

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

August 3, 2022, RPBCWD Board of Managers Work Session & 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*
- Joshua Maxwell, Water Resources Coordinator
- Louis Smith, Attorney, Smith Partners*
- Scott Sobiech, Engineer, Barr Engineering Company*

- Other Attendees: Andrew Aller, CAC Marilyn Torkleson, CAC
- Jared Jones Jeff Weiss, CAC

**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 state COVID-19 actions, mandates, and guidance.

1. 5:00 p.m. Work Session

- 1 President Ziegler called the Board work session to order at 5:01 p.m.
- 2
- 3 **a. Preliminary Draft Budget**
- 4 Administrator Jeffery displayed the Excel spreadsheet with the revised preliminary draft
- 5 2023 District budget. He pointed out the budget reflects projects that were delayed or
- 6 advanced, such as the Upper Riley Creek project that will start in 2022, pushed out from
- 7 2021. Administrator Jeffery reported the proposed 2023 levy is an increase of 2.4% over
- 8 this year’s levy. He explained staff proposes a levy increase of 5% in 2024 and 6% in
- 9 2025. He said the biggest change in the revised preliminary budget compared to the
- 10 version discussed at last month’s workshop is the staff cost budget increase. He explained
- 11 the reasons for the change, noting previous budgets had various staff costs under different
- 12 line items and the proposed budget consolidates all staff costs under one line item.

13 Administrator Jeffery asked for manager feedback on the proposed 2023 budget and
 14 levy.

15 Manager Koch commented he wants to make sure the District has a good handle on
 16 inflation going forward. He said likely things aren't going to cost what the District had
 17 previously estimated. Manager Koch had specific questions about how the proposed levy
 18 total was reached. He also stated he is really concerned about the Frederick Miller
 19 Springs area.

20 Manager Pedersen supported increasing the levy a little more than the proposed 2.4%,
 21 and she said she appreciates the forward-looking view to the budget, so the managers can
 22 look ahead several years.

23 Manager Koch said he doesn't think the information on staff costs is sufficient, and he
 24 wants to see more detailed information such as proposed percent increases and other
 25 information to have a good handle on personnel costs.

26 Manager Koch recommended raising the 2023 levy increase to 5%, which is half of the
 27 rate of inflation, and said unspent funds should go into the District's reserves.

28 Manager Duevel said one of the big drivers of inflation is the anticipation of inflation. He
 29 said he is sharing this point as a cautionary note, because costs should be factored in but
 30 the managers shouldn't be thinking the inflation rate means to automatically raise costs
 31 by 10% or 20%.

32 President Ziegler said he thinks a 5% levy increase next year makes sense and is prudent.
 33 Manager Crafton said she agrees. Manager Pedersen said a 5% levy increase is a good
 34 idea. Manager Duevel agreed with a 5% levy increase.

35 Manager Pedersen moved to close the work session. Manager Crafton seconded the
 36 motion. Upon a roll call vote, the motion carried 5-0 as follows:

37

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

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 39 The work session adjourned at 6:25 p.m.

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2. Call to Order of Regular Monthly Meeting

43 President Ziegler called to order the Wednesday, August 3, 2022, Board of Managers Regular
 44 Meeting at 7:01 p.m. The meeting was held remotely via meeting platform Zoom.

45

3. Approval of Agenda

46 Manager Crafton moved to approve the agenda. Manager Pedersen seconded the motion.

47 Attorney Smith suggested adding two agenda items: an attorney report on the Minnesota Supreme
 48 Court decision on Circle Pines vs. Anoka County, and a closed session for continued discussion
 49 of the hostile workplace investigation. President Ziegler added these two items to the end of the
 50 Action items, to follow action item 9k.

51 Manager Koch stated he wants to remove all Consent Agenda items and to add them as action
 52 items. He requested adding additional agenda items, including: MN Data Practices Request, Old
 53 Business, including the list of items from the previous Board meeting: action items regarding the
 54 CAC, discussion of a meet & greet, discussion of low mow and cultivators, letter to City of
 55 Chanhassen on wake boats, contact City of Chanhassen on debris in gutters, add an item in the
 56 closed session to discuss the IT RFP, and a status report of the matter of public interest where
 57 someone wanted to contact Mr. Jeffery, a status update on the Bearpath agreement amendment,
 58 and an update on the grant application to BWSR [Minnesota Board of Water and Soil Resources].
 59 Administrator Jeffery said a Bearpath pay app is on the agenda. Manager Koch said the update
 60 about the agreement update could be part of that item. President Ziegler said Manager Koch’s
 61 items could precede the Committee Reports in the meeting agenda. Manager Koch suggested
 62 adding his Old Business items as discussion items.

63 Manager Pedersen commented on the length of the agenda. The managers agreed by consensus to
 64 adjourn the meeting at 10:00 p.m. Managers Crafton and Pedersen accepted the modifications to
 65 the agenda as friendly amendments to the motion.

66 Upon a roll call vote, the motion to approve the agenda with revisions carried 5-0 as follows:

67

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

68

4. Public Hearing: Bluff Creek Reach 5 Ecological Enhancement Plan

69 Administrator Jeffery reminded the Board that staff presented at the previous Board meeting the
 70 feasibility report for this project. He reminded the Board the project encompasses the wetland
 71 area upstream. Administrator Jeffery said tonight’s public hearing is to take public comments on
 72 the proposed plan, and then staff will come in front of the Board at a later date to ask the Board to
 73 consider ordering the project. He noted the project is contingent on the budget discussed in the
 74 Board’s workshop earlier this evening.

