chlorine free.” He asked for a change on lines 221 and
 206 222 to read “...liquid ice melt pretreatment. He said if the chloride-free pretreatment turns
 207 out to be a better option than rock salt, the District could consider adding it to the
 208 District’s salt-reduction program.” Manager Crafton and Manager Pedersen agreed to the
 209 friendly amendment to include the revisions noted by Manager Ziegler.

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

211

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ziegler	Aye

212

5. CAC

213 **a. Report and CAC Minutes**

214 Ms. Torkelson reported the CAC had one person, Larry Koch as an individual, not

215 representing the Board, speak on Matters of General Public Interest on training for CAC
216 members and how the CAC conducts business. She said the CAC did not discuss the
217 items he raised, except the CAC chair did immediately implement the practice of taking a
218 roll call vote. Ms. Torkelson commented the practice is a lot easier when five people are
219 voting compared to twelve to fourteen people, which is the number of CAC members. She
220 noted the CAC set its 2022 calendar.

221 Ms. Torkelson said the CAC discussed the idea of a joint meeting between the CAC and
222 the Board of Managers once a year, such as when there is a workshop or action items of
223 interest to both the CAC and the Board. She said this would be one way to have the two
224 groups work together more closely.

225 Ms. Torkelson asked for clarification on the point raised in the Matters of Public Interest
226 that the sale of the Noble Hills property isn't going through. Attorney Smith said that
227 point is a matter of record that the purchase agreement conditions have not been met and
228 the purchase is not proceeding at this time.
229

230 **b. Confirm Board Representative for February 21 CAC Meeting**

231 Manager Pedersen volunteered to be the Board representative at the CAC's February 21st
232 meeting.
233

234 **c. Training**

235 Manager Koch discussed training he thought would be beneficial for the CAC and the
236 idea of joint training between the Board and CAC regarding laws and rules.
237

238 **d. Appointment to CAC**

239 President Ziegler reported the District received one additional application for the CAC.
240 Manager Crafton moved to appoint Mike Soernson to the CAC. Manager Pedersen
241 seconded the motion. Upon a roll call vote, the motion carried 4-0 as follows:
242

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ziegler	Aye

243
244 Manager Koch recommended the District send a short letter of congratulations to Mr.
245 Sorenson to welcome him to the CAC. The managers indicated agreement to the

246 recommendation. President Ziegler directed Ms. Bakkum to draft the letter for his
 247 signature.

248

7. Consent Agenda

249 President Ziegler listed items on the Consent Agenda items as revised by the Board under
 250 Approval of the Agenda. Manager Pedersen moved to approve the Consent Agenda. Attorney
 251 Smith reminded the Board it approved adding items 8b and 8c to the Consent Agenda. Manager
 252 Pedersen amended her motion to accept the Consent Agenda as presented by President Ziegler
 253 and Attorney Smith. Manager Crafton seconded the motion.

254 The Consent Agenda included items 7c – Accept January Construction Inspection Report, 7d -
 255 Approve Payment Application #2 for Rice Marsh Lake Water Quality Project, 7e _Approve
 256 Payment Application #3 for Middle Riley Creek Restoration, 7f – Approve Permit 2021-082
 257 Mister Car Wash – Minnetonka as presented in the Board Action section of the Permit Review
 258 Report, 8b – Accept December Treasurer’s Report, and 8c – Approve Paying of the Bills.

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

260

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ziegler	Aye

261

9. Closed Session

262 Manager Koch moved to go into closed session for the purpose of the performance evaluation of
 263 the Interim Administrator Terry Jeffery. Manager Pedersen seconded the motion. Upon a roll call
 264 vote, the motion carried 4-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye

Ziegler	Aye
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At 7:54 p.m. the meeting moved into closed session.
After conducting the closed session, the Regular meeting reconvened. Manager Koch moved that Be it resolved that the Board of Managers approves the leave requested by Mr. Jeffery as set forth in the memo prepared by Attorney Smith dated February 2, 2022. Manager Pedersen seconded the motion. Upon a roll call vote, the motion carried 4-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ziegler	Aye

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10. Appointment of Temporary Interim Administrator

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Manager Ziegler summarized Barr Engineering’s preparedness to take on the role of temporary interim administrator and documentation of areas of conflict of interest. He suggested Amy Bakkum take on tasks identified as conflicts of interest, such as financial tasks.
Attorney Smith displayed and went through the proposed resolution he drafted for the Board regarding Appointing a Temporary Interim Administrator. He summarized the points in the resolution, including:

- The District has had an interim administrator since March 15, 2021.
- The Board has approved a leave of absence of 30 days for Mr. Jeffery, until March 3, 2022.
- The District Engineer, Scott Sobiech, has current knowledge of District operations and is willing to assume duties as temporary interim administrator during that time.
- Scott Sobiech proposes to provide such services pursuant to the existing services agreement between Barr Engineering Company and the District.
- Task Order 38 identifies the District Administrator duties Scott Sobiech and Barr Engineering will be responsible for.

