

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

April 1, 2020, RPBCWD Board of Managers Monthly Meeting and Public Hearings

PRESENT:

Managers: Jill Crafton, Treasurer

Larry Koch

Dorothy Pedersen, Vice President

Dick Ward, President

David Ziegler, Secretary

Staff: Claire Bleser, RPBCWD Administrator

Terry Jeffery, Watershed Planning Manager

B Lauer, RPBCWD Education and Outreach Assistant

Louis Smith, Attorney, Smith Partners

Scott Sobiech, Engineer, Barr Engineering Company

Other attendees: Dana Donnay, Chanhassen resident

Sharon McCotter, CAC

Greg Falconer

Jim Senske, Bearpath

Greg Hawks, Chanhassen Environ. Comm.

Note: this meeting was held remotely via meeting platform Zoom in abidance with state mandates in response to Covid-19.

1. Call to Order

1 President Ward called to order the Wednesday, April 1, 2020, Board of Managers Regular
2 Monthly Meeting and Public Hearings (held remotely via meeting platform Zoom) to order at
3 7:00 p.m.
4

2. Approval of Agenda

5 President Ward said agenda item 8h - Enter into Contract with Human Resources Consultant not
6 to Exceed \$5,000 – is moved to the final item on the agenda before adjournment and will be
7 conducted in closed session. He moved off the Consent Agenda item 8e – Approve Permit 2020-
8 03 Moments of Chanhassen. Manager Koch requested pulling off the Consent Agent item 8a -
9 Accept March Staff Report, 8b – Accept March Engineer’s Report (with attached inspection
10 report), 8c – Approve Pay App #1 Lake Susan Spent Lime Filter Modification, 8d – Approve Pay
11 App #3 Lower Riley Creek Branch Stabilization, and 8i – Approve Proposal from Wenck on the
12 Review Aquatic Vegetation Management in Mitchell Lake and Red Rock Lake. Manager Ziegler
13 requested pulling off the Consent Agenda item 8g – Approve Duck Lake Raingarden Quote.

14 Attorney Smith added item 10b – Legal Update. President Ward corrected agenda item 6a, stating
 15 the item is the Approval of the Minutes of the March 4, 2020, meeting and not the February 5
 16 meeting as listed on the agenda. Manager Crafton noted she has comments to make during the
 17 item 5 – Matters of General Public Interest.

18 Manager Crafton moved to approve the agenda as amended. Manager Ziegler seconded the
 19 motion. By call of roll, the motion carried 5-0 as follows:

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

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3. Public Hearing: Middle Riley Creek

21 Administrator Bleser provided background on the proposed project. She summarized the
 22 feasibility study conducted by Barr for the proposed project to restore 1,435 feet of Middle Riley
 23 Creek. She talked about staff working with Bearpath ownership and staff to identify possible
 24 approaches to the design. Administrator Bleser presented the recommended design approach,
 25 explaining the opinion of probable cost for the project is \$286,000. She stated the District would
 26 provide funds in the amount \$242,500 and Bearpath would provide \$43,500 in funding and
 27 \$39,000 of in-kind services such as vegetation establishment management and public education.

28 President Ward opened the public hearing for comments. Jim Senske, owner of Bearpath,
 29 provided comments about his and Bearpath’s support of this project.

30 Manager Koch asked several questions regarding the cost differences between the design options
 31 that were investigated, and staff responded. Manager Pedersen remarked she had reservations
 32 about the project cost and the District’s portion of the cost.

33 President Ward called for further comments. Upon hearing none, he closed the public hearing.

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4. Public Hearing: Wetland at 101

35 Mr. Jeffery summarized the project and the two concept plans and two outlet options that were
 36 investigated. He explained staff recommends the project with Concept Plan A and outlet option 2
 37 for the reasons that this design would provide the lowest cost per pound of total phosphorous (TP)

38 and total suspended solids (TSS) removed with the least site disturbance and the most
39 downstream benefit in terms of rate control and TP and TSS removal.

40 Mr. Jeffery said staff plans to organize a neighborhood meeting in the summer to collect input
41 from residents regarding the proposed design.

42 President Ward opened the public hearing for comments.

43 Manager Koch asked if a project outcome is that the creek will no longer be impaired. Mr. Jeffery
44 responded this project in and of itself won't result in the District being able to delist Bluff Creek
45 from the Impaired Waters List, but the project will help the District's progress toward the goal of
46 delisting the creek. Manager Koch asked about the project's location and whether it is the best
47 location for this project, and Engineer Sobiech responded on why this is the right location for the
48 project.

49 Mr. Hawks asked if the project includes construction of a boardwalk trail. Mr. Jeffery said no,
50 construction of a boardwalk trail is not part of the project's scope of work. He added that perhaps
51 there will be a future opportunity for a boardwalk trail in this location, but a trail is not part of the
52 current proposed project. Mr. Falconer asked what prevents invasive plants from returning post-
53 restoration. Mr. Jeffery talked about long-term maintenance and other factors designed to
54 minimize invasive plants moving into the restored wetland.

55 President Ward called for additional comments. Upon hearing none, he closed the public hearing.

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5. Matters of General Public Interest

57 Jill Crafton introduced herself as a resident of Bloomington and member of the Bush Lake
58 chapter of the Izaak Walton League. She said many of the Chapter's members live in Eden Prairie
59 and Bloomington, and the Chapter provided comments to the District's on its 10-Year Plan. Ms.
60 Crafton said the Chapter has long considered the Riley Purgatory Bluff Creek Watershed District
61 to be on the cutting edge of water management, but now she is asking the question, "Is Watershed
62 District is positioned to remain on the cutting edge?"

63 Ms. Crafton read into the record her comments regarding regenerative agricultural practices and
64 said she would provide these written comments to the District.

65 Manager Pedersen recommended the Board holds a Board workshop this year on the topic of the
66 watershed as an ecosystem.

6. Approval of Minutes

a. March 4, 2020, RPBCWD Board of Managers Regular Monthly Meeting

67 Manager Pedersen corrected two misspellings of her name. Manager Ziegler noted on line
68 21 the word "discussion" should be replaced with "discussed" and on line 23 the reference
69 to "President" Koch should be changed to "Manager" Koch. Manager Ziegler moved to
70 approve the minutes as amended. Manager Crafton seconded the motion. Upon a roll call
71 vote, the motion carried 5-0 as follows:
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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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b. March 2, 2020, Board of Managers Workshop

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Manager Ziegler moved to approve the March 2, 2020, Board of Managers Workshop minutes as presented. Manager Pedersen seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

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

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c. March 24, 2020, Board of Managers Workshop

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Manager Crafton moved to approve the March 25, 2020, Board of Managers Workshop minutes as presented. Manