

## MEETING MINUTES

### Riley-Purgatory-Bluff Creek Watershed District

#### December 8, 2021, RPBCWD Board of Managers Public Hearing and Monthly Meeting

**PRESENT:**

Managers: Jill Crafton, Treasurer

Larry Koch

Dorothy Pedersen, Vice President

David Ziegler, Secretary

Staff: Amy Bakkum, Office Administrator

Zach Dickhausen, Water Resources Technician II

Liz Forbes, Grant Program Coordinator

Terry Jeffery, Interim District Administrator and Watershed Planning Manager

Josh Maxwell, Water Resources Coordinator

Louis Smith, Attorney, Smith Partners

Scott Sobiech, Engineer, Barr Engineering Company

Other attendees: Shanna Braun, Barr Engineering Tom Lindquist

Corey (last name not provided) Eleanor Mahon

David Benedict Marilyn Torkelson

Patty Duryee Jeff Weiss

Fred Kamps

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

### 1. Call to Order

1 Vice President Pedersen called to order the Wednesday, December 8, 2021, Board of Managers  
2 Public Hearing and Regular Meeting at 7:00 p.m. The meeting was held remotely via meeting  
3 platform Zoom. Vice President Pedersen noted President Ward is recovering from surgery. She  
4 stated she proposes limiting tonight's meeting to three hours, and if the Board hasn't completed  
5 its business in three hours, the Board could continue its meeting at a later date.

6

### 2. Approval of Agenda

7 Manager Ziegler moved to approve the agenda as presented. Manager Crafton seconded the  
8 motion.

9 Manager Koch moved to amend the agenda to remove Consent Agenda items 9a – Accept  
10 November Staff Report, 9b – Accept November Engineer’s Report, 9c – Accept November  
11 Construction Inspection Report, 9h – Approve Watershed Stewardship Grant with St. Luke  
12 Presbyterian Church for the restoration of 1.4 acres of Woodland with a Not-to-Exceed Amount  
13 of \$11,800 and to add to the Consent Agenda items 10g – Consider Exception Request for Permit  
14 2021-077 Ravines 4 & 5 Stabilization as Related to Floodplain Compensatory Storage, 10h –  
15 Approve Permit 2021-077 Ravines 4 & 5 Stabilization as Presented in the Proposed Board Action  
16 Section of the Permit Review Report, and 10k – Approve Task Order 037 for Sediment Analysis  
17 of Lake Susan, Rice Marsh Lake, Lake Riley, and Lake Susan Preserve Wetland. There was  
18 manager discussion to clarify the changes and the items Manager Koch is requesting to move on  
19 and off the Consent Agenda. Managers Ziegler and Crafton accepted Manager Koch’s friendly  
20 amendment.

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

22

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Absent
Ziegler	No

23

### 3. Matters of General Public Interest

24 Mr. Thomas Lindquist of 16750 Baywood Terrace, Eden Prairie, read his comments into the  
25 record, as follows, and he presented a PowerPoint slide titled “Some Notes on Duck Lake  
26 Fishing” that also included photos of anglers and ice fishing:

27 On December 11, 1998, DNR Regional Management signed and initiated a Lake  
28 Management Plan for Duck Lake that states, “Following a severe winterkill that occurs on  
29 average one in 10 to 20 years, stock 10 largemouth bass, 10 black crappie, and 10 bluegills  
30 as adults in spring for brood stock.”

31 From December 11, 1998 through January 29, 2002, a time range for which the DNR Lake  
32 Finder data is publicly available, the average measured water level of Duck Lake was 914.0  
33 feet. This is substantially higher than what current DNR management states that the level  
34 should be.

35 During this interval, fishing was excellent on Duck Lake. Foot-long bass [Mr. Lindquist  
36 noted fish photos displayed on his PowerPoint slide] were common (their length indicating  
37 that there was not total winterkill for at least the preceding three years).