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

77

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

78

79 Engineer Sobiech shared a PowerPoint presentation “Bluff Creek Reach 5 Ecological
 80 Enhancement Plan.” He explained why this project is proposed for this reach of the creek.
 81 Engineer Sobiech displayed photos of an incised channel disconnected from the floodplain and
 82 images of bank and gully erosion. He talked about proposed enhancement measures and
 83 implementation strategy and a recommended path forward for the proposed project. Engineer
 84 Sobiech reported the estimated project cost is \$606,000 with an estimated total phosphorous
 85 reduction of 69 pounds, total suspended solids reduction of 68,000 pounds, and an area of
 86 ecological enhancement of more than 8.5 acres. He stated the point estimate of cost is \$606,000
 87 and explained this is the very early stage of a design project, and the definition and refinement
 88 comes as the project moves further down the path. He said for that reason, the Engineer has a
 89 range around the estimated cost and the estimated possible cost range is between \$550,000 and
 90 \$800,000. Engineer Sobiech explained the wide range is due to the environment of the
 91 construction industry and bidding, which makes more precise numbers hard to forecast.

92 Engineer Sobiech said if the Board decides to move forward with the project, he recommends
 93 ordering the project in late 2022 for design and permitting starting in late 2022 and going through
 94 early 2024, and project construction in 2024-2025. He added that there is a possibility of aligning
 95 this work with the City of Chanhassen’s planned 2024 project to realign Galpin Avenue.

96 Manager Koch commented he thinks access issues should be specifically coordinated with the
 97 City of Chanhassen and it behooves the District to work closely with the City of Chanhassen. He
 98 asked what construction schedule or index the Engineer is working off of. Engineer Sobiech
 99 responded the range in cost is based on ASTM standards and ACE standards for engineering cost
 100 estimating, based on the level of definition of the project, and is not tied to a specific inflation
 101 amount or construction index at this time.

102 President Ziegler opened the floor for public comments. Ms. Marilyn Torkelson, CAC member,
 103 asked how the Reed Canary Grass would be removed from the wetland and how plant diversity
 104 would be re-established. Administrator Jeffery said vegetation restoration isn't part of the project
 105 due to the size as it would increase this project scope by at least tenfold. He said if there is
 106 adequate freeboard between infrastructure, it might be possible to elevate the water level to
 107 drown the Reed Canary Grass, but the District doesn't have enough survey data right now to
 108 make that determination.

109 Manager Koch commented that before alteration of the wetland is undertaken, some type of
 110 assessment should be undertaken as there are wildlife species in there.

111 President Ziegler asked Administrator Jeffery if the project could include an estimate for what
 112 might be able to be done regarding the wetland. Administrator Jeffery said staff could add a
 113 general estimate on what it would be to vegetatively restore the wetland.

114 Manager Duevel asked if this project cost is reflected in the District's proposed budget that the
 115 Board discussed in the Board workshop. Engineer Sobiech said the budget discussed earlier this
 116 evening in the Board workshop includes \$650,000 for this restoration, spread out over 2023,
 117 2024, and 2025.

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

120

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

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5. Matters of General Public Interest

122 President Ziegler presented the procedure for raising Matters of General Public Interest. Ms.
 123 Marilynn Torkelson, Eden Prairie resident and CAC member, said she is commenting in favor of
 124 native plant restoration. She talked about the beetle that eats purple loosestrife. Ms. Torkelson

125 asked the Board and staff to keep apprised of invasive species mitigation techniques and
 126 biological controls as they get approved and to consider how the District can use such approved
 127 techniques as less expensive ways to mitigate invasive plant species.

128

6. Reading and Approval of Meeting Minutes

129 **a. Minutes of the July 13, 2022, RPBCWD Board of Managers Regular Monthly**
 130 **Meeting**

131 Manager Crafton moved to approve the minutes of the July 13, 2022, RPBCWD Board of
 132 Managers Regular Monthly Meeting. Manager Pedersen seconded the motion.

133 Manager Crafton noted non-substantive edits on lines 13, 14, 16, 72, 52, 53, 156, 316,
 134 440, 503, and 592, to correct spelling, missing words, and note the time the Board
 135 reconvened its public meeting after the closed session.

136 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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7. CAC

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

140 Ms. Torkelson reported the CAC had no motions or actions items from its last meeting.
 141 She said CAC members are interested in field trips to look at implemented District
 142 projects and BMPs (Best Management Practices). Ms. Torkelson commented on
 143 dwindling participation in the CAC meetings and said she hopes the Committee can retain
 144 the great people that are participating on the Committee.

145 Manager Koch asked if the CAC reviewed the District’s draft proposed 2023 budget and
 146 if the Committee had any comments on it. Ms. Torkelson said the budget was reviewed in
 147 the joint Board-CAC meeting and she didn’t have any CAC feedback to report. Manager
 148 Koch said as the 2023 budget hasn’t been finalized, if anyone has comments or questions,
 149 to bring them to the attention of Administrator Jeffery and Engineer Sobiech.

150 Manager Koch said he thinks having CAC exit interviews is a great idea, but the
151 interviews shouldn't be performed by anyone involved in the District. He suggested the
152 CAC discuss the idea and report back to the Board.

153 Manager Pedersen raised the idea, talked about at a previous meeting, about the CAC and
154 Board together tour some of the District's projects and BMPs. Administrator Jeffery said
155 staff will work on setting that up. Manager Koch suggested staff use GoPro or similar
156 technology to video sites, so the videos can be shared.

