

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

September 14, 2022, RPBCWD Board of Managers Work Session and Regular Monthly Meeting

PRESENT:

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

Staff: Amy Bakkum, Administrative Assistant*
Zach Dickhausen, Water Resources Technician II
Liz Forbes, Grant Program Coordinator*
Terry Jeffery, District Administrator*
Eleanor Mahon Education and Outreach Coordinator*
Joshua Maxwell, Water Resources Coordinator*
Mat Nicklay, Natural Resources Technician
Louis Smith, Attorney, Smith Partners*
Scott Sobiech, Engineer, Barr Engineering Company*

Other Attendees: Olivia H. Jennifer Mocol-Johnson, BWSR
Julie Fleming-Wolfe T. Stricherz

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

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

1. 5:00 p.m. Work Session

- 1 President Ziegler called the Board work session to order at 5:01 p.m.
- 2
- 3 Manager Koch commented he thinks this meeting is a special meeting of the Board and
- 4 should have been duly public noticed as such. He said he doesn't think the Board has any
- 5 legitimate topics to address at this meeting, and therefore he moved to object holding this
- 6 meeting in light of the fact we had no agenda posted based on his review of the website
- 7 within the required time.
- 8
- 9 Attorney Smith said his understanding is this is a regular meeting as the Board took action to
- 10 amend its regular meeting schedule previously adopted by the Board. He said this meeting is

11 not a special meeting but a regular meeting. Manager Koch disagreed with that conclusion.
12 He said there are rulings out there which state that any variation from the original regular
13 meeting are a special meeting. Manager Koch said he poses his objection to this meeting and
14 his participation is not intended to waive any of his objections to the holding of this meeting
15 if you decide to continue to hold this meeting. The motion died due to lack of a second.
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17 **a. Web Page Final Review**

18 Administrator Jeffery summarized the process staff has undertaken to develop the new
19 District website and the opportunities along the way for feedback from the Board and
20 CAC. He pointed out the website is a living document and changes can be made.
21 Administrator Jeffery said staff is currently maintaining the old website and this new one,
22 which is inefficient use of staff time, and staff is asking the Board tonight to authorize
23 staff to go live with the new website.

24 Staff Forbes noted staff received more than 150 comments from the managers and CAC
25 members about the first draft of the new website. She reported each of the comments was
26 reviewed and considered. Staff Forbes introduced the components of the new website and
27 presented the final draft of the new website. She stated staff is seeking Board approval to
28 launch the new website October 1. Staff Forbes explained the new URL will maintain the
29 same URL as the District's current website.

30 Staff Mahon and Staff Bakkum presented some of the sections of the new website such as
31 Meet the Managers, the project pages, the Board meeting agendas, and the District
32 calendar. Staff Forbes stated Administrator Jeffery will send the managers a link to the
33 final draft of the website on the staging site. She said the managers can reach out to staff
34 with any comments about the site.

35 Manager Koch asked if there is a site map for the website and if so, would staff provide it
36 to him. Manager Koch asked if there is any documentation showing what, if any, of the
37 suggested changes by people, particularly himself, were accepted or not accepted. He
38 said it would help speed up a review. Manager Koch remarked the new site has better eye
39 appeal than the District's existing website, so it's a monumental improvement. He
40 congratulated everybody on all their hard work on the new website.

41 Manager Duevel said his quick reaction is "wow." He said it looks amazing and will
42 provide education as well as easy access. Manager Duevel asked what the review process
43 will be for making changes to the website once it's live. Staff Forbes said staff have full
44 editing access, and if it's a drastic change, the appropriate staff reviews, and if it's a
45 minor change, it does not go through a review process.

46 Manager Crafton said she agrees with "wow." She said it is well organized and seems
47 like it has a lot of capacity to show what the District is doing and where. Manager
48 Crafton said she thinks it is great.

49 Manager Koch said he hopes there will be a written procedure for making reviews, to
50 make sure we don't have any rogue changes that get posted. He said his experience is
51 there is always at least two levels of drafting preparation and one level of approval before
52 some item goes live to make sure there isn't anything inappropriate posted. Manager

53 Koch said he would like to see any procedures staff has about reviewing and approving
54 changes before they get posted.

55 Manager Pedersen said this site is a huge improvement.

56 Manager Koch asked staff to make this presentation available. Administrator Jeffery said
57 staff will make it available.

58 President Ziegler said staff could send the link to the CAC as well. Staff Forbes explained
59 how the CAC members have been involved in the process already. She said the CAC has
60 seen a sneak peek of the final draft of the website and will get the link to the draft as well.

61

62 **b. BWSR Presentation on Performance Review and Assistance Program**
63 **(PRAP) Process and Schedule (Jennifer Mocol-Johnson)**

64 Administrator Jeffery introduced Ms. Jennifer Mocol-Johnson, PRAP Coordinator for
65 BWSR. Ms. Mocol-Johnson displayed a PowerPoint presentation “Performance Review
66 and Assistance Program, September 14, 2022.” She explained the PRAP program and
67 talked about what would happen in the next 60-day timeframe. Ms. Mocol-Johnson said
68 BWSR’s PRAP program is in place to assess the performance of local units of
69 government responsible for conservation of water and related land resources and help
70 partners be the best they can be. She said there is also a grant program to help with
71 potential future needs.

72 Ms. Mocol-Johnson defined the different PRAP assessment types, including statewide
73 summary, organizational assessments, watershed-based assessments, and special
74 assessments. She talked about the Performance Standards Evaluation Checklist that’s part
75 of organizational assessments, which happen every ten years. She noted BWSR will
76 provide the District with the checklist. She said BWSR will also provide a survey to the
77 staff and Board as well as the District’s partners. Ms. Mocol-Johnson walked through the
78 checklist and shared some survey questions.