38 During more recent years, meaning from May 8, 2013, and onward, available data suggests  
39 Duck Lake's average water level has been 0.5 to 1.0 feet lower than it was in the period  
40 from December 11, 1998 to January 29, 2002. Since Duck Lake's average depth is only  
41 about three feet, a one-foot decrease in its depth would equate to a 33% decrease in water  
42 volume, and accordingly a 33% decrease in the amount of dissolved oxygen available to  
43 sustain the fish population during the winter. It should therefore be no surprise that in these  
44 more recent years, winterkill has been the norm, not the exception.

45 As winterkill has become the norm for Duck Lake, restocking the lake with bass, crappies  
46 and bluegills has become impractical.

47 Mr. Lindquist concluded his comments by stating to make Duck Lake a good fishing lake  
48 again, make the real-world measured average lake water level at least as high as it was for  
49 the 31 years from September 15, 1970 through January 29, 2002, which was 914.1 feet.

50

#### 4. Public Comment on 2022 Budget and Levy

51 Vice President Pedersen opened the floor for public comment on the District's 2022 budget and  
52 levy as the Board adopted in September. No comments were raised.

53

#### 5. Public Hearing on Upper Riley Creek Stabilization Project

54 Manager Ziegler moved to open the public hearing on the Upper Riley Creek Stabilization  
55 Project. Manager Crafton seconded the motion. Manager Koch said he didn't think the  
56 attachment about this item was sufficient for the public to be able to discuss it. He said he was  
57 taken aback by this agenda item. He asked if the District published notice about a public hearing.  
58 Interim Administrator Jeffery responded yes, the District did publish the public notice as  
59 required. Administrator Jeffery said no action is being taken on the project tonight, and the  
60 feasibility study has previously been presented, and the District is looking to take public comment  
61 tonight on this project. Manager Koch said he thinks it would be appropriate to discuss whether  
62 the District wants another public hearing or public comment opportunity on this project. Interim  
63 Administrator Jeffery added that the CAC will have an opportunity to review and comment on  
64 this project as well. Upon a roll call vote, the motion to open the public hearing carried 4-0 as  
65 follows:

66

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

Ward	Absent
Ziegler	Aye

67

68 Interim Administrator Jeffery summarized the project and introduced Ms. Shanna Braun, senior  
69 environmental scientist at Barr Engineering Company. Ms. Braun presented a PowerPoint  
70 presentation “Upper Riley Creek Ecological Enhancement Plan” and noted she is the project  
71 manager working to help develop this plan. She summarized the project’s vision to provide an  
72 ecologically diverse stream reach that: improves ecological functions, provides diverse habitat  
73 layers, significantly reduces streambank erosion, and enhances public access and understanding  
74 of the importance of stable streams.

75 Ms. Braun explained the adaptive management approach being taken with this project. Ms. Braun  
76 explained the District prioritized this reach of Upper Riley Creek in 2018 and that the reach was  
77 included in the District’s 10-Year Plan. She went through the District’s total benefit score for the  
78 project, describing how and why the 2018 score of 39 was adjusted in 2021 to a score of 48. She  
79 said this project score is higher than other not-yet-implemented projects in the District’s 10-Year  
80 Plan, which is why this project is a higher priority.

81 Ms. Braun discussed the issues the project addresses and possible enhancement measures that  
82 have been identified. She summarized the project’s anticipated outcomes, including:

- 83 • Total estimated reduction in pollutant loading of 470,000 pounds per year of Total  
84 Suspended Solids (TSS) and 250 pounds per year of Total Phosphorous (TP)
- 85 • Critical ecological health improvement of Upper Riley Creek and Lake Susan.

86 Ms. Braun said this project is essential for working toward the District’s goal of removing Lake  
87 Susan and Riley Creek from the MPCA Impaired Waters list. She added that this project also  
88 supports the City of Chanhassen in achieving its Minnesota Pollution Control Agency MS4  
89 permit requirements.

90 Ms. Braun went through the project’s proposed future steps, outlined by year, estimated cost, and  
91 leader. She talked about the future steps including ordering of the project and its design, bidding  
92 and awarding of the contract, implementation, and post-construction and long-term activities. She  
93 stated the District’s estimated total financial contribution is \$1,885,000, including 50% storm  
94 sewer outfalls, and the City of Chanhassen’s estimated contribution is \$571,000, also including  
95 50% storm sewer outfalls.