Attorney Smith noted the importance of the Board identifying a single individual as being delegated this temporary interim administrator responsibility by the Board, for example in order to sign permits if necessary and other specific tasks, but with the understanding that Barr

291 Engineering Company is providing the services pursuant to the existing binding services
 292 agreement.
 293 Attorney Smith went through the duties this proposed resolution does and does not assign to Mr.
 294 Sobiech.
 295 Manager Pedersen moved to accept Resolution Appointing a Temporary Interim Administrator.
 296 Manager Crafton seconded the motion. Manager Koch said as a matter of principle he can't
 297 approve something he hasn't had enough time to review. He said he is not opposed to contracting
 298 with Barr. He provided his feedback on the resolution. Manager Koch recommended laying this
 299 item over until the managers have had time to review the resolution. He moved to lay this over to
 300 a continuance of this meeting at a time the Board decides on tonight. Manager Koch's motion
 301 died due to lack of a second. Upon a roll call vote, the motion on the table carried 4-0 as follows:
 302

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ziegler	Aye

303

8. Action Items

304 **a. Items Pulled from Consent Agenda**

305 **i. Accept January Engineer's Report**

306 Manager Koch asked staff questions about the draft term sheet, Riley Lake
 307 alum treatment and additional core analysis, and if there is a tracking log in
 308 place for calls or time staff spends on permit inquiries before they are formal
 309 permit applications. Manager Koch asked staff to document his question "when
 310 is the point where it's more than minimal that the District starts tracking" in
 311 terms of time spent on conversations about permits before those inquiries are
 312 formal permit applications.

313 Manager Koch asked about Task Ordre 29B Middle Riley Creek and if
 314 additional funding is going to be needed. Engineer Sobiech said additional
 315 funds are not being sought at this time, but the budget is close to being fully
 316 expended, and he wants to analyze what any additional funding request might
 317 be before the Board is approached with any request. Manager Koch asked Mr.
 318 Sobiech to consider if there is an additional funding request, if it is a one-off
 319 request or if there is anything the District should do to reduce costs on the part
 320 of the District. Manager Koch asked for more details about Task Order 34 –

321 Lotus Lake Vegetation Management Plan. Mr. Sobiech said at this point the
 322 plan comprises looking at existing information to determine what the plan
 323 should include, and that plan will be brought to the Board for consideration as a
 324 draft and discussion on how to finalize it.

325 Manager Koch moved to accept the January Engineer’s Report. Manager
 326 Crafton seconded the motion. Upon a roll call vote, the motion carried 4-0 as
 327 follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ziegler	Aye

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330

331 **ii. Approve Resolution 2022-017 for Grant Agreement with Eden**
 332 **Prairie Schools for a Chloride Reduction Grant Funded by the**
 333 **Lower Minnesota Collaborative**

334 Manager Koch said his concern is that since this is a grant and the District is
 335 going to put money to buy equipment that the indemnification provision should
 336 be stronger to make it clear that the District is just a funder and Eden Prairie is
 337 going to protect this from the purchase/use and all the way through disposition
 338 of this equipment. He said he would like to see the indemnification language
 339 tightened up and revised. Manager Koch said he has no problem with the grant,
 340 and he just wants to make sure the District is protected.

341 Manager Koch moved to authorize Attorney Smith to revise the indemnification
 342 language appropriately and provide a copy of the grant agreement for President
 343 Ziegler to sign. Manager Pedersen seconded the motion.

344 Manager Crafton asked Attorney Smith to comment. Attorney Smith said he
 345 could take a look at that language, he understands Manager Koch’s point, and it
 346 can be addressed. Attorney Smith said he understands the motion to be approval
 347 of the resolution subject to the District’s legal counsel revising the
 348 indemnification language and authorization of President Ziegler to sign the
 349 grant agreement.

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

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ziegler	Aye

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Manager Koch brought up the topic of a Chanhassen grant agreement. Manager Koch moved to lay over the item, although not on the meeting agenda, to the Board’s next meeting and to authorize Attorney Smith and President Ziegler to review the agreement to make sure it matches the request by the City of Chanhassen and appropriately indemnifies the District from liability arising from their program. Manager Crafton seconded the motion.

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Ms. Forbes said she has communicated with the City of Chanhassen and there is time to adjust the grant agreement. Manager Koch amended his motion to have staff Forbes and Mr. Smith review the agreement and present it at the next meeting. Manager Crafton pulled her second. Manager Koch and Manager Crafton discussed procedure about pulling motions off the table and if a second motion to lay an item over makes the first motion moot. Manager Crafton seconded Manager Koch’s motion to lay the item over. Upon a roll call vote, the motion carried 4-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ziegler	Aye

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b. Accept December Treasurer’s Report

Item moved to Consent Agenda.

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c. Approve Paying of the Bills

Item moved to Consent Agenda.

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d. Accept 2021 Scoresheet

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Item laid over to the Board’s next meeting.

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e. Approve Final Reconciliation

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Item laid over to the Board’s next meeting.

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f. Approve Fee Schedule

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Item laid over to the Board’s next meeting.

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g. Lotus Lake Violations Report

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Item laid over to a future Board meeting.

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10. Informational Items

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a. Duck Lake Outlet Elevation

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Item laid over to a future Board meeting.

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11. Discussion Items

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a. Attorney Report

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Attorney Smith recommended that at this time the Board go into closed session for

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purposes of receiving confidential litigation advice concerning legal strategy in the

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Spring Valley Friends versus Riley Purgatory Bluff Creek Watershed District matter.

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Manager Pedersen moved to go into closed session as described by Attorney Smith.

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Manager Koch seconded the motion. Upon a roll call vote, the motion carried 4-0 as

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follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ziegler	Aye

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400 The Board moved into closed session at 9:08 p.m.

401 The Board reconvened its regular meeting at 9:38 p.m.

402 **b. Engineer Report**

403 Engineer Sobiech said he received word today that the University of Minnesota has
404 completed its wakeboard study. Manager Koch said he was sent a link and he will
405 forward it to Engineer Sobiech. Engineer Sobiech said he will forward the link to the
406 managers and staff.

407

408 **c. Administrator Report**

409 Temporary Interim Administrator Sobiech said he has nothing to report in this capacity.

410

411 **d. Managers' Report**

412 Manager Pedersen reported on the search to find a consultant to help the Board search for
413 a permanent District Administrator. She said after contacting nine consultants she has
414 found two she believes are qualified, willing, and able to assist the District. Manager
415 Pedersen provided more details about the two consultants and the individuals who would
416 work with the watershed. She talked about the information the consultants provided about
417 their typical processes, including that they usually work with a personnel committee or
418 other representative subset.

419 Attorney Smith commented on the legal framework of the process. He said there are
420 sensitive issues about the Open Meeting Law and the Data Practices Act in this process.
421 Attorney Smith said Smith Partners has worked with a lot of watersheds to design a
422 process that complies and meets the needs. He said a key thing to be aware of is once
423 someone is deemed to be a finalist for a position, their information is public. Attorney
424 Smith explained there is a fair amount of sensitivity that revolves around the decision to
425 become a finalist and then to be identified as a finalist.

426 Attorney Smith said there is a process and some amount of legal interpretation around the
427 creation of a committee that takes on a search process and how public that business needs
428 to be. He said Smith Partners has developed a process that allows a subgroup of Board
429 members to take initiative and have a greater level of involvement if that is the desire of
430 the Board.

431 Attorney Smith said a critical item throughout the process is that all information has to be
432 equally accessible to all Board members, so the Committee is not performing a function
433 of delegated decision-making in any way. He said he could provide the information he
434 just summarized in a more detailed memo. Attorney Smith said if the Board wants two
435 Board members to take the lead, then he would want to carefully consider if it could be
436 two members of the Personnel Committee because it is an existing standing committee of
437 the Board, and he thinks that changes the Open Meeting Law analysis.

438 Attorney Smith said if the Board wants to designate two managers or one manager to take
439 the lead in launching the search process, not the selection process, then legal counsel will

440 make sure the process is designed to make sure all information is equally accessible, with
 441 safeguards, to all Board members.

442 Manager Koch moved to authorize Attorney Smith to put together a memo on the proper
 443 procedures to be applied in the search for a permanent administrator and to authorize
 444 Manager Pedersen and the Personnel Committee to gather the information on the search
 445 firms and to bring that to the Board at its next meeting. Manager Ziegler made the
 446 friendly amendment that instead of using the Personnel Committee, to just have Manager
 447 Pedersen lead the process. Attorney Smith clarified his point was that once the search
 448 process commenced, there should be a difference between the Personnel Committee and
 449 the lead managers in the permanent District Administrator search process. He said for the
 450 mere purpose of bringing search consultant proposals to the Board, it's not an issue.
 451 Manager Ziegler withdrew his amendment and seconded Manager Koch's motion.

452 Manager Pedersen asked if the Board wants the consultant proposals at its next regular
 453 Board meeting or if there should be a special meeting before the March regular Board
 454 meeting. The managers discussed continuing this item at the continuation of this meeting,
 455 date, and time to be set. The Board directed Attorney Smith to prepare the memo on
 456 process and procedure as discussed.

457 Manager Koch amended his motion to add amending the meeting agenda to include the
 458 consultant topic and to continue the meeting to Wednesday, February 9 at 9 a.m.
 459 Manager Pedersen seconded the motion. The managers and staff discussed meeting time.
 460 Manager Koch made the friendly amendment to his motion to set the meeting time for 11
 461 a.m. Manager Pedersen accepted that friendly amendment.

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

463

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ziegler	Aye

464

465 At 9:55 p.m. the meeting was continued to 11:00 a.m. on February 9th.

466

467 **e. Governance Committee Report**

468 [Item continued to February 9th.]

469

470

12. Upcoming Board Topics and Events

471 [Item continued to February 9th.]

472

13. Adjournment

473 [Item continued to February 9th.]

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Respectfully submitted,

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481

482

Dorothy Pedersen, Secretary