

# Mgr. Koch's March Report

Thursday March 2 2023 10:01 AM

1. Review of prior year
  - a. Workshop good start -
  - b. No balancing - spend in excess of revenues and funds?
  - c. No eko plan
  - d. No response to my comments on budget
  - e. Annual Report draft -
    - i. Needs work
    - ii. Needs improvement in prose;
    - iii. Needs consistent references eg to Board or managers or District.
    - iv. Needs reorganization - projects just listed randomly without appropriate heading
    - v. Need a proof reader and a professional writer to review.
      - 1) Do what you do best and let others do the rest
      - 2) If you don't have experience say so; own up to your shortcomings; be willing to learn;
    - vi. Needs appendices and just links
2. 10 year plan
  - a. Have not seen a comprehensive review
    - i. This would be beneficial for all managers particularly recently appointed managers
    - ii. Not in the annual report
3. Financials
  - a. Have not received written confirmation that Accounting for credit card purchases complies with GAAP or GACAP; until then I am of the opinion that the accounting for credit card purchases does not comply with GAAP etc.
4. Staffing
  - a. Have not received an update as to the hiring of an assistance.
  - b. Proposed contract with Nine Mile Creek was not provided to the managers in a timely manner that would allow for review of the contract; approval of the agreement without having read it or at least receiving a summary of the material terms is malfeasance.
    - i. I question every contract based on my experience regarding other contracts prepared by legal counsel.
    - ii. I find it unacceptable for the personnel committee to not have reviewed the proposed contract between the district and Nine Mile regarding the sharing of an employee.
5. HR -
  - a. BOM continues to refuse to hire and HR professional despite obvious need due to lack of
  - b. HR consultant is needed, as no manager nor staff has demonstrated the requisite experience or training in HR
  - c. Employee handbook, does not exist to my knowledge
  - d. Employee handbook is standard operating procedure for any entity
  - e. District policies do not appear to be organized and no review to my knowledge has been completed by administrator Jeffrey
  - f. Policies need to be reviewed in light of recent legislation and additional proposed legislation, as well as state and national litigation
6. IT
  - a. I have no idea of the District's IT systems or protocols.
  - b. They have not received a briefing on the District IT security review which I understand is required under state.
  - c. The manager should receive everything on our IT system and security.
    - i. I understand that the managers may going to close session to have the security briefing.
    - ii. Need a briefing
  - d. It does not appear that any manager or staff has the requisite experience or training regarding IT
    - i. Absent the requisite experience and training by staff or managers the district needs to engage a consultant to assess the District's IT systems and security and report to the managers
  - e. I have provided IT referrals to administrator Jeffrey but have not been advised as to whether or not any such offenders or other vendors have been contacted or engaged to provide the requisite evaluation of the districts systems and security
  - f. In my view, terminating these services is of IT. Imagine without engaging a qualified consultant to advise the district as to its IT systems and security is malfeasance
  - g. The District should be issuing and Rfp
  - h. Given the apparent lack of experience and training of staff and managers cannot the district should form an IT committee to oversee the IT systems and security
  - i. Not provided with any security protocol or any processes or procedures to follow in the event of a hack of the District's IT systems
    - i. The district should engage in IT expert to assist in preparing procedures and protocols duly implemented in the event of a hack
    - ii. In my view failure to have protocols in place to deal with a hack is malfeasance. Unless an IT consultant advises us that such protocols are unnecessary.
    - iii. He goes without saying that if we do not even have IT protocols in the event of a hack we have not completed what are referred to as Table-top exercise
  - j. Document management
    - i. Let us see any reported developments on the preparation of a document management system.
    - ii. In my view the district needs a proper document management system. I have provided information regarding various vendors. This matter was something that Mr. Jeffrey said that he would be looking into last year. I have not received any update regarding the creation of a system.
      - 1) Not to discount the persons capabilities cam engaging a library and is not necessarily the best person to engage to come up with a nomenclature for documents.
      - 2) Most vendors of document management systems have samples that can be used; I am sure that Barr engineering and Smith partners likely have a document nomenclature that we could consider or adapt to the district's needs.
7. Disaster preparedness
  - a. I note that one of the workshops in the proposed plan for workshops includes a session on disaster preparedness plan
  - b. The District should authorize the administrator to engage in consultant to advise and work with staff to draft a proposed disaster preparedness plan
  - c. That said we should not be re-creating the wheel and should draw on plans previously created by consultants on this matter as well as other entities including other watersheds.
  - d. Staff to provide recommendation
  - e. Back up
    - i. What and how?
    - ii. Need evaluation
  - f. Need comprehensive policy and procedures
8. Website
  - a. Have not received any response to my numerous comments and recommendations regarding the website
  - b. Although the revised website is a good start it has many deficiencies and areas of improvement which I ended out in writing to the administrator Jeffrey including but not limited to webpages concerning.
    - i. governance
    - ii. GC
    - iii. GM
  - c. Under Governance Committee:  
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SharePoint  
Search this library