96 Vice President Pedersen called for comments and questions from the public.

97 Mr. David Benedict said he lives on Lake Susan, and he is excited about this public hearing and  
98 project. He sees this project as necessary and exciting, as the phosphorous effects on Lake Susan  
99 are very evident. He asked if there are estimated numbers about how many pounds of Total  
100 Phosphorous this project would prevent from entering Lake Susan. Interim Administrator Jeffery  
101 didn’t have that number but commented that reducing even one pound of phosphorous from  
102 entering Lake Susan could reduce the amount of blue-green algae in the lake by about 500  
103 pounds. Mr. Benedict said he understands that this one project wouldn’t fix all of Lake Susan’s

104 problems but will help. He encouraged the District to move forward with this project as soon as  
105 possible.

106 Mr. Fred Kamps said he has been a resident of Lake Susan for 21 years and has been involved  
107 with the District during some of that time. He said the algae bloom in the lake this year was more  
108 extensive than in any year since he has lived there. Mr. Kamps asked if the proposed project is  
109 successful, will the lake have different issues, such as watermilfoil or other things in the lake. He  
110 also asked how lake levels will be addressed.

111 Interim Administrator Jeffery said he is happy to meet with Mr. Benedict and Mr. Kamps to talk  
112 in more detail. Interim Administrator Jeffery said yes, as lake water clarify improves, there is an  
113 increased propensity for growth of aquatic vegetation, and there is a possibility for aquatic  
114 invasive species to grow. Mr. Benedict commented it's his understanding that the District needs  
115 to do projects to reduce phosphorous entering the lake before the District would undertake  
116 investing in projects such as alum treatments. He asked if it is correct to characterize the proposed  
117 project as a beneficial first step of other possible large and essential steps. Interim Administrator  
118 Jeffery said yes.

119 Manager Koch asked if this project would be similar to the project in Lower Riley Creek. Interim  
120 Administrator Jeffery said a better comparison would be to the Middle Riley Creek project.  
121 Manager Koch asked that the feasibility report be circulated again to the managers. Manager  
122 Koch asked if estimated costs could be added to the project timeline, to indicate estimated  
123 projects costs in line with the project tasks and years. Manager Koch asked what the next step  
124 would be. Interim Administrator Jeffery said the next step would be soliciting feedback on the  
125 project from the CAC and asking the Board to order the project.

126 Manager Crafton moved to close the public hearing on the Upper Riley Creek Stabilization  
127 project. Manager Ziegler seconded the motion.

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

129

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

130

## 6. Reading and Approval of Meeting Minutes

131 a. **November 3, 2021, RPBCWD Board of Managers Regular Meeting**

132 Manager Crafton moved to accept the minutes of the November 3<sup>rd</sup> RPBCWD Board of

133 Managers Regular meeting. Manager Ziegler seconded the motion. Manager Ziegler noted  
134 an edit to include the title of President after Dick Ward’s name in the attendee list. He  
135 noted on line 45 the word “wants” should be “want.” He asked to revise the sentence on  
136 line 239 to clarify the point will be brought to the Board at a future meeting to discuss. He  
137 said the words “did not” should be inserted into line 366. Manager Ziegler said the word  
138 “outlet” should be inserted before the word “elevation” in line 512.

139 The managers agreed to the friendly amendment by unanimous consensus. Upon a roll  
140 call vote, the motion carried 4-0 as follows:

141

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

142

143 **b. November 15, 2021, RPBCWD Board of Managers Special Meeting**

144 Manager Ziegler moved to approve the minutes of the November 15<sup>th</sup> RPBCWD Board of  
145 Managers Special Meeting. Manager Crafton seconded the motion. Manager Ziegler noted  
146 one change to line 79 to replace the word “consultant” with “headhunter.” Manager  
147 Crafton accepted the friendly amendment.