79 Ms. Mocol-Johnson presented a timeline for the PRAP Organizational Assessment,
80 highlighting the deadline for the survey/performance standards is September 28th and the
81 deadline for the water plan review is October 5th. She said she will set up a meeting for
82 October 20th with Administrator Jeffery to walk through the draft report and will be back
83 on November 2nd to deliver the report to the Board.

84 Manager Crafton asked if there are any caveats as the District isn’t part of the One
85 Watershed One Plan. Ms. Mocol-Johnson said no, and that is why BWSR will look at the
86 District’s Watershed Management Plan.

87 Manager Koch asked for a copy of Ms. Mocol-Johnson’s presentation and asked to be
88 copied on all communications regarding this evaluation process and he wants to be on top
89 of what is going back and forth. He clarified that we’ll be kept in the loop on all these
90 communications and steps as we go along there. Ms. Mocol-Johnson said that is no
91 problem.

92 Administrator Jeffery reported the application to BWSR for a special assessment is
 93 moving forward but is a separate track than the PRAP. Administrator Jeffery said he has
 94 a meeting on Monday about WACA and will update the Board about that meeting.

95 Manager Duevel asked for more information about the One Watershed One Plan. Ms.
 96 Mocol-Johnson described her experience with it. Administrator Jeffery said Steve
 97 Christopher will be part of the BWSR presentation of the PRAP report and we can ask
 98 him for more details about the One Watershed One Plan program.

99 Manager Pedersen moved to close the work session and reconvene at 7:00 p.m.. Manager
 100 Crafton seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

101

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

102 *Prior to announcing his vote, Manager Koch stated, “Without waiving my prior objections...”

103 The work session adjourned at 6:03 p.m.

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2. Call to Order of Regular Monthly Meeting

105 President Ziegler called to order the Wednesday, September 14, 2022, Board of Managers
 106 Regular Meeting at 7:03 p.m. The meeting was held remotely via meeting platform Zoom.
 107 Attorney Smith took roll call, and manager attendance was as follows:

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<i>Manager</i>	<i>Attendance</i>
Crafton	Present
Duevel	Present
Koch	Present*
Pedersen	Present
Ziegler	Present

109 *Prior to announcing his vote, Manager Koch stated, “Subject to my prior objections...”

110

3. Approval of Agenda

111 Manager Crafton moved to approve the agenda as submitted. Manager Pedersen seconded the
112 motion.

113 Manager Koch said subject to his prior stated objections he requests, pursuant to his authority, to
114 remove all items from the Consent Agenda except 8e – Approve Permit Application 2022-059
115 (EP 23-43-C) Dredging and Waterbody Crossing as presented in the proposed Board Action
116 section of the Permit Review Report. He moved to amend the agenda to move item 9k –
117 Authorize Administrator to Compile Comments from Board of Managers for Submittal to
118 MAWD before 10/01/22 Deadline – to the Consent Agenda and move Committee Reports to item
119 7 as 7b, 7c, and to add 7d Audit and Finance Committee.

120 Manager Crafton said she’d like to keep 9k as an action item. President Ziegler said let’s leave
121 the Committee reports where they are and if the Board wants to rethink its agenda structure, it can
122 consider it in the future but not for this meeting.

123 Upon a roll call vote, the motion to adopt the agenda carried 5-0 as follows:

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

125 *Prior to announcing his vote, Manager Koch stated, “Subject to my prior objections...”

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4. Public Hearing: Take Comments on Proposed 2023 Preliminary Budget and Levy

127 Manager Pedersen moved to open the public hearing. Manager Crafton seconded the motion.

128 Manager Koch objected to having the public hearing in that a copy of the budget was not attached
129 or referenced to in the meeting notice as required and the notice wasn’t sufficient and he couldn’t
130 understand any link to go find any detail to the budget, so he didn’t know how people would
131 know exactly what budget we’d be dealing with for the public hearing.

132 Administrator Jeffery said the notice in the newspaper didn’t include the budget. Manager
133 Crafton stated it was attached to the Resolution. Manager Koch responded whether it’s attached
134 to another item is, he believes, irrelevant. He reiterated his objection to holding the public hearing
135 and his reasons for his objection.

136 Attorney Smith stated the statute requires the notice of the hearing on the budget to include a
137 summary in the newspaper of the proposed budget, and he thinks what we have is an
138 interpretation of what a summary is. Manager Koch said as long as the full budget document is
139 reasonably accessible to the public, he thinks a general summary is adequate and he doesn't think
140 it's expected that the full budget and each line item be published in the newspaper.

141 Manager Koch said he doesn't believe a one-line item in any way meets the definition of a
142 summary, or a two-line item, for that matter. He said other notices by cities and watersheds
143 provide more a detailed budget in their notices. Manager Koch said he notices staff isn't asking
144 for comments on the notices before they go out. He asked if someone can find the authorization to
145 hold the public meeting, to submit the notice for it, since the notice states it was by order of the
146 Board.

147 Manager Koch said he didn't find in the minutes of the Board's August meeting an item calling
148 for a meeting and directing publication of the notice, so if we didn't do that, then the notice is
149 false, and then he doesn't believe we are authorized to hold a public hearing.

150 Manager Crafton asked if there is anyone attending the meeting that wants to comment on the
151 budget. Manager Koch said that question is totally irrelevant to the issue at hand, particularly
152 when there was no budget attached.