Governance Committee  
Private group Not following 4 members

Home New Upload Edit in grid view Sync Add shortcut to OneDrive Pin to Quick access Export to Excel All Documents

Documents

Name	Modified	Modified By
Communications	October 7, 2022	Terry Jeffery
Governance Manual	September 23, 2022	Terry Jeffery
Minutes	September 29, 2022	Terry Jeffery
Policies	September 23, 2022	Terry Jeffery
Resolutions	September 23, 2022	Terry Jeffery

Screen clipping taken: /16/2023 11:06 AM

**Need consultant?**

**Something for an IT committee**

- i. MAWD Materials? Provide links on District website
- ii. BSWR website links on
- iii. DNR website links and notices
- iv. Status of response to my comments
- v. News updates
  - 1) Bower releases
  - 2) MAWD releases
- vi. management

RILEY PURGATORY BLUFF CREEK WATERSHED DISTRICT

About EFRCWD - What's Happening - Get Involved - Explore - Permits - Governance

Home - What's Happening - Calendar - Board Work Session

### Board Work Session

Board Meeting  
Jan 9, 2023, 7:00 PM - 10:00 PM

A board work session will be held on the third Thursday of each month at 10:00pm.  
For board meeting materials, visit the [Board of Managers page](#).

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Screen clipping taken: /5/2023 5:36 PM

**d. Website non-compliant with BSWR rule**

- i. Mn rule 8410.0150 Subp. 3a.

**Watershed management organization websites.**

An organization shall have a website that, **at a minimum**, contains the location, time, agenda, and **minutes** for organization meetings and hearings; contact information for the organization including a person capable of answering questions about the organization; the current watershed management plan; annual activity reports and audits for the past three years; rules and regulatory program, if any; a list of the organization's board members including identification of designated officers and the governmental organization that each board member represents for joint powers organizations and the county that each board member is appointed by for watershed districts; and a list of employees including postal and electronic mailing addresses and telephone numbers. The

**9. PRAP**

- a. I have not received a response to my request for the data provided to or considered in connection with the PRAP
- b. To my knowledge not scheduled a time to review the results of the PRAP
- c. This matter should be the subject of one of the workshops

**10. Manager interaction.**

- a. I have not received any communication regarding the status of the request for funding for a consultant to assist the managers in assessing and improving their interactions.

**11. Workshop schedule and topics should include the following topics:**

- a. Strategic plan
- b. comprehensive 10 yr plan review
  - i. The review at the February workshop was helpful but not r comprehensive
- c. Work with consultant regarding manager interaction

**12. Rules**

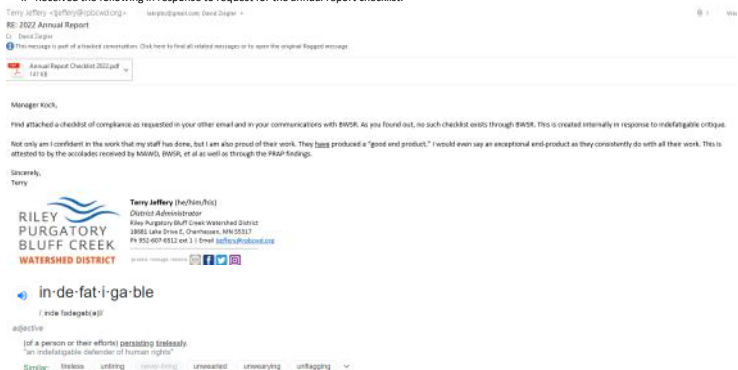
- a. Never received any substantive update on the status of the rule revisions
- b. We need to move quickly on rule revisions particularly because Chanhasen's plan is up for review and 2025?
- c. Rules need to be reviewed to address
  - i. Deficient re steep slopes
  - ii. Protection of shoreline
  - iii. Protection of lake bottoms
  - iv. Local ordinances
  - v. Fragile habitat
- d. Tree plans - the rules should include to the extent possible requirements regarding removal and planting of trees to provide for a replacement of the same amount of "diameter" is removed
- e. Street sweeping
  - i. Plan and requirement - District should review Street planning plan and requirements similar to the cities that presented at the most recent MAWD conference
- f. ew and report with recommendations
- g. Local surface water management - the District rule should include provisions regarding local surface water management the extent the impact banners within the district's jurisdiction including
  - i. Erosion
  - ii. Pollution
  - iii. Non-point source pollution?