157 **b. Confirm Board Representative for August 15th CAC Meeting**

158 Manager Duevel volunteered to be the Board representative at the CAC's August 15th
159 meeting.

160

8. Consent Agenda

161 There were no items on the Consent Agenda.

162

9. Action Items

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

164 **i. Accept July Staff Report**

165 Manager Crafton moved to accept the July Staff report. Manager Koch
166 seconded the motion.

167 Manager Crafton asked for more details about the TEP (Technical Evaluation
168 Panel) meeting. Staff Dickhausen provided more details about the meeting and
169 topic, a wetland boundary determination application for a residential project in
170 Chanhassen. He said the delineation report isn't back yet.

171 Manager Koch asked about administration regarding annual reviews and asked
172 what the process is for advising managers as to how staff is doing. He said he
173 thinks managers need to know the Administrator's assessment of how staff is
174 doing by person. Manager Koch said he thinks it is important for managers to
175 know those results. He said he thinks an item should be added to a Board
176 agenda regarding for coming up with a request for proposals for finding an HR
177 consultant.

178 Manager Koch moved to authorize attendance of managers and any such staff
179 as Administrator Jeffery deems appropriate at the MAWD Summer Tour and
180 that the District reimburses attendees for the cost of attendance including
181 mileage, hotel, and meals. Manager Pedersen seconded the motion.

182 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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Manager Koch raised other comments and questions he had regarding the staff report, including:

- Asking staff to circulate to managers the Carver County EDNA testing report, regarding Zebra mussel veliger sampling, and for staff to present the results at a future Board meeting.
- Explaining he'd like to see a bi-annual or quarterly report, once the database is up and running, regarding what's been applied for, what's been done, who is doing what, what's been approved, what's been inspected, and results.
- Commenting about flow-data monitoring station installations and this year's flow data
- Stating he'd like to see something more substantive regarding groundwater conservation plans and that they include low-mow, low water, natural habitat, that could even be pulled into a specific grant program
- Asking staff to circulate the lake vegetation management plan(s) mentioned on the staff report page 5 [for Mitchell Lake and Red Rock Lake] and have someone provide a brief update to the Board at a future meeting or workshop.
- Asking staff to coordinate a presentation to the Board on the University of Minnesota's final report on iron filings and including the UMN researchers as presenters.
- Asking to see the report on the core samplings on Rice Marsh Lake

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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ii. Accept July Engineer’s Report

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Manager Pedersen moved to accept the July Engineer’s report. Manager Crafton seconded the motion.

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Manager Koch asked for more details regarding Task Order 29B Middle Riley Creek regarding the design’s slope and the site’s grass cover. Engineer Sobiech provided those details. Manager Koch asked what kind of monitoring the District has scheduled to evaluate what worked or didn’t. Staff Maxwell responded with details about the District’s regular stream monitoring and CRAS programs.

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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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iii. Accept July Construction Inspection Memo

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Manager Crafton moved to adopt the status of the July 2022 non-compliant sites. Manager Pedersen seconded the motion.

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Manager Koch said he would like to see going forward a quarterly summary of permits and permit statuses. Administrator Jeffery said staff will work on developing such a report with AGI. Manager Koch asked Administrator Jeffery to update the Board at the September meeting as to the status of the

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232 development of the report and when by the end of the year staff could provide
 233 it. 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

235
 236 **iv. Approve Permit Application 2022-046 Dakota Retail as Presented in**
 237 **the Proposed Board-Action Section of the Permit Review Report**

238 Manager Crafton moved to adopt Permit 2022-046 Dakota Retail as Presented
 239 in the Proposed Board-Action Section of the Permit Review Report, including
 240 the resolutions. She read the resolution into the record:

241

Proposed Board Action

Manager _____ moved and Manager _____ seconded adoption of the following resolutions based on the permit report that follows and the presentation of the matter at the August 3, 2022 meeting of the managers:

Resolved that the application for Permit 2022-046 is approved, subject to the conditions and stipulations set forth in the Recommendations section of the attached report;

Resolved that on determination by the RPBCWD administrator that the conditions of approval of the permit have been affirmatively resolved, the RPBCWD president or administrator is authorized and directed to sign and deliver Permit 2022-046 to the applicant on behalf of RPBCWD.

Upon vote, the resolutions were adopted, _____ [VOTE TALLY].

242 Manager Pedersen seconded the motion.

243 Manager Koch asked for more information about the filter and how the District
 244 knows if it works, what kind of testing and reporting the District has in place,
 245 and what if it doesn't work.

246 Engineer Sobiech described the filter design and how it is designed to perform
 247 to remove pollutants. He said the performance testing on this proprietary BMP
 248 was conducted by the state of Washington's Department of Ecology. Engineer
 249 Sobiech referred to the MPCA's information in its online stormwater manual
 250 dedicated to manufactured devices and establishing approved pollutant removal
 251 crediting. He explained these agency information sources are what the District
 252 relies on as reviewers to either accept the BMP or ask for modifications.

253 Engineer Sobiech went into more detail about the project design and the
254 function of this BMP within the project.

255 Manager Koch asked about items included in the maintenance agreement.
256 Engineer Sobiech explained about the maintenance declaration the applicants
257 will be required to record on the property.

258 Manager Koch asked if the District would get a report or can require a test that
259 verifies the applicant is compliant. Engineer Sobiech said a test is not a permit
260 requirement and is not a condition or stipulation of approval at this time.