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

149

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

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151

**7. CAC**

152 Mr. Jeff Weiss reported on the CAC’s November 15<sup>th</sup> meeting. He said the CAC appreciated  
153 Interim Administrator Jeffery’s presentation on the District’s rules and permit review process.  
154 Mr. Weiss noted the CAC will meet next week and will appoint a Committee chair and secretary.  
155 Mr. Weiss stated three of the CAC members volunteered to assist Interim Administrator Jeffery  
156 on an MPCA planning grant application for stormwater, wastewater, and community resilience.  
157 Mr. Weiss reported that 12 of the 14 current CAC members plan to continue to serve on the  
158 Committee in 2022.

159 Interim Administrator Jeffery said the last time the Board discussed CAC member numbers, the  
160 Board decided 12 members is the minimum member number. The Board and staff discussed the  
161 number of CAC members planning to serve in 2022 and member term lengths. Manager Koch  
162 expressed his opinion that the current CAC members shouldn’t automatically be reappointed.

163 Manager Koch moved to authorize staff to execute public solicitations for CAC members in the  
164 same way the District did so last year, for the Board to discuss applications received and  
165 appointments at its January meeting for appointments to be effective February 1. Upon a roll call  
166 vote, the motion carried 4-0 as follows:

167

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

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169

170 Vice President Pedersen said the Board needs to appoint a representative for the CAC’s  
171 December 20<sup>th</sup> meeting. Manager Crafton volunteered.

172

**8. Personnel Committee**

**a. Committee Report**

173 Vice President Pedersen reported on the delay of receiving the benefits information from  
174 the District’s benefits representative. She said the Personnel Committee spent its meeting  
175 time this week reviewing for the first time the benefits information. She said the  
176 Committee had questions and hasn’t received all the answers yet. Vice President  
177

178 Pedersen recommended this item be continued. The Board agreed by unanimous consent  
179 to continue this item at a time and date to be determined later in this meeting.

180

## 9. Consent Agenda

181 Manager Koch moved to approve the Consent Agenda as amended earlier in the meeting and  
182 adopt all the resolutions referred to in the Barr reports that are part of those various items on the  
183 Consent Agenda. Manager Ziegler seconded the motion. The Consent Agenda included item 9d –  
184 Approve Payment Application #1 for Pioneer Wetland Restoration, Approve , 9e – Approve  
185 Payment Application #1 for Middle Riley Creek Restoration, 9f – Approve Permit 2021-048  
186 Vogel Shoreline Stabilization as presented in the proposed Board action of the permit review  
187 report, 9g – Approve Permit 2021-076 Purgatory Creek Sediment Removal at Scenic Heights as  
188 presented in the proposed Board action section of the permit review report, 10g – Consider  
189 Exception Request for Permit 2021-077 Ravines 4 & 5 Stabilization as Related to Floodplain  
190 Compensatory Storage, 10h – Approve Permit 2021-077 Ravines 4 & 5 Stabilization as presented  
191 in the proposed Board action section of the permit review report, 10k – Approve Task Order 037  
192 for Sediment Analysis of Lake Susan, Rice Marsh Lake, Lake Riley, and Lake Susan Preserve  
193 Wetland.

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

195

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

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197

## 10. Action Items

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

199 **i. Accept November Staff Report**

200 Manager Koch said under page 1, regulatory programs, he needs to know what  
201 is happening with the three Lotus Lake items. Interim Administrator Jeffery  
202 said one of the items, the Eliassen after-the-fact permit, is on the agenda tonight.  
203 He said he hasn't worked out how to proceed regarding the sand blanket

204 application and the violation, even though Manager Koch reported he saw it  
205 occur. Manager Koch said he has pictures and video he can send to Interim  
206 Administrator Jeffery and would be happy to fill out an affidavit. Manager  
207 Koch said the gentleman knew better. Manager Koch said he is of the school of  
208 thought that if you have them on the books, enforce them. He asked Interim  
209 Administrator Jeffery to consult with Counsel Smith about possible ways to  
210 proceed. Manager Koch asked going forward for these types of violations to be  
211 addressed or for the Board to make a decision not to address them.