**13. CAC**

- a. As discussed at the March meeting of the managers we managers need to adapt the policy and procedure for dealing with motions and recommendations coming from the CAC;
- b. Recommend that CAC record all meetings for the benefit of the managers and the public; there is another old adage if you cannot say it in public do not say it at all.

**14. Ledger of due from other governments - the manager should be provided with detailed information upon which the "due from" amount is determined**

15. Finance
  - a. November credit card on October report? This is not appear to be consistent with generally accepted accounting principles.
  - b. December visa payment without authorization; this does not appear to be consistent with generally accepted accounting principles for any policies adopted by the BOM-although I have not been provided with copies of any financial policies adopted by the BOM
  - c. Unauthorized payment of cc bill in December 2022; if not received any authorization for the payment
  - d. Amended resolution re pay the bills : this resolution should include representation that the treasurer has reviewed all of the request for payments and has determined that such requests are due and payable
  - e. Electronic bill pay electronic checks - we discussed using this process in the interest of saving time and money. This should be implemented, if at all possible at a reasonable cost; request for status report.
  - f. Amounts due from St Hubert's - these amounts should be set forth in the monthly and annual financial statements and reports
  - g. Amounts due EP - this amount should be set forth in the monthly and annual financial statements and reports
  - h. Accounting procedures - if still not received any evidence of any accounting procedures that have been adopted by the BOM
  - i. The financial report each month should supplemental ledger as part of the finance and accounting package that details the due from other governments
  - j. The District's financial procedures should include a modified cash/accrual accounting for income and receipts if that is our practice. However, nobody is provided me with a copy of any policy to that effect adopted by the BOM
    - i. For example, for grants camera accounts receivable, such as receivable from St. Hubert's
16. WCA
  - a. There should be a report with a summary of all actions taken, under the WCA on behalf of other governmental entities. Such reports should be included in the board packet and provided to the authorizing governmental entity
  - b. Policies and procedures? - there should be policies and procedures regarding the actions of the district and staff as the designated entity under WCA
17. E&O Plan - this is a significant budget item and there should be a written plan of how the funds are going to be spent. This plan should be provided to the managers in connection with approving the budget for the following year.
18. Contract retainage
  - a. No policy adopted - not having a policy is not a best practice. Without a policy the managers are going to be reviewing each and every contract regarding retainage and included in the report/resolutions approving any contract; the BOM should be adopting a policy specifying that all contracts will include a provision requiring the maximum retainage allowed by law
  - b. Copy of template for construction contracts - managers should be reviewing and commenting upon
19. Lotus lake rules violations
  - a. - status - have not received any report regarding the violations on Lotus lake including violation on the west and southeast shorelines of Lotus lake; there should be continuous and ongoing reporting to the BOM regarding all outstanding violations of any of the rules
  - b. Fees for costs? - any permits issued in connection with a violation should be conditioned upon paying all the costs incurred by the District in enforcing the rules including but not limited to staff time having to inspect properties where there were rules violations or failure to obtain a permit as well as costs incurred by legal counsel and district engineer's and contractors with respect to such rule violation and/or failure to obtain a permit
20. COVID
  - a. Status of plans for in person meetings - managers a been told that it is coming that we have not seen the plan
  - b. Hvac filtration? - what is the status of the HVAC filtration system at the District offices
    - i. OSHA requirements?
  - c. Sanitation plan/procedure - is there a plan/procedure? And if so, should be included in the board packet for review and comment by the managers
21. Meetings
  - a. Recording of all meetings bom and committees - all meetings should be recorded. Given the availability of the technology recordings would allow that managers staff and the public to listen to the discussions at the meetings at their convenience
    - i. The disposition of recordings should be dealt with in the District's document retention policy