261 Manager Koch noted the testing criteria and qualifications are only as good as
262 the accuracy of the assumptions. He said it seems that a good system should
263 have periodic testing to see if in fact it performs. Manager Koch asked what
264 happens if the manufactured device fails. Engineer Sobiech said the applicant is
265 required as part of the maintenance declaration to do the repairs to ensure the
266 device functions as designed.

267 Manager Koch shared his opinion that the District should be including some
268 type of testing requirement and authorization for the District to go in and do its
269 own testing whenever it wants to, to see if these types of systems are actually
270 working. He said that is his recommendation for a maintenance agreement.

271 Engineer Sobiech noted stormwater Rule J has the provision to include
272 monitoring if the Board feels is necessary. He said the District Engineer
273 recommends not including it and instead rely on the information provided by
274 the TAPE program and the MPCA. Engineer Sobiech agreed he thinks it is
275 valuable to ask the applicant to allow the District to come in and do periodic
276 testing, such as collecting samples, as a cross check.

277 Manager Koch moved an amendment to the resolution to provide that the
278 maintenance agreement allow the District to perform periodic testing at its
279 discretion as to the performance of the filter. Managers Crafton and Pedersen
280 didn't accept Manager Koch's amendment as a friendly amendment to the
281 motion on the table.

282 Manager Crafton said the Board can consider and discuss those points at a
283 future time, but not as part of this permit. Manager Koch said he didn't hear any
284 reason why not to include it. Manager Crafton said she thinks the Board should
285 discuss adding a process but not with this permit.

286 President Ziegler said he is hearing adding this type of language is something
287 the Board wants to consider adding to maintenance agreement of all projects
288 that include manufactured devices, to allow the District access to periodically
289 review and test the output.

290 Administrator Jeffery stated that device removal efficacies are based on an
291 annual basis, not a per-event removal, so a sample on any given date may not
292 come close to the annual removal efficiency. He said this is why in-field

293 monitoring of these devices is difficult. Administrator Jeffery said the District
 294 already has the ability per agreements to access the site and verify the system is
 295 functioning. Attorney Smith confirmed Administrator Jeffery’s statement.

296 President Ziegler said it sounds like the amendment to the motion isn’t needed
 297 as the District already has the ability.

298 Manager Koch said he doesn’t see specific language about the District being
 299 able to enter the site and do testing, and he thinks it would behoove the District
 300 to have language in the maintenance agreement that would give the District the
 301 best ability to do whatever testing the District thinks is appropriate.

302 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

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306 **v. Adopt Resolution 22-058 Authorizing Payment on Pay Application**
 307 **#4 for Pioneer Trail Wetland Restoration**

308 Manager Pedersen moved to adopt Resolution 22-058 Authorizing Payment on
 309 Pay Application #4 for Pioneer Trail Wetland Restoration. Manager Crafton
 310 seconded the motion.

311 Manager Koch asked about the amount of the retainage and asked if the amount
 312 is what the District’s contract calls for. Engineer Sobiech said the District’s
 313 contract allows for retainage of 5% up until 50% of the total contract amount,
 314 which is the amount of \$7,170. Manager Koch asked if that limitation is in the
 315 statute. Engineer Sobiech said it is not, the statute mentions up to 10% for the
 316 total contract, but the District has the policy for contractors in good standing
 317 and performing well to release retainage at the 50% mark.

318 Manager Koch shared his understanding of the recent law change and said
 319 Attorney Smith can verify that information at the appropriate time. Manager
 320 Koch said the District should not be issuing any contracts until we have
 321 considered whether or not 5% at 50% is an appropriate level and we have
 322 discussed additional hold back for paperwork, etcetera.

323 President Ziegler said it sounds like this is a point the Board and staff can
 324 consider when it discusses its rules.

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

326

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

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329 **vi. Adopt Resolution 2022-059 Authorizing Payment on Pay Application**
 330 **#4 for Middle Riley Creek Restoration**

331 Manager Crafton moved to adopt Resolution 2022-059 Authorizing Payment on
 332 Pay Application #4 for Middle Riley Creek Restoration. Manager Pedersen
 333 seconded the motion.

334 Manager Koch said he has the same question about this pay app regarding the
 335 retainage on this contract as he had on the last item about Resolution 2022-058,
 336 the Pioneer Trail Wetland Restoration Pay app. He asked if the response would
 337 be the same. Engineer Sobiech said yes.

338 Manger Koch repeated his suggestion that we address this sooner rather than
 339 later.

340 Attorney Smith reminded the Board that it added to this agenda item a
 341 discussion Manager Koch’s question about the status of the Bearpath agreement
 342 amendment.

343 Manager Koch asked for a status report of the proposed amendment to the
 344 agreement that the Board approved in principle with the direction for staff to
 345 work on providing a more definitive agreement on who is paying how much
 346 and when.

347 Administrator Jeffery said staff is still working on adding the cost breakdown
 348 into the amendment and hasn’t yet provided a proposed amended agreement to
 349 Bearpath. He said staff is still working with Bearpath to provide the District
 350 with the easement recordation.

351 Manager Koch noted Barr Engineering’s request for more monies on this
 352 project and asked if the amendment could address the added Engineering costs.

353 Administrator Jeffery provided more details about the reasons behind the
 354 additional engineering costs associated with construction administration of this
 355 project and the reason behind agenda item 9d – Adopt Resolution 2022-063 for
 356 Additional Budget for Task Order 29B for Barr Engineering to Cover
 357 Additional Costs Associated with Construction Administration of Middle Riley
 358 Creek Stabilization Project. Administrator Jeffery reported Barr Engineering is
 359 going to cover \$19,000 of the additional construction administration costs,
 360 leaving \$8,000 in costs to be paid.