212 Manager Koch asked about the violation on the west side of Lotus Lake.  
213 Interim Administrator Jeffery said that property on Frontier Trail is immediately  
214 adjacent to the lake and needs to put in a stormwater BMP. Interim  
215 Administrator Jeffery said he met with the City of Chanhassen twice to talk  
216 about the bigger picture of making sure there is alignment between the City's  
217 permit process and the District's process. He reported the City of Chanhassen is  
218 in process of implementing an online permitting system, and that system will  
219 indicate to applicants if they need to contact the District about a watershed  
220 permit. Interim Administrator said he will follow up on that violation.

221 Manager Koch asked if the District could come up with a LiDAR program as  
222 part of its monitoring program. Interim Administrator Jeffery said Carver  
223 County updates its LiDAR every other year, and the District could reach out  
224 about participating. Engineer Sobiech said Hennepin County is in the early  
225 stages of setting up a LiDAR program, and now would be a good time to reach  
226 out to Hennepin County if the District is interested in participating.

227 Manager Koch also asked if staff is considering correlating this year's runoff  
228 data with its rainfall data to help calibrate the District's models.

229 Manager Koch talked about the wetland metrics work done by the state of  
230 North Dakota, and he was wondering if the District could make use of that  
231 work.

232 Manager Koch talked about the Hennepin County chloride program and how  
233 the target audience seems narrow. He commented the District should want to  
234 include as broad an audience as possible. Interim Administrator Jeffery noted  
235 this campaign is focused on the audiences Hennepin County identified as not  
236 yet being engaged, but the program as a whole will target a broader audience.

237 Manager Koch commented on the staff report item about the Lower Riley Creek  
238 Stabilization, and he asked if staff could figure out a way to capture project  
239 progress in ways other than photographs.

240 Manager Koch said regarding the Rice Marsh Lake project and the Kraken  
241 device installation issues, is there monitoring in and out of that equipment so  
242 the District gets good data on how well they do. Interim Administrator Jeffery  
243 said yes, there is an access port in the equipment, so staff member Maxwell can  
244 get the monitoring data.

245 Manager Koch asked if the Board should move into closed session to discuss  
246 the Molnau Trucking item because he doesn't want the District to blow its  
247 client-attorney privilege and doesn't want to let the District's bargaining  
248 positions be known before they have to be known. Attorney Smith said the  
249 Minnesota Supreme Court is very clear on the scope of going into a closed  
250 meeting, which is for cases where litigation strategy is the topic and in cases  
251 where litigation is much more present than in the District's issue with Molnau  
252 Trucking. Attorney Smith said District Legal Counsel doesn't see the Molnau  
253 Trucking item to be an appropriate subject for closing the meeting. He said  
254 there are some actions the Board could take this evening that would be first  
255 steps, and he could talk further with Manager Koch if he wants.

256 Manager Koch moved to accept the November staff report. Manager Crafton  
257 seconded the motion. Upon a roll call vote, the motion carried 4-0 as follows:

258

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

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**ii. Accept November Engineer's Report**

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Manager Koch said on page 4 of 8 regarding Silver Lake Water Quality, he looked at the two pictures and they struck him as showing extreme compaction. He wanted to make sure the sites are not in final condition. Interim Administrator Jeffery said staff is in communication about the final punch list with the contractor, who needs to provide adequate topsoil and decompaction on the site.

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Manager Koch commented photos included in the Engineer's report on page 5 regarding Middle Riley Creek seem to show steep grading on the slopes. He noted he isn't an engineer but has some physics background, and he would like to make sure going forward the District puts adequate slopes to minimize erosion on these banks.

272

273

274

Manager Koch moved to accept the November Engineer's report. Manager Ziegler seconded the motion. Upon a roll call vote, the motion carried 4-0 as follows:

275

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

276

277

iii. **Accept November Construction Inspection Report**

278

Manager Koch asked if going forward it would be possible to add updates to the report to indicate what has been addressed and what has been done. Vice President Pedersen thanked staff for adding the location maps into the report.