153 President Ziegler asked Attorney Smith the date of the deadline for the District to submit its
154 budget and levy. Attorney Smith said September 15. He stated he recalls a budget workshop in
155 August where the budget was presented in detail. He said there was discussion, Mr. Jeffery
156 proposed the amount that would be sent out for notice for public hearing purposes. Attorney
157 Smith said he believes that was the number used in the summary, and he believes the Board
158 authorized him to proceed with noticing the hearing, and the Board had a detailed discussion of
159 the budget that was proposed. Manager Koch said unless someone can point him to the
160 resolutions adopted to the effect of ordering a public hearing and directing publication of the
161 notice, it didn't happen.

162 President Ziegler recommended proceeding otherwise the District will be in violation of rules
163 because of timing. He said with regard to the discussion, there was a workshop and the Board did
164 talk about it in detail.

165 Manager Koch moved to not hold the public meeting because it wasn't authorized, the
166 appropriate notices were not given, and there was not sufficient time in which to provide and
167 approve budget according to the law by the deadline. He said he thinks we all took an oath to
168 uphold the law, and we didn't do what we were supposed to do, and shame on us.

169 The motion died due to lack of a second.

170 Upon a roll call vote, the motion to adopt the agenda carried 4-1 as follows:

171

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

Duevel	Yes
Koch	No*
Pedersen	Yes
Ziegler	Yes

172 *Prior to announcing his vote, Manager Koch stated, "Subject to my reservations about this meeting in
173 general for the reasons he set forth..."

174

175 Administrator Jeffery reminded the Board that iterations of the draft budget was presented to the
176 Board in June, July, and August. He reminded the Board it settled on a 5% levy increase and a
177 6% budget increase for 2023.

178 Manager Koch commented he reserves his prior stated objections, but he needs to raise the point
179 that pursuant to the Open Meeting Law, copies of this budget are supposed to be available for
180 people to peruse while it's being discussed, but we're not doing so, since it hasn't been posted for
181 purposes of the public hearing, so he makes that statement of objection and notice of what he
182 believes is a violation of the Open Meeting Law. Manager Koch said he brings attention to what
183 he believes is a violation of the Minnesota Data Practices Act, namely a failure to provide the
184 total of information in the possession of the District that basically backs up the items in the
185 agenda, but specifically his request regarding information for employees' salary and
186 compensation was not provided.

187 Manager Koch said the budget Mr. Jeffery is showing doesn't foot, meaning the numbers don't
188 add up. Manager Koch said there is a differential of \$100,612, so on that basis, he doesn't think
189 we can approve that. Manager Koch said speaking as a manager and also as a resident of this
190 District, he expects to have access to all the information he previously requested, whether it be
191 under the Minnesota Data Practices or Minnesota 103.D.315 and its subdivisions.

192 Manager Koch said he doesn't believe the Board finalized the budget because we didn't
193 proactively post it and notice it, and so he thinks the process has been defective. He said he is
194 sorry but we didn't do our job.

195 President Ziegler called for comments from the public on the budget as it was presented by
196 Administrator Jeffery. No comments were raised.

197 President Ziegler called for comments by the managers.

198 Manager Crafton stated the District has \$325,000 in its reserves, which would cover the shortfall
199 of \$105,442.

200 Manager Duevel asked Manager Koch to point out the footing error. Administrator Jeffery
201 highlighted row 418, column M cell in the budget spreadsheet. Administrator Jeffery said we
202 could reduce the Reserve to \$224,388 to zero out the budget. Manager Koch stated the issue is the
203 total expenditures exceed the gross amount of money we predict we're going to have available to
204 spend. He said he doesn't mean any disrespect to Manager Duevel, but this is not the first time,
205 and people don't want to listen, but he [Manager Koch] could never vote for something that is out

206 of balance like that, where we are going to spend more money than we anticipate we are going to
207 have.

208 Manager Crafton moved to close the public hearing. Manager Pedersen seconded the motion.
209 Upon a roll call vote, the motion carried 5-0 as follows:

210

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

211 *Prior to announcing his vote, Manager Koch stated, “Subject to my prior objection as to the meeting and also to the
212 notice of the meeting of this public hearing, etcetera...

213

5. Matters of General Public Interest

214 President Ziegler presented the procedure for raising Matters of General Public Interest. No
215 matters were raised.

6. Reading and Approval of Meeting Minutes

216 **a. Approve Minutes of the August 3, 2022, RPBCWD Board of Managers Regular**
217 **Monthly Meeting**

218 Manager Crafton moved to approve the minutes of the August 3, 2022, RPBCWD Board
219 of Managers Regular Monthly Meeting. Manager Pedersen seconded the motion.

220 Manager Koch stated subject to his prior objections, he doesn’t have any specific changes
221 to be made, but he has a comment that he’s having difficulty trusting the accuracy of the
222 minutes, in light of the fact that the minutes of the prior meeting, he doesn’t remember
223 exactly which one, in his opinion included subjective characterizations and did not limit
224 itself to actual words stated or spoken so therefore he is not going to be able to approve
225 any minutes prepared by the current recorder.

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

227

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

Duevel	Yes
Koch	No*
Pedersen	Yes
Ziegler	Yes

228 *Prior to announcing his vote, Manager Koch stated, “Subject to my prior reservations...”

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230 **b. Approve Minutes of the August 10, 2022, RPBCWD Board of Managers Special**
 231 **Meeting**

232 Manager Crafton moved to approve the minutes of the August 10, 2022, RPBCWD Board
 233 of Managers Special Meeting. Manager Pedersen seconded the motion.