361 Manager Koch asked if the District has basis for requesting at least partial
 362 payment for this excess cost. Attorney Smith said he would want to review the
 363 District’s agreement with Bearpath before commenting on Manager Koch’s
 364 question. Attorney Smith stated Engineer Sobiech would be in a place to judge
 365 whether the additional costs were incurred due to the result of some
 366 responsibility of Bearpath that could be put on Bearpath. Attorney Smith said
 367 that would be the basis on which the District would go back and look at the
 368 agreement. He said staff can review that and come back to the Board.

369 Manager Koch proposed an amendment to the motion to direct Legal Counsel
 370 to look into whether Bearpath might have any responsibility for any additional
 371 payment that is made to Barr Engineering on this project that might be
 372 attributable to any action or inaction of Bearpath, representatives, and/or
 373 contractors.

374 President Ziegler noted two agenda action items are being discussed at the same
 375 time. Attorney Smith suggested handling the actions sequentially.

376 Upon a roll call vote, the motion to adopt Resolution 2022-059 carried 5-0 as
 377 follows:

378

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

379
 380 Manager Koch moved to direct the District Administrator and Legal Counsel to
 381 look into whether Bearpath might have any responsibility for any additional

382 payment that is made to Barr Engineering on this project that might be
 383 attributable to any action or inaction of Bearpath, representatives, and/or
 384 contractor and to adopt Resolution 2022-063 to Approve Additional Budget for
 385 Task Order 29B for Barr Engineering to Cover Additional Costs Associated
 386 with Construction Administration of Middle Riley Creek Stabilization in the
 387 amount of \$8,000. Manager Crafton seconded the motion.

388 Upon a roll call vote, the motion to adopt Resolution 2022-063 carried 5-0 as
 389 follows:

390

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

391

392 **vii. Adopt Resolution 2022-060 Authorizing Payment on Pay Application**
 393 **#4 for Rice Marsh Lake Water Quality Improvement Project**

394 Manager Pedersen moved to adopt Resolution 2022-060 Authorizing Payment
 395 on Pay Application #4 for Rice Marsh Lake Water Quality Improvement
 396 Project. Manager Crafton seconded the motion.

397 Manager Koch asked the same questions with respect to the retainage and asked
 398 if the staff's answers are the same as for the other two pay applications.

399 Engineer Sobiech responded yes. Upon a roll call vote, the motion to adopt
 400 Resolution 2022-063 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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403 **b. Accept June Treasurers' Report**

404 Treasurer Crafton moved to accept the June Treasurer's Report. Manager Pedersen
405 seconded the motion.

406 Manager Koch asked if his \$600+ per diem that wasn't processed last month has been
407 processed. Administrator Jeffery said he will confirm the status with the accountant.

408 Manager Koch commented the insurance and bonds budget is at 117% of budget and
409 legal services is at 64% of its budget and asked if these items will be in line with the
410 budget categories at year end. Administrator Jeffery commented on the additional time
411 spent on revisiting agreement language, data practice requests, and other unanticipated
412 legal costs, and said the costs will be running up against the budget.

413 Manager Koch said he takes it Mr. Smith doesn't want to say anything. Attorney Smith
414 said he is happy to comment, and he thinks the Board is aware of the matters that have
415 driven legal costs to date, and he is happy to provide a more detailed report. Manager
416 Koch asked if Attorney Smith had an idea on whether the annual legal costs will end up
417 in budget. Attorney Smith said no, he doesn't have an idea.

418 Manager Koch asked if there was a reason why the insurance and bonds is at 117%.
419 Administrator Jeffery said he will review and find the answer.

420 Manager Koch repeated his concerns about recording payments under the credit card
421 company as opposed to the actual vendor. He said he checked Quicken, which has you
422 enter the vendor as opposed to the credit card company. Manager Koch said he wants to
423 know from our accountants if that is in accordance with GAAP. He mentioned
424 purchasing cards provide information on acquisitions that can be directly downloaded to
425 one's system. Manager Koch said he would hope the District would have a breakdown
426 quarterly or at least at year-end that's a summary of all the credit card purchases so we
427 can sort by vendor so we know where the money is going, not that anybody is
428 committing fraud but just to make sure that we know what we are spending with whom.

429 Treasurer Crafton walked the managers through the existing process for accounting for
430 District's credit card expenses. Manager Koch expressed his opinion of the process and
431 noted if Treasurer Crafton can get a letter saying the process is according to GAAP, that
432 would be great, and he will take it to the Accounting Board. He shared his ideas on what
433 process and documentation would be better than what is in place.

434 Manager Duevel pointed out the Treasurer's Report the page titled Old National Bank
435 Visa Activity. He explained the page lists the Visa activity during the period covered by
436 the report.

437 Manager Koch clarified his request to enter the Visa activity by vendor and as a
438 receivable instead of listing the name of the bank as the vendor. He said the managers
439 have never seen any consolidation of the credit card transactions on an annual basis. He
440 said it would allow the managers to see what it may show, such as it may show the
441 District spent a lot of money at Holiday, and there are corporate discounts to take
442 advantage of or fuel tax refunds.