279

280

281

Manager Koch moved to accept the November Construction Inspection Report.

282

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

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284

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

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iv. **pprove Watershed Stewardship Grant with St. Luke Presbyterian Church for the Restoration of 1.4 Acres of Woodland with a Not-to-Exceed Amount of \$11,800**

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Manager Koch explained he pulled this item off the Consent Agenda because the project seems to be focused on restoring woodlands, and he is against without good reason spending money on woodlands without direct connection to improving waters. Interim Administrator Jeffery talked about the ecosystem approach to restoring soil health and the beneficial impact of such to water resources. Ms. Forbes talked further about the grant review committee discussions and future points of discussion as well as about this project with St. Luke Presbyterian Church.

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297 Manager Koch said he believes it is really important the District has clear  
298 criteria that ties into waterbodies or groundwater, so the District can say it has  
299 as objective a process as possible. He said he is not in favor of this project.  
300 Interim Administrator Jeffery said the District does complete a scoresheet on  
301 grant projects. He said he hears Manager Koch’s comments.

302 Managers Ziegler and Crafton commented about the need for increasing  
303 infiltration and restoring functionality of the landscape for groundwater  
304 recharge. Manager Crafton spoke about the benefits of this proposed project.

305 Manager Crafton moved to approve the watershed stewardship grant with St.  
306 Luke of Minnetonka Presbyterian Church as recommended by staff. Manager  
307 Ziegler seconded the motion.

308 Upon a roll call vote, the motion carried 3-1 as follows:

309

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	No
Pedersen	Aye
Ward	Absent
Ziegler	Aye

310

**b. Approve Payment Application #1 for Molnau Trucking LLC for Silver Lake Water Quality Improvement Project and Consider Action in Response to Contractor Delay**

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Interim Administrator Jeffery explained that in front of the Board is Payment Application #1 from Molnau Trucking for work it performed and is owed. He said there is another item in front of the Board, and he summarized the situation. Interim Administrator Jeffery stated Molnau Trucking was given two windows within which to complete its work, the latest of which had a substantial completion date of September 30, 2021.

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Interim Administrator Jeffery listed the dates and details of Molnau Trucking’s activities, starting on October 15, 2021, the date Molnau Trucking mobilized onto the site to begin the clearing. Interim Administrator Jeffery said on October 27<sup>th</sup> pipes and structures were installed but not to spec or meeting the requirements of the District. He said part of this issue with the installation was not Molnau Trucking’s fault as the manufacturer did not send the correct slab collar. Interim Administrator Jeffery detailed activities throughout November, explaining that on November 23<sup>rd</sup> the District provided a punch list of items to be completed by November 30<sup>th</sup>, He said that on November 30<sup>th</sup>,

328 Barr staff member Jen Koehler went onto the site and found eight of nine punch list  
329 items not yet completed.

330 Interim Administrator Jeffery stated Molnau Trucking contacted him on December 2<sup>nd</sup>  
331 asking if the District could pay the Payment Application #1 by December 3<sup>rd</sup>. He said  
332 Molnau Construction will submit another payment application. He explained the second  
333 payment application will be substantial enough to cover the \$30,000 in liquidated  
334 damages staff owed to the District from Molnau Trucking per performance issues.  
335 Interim Administrator Jeffery acknowledged the additional amount of time Barr  
336 Engineering had to spend on this project. He said Molnau Trucking is still under  
337 contract with the District, and he brought up the idea of the District dissolving the  
338 contract with Molnau and working directly with Prairie Restorations for the remaining  
339 work.

340 Attorney Smith reiterated the District has a payment application, which the District  
341 Engineer has certified is complete and conforms to plans and specifications and  
342 recommends payment. Attorney Smith noted that as Interim Administrator Jeffery  
343 outlined, there is a series of performance problems that triggered the liquidated damages  
344 provision of the contract. Attorney Smith said the amount of liquidated damages is  
345 \$30,000, and the amount anticipated to be included in payment application #2 would  
346 cover the liquidated damages. Attorney Smith explained that as Interim Administrator  
347 Jeffery stated, the District continuing to work with Molnau Trucking is not in the  
348 District's best interest and it would be better to proceed to terminate the agreement and  
349 turn to work directly with Prairie Restoration. He said ideally the District and Molnau  
350 Trucking would negotiate an end to the contract to avoid any additional cost to the  
351 District.