    - ii. reasons to record
      - 1) Jill Crafton's statement at a personnel committee meeting which was not being recorded: "let larry talk we will just ignore him and boom"
      - 2) Manager Duevel's statement and a governance committee meeting on 1/6/23 - which is not being recorded to the effect of " saw Larry Koch' comments and there is a theme to them"
      - 3) Characterizations by recorder in the minutes of the BOM meetings which are inappropriate and not part of the practice of recorders - recorders are to record what was said not how it was said; is for participants in the meeting to verbally characterize any statements and not for the recorder to do so; for this reason the current recorders should be terminated in a new recorders should be interviewed and recorded; the recordings will speak for themselves and listeners can reach their own conclusions
      - 4) Recording a presentation allows for future viewing by other interested parties new mgrs staff cac public - recording should be posted on our website and perhaps on YouTube
  - b. Staff should provide minutes in word format and pdf format
  - c. Review of minutes before the publication of the board packet
    - i. The managers are not following the procedure adopted for reviewing the minutes namely that address of the minutes would be circulated to the managers and staff within 10 days after the meeting; managers and staff were to provide their comments and corrections in word format to staff as soon as possible so that a compendium of all the proposed changes can be included in the draft of the minutes included in the board packet so as to save time going through minutes at the board meeting. If managers are not going to review the minutes in accordance with the procedure then they should not vote on the minutes or the approval of men should be laid over to the next month.
    - ii. The recorder and staff should be proof reading and correcting typos etc. before dissemination to the BOM using the review function in word
  - d. All recordings of meetings and committees should be posted on the District's website and on the District's YouTube channel
  - e. Length of meetings
    - i. Meetings could be shortened if the minutes were previously proofreads and circulated for changes prayer to inclusion in the forward packet
    - ii. Manager Duevel calls for discussion yet implies that meetings too long:
      - 1) Feels stilted in meetings?
      - 2) Implied that there should be side bars during meetings-open meeting laws preclude sidebars and even if they are not precluded they are not a best practice in the public forum?
  - f. Open meeting law applies. All meetings of majority of the members and any "serial" meetings - attorney Smith can illuminate BOM on the particulars
  - g. Minutes of every meeting of the BOM and each committee should be prepared and submitted to the BOM for review and acceptance; such minutes as well as the recordings of each meeting need to be preserved as prescribed in the records retention policy of the district.
  - h. Each item on the agenda meeting at closer action should have a written resolution for consideration by the BOM
22. Accounting and finance
  - a. Am not aware of the State Auditor audit checklist being circulated; this checklist should be circulated to all staff and managers completed and submitted to the auditors
  - b. See prior comments on 2021 audit report
  - c. Despite being asked for no basis has been provided to me for the statements contained in the previous audits as to the policies of the district.
    - i. Abdo knew of the issue of no policies having been adopted
    - ii. Should fire Abdo as making representations not true
  - d. To my knowledge the accounting and finance committee did not meet 2022;
    - i. It would appear to be malfeasance for the county and finance committee not to have reviewed 2022 financials and not at least meet to discuss financial policies
  - e. Who chairs the audit finance committee?
  - f. Training for information regarding the accounting for governmental entities have been provided to or obtained by members of the committee?
  - g. The accounting finance committee should look into streamlining the accounting procedures and practices including but not limited to considering requiring a portal in whatever accounting program is being used for designated staff to enter information into the system camera rather than providing the information to the accountants only to have the accountants enter the information into the system. Such a procedures should reduce the expense of the accountants. I am aware that there are contractors who provide those services that lower rates than the accountants.
23. Education and outreach
  - a. Newsletters etc. Did not appear to be published on a consistent basis
  - b. That is why we need a detailed E and O budget
    - i. We need a detailed work plan and checklist so that we have consistency and issuance of newsletter;