443 Manager Duevel noted the credit card charges are recorded to specific accounts, and the
 444 current process is like having an accounts receivable on the balance sheet and a detailed
 445 ledger later on in the report, because the balance sheet wouldn't show say 5,000
 446 accounts receivable, but the books would have a ledger showing that detail. He asked
 447 for clarification of internal controls in place for Visa charges. Treasurer Crafton
 448 explained the internal controls in place. Manager Duevel said he hears there are three
 449 steps in place for oversight and internal controls. He said from his experience working
 450 at many different levels, from an auditing point of view and internal control point of
 451 view, these things are covered pretty well.

452 Manager Crafton asked if the managers are comfortable with this process. Manager
 453 Koch said this isn't a matter of internal controls, although the Board still hasn't adopted
 454 them, and it is a point of accounting regarding the vendors and a matter of reporting to
 455 know where the money goes other than Old National. He said he wants to know how
 456 much we are spending here or there.

457 Manager Pedersen moved that the Board accepts the method in which the District pays
 458 its Visa bill every month. President Ziegler seconded the motion but noted there is
 459 already a motion on the table to accept the Treasurer's report.

460 Upon a roll call vote, the motion to accept the June Treasurer's Report carried 4-1 as
 461 follows:

462

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

463
 464 Manager Pedersen moved to accept the method in which we pay the for the District's
 465 Visa bill each month. Manager Ziegler seconded the motion to accept the District's
 466 process for reviewing and approving the Visa. Manager Koch said President Ziegler's
 467 reiteration didn't match the motion. Manager Pedersen changed her motion to concur
 468 with the language stated by President Ziegler. Manager Koch commented he had the
 469 floor and Manager Pedersen did not.

470 Manager Koch repeated that President Ziegler's reiteration didn't match what Manager
 471 Pedersen had proposed. President Ziegler asked Attorney Smith to provide acceptable
 472 wording for the motion. Attorney Smith said a motion that the Board accepts the current
 473 practice and method of payment of the Visa credit card bill. Manager Pedersen

474 concurred with that motion. President Ziegler seconded the motion. Manager Koch
475 asked if we could please have people ask for the floor before speaking.

476 President Ziegler asked for further discussion. Manager Koch said first, we don't have a
477 motion on the floor because Mr. Smith is not a manager, so he can't make motions.
478 Manager Koch said so we still have the motion on the table.

479 Manager Pedersen said she would like to amend her motion to the wording Attorney
480 Smith gave us for the motion. President Ziegler accepted that amendment as a friendly
481 amendment.

482 President Ziegler called for a vote.

483 Manager Koch said point of order, call for discussion.

484 President Ziegler asked if there is further discussion.

485 Manager Koch talked about going through this last November to adopt policies on not
486 only on how to do this but also on how to do reporting. He said that was never brought
487 to the managers like it was supposed to, and he won't say why it didn't happen.
488 Manager Koch said he doesn't have in front of him those written procedures and
489 policies in order to make a decision. Manager Koch moved to table this until we've had
490 a chance to look at those processes and then approve them.

491 Manager Koch's motion died due to a lack of a second.

492 President Ziegler asked for further discussion on the motion.

493 Manager Koch said apparently we are having a vote without having the policy in front
494 of us to review.

495 President Ziegler said Manager Crafton went through the policy. He said it would be
496 appropriate to have it written out so the managers can read it and approve it at the next
497 general Board meeting.

498 President Ziegler said that would make the motion effectively postponed until the
499 Board's next regular meeting.

500 Manager Crafton said so can there be a consensus on this process. President Ziegler said
501 it sounds there already is one and only Manager Koch doesn't agree with the process
502 and his lack of agreement may be because he doesn't have the written process in front
503 of him. Manager Koch said he proposed changes to the written process and he thinks
504 it's appropriate to review the proposed changes and the revisions he proposed.

505 Manager Koch moved to table the adoption of the procedure until the next meeting so
506 we can look at both of the procedures in detail but that we move forward to payment of
507 the bills.

508 President Ziegler asked Attorney Smith if there is anything the Board can do today to
509 make the process clearer or does it need to wait until the process is in writing in front of
510 us.

511 Attorney Smith said you have a motion before you right now, and there is a motion to
 512 table that wasn't seconded. He said if you want to dispose of this motion somehow, if
 513 you want to table it, or if you want to include it in relation to other written policy
 514 segregation of duties, it is up to the Board on what it would like to do.

515 Manager Koch said he understood what President Ziegler said was effectively a motion
 516 to table this until the next meeting when we have a written copy of the procedure, and
 517 he [Manager Koch] added his comments and seconds that motion.

518 Manager Ziegler withdrew his motion.

519 Manager Duevel asked for a clarification on the motion on the table.

520 Attorney Smith stated the motion is that the Board accepts the current method and
 521 practice of paying the Visa credit card bill. Upon a roll call vote, the motion carried 4-1
 522 as follows:

523

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

524

525 **c. Adopt Resolution 2022-061 to Approve Paying of the Bills**

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

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

528

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

529

530 **d. Adopt Resolution 2022-063 for Additional Budget for Task Order 29B for**
 531 **Barr Engineering to Cover Additional Costs Associated with Construction**
 532 **Administration of Middle Riley Creek Stabilization Project**

533 [Item handled under Agenda item 9avi.]

534
 535 **e. Approve Permit 2022-058 Moments of Chanhassen as Presented in the**
 536 **Proposed Board Action Section to the Permit Review Report.**

537 Manager Koch moved to approve the resolution set forth on page 1 of the permit
 538 application review for Permit # 2022-058. Manager Crafton seconded the motion.

539 Manager Pedersen noticed the report stated this permit’s site had contaminated soils
 540 from chemicals from the Sinclair station. She said regarding the list of trees being
 541 considered for the site, there is a new research module available in selecting trees for
 542 specific chemicals. She is wondering if this project checked to make sure the selected
 543 trees are those that can work with the chemicals found in the soil there. Administrator
 544 Jeffery said he will follow up with Jill Sinclair at the City of Chanhassen. He asked
 545 Manager Pedersen to provide him the information and said he will provide that
 546 information to the District’s member cities.

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

548

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

549
 550 **f. Adopt Resolution 2022-062 Authorizing Administrator to Send Resolutions**
 551 **to MAWD for Consideration at Annual Meeting**

552 Manager Pedersen moved to adopt Resolution 2022-062 Authorizing Administrator to
 553 Send Resolutions to MAWD for Consideration at Annual Meeting. Manager Crafton
 554 said she would like to pull the soil health resolution because she isn’t comfortable with
 555 the language as it doesn’t portray soil as a living organism.

556 Manager Koch seconded the motion. Manager Koch made an amendment to have
 557 Manager Crafton work with the District Administrator on the soil health resolution and

558 for the motion to include his resolution to increase the inflationary adjustment to
 559 managers’ per diem. The motion died due to lack of a second.

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

561

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

562

563

564 **g. 2020 Audit – Payment of Interest**

565 **i. Auditor Recommendations Re: Procedures**

566 Manager Koch said he’s never seen a response from the auditors regarding
 567 findings from the District’s 2020 audit and late payment of invoices and the
 568 payment of interest. He said he has requested a statement from the auditor that
 569 no interest was due on any of those invoices. Manager Koch said he would like
 570 to receive a letter from the auditor stating either there was no issue or to receive
 571 the information showing there was no issue with the payment of interest. He
 572 said his understanding is the law requires the District to pay the interest whether
 573 or not it was requested.

574 Manager Crafton provided context for Manager Duevel regarding the 2020
 575 audit.

576 Manager Koch said his position is the auditors have to decide whether or not
 577 there’s a failure to pay interest, and if they say after meeting with Manager
 578 Crafton there’s not a problem, he doesn’t have a problem.

579 Manager Koch moved that Manager Crafton and the Administrator contact the
 580 auditor regarding this issue of payment of interest and come back with either a
 581 clearance letter from the auditors that either no interest is due or a
 582 recommendation as to how much interest the District owes.

583 President Ziegler asked if there is a second to the motion. The motion failed due
 584 to lack of a second.

585

586 **ii. 2021 Audit - Duck Lake Cooperative**

587 Manager Koch said the question is whether or not the Duck Lake Cooperative
 588 Agreement to pay \$235,000, or \$225,000 each year, should be reported as a
 589 payable. He said he reviewed the agreement and it appears that it is a non-
 590 contingent liability, and he is not sure that was made clear. Manager Koch said
 591 there was some question on the part of the accountants on that. He said again
 592 the audit refers to fiscal policies that the Board has never adopted.

593 Manager Koch moved to have Manager Crafton and the auditors discuss the
 594 appropriate accounting for the Duck Lake Cooperative Agreement, given his
 595 interpretation that the District’s payments are non-contingent and should be
 596 reported as a liability. Manager Crafton said she already had this conversation
 597 with the auditor and said his opinion is it is not a liability. Administrator Jeffery
 598 reported he communicated with the City of Eden Prairie and the City stated it is
 599 not accounting for the payment as revenue.

600 Manager Koch asked that everybody ask for the floor before speaking.

601 Manager Koch amended his motion to include asking the District to get
 602 something from the District’s auditor saying they don’t believe the payments
 603 need to be booked as a receivable. The motion died due to lack of a second.

604 Manager Koch said his knowledge is that fiscal policies have never been
 605 adopted and no one has ever shown them to him even though he has asked.
 606 Manager Koch moved that the District prepare its fiscal policies and adopt those
 607 for inclusion in the District’s Governance Manual, so the audit can accurately
 608 reflect policies the District actually has in place. The motion died due to lack of
 609 a second.

610 Manager Koch moved to refer the matter of the fiscal policies to the Audit and
 611 Finance Committee for review, consideration, and recommendation back to
 612 managers for adoption. Manager Duevel seconded the motion.

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

614

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

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Manager Koch moved for Board to remain meeting notwithstanding the vote to end the meeting at 10:00 p.m. Manager Crafton seconded the motion. Attorney Smith said he understands the motion to be to revise the meeting agenda. 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

622
623

h. Consider Adding Resolution for Adjusting the Max Per Diem to Inflation Starting in the Year the \$125 Per Diem was Approved; BWSR to Set Annually, Rounded to the Nearest Dollar

624
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629
Manager Koch moved to forward the proposed resolution to MAWD for consideration after the resolution language has been doctored up by the Administrator and Legal Counsel.

630
631
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634
Manager Koch explained his reasons for this resolution are related to inflation and the erosion of 10% of the per diem value over the past year. He said many other provisions that are dollar amounts under state law have an inflationary provision to it, and other provisions include escalators and he thinks that as a matter of principle it makes sense to include escalators in any dollar amount because inflation is inevitable.

635
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641
Manager Crafton explained why she is not in favor of the resolution and noted the action to increase the per diem to \$125 was a result of out-state Districts having the situation of Board members needing to drive long distances to participate in meetings. She said she views her time as a manager as a volunteer activity. She said she doesn't think this Board has a hardship, and she doesn't want to see the District spending more money on per diems that would take away money from programs that are being paid for by tax dollars.