234 Manager Koch stated he didn’t bring it up at the prior minutes but he’ll bring it at this
 235 point. He said the bylaws of this District require that action be taken and that they be done
 236 by written resolutions and he believes we are missing written resolutions for each of the
 237 minutes. He said it’s specifically in the bylaws, and he believes either the secretary or the
 238 staff, he forgets which one, is to provide written resolutions for all items not brought up
 239 by individual managers or otherwise members of the public or individuals.

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

241

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

242 *Prior to announcing his vote, Manager Koch stated, “Subject to all my prior objection...”

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244 **c. Approve Minutes of the August 11, 2022, Continuation of the August 3, 2022,**
 245 **RPBCWD Board of Managers Regular Monthly Meeting**

246 Manager Duevel moved to approve the minutes of the August 11, 2022, Continuation of
 247 the RPBCWD Board of Managers Regular Monthly Meeting. Manager Pedersen seconded
 248 the motion.

249 Manager Koch stated he restates his prior objections to this meeting and his prior
 250 objections to the minutes.

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

252

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

253 *Prior to announcing his vote, Manager Koch stated, "Subject to all my reservations..."

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7. CAC

255 **a. Report and Accept CAC Minutes**

256 No CAC report. No managers raised questions about the CAC minutes.

257 **b. Confirm Board Representative for September 19th CAC Meeting**

258 Manager Duevel volunteered to be the Board representative at the CAC's September 19th
259 meeting.

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8. Consent Agenda

261 Manager Crafton moved to adopt Resolution 2022-064 as amended. Manager Pedersen seconded
262 the motion. Upon a roll call vote, the motion carried 4-1 as follows:

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

264 *Prior to announcing his vote, Manager Koch stated, "Subject to my prior reservations regarding this
265 meeting, etcetera..."

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The Consent Agenda included item 8e – Approve Permit Application 2022-046 Dakota Retail as Presented in the Proposed Board-Action Section of the Permit Review Report.

9. Action Items

a. Items Pulled from Consent Agenda

i. Accept August Staff Report

Manager Crafton moved to accept the August Staff report as submitted.
Manager Pedersen seconded the motion.

Manager Koch asked for an explanation about the staff report’s page 1, accounting, audit, and budget, the last paragraph. Administrator Jeffery explained about the U.S. Bank system for verifying checks to make certain that redundant checks don’t go out or inappropriate amounts don’t go out. He went into more detail about how positive pay works. He explained how U.S. Bank’s default is set, which directed that no checks that went out were authorized to be paid, so the 17 checks from the District that were deposited were returned. Administrator Jeffery said that setting has since been changed from the default to a yes value and staff has the ability to stop payment on a check after the Board has approved it.

Manager Koch asked if there was a procedure beforehand as to how this positive pay provision should work. He said he doesn’t find having 17 checks returned acceptable. Manager Koch asked if the District has reimbursed everybody for any banking fees resulted from these checks being returned unpaid.

Administrator Jeffery said we did meet with U.S. Bank and they went through all the aspects of it, but when we talked about positive pay, they just talked about the ability to catch redundant checks and we were not made aware of the default setting. Administrator Jeffery said for anybody who has notified us that their bank charged them for that, we are making payment for that fee.

Manager Koch said if it were him, and he doesn’t speak for the District, he would reach out to each one of the payees for those 17 checks and affirmatively ask if they incurred any fees and offer to reimburse them.

Manager Koch moved that we direct staff to reach out to the payees whose checks were returned unpaid and inform them that if they incurred any service charges that the District would reimburse them upon their providing us with appropriate documentation as to the amount of the fees. President Ziegler seconded the motion.

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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

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*Prior to announcing his vote, Manager Koch stated, "Subject to my prior reservations..."

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Manager Koch stated he received a second check for the amount that was returned because he had redeposited the original check and by the time it was redeposited, it went through. He said he has concerns that we have a good procedure to follow when something like this happens. Manager Koch recommended a protocol of immediately reaching out to those people, finding out what they are going to do before we go writing another series of checks.

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Manager Koch said regarding the internal policies section of the staff report, on page 2, he doesn't recall having received a link for SharePoint and he would like to make sure that is set up and that President Ziegler and he have access to that. Manager Koch asked Administrator Jeffery to follow up on this after the meeting.

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Manager Koch referenced the AIS section of the staff report and results of finding no veligers and no eDNA in Lotus Lake. Manager Koch asked if we have a process to communicate with the DNR about the results and get delisted for zebra mussels. Staff Maxwell said we talked to the AIS specialist at the RPBCWD's annual summit. He said he hasn't heard of the DNR delisting a lake for zebra mussels. Staff Maxwell said he could share the results with the DNR. Manager Koch asked if the District has shared the information with the Lotus Lake group. He stated if appropriate, to share the results with that group. Staff Maxwell said he can do that.

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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

330 *Prior to announcing his vote, Manager Koch stated, “Subject to my prior reservations...

331

332 **ii. Accept August Engineer’s Report**

333 Manager Crafton moved to accept the August Engineer’s report as submitted.

334 Manager Pedersen seconded the motion.

335 Manager Koch asked for staff to walk through the task orders listed in the
336 August Engineer’s Report and to provide a status update on each. Engineer
337 Sobiech and Administrator Jeffery provided the information. Manager Koch
338 said he’d find it helpful if we’d be able to put a Gantt chart together for the
339 projects that would show each stage, when we think we’re going to do it, to
340 make sure we measure ourselves against what we proposed. Administrator
341 Jeffery responded our intent with the project section of the website is to make
342 that type of information readily available.

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

344

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

345 *Prior to announcing his vote, Manager Koch stated, “Subject to my prior stated conditions...”

346

347 **iii. Accept August Construction Inspection Memo**

348 Manager Pedersen moved to adopt the August construction inspection report.

349 Manager Crafton seconded the motion.

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

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

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*Prior to announcing his vote, Manager Koch stated, "Subject to my prior reservations..."

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iv. Adopt Resolution 22-065 Authorizing Payment on Pay Application #5 for Pioneer Trail Wetland Restoration

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Manager Pedersen moved to adopt Resolution 22-065 Authorizing Payment on Pay Application #5 for Pioneer Trail Wetland Restoration project. Manager Crafton seconded the motion.

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Manager Koch suggested the mover of the motion revise their motion to move for adoption of the resolution included in the Board packet. Manger Pedersen asked how that would be different than the motion she made. Manager Koch said if it were him, he would move to adopt Resolution 22-065 as submitted. Manager Pedersen said that's fine, she accepts the friendly amendment. Manager Crafton accepted the friendly amendment.

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Manager Koch said it was his understanding that we agreed as a District that we would not be limiting our retainage to 5% of one-half of the contract amount, but we would be applying the full amount authorized by statute, which is 5% of the total amount until substantial completion. He asked if he is wrong that that's what we agreed or did the contract pre-date our agreement on that issue. Administrator Jeffery said yes, these contract pre-dates that discussion.

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Manager Koch asked if going forward since that discussion we are reserving the right to hold 5% of the full amount subject to our ability to release any amounts we decided are appropriate. Administrator Jeffery said a memorandum was prepared by Attorney Welch. Administrator Jeffrey recommended we bring that memo to the Board for consideration and have either Mr. Smith or Mr. Welch speak to that matter and what we could do with our contract language and what could best secure the District's interests.

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Attorney Smith said we've prepared that memo and that would be a discussion point for all contracts going forward, so it would be timely to have that

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382 discussion before the next contracts are reviewed by the Board, but none of that
383 applies to the pay apps that are before you.

384 Manager Koch moved to direct staff and legal counsel to come back to the
385 Board’s November meeting with the memo for the Board’s discussion of
386 contract terms for contracts for 2023 and beyond. The motion died due to a lack
387 of a second.

388 Upon a roll call vote, the motion to adopt Resolution 22-056 carried 5-0 as
389 follows:

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

391 *Prior to announcing his vote, Manager Koch stated, “Subject to my prior reservations...”

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393 Manager Koch moved to adopt the resolutions provided in the packet for the
394 remaining pay applications and that we direct staff and legal counsel to come
395 back at the November or December meeting with a memorandum and prepared
396 to discuss the contract terms regarding retainage. President Ziegler seconded the
397 motion, which includes the adoption of Resolution 22-066, Resolution 22-067,
398 Resolution 22-068, and Resolution 22-075.

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

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

401 *Prior to announcing his vote, Manager Koch stated, “Subject to my prior reservations...”

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v. Adopt Resolution 2022-066 Authorizing Payment on Pay Application #5 for Middle Riley Creek Restoration

[See item 9aiv.].

vi. Adopt Resolution 2022-067 Authorizing Payment on Pay Application #5 for Rice Marsh Lake Water Quality Improvement Project

[See item 9aiv.].

vii. Adopt Resolution 2022-068 Authorizing Payment on Pay Application #7 for Bluff Creek Tributary Creek Restoration Project

[See item 9aiv.].

viii. Adopt Resolution 22-075 Authorizing Payment on Pay Application #4 for Duck Lake Subwatershed Project

[See item 9aiv.].

ix. Adopt Resolution 22-069 Authorizing Administrator and Staff Forbes to Make the Updated RPBCWD Webpage Live and Archive the Existing Webpage

Manager Pedersen moved to adopt Resolution 22-069 Authorizing Administrator and Staff Forbes to Make the Updated RPBCWD Webpage Live and Archive the Existing Webpage. Manager Crafton seconded the motion.

Manager Koch moved we amend Resolution 22-069 and to substitute the October 1 date with the date October 8 so we have adequate time to review the new website and bring up any items or discussions at the October meeting.

Administrator Jeffery said the website is a living document and if things need to be added, we can add them. He said right now staff is maintaining two websites, and he would like the efficiency of maintaining one website and get the new website live.

Manager Koch remarked with all due respect he doesn't see the difference that one week would be. He said getting it right before going live is much easier. He said he respectfully disagrees with Mr. Jeffery.

Manager Pedersen and Manager Crafton did not accept Manager Koch's motion as a friendly amendment.

437 Manager Koch said we don't have any mechanism in place in which to make
 438 changes, approves changes, discuss changes, or discuss how it's laid out. He
 439 said we don't have a mechanism in place before October 1 to deal with any
 440 substantive issues, which is why he's recommending an October 8th date.

441 The motion died due to lack of a second.

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

443

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

444 *Prior to announcing his vote, Manager Koch stated, "Subject to my prior reservations..."

445

446 **b. Accept July Treasurers' Report**

447 Treasurer Crafton moved to accept the July Treasurer's Report, which has been
 448 reviewed in compliance with our internal controls, procedures, and practices. Manager
 449 Pedersen seconded the motion.

450 Manager Koch said he has questions on the fund performance analysis, Table 1, and he
 451 asked Mr. Jeffery or Treasurer Crafton to walk him through the District's budget line
 452 items that have the year-to-date percentage exceeding 58% and to comment on whether
 453 or not we anticipate going over the budgeted amount at this time. Administrator Jeffery
 454 provided Manager Koch with the requested information.