352 Engineer Sobiech commented the majority of the remaining work on the site is tied to  
353 vegetation establishment over the next three years. Interim Administrator Jeffery asked  
354 if Molnau has outstanding payment for work performed that is equal to the liquidated  
355 damages owed to the District. Engineer Sobiech said yes.

356 Manager Crafton moved to follow through to work out an end to the contract with  
357 Molnau Trucking and to deduct the \$30,000 in liquidated damages. Interim  
358 Administrator Jeffery noted that the District is considering approval of paying payment  
359 application #1, which the District owes, and consideration of authorizing working  
360 directly with Prairie Restoration for the remaining work, and authorizing him, Attorney  
361 Smith, and Engineer Sobiech to negotiate an end to the contract. Manager Ziegler  
362 seconded the motion. Manager Crafton amended her motion to approve paying Molnau  
363 Trucking's payment application #1 in the amount of \$88,243.39. Manager Ziegler  
364 agreed to the amendment.

365 Interim Administrator Jeffery reminded the Board that Molnau Trucking has already  
366 completed work beyond what it invoiced in Payment Application #1, and the cost of the  
367 work not yet invoiced totals more than \$30,000. Manager Koch asked what work  
368 Molnau Trucking hasn't yet completed. Interim Administrator Jeffery listed the  
369 incomplete work.

370 Manager Koch asked if liquidated damages is the sole remedy. Attorney Smith said  
 371 liquidated damages is the District’s key remedy. Manager Koch said he doesn’t think  
 372 the District should leave everything until the last payment application without an  
 373 agreement to the contrary. He said he thinks the District should be telling Molnau  
 374 Trucking the District is planning to pay the payment application #1 in the amount of  
 375 \$88,000 minus the \$30,000 unless an agreement is reached to terminate, at which point  
 376 the District would look at splitting the \$30,000 over two payments. Manager Koch said  
 377 the District needs to look at what it will cost to do the work Molnau hasn’t done, which  
 378 is the amount the should District retain. Manager Koch moved to amend the motion on  
 379 the table to pay \$88,000 minus \$30,000 unless an agreement is reached with Molnau  
 380 Trucking to terminate the contract and spread the \$30,000 across two payment  
 381 application payments. Interim Administrator Jeffery asked if the District couldn’t just  
 382 terminate the contract. Attorney Smith said it could, based on cause, but it’s in the  
 383 District’s best interest to get to the most expeditious way to complete this and protect  
 384 the interests of the District. He noted the District knows \$30,000 is the fixed sum of  
 385 liquidated damages, and the District is entitled to that sum.

386 Vice President Pedersen asked how much it will cost above and beyond what was  
 387 budgeted for the District to have Prairie Restorations do the work. Interim  
 388 Administrator Jeffery said the contract would be directly with Prairie Restorations, and  
 389 while the cost is a contracted amount, Prairie Restorations has already done some work  
 390 costing more than the contracted amount.

391 Manager Koch said he disagrees with paying the full amount of Payment Application #1  
 392 when the District has the right to \$30,000. He said he doesn’t want the District to waive  
 393 its rights to the \$30,000 in liquidated damages. He reiterated his motion to amend the  
 394 motion on the table. Manager Koch’s motion to amend the motion died due to lack of a  
 395 second. Manager Ziegler asked if Attorney Smith is comfortable with the motion on the  
 396 table. Attorney Smith said yes, the District’s legal counsel is comfortable with the  
 397 action moved because the amount of the second payment application will be more than  
 398 the liquidated damages. He said legal counsel is comfortable either under the motion on  
 399 the table or the motion suggested by Manager Koch. Upon a roll call vote, the motion  
 400 carried 3-1 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	No
Pedersen	Aye
Ward	Absent
Ziegler	Aye

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**c. Approve Amendment to Task Order 024B for Additional Engineering Services During Construction of Silver Lake Restoration**

Interim Administrator Jeffery explained the amendment is for the additional incurred costs and additional costs that will be incurred for Task Order 024B. Interim Administrator Jeffery said there may be costs for future work by Barr Engineering that District staff can assume, such as vegetation inspection. He said he would, however, like the task order amendment to be approved in its entirety at this time, and District staff and Barr can work out details about the tasks the District can assume.