- c. City publications - despite having been suggested and brought to the attention of staff staff is still not including information regarding the District in the Chanhassen publications and I assume none have been included in the publications by the other cities within the district.
    - i. City publications would appear to be a cost-effective means of getting information to the public regarding the District including but not limited to the rules and events etc.
  - d. Although suggested before lakeshore owners not being provided information regarding the necessity of following the applicable rules; at a minimum postcards should be sent to each lakeshore owner reminding them of various applicable rules in order to find additional information; particularly regarding shoreline work.
  - e. In addition the District should consider hosting a seminar for companies known to do Lakeshore work
  - f. I suggest sending postcards or indoor letters to all known Lakeshore and Lake service providers; there should be databases available including the licensure requirements for Lake service providers
  - g. Inspection should be required for Lake service providers after the termination of the Lake inspections by the cities and counties.
24. Governance Manual
- a. The governance manual that is purported to have been adopted in 2021 was not duly adopted as the required notices of the meetings at which it was to be adopted was not given in accordance with state law and the requisite 30 days advance notice specified in our own bylaws was not provided.
  - b. At the time that my appointment to the governance committee terminated a comprehensive proposal for amendments to the governance manual was ready for action by the governance committee.
  - c. The failure to reappoint me to the Governance Committee is clearly retaliation against me for my whistleblowing activities regarding the failure of staff and managers to comply with the open meeting law as well as the data practices act especially considering the fact that I clearly have the best qualifications for being a member of the governance committee given that I am a lawyer and that I practice in corporate and nonprofit governance for more than 40 years.
  - d. The appointment of manager Duevel unnecessarily delayed the review of the proposed changes by the managers which changes have been fitted by the CAC.
25. Efficiencies
- a. The staff with the assistance of counsel should be looking at ways and means of improving efficiency including but not limited to the implementation or use of
    - i. Dictation software - such as Dragon
    - ii. Full use of all of the functions of Word Excel and Acrobat
      - 1) Consultants are available that can assist with use of these functions. I have provided names of consultants to administrator Jeffrey
    - iii. Accounting systems allowing for remote entry by staff instead of accounting firms the saving time and money
    - iv. Document management systems
  - b. As mentioned above the BOM previously approved a process for reviewing the minutes to save time at BOM meetings it does not appear that this process is being followed.
  - c. As stated above each item and agenda for meeting should have a draft of a written resolution regarding the agenda item for consideration by the voting members.
  - d. I recommended that staff consider using one note as a means of tracking information status of items action items links to applicable documents
26. Open meeting law
- a. Requires at least one copy of all items to be considered camera discussed etc. Be available to the attendees of the meeting.
    - i. Considering status of technology all such items should be posted to the District's website prior to the meeting
  - b. The closed meeting regarding the Noble Hills project was not conducted in accordance with Minnesota statutes Section 13D.05, Subdivision 3 (c)(3) which states as follows  
 "to develop or consider offers or counteroffers for the purchase or sale of real or personal property.  
 Before holding a closed meeting under this paragraph, the public body must identify on the record the particular real or personal property that is the subject of the closed meeting. The proceedings of a meeting closed under this paragraph must be tape recorded at the expense of the public body. The recording must be preserved for eight years after the date of the meeting and made available to the public after all real or personal property discussed at the meeting has been purchased or sold or the governing body has abandoned the purchase or sale. The real or personal property that is the subject of the closed meeting must be specifically identified on the tape. A list of members and all other persons present at the closed meeting must be made available to the public after the closed meeting. If an action is brought claiming that public business other than discussions allowed under this paragraph was transacted at a closed meeting held under this paragraph during the time when the tape is not available to the public, section 13D.05, subdivision 3 applies.  
 An agreement reached that is based on an offer considered at a closed meeting is contingent on approval of the public body at an open meeting. The actual purchase or sale must be approved at an open meeting after the notice period required by statute or the governing body's internal procedures, and the purchase price or sale price is public data  
 From <<https://www.revisor.mn.gov/statutes/cite/13D.05>>
27. Data practices act
- a. Administrator Jeffery as the "responsible authority" and the "data practices compliance official" is not timely performing the duties as such positions. As long as administrator Jeffery is the responsible authority in the data practices compliance official is his obligation to comply with data practices law. The BOM may not direct him to violate the law and the BOM must direct the administrator Jeffery to comply with the law.
  - b. I am unaware of whether or not all contracts entered into by the District include a notice that the data practices act applies to the contractor as required under Minnesota statutes Section 13.05 subdivision 6. I am aware of contracts not including such notices.
  - c. I am not aware of any agreement that requires third parties performing services to comply with the Minnesota data practices act as specified in Minnesota statutes Section 13.05 subdivision 11
  - d. The BOM should require administrator Jeffery to report on and to the extent that he and the district are compliant with the Minnesota data practices act requirements.
28. Administrator Jeffery
- a. Again receiving unprofessional emails from Administrator Jeffery.
    - i. Received the following in response to request for the annual report checklist.  

  - b. Administrator Jeffery appears to have ego issues and issues with authority. Witness the erogance of putting "his" message in the Annual Report.
    - i. Administrator is not listed in the statute but the managers are and even the chief engineer.
  - d. This is now at least the third time he has sent unprofessional emails.
  - e. Admin Jeffery may want to explore the word
    - i. [Munipimus](https://www.merriam-webster.com/words-at-play/top-10-rare-and-amusing-insults-vol-1)  
 From <<https://www.merriam-webster.com/words-at-play/top-10-rare-and-amusing-insults-vol-1>>  
 Definition - a stubborn person who insists on making an error in spite of being shown that it is

wrong

From <<https://www.merriam-webster.com/words-at-play/top-10-rare-and-amusing-insults-vol-1>>