455 Manager Koch asked about the wetland restoration at Pioneer. He noted the total cost to
 456 date is \$990,000 but our lifetime budget is listed at \$857,000, and we have a lot of
 457 unspent current year budget money. Manager Koch said he is trying to reconcile that
 458 and asked Administrator Jeffery to look at that and get back to the Board about it.
 459 Administrator Jeffery agreed to do so. Administrator Jeffery reported that previously the
 460 District was earning .01% in interest and now is earning 1.86% on its funding.

461 Upon a roll call vote, the motion to accept the July Treasurer's Report carried 5-0 as
 462 follows:

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

Duevel	Yes
Koch	Yes*
Pedersen	Yes
Ziegler	Yes

463 *Prior to announcing his vote, Manager Koch stated, “Subject to my prior reservations...”

464

465 **c. Adopt Resolution 2022-070 to Approve Paying of the Bills**

466 Manager Crafton moved to pay the bills. Manager Pedersen seconded the motion.

467 Manager Koch moved that we do not pay check number 6051 payee Kennedy & Graven
 468 Charter in the amount \$13,409.77 unless it can be demonstrated that those fees do not
 469 include any services that were beyond the scope of the engagement entered into with
 470 Kennedy & Graven. The motion died due to lack of a second.

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

472

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

473 *Prior to announcing his vote, Manager Koch stated, “Based on the reservations I made and the exceptions I
 474 made...”

475

476 **d. Adopt Resolution 2022-071 – Adopting the 2023 Budget and Levy and**
 477 **Authorize Administrator to Distribute**

478 Manager Pedersen moved to adopt Resolution 2022-071 Adopting the 2023 Budget and
 479 Levy and Authorizing the Administrator to distribute it.. Manager Crafton seconded the
 480 motion.

481 Manager Koch stated as he previously noted his position that the appropriate notice of
 482 the hearing was not provided and was not an adequate summary and there was no
 483 alternate or approval to set the budget over for a public hearing, no such budget was
 484 provided in the notice or the Board packet in violation of the public meeting law
 485 furthermore the budget that was at least discussed does not foot, and besides all the

486 numerous typographical errors in the Resolution 2022-071 that was included in the
 487 Board package he received.

488 Manager Crafton commented the Board will have the opportunity in December to lower
 489 its budget but won't be able to raise it.

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

491

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

492 *Prior to announcing his vote, Manager Koch stated, "Subject to all the reservations I previously stated and
 493 my comments..."

494

495 **e. Approve Permit Application 2022-061 Eliason Shoreline Maintenance**
 496 **After-the-Fact Permit as Presented in the Proposed Board Action Section of**
 497 **the Permit Review Report**

498 Manager Pedersen moved to Approve Permit Application 2022-061 Eliason Shoreline
 499 Maintenance After-the-Fact Permit. Manager Crafton seconded the motion.

500 Manager Koch asked for some explanation of how this happened and how we are going
 501 to be recouping costs and expenses incurred in having to deal with an after-the-fact
 502 permit. Administrator Jeffery provided background on the permit application.
 503 Administrator Jeffery explained Mr. Eliason has come back with an after-the-fact permit
 504 under the District's existing rule, which would allow for placement of rip rap or
 505 maintenance of exiting rip rap. Administrator Jeffery stated the permit fee has been
 506 included as a condition of this permit and is \$3,038.50.

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

508

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

Pedersen	Yes
Ziegler	Yes

509 *Prior to announcing his vote, Manager Koch stated, “Subject to my prior reservations...”

510

511 **f. Approve Permit Application 2022-063 Erhart Farm Waterbody Crossing**
 512 **After-the-Fact Permit as Presented in the Proposed Board Action Section of**
 513 **the Permit Review Report.**

514 Manager Crafton moved to approve Permit Application 2022-063 Erhart Farm
 515 Waterbody Crossing. Manager Pedersen seconded the motion. Manager Koch made a
 516 friendly amendment that the motion be to approve the draft resolution set forth in the
 517 application review for Permit number 2022-063. Manager Crafton rephrased her
 518 motion to approve permit 2022-063 based on the permit report and the presentation of
 519 the matter at this meeting, resolved that the application for Permit 2022-063 is
 520 approved, subject to the conditions and stipulations set forth in the Recommendations
 521 section of the report; Resolved that on determination by the District administrator that
 522 the conditions of the approval have been affirmatively resolved, the Riley Purgatory
 523 Bluff Creek Watershed District president or administrator is authorized and directed to
 524 sign and deliver Permit 2022-063 to the applicant on behalf of the District. Manager
 525 Pedersen seconded Manager Crafton’s restated motion.

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

527

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

528 *Prior to announcing his vote, Manager Koch stated, “On my prior reservations...”

529

530 **g. Adopt Resolution 22-072 Approving Communication Manager Job**
 531 **Description as Recommended by the Personnel Committee**

532 Manager Koch moved to lay this item as well as item h over until we have had a
 533 workshop discussing the total organization of the District including these two proposed
 534 positions. The motion died due to lack of a second.

535 Manager Pedersen moved to adopt Resolution 22-072 Approving Communication
 536 Manager Job Description as Recommended by the Personnel Committee. Manager
 537 Crafton seconded the motion.

538 President Ziegler said maybe it doesn't need to be in the job description but to make
 539 clear the division between what the communication manager's job regarding
 540 spokesperson for the watershed versus for the Board president or the Board as a whole.

541 Manager Koch said with only receiving this proposal Friday or Saturday and without, in
 542 his opinion, adequate information as to how all our positions are going to integrate, it
 543 would not be a best management practice to proceed forward with this item nor with the
 544 following item. He suggested holding a workshop to discuss District organization and
 545 having outside expert consultation on our organization.

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

547

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

548 *Prior to announcing his vote, Manager Koch stated, "Subject to my prior reservations and my
 549 comments..."

550

551 **h. Adopt Resolution 22-073 Approving Natural Resources Coordinator Job**
 552 **Description as Recommended by the Personnel Committee**

553 Manager Koch moved to lay this matter over to a workshop during which time we
 554 should address and discuss the organization of the watershed district and the interaction
 555 of the existing positions and the proposed positions. The motion died due to a lack of a
 556 second.

557 Manager Pedersen moved to adopt Resolution 22-073 Approving Natural Resources
 558 Coordinator Job Description as Recommended by the Personnel Committee. Manager
 559 Crafton seconded the motion.

560 Manager Koch restated his prior comments with regard to the communication manager
 561 as he thinks they apply as well here. He said he is very disappointed we didn't receive a
 562 presentation on these two proposals by either the Personnel Committee or the District
 563 Administrator. Manager Koch said without sufficient information it would be a

564 malfeasance, not misfeasance, to go through and approve this resolution for this
565 position.

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

567

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

568 *Prior to announcing his vote, Manager Koch stated, "Subject to my reservations..."

569

570 **i. Hostile Work Investigation and Resolution of Censure**

571 Attorney Smith stated at your previous meeting you directed the preparation of a
572 resolution such as this. He said we have reviewed the discussion you had and all the
573 information and prepared this draft. Attorney Smith said Ms. Fleming-Wolfe is here and
574 has also reviewed the draft and he and Ms. Fleming-Wolfe are happy to answer any
575 questions.

576 Manager Koch said in light of the content of the proposed resolution he moves that this
577 motion be permanently tabled as there are insufficient managers who can vote without a
578 conflict of interest and thus there are insufficient votes to be able to pass this resolution
579 and this is all per our very bylaws section rule number 6.B. The motion died due to lack
580 of a second.

581 Manager Pedersen moved to adopt the proposed resolution provided by Attorney Smith.
582 Manager Crafton seconded the motion. Administrator Jeffery determined it is resolution
583 2022-076.

584 Manager Koch said as he previously stated Ms. Schwie's investigative report exceeded
585 her engagement. He said her engagement was specifically limited to allegations by Mr.
586 Jeffery's of a hostile work environment. Manager Koch said it included no other
587 investigation yet she took it upon herself to not only look at other issues that were not
588 raised by Mr. Jeffery but she took it upon herself to act as a lawyer and advisor. He said
589 she made derogatory, libelous, slanderous statements, which in his opinion, if you
590 managers adopt this you have in fact made all those the same libelous and slanderous
591 statements and would be subject to the same liability as she would. Manager Koch
592 further pointed out that in no case did she raise the legal principles of official or
593 qualified immunity for making statement. Manager Koch stated it is his opinion that Mr.

594 Jeffery made his claim against him as retaliation for Manager Koch's exercise of his
595 rights under Minnesota Data Practices Act, which action is violation of Minnesota
596 Whistleblower law. Manager Koch said it is his position that adopting this motion
597 would also constitute a violation of Minnesota Whistleblowers Act. Manager Koch
598 stated it appears to him that this is a concerted effort by managers, staff, at least Mr.
599 Jeffery, and Mr. Smith to discriminate against him in violation of Minnesota
600 Whistleblowers Act. Manager Koch said in addition he points out the United States
601 Constitution protects his speech that he may have made and certainly characterizations
602 contained or are referred to are subjective, no one has any idea what they are, there are
603 no references to fact, etcetera. Manager Koch stated these statements therefore become
604 reckless and are libelous to his profession, including the statements regarding his
605 professional conduct as an attorney. He said he's not finished yet as he is just going
606 through his notes.

607 Manager Koch pointed out there is no such thing as retaliatory intent, etcetera. He said
608 no policy of this Board can infringe on his constitutional rights or his qualified or
609 official privileges. Manager Koch said no policy of the Board can limit his rights under
610 Minnesota Data Practices Act. Manager Koch said no policy of the Board can limit his
611 rights under 103D.315 and applicable subdivisions thereunder. Manager Koch stated he
612 is not finished yet.

613 Manager Koch said he will note that this is the latest ongoing attempt to basically thwart
614 his constitutional rights of free speech and as he previously pointed out, Manager
615 Pedersen and Manager Crafton are disqualified pursuant to the terms of our very own
616 bylaws from voting on this resolution. Manager Koch continued by saying furthermore
617 Manager Ziegler is disqualified as he would be a witness, as such allowing him to vote
618 would be not only be a violation of our bylaws but a violation of the due process clause
619 in the United States and as well as the state of Minnesota. Manager Koch said because
620 of the disqualification of two if not three of the managers there are insufficient votes to
621 be able to pass this resolution and any attempt to pass that resolution would likewise be
622 a violation of our very own bylaws. He said that is all he has to say at this point.
623 Manager Koch said one last item, if you recall in the report that Ms. Schwie herself said
624 regarding a statement by me that an attempt to remove somebody from their position
625 would itself be a breach of the District's code of conduct. Manager Koch said so he
626 would have to say since you have apparently agreed with her position, anybody voting
627 to pass this resolution in attempt to have me removed as a manager would be likewise
628 violating the very code of conduct that you allegedly claim that I have violated. He said
629 he is at this point finished, thank you.

630 President Ziegler asked Attorney Smith if he had any comments to add. Attorney Smith
631 said he thinks the only question for Manager Koch would be whether he wishes to
632 submit his comments in writing or would prefer a transcript be made of the comments
633 he just made.

634 Manager Koch responded he thinks both a transcript and a written one would be
635 appropriate if this body decides that it's going to take action, and he will note that he

636 does not have any time limit in which to make a written complaint about including any
637 of this as part of the written record.

638 Manager Koch noted legal counsel represents the Board of Managers as a whole and not
639 any individual managers.

640 Upon a roll call vote, the motion carried 3-1 with one abstention as follows:

641

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

642 *Prior to announcing his vote, Manager Koch stated, "Subject to all my prior reservations..."

643 ** After announcing his vote, Manager Koch stated, "Although I will say that as I stated before I
644 believe Manager Crafton, Manager Pedersen, and Manager Ziegler are disqualified from voting and if they
645 agree not to vote I would certainly excuse myself from the vote, but given that they have not excused
646 themselves, I vote no."

647

648 **j. Adopt Resolution 22-074 Approving Barr Task Order No. 40 to Review and**
649 **Update Internal Load Management Plan for Lotus Lake**

650 Manager Pedersen moved to adopt Resolution 22-074 Approving Barr Task Order No.
651 40 to Review and Update Internal Load Management Plan for Lotus Lake. Manager
652 Crafton seconded the motion.

653 Manager Koch asked Engineer Sobiech to explain his methodology and if it would be
654 such that it would be able to take into account the possible impacts of wake boat activity
655 on Lotus Lake as it may impact alum treatments. Engineer Sobiech said the analysis and
656 part of Task 3 is to include a discussion on using alum in deep and shallow lakes with
657 respect to recreational boating. Manager Koch provided his suggestions for Task 3.
658 Administrator Jeffery said he thinks this will be an important discussion to have when
659 Mr. Bischoff comes in for the workshop.

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

661

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

Duevel	Yes
Koch	Yes*
Pedersen	Yes
Ziegler	Yes

*Prior to announcing his vote, Manager Koch stated, “Subject to my prior reservations...”

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k. Authorize Administrator to Compile Comments from Board of Managers for Submittal to MAWD before 10/01/22 Deadline

President Ziegler commented he received a note that some other watersheds have sent a letter specifically stating they agree with the proposed changes and it seems like if we’ve reviewed it and we don’t disagree with it, we should consider the same note so MAWD can make a decision on this.

President Ziegler moved to authorize the administrator to compile the comments and report back to MAWD that we’re in favor of it if no manager says they don’t like it for whatever reason. Manager Pedersen seconded the motion.

Manager Crafton said she strongly supports the language and thinks we should send a letter of support to the acting executive director of MAWD.

Manager Koch commented that many times we’re not providing the information or the resolutions as required pursuant to the Open Meeting Law and we are not providing written resolutions as required by our very own bylaws. He said this is one of the situations and we need to follow our own bylaws and we need to follow the law.

Administrator Jeffery said if President Ziegler would forward him the letter, he could use that as a jumping off point to draft a letter. Manager Koch said point of order, given the time and remaining items, he moved that we continue this meeting to a future date that would be set tonight and perhaps that would give us all time to review this letter and make comments. President Ziegler said he will forward the letter to Administrator Jeffery, who can send it to the managers. Manager Pedersen seconded the motion.

Manager Koch amended his motion to continue the meeting to 9:00 a.m. Friday, September 23, 2022. Manager Pedersen accepted the amendment. Attorney Smith said he has a conflict at that time but could meet at 10:30 a.m. or after or could make arrangements for Mr. Welch to attend if the meeting is set for 9:00 a.m.

Upon a roll call vote, the motion to continue the meeting to 9:00 a.m. on September 23, 2022, carried 5-0 as follows:

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

Duevel	Yes
Koch	Yes*
Pedersen	Yes
Ziegler	Yes

691 *Prior to announcing his vote, Manager Koch stated, "Subject to my prior reservations..."
692 At 9:58 p.m. the Board continued its meeting to Friday, September 23 at 9:00 a.m.
693

10. Committee Reports

- 694 a. Personnel Committee Report
- 695
- 696 b. Governance Committee Report
- 697

11. Discussion Items

- 698 a. Human Resources Consultant
- 699 b. Information Technology Consultant
- 700 c. Open Meeting Law
- 701 d. MN Data Practices Act MN Statute Chapters 13 and 103D.315
- 702 e. File Organization and Online Access
- 703 f. Status of 4M and US Bank Accounts
- 704 g. US Bank NSF Issue
- 705 h. Per Diem Payments
- 706 i. Review of Administrator Jeffery
- 707 j. Communications
- 708 k. District Organization
- 709 l. District Policies
- 710 m. 10-Year Plan Status Update
- 711

12. Manager Reports

712

13. Administrator Reports

713

14. Legal Counsel Reports

714

- a. Spring Valley Friends, LLC v. RPBCWD Update

15. Upcoming Board Topics

715

- a. UofM Pond Study Findings

716

- b. Hennepin County – Climate Action Plan

717

- c. Contract Retainage

718

- d. Rules and Plan Review

719

16. Upcoming Events

720

- a. Tree and Shrub Give Away, 10/7/22

721

- b. Cycle the Creek (Bluff), 10/9/22

722

- c. MN Water Resources Conference, 10/18/22-10/19/22

723

- d. North American Lake Management Society (NALMS), 11/14-11/17/22

724

- e. MAWD Annual Conference 11/30/22 – 12/3/22

17. Adjournment

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Respectfully submitted,



Dorothy Pedersen, Secretary