642
643
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645
Manager Duevel said he agrees with everything that Manager Koch put forward on this item, but he agrees with Manager Crafton on the general notion of this Board membership. Manager Duevel stated that of all the things that are politically dynamite, raising the per diem is really negative PR for the amount of money that would be passed

646 on. He said he thinks anytime anybody connected with politics is asking to raise their
647 salary for themselves, it's really toxic, and in this atmosphere for sure.

648 Manager Koch's motion died due to lack of a second.

649

650 **i. MAWD Award Presentations**

651 President Ziegler asked if the Board feels like the District should nominate the Pioneer
652 Wetland restoration project this year. The managers and staff discussed the idea of
653 waiting until next year when the project is more fully completed. The Board agreed by
654 consensus to wait until next year to submit for a MAWD award.

655

656 **j. Lotus Lake Violations Status Report**

657 Administrator Jeffery provided an update on the Lotus Lake permit violations.

658 Manager Koch asked if the violators can be charged for the District's costs for the time of
659 enforcing the District's rules. Administrator Jeffery said yes. Manager Koch said he thinks
660 we should seriously consider doing so as a leverage to get these things done, and then
661 decide later to what extent to enforce it. He said the only way we are going to get these
662 people to start following the rules is if we enforce them and it's going to cost them some
663 money. Manager Koch said otherwise these people are notorious for just ignoring us and
664 ignoring the rules. He said it's important to track staff time and Legal Counsel's time, and
665 the time of anyone else involved. Manager Koch said if we have special meetings, we
666 should consider charging for our per diems.

667

668 **k. Attorney Report on Minnesota Supreme Court Ruling on Circle Pine vs.**
669 **Anoka County**

670 Attorney Smith reported he sent the managers a copy of the Minnesota Supreme Court
671 decision in the case of Circle Pines vs. Anoka County. He reviewed the decision and
672 explained its implications for the District Board. Attorney Smith said the result is that the
673 role of the cities in the appointment of Board managers is enhanced, and the discretion of
674 counties in the appointment process is constrained. He said if a person is interested in
675 continuing to serve on a watershed board in the metro area, that person would be well
676 advised to get support for a nomination by a city and that would take the form of a City
677 Council action. Attorney Smith said the MN Supreme Court said a single city can submit
678 a list of three names and the county is to aggregate all the nominations from the different
679 cities. He explained that if the aggregation is at least a total of three names, it would be an
680 adequate list of three names and would generally constrain the County's options of who
681 they could appoint unless the result would raise issues about fair representation of the
682 various hydrological areas of a watershed. Attorney Smith noted a nomination by a city to
683 their list is an important part of the process. He said something that varies by watershed,
684 but may be clearer for the RPBCWD, is some districts have identified, perhaps in their

685 plan, areas of hydrologic interest. Attorney Smith said a watershed district may find it
 686 valuable and informative to think about what the areas of hydrologic interest are and to
 687 define it in some type of map or document. He stated it's ultimately for the county to
 688 choose who to appoint and consider those interests, but the counties may find it
 689 informative to learn about such processes or a map from the watershed district. He added
 690 that the RPBCWD has three subwatersheds that may pretty clearly define the areas.
 691 Attorney Smith said if the Board wants to give this topic more thought, it could be the
 692 topic for Board discussion in the future.

693
 694 **m. Closed Session for Purpose of Discussing the Hostile Workplace Investigation**

695 President Ziegler moved to go into closed session for the purpose of discussing the hostile
 696 workplace investigation. Manager Crafton seconded the motion. Upon a roll call vote, the
 697 motion carried 4-0 with one abstention as follows:

698

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

699
 700 The meeting moved to closed session at 10:39 p.m.

701 The Board reconvened the public meeting at 11:27 p.m.

702 Manager Koch moved to continue the meeting to an agreeable time and date. Manager
 703 Koch amended his motion to continue the meeting until Thursday, August 11 at 7 p.m.
 704 Manger Crafton seconded the motion. Attorney Smith said he is not able to attend at that
 705 date and time. He said he is not aware of any legal issues on the remaining items of the
 706 agenda, but he can ask Attorney Welch if he is able to attend.

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

708

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

Koch	Yes
Pedersen	Yes
Ziegler	Yes

709

710

At 11:32 p.m. the meeting was continued to Thursday, August 11 at 7:00 p.m.

711

10. Committee Reports

712

a. Personnel Committee Report

713

i. Compensation Packages and Staff Organization Adjustments

714

715

b. Governance Committee Report

716

11. Discussion Items

717

a. MN Data Practices Request

718

i. Compensation Packages and Staff Organization Adjustments

719

720

b. Old Business: CAC Action Items

721

c. Old Business: Meet & Greet

722

d. Old Business: Low Mow and Cultivators

723

e. Old Business: Letter to City of Chanhassen on Wake Boats

724

f. Old Business: Contact City of Chanhassen on Debris in Gutters

725

g. Old Business: Previous Matter of Public Interest

726

h. Old Business: Grant Application to BWSR

727

i. IT RFP

728

12. Manager Reports

729

13. Administrative Reports

730

14. Upcoming Board Topics

731

a. UofM Pond Study Findings

732

b. Hennepin County – Climate Action Plan

733

15. Upcoming Events

734

a. TAC Meeting August 18, 2022

735

b. MAWD Summer Tour – August 23-25, 2022

736

c. MAWD Annual Conference 11/30/22 – 12/3/22

737

16. Adjournment

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Respectfully submitted,

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745

Dorothy Pedersen, Secretary

746