Engineer Sobiech provided more details about the overage, which was a result of the amount of extra time the Engineer spent working with the contractor.

Manager Crafton moved to approve the amendment to Task Order 024B. Manager Ziegler seconded the motion. Manager Koch said if this is approved with a not-to-exceed amount, Barr Engineering can charge up to that amount. Manager Koch proposed a friendly amendment to the motion to amend Task Order 024B and authorize an expenditure for \$10,000 for work already done and up to \$13,100 for future work for the items listed on that same line item under description, and for total work not to exceed \$23,995.08. He suggested District staff doesn't do the work and instead for Barr Engineering complete the work. Manager Crafton said that is the motion, but she takes Manager Koch's details as a friendly amendment of detail added. Manager Ziegler agreed to the friendly amendment of details added to 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
Ward	Absent
Ziegler	Aye

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**d. Accept October Treasurer's Report**

Treasurer Crafton stated the report has been reviewed in accordance with internal controls and procedures. She moved to accept the October Treasurer's Report. Manager Ziegler seconded the motion.

Manager Koch asked for a rundown of items currently having expended more than 83% of their budget and for information on whether the excess is going to grow by year end or not and ideas on how to rebalance the budget. Treasurer Crafton and Interim Administrator Jeffery addressed several line items. Interim Administrator Jeffery said

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he will have recommendations prepared by the Board’s January regular meeting and will try to have them prepared in time for the continuation of this meeting if the Board does decide to continue it.

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

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

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**e. Approve Paying of Bills**

Manager Crafton moved to pay the bills. Manager Ziegler 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
Ward	Absent
Ziegler	Aye

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**f. Consider Changes to the District’s 2022 Budget and Levy**

Manager Pedersen noted the time, and the Board discussed continuing this meeting. Manager Koch said it would be helpful to have the information from Interim Administrator Jeffery about budget overages and underages before discussing this item. Manager Koch moved to continue the meeting to Wednesday, December 15 at 2:00 p.m. Manager Ziegler 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
Ward	Absent
Ziegler	Aye

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At 9:54 p.m., the Board continued its meeting to Wednesday, December 15 at 2:00 p.m.

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- i. Approve After-the-Fact Permit 2020-041 Eliassen Shoreline Stabilization Solutions for Hennepin County Chloride Initiative Project**

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Item to be addressed at the Board's continuation of this meeting on December 15.

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- j. Authorize Administrator to Enter into an Agreement with MP&G Marketing Solutions for Hennepin County Chloride Initiative Project**

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Item to be addressed at the Board's continuation of this meeting on December 15.

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## 11. Discussion Items

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**a. Attorney Report**

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**1. Update on Friends of Frederick Miller Spring Lawsuit**

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Item to be addressed at the Board's continuation of this meeting on December 15.

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**b. Engineer Report**

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**1. Duck Lake Outlet Review**

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Item to be addressed at the Board's continuation of this meeting on December 15.

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**c. Administrator Report**

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**1. Grant Application for Climate Action Plan**

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Item to be addressed at the Board's continuation of this meeting on December 15.

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**d. Manager Report**

477 Item to be addressed at the Board's continuation of this meeting on December 15.

**12. Upcoming Board Topics**

- 478 a. **Regulatory Program**  
479 b. **Feasibility Report Scope**  
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**13. Upcoming Events**

- 481 • January 5, 2022, Board of Managers Regular Monthly Meeting  
482 • January Workshop Marketing Firm/Administrator Search

**14. Adjournment**

483 Item continued to December 15.  
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489 Respectfully submitted,

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492 David Ziegler, Secretary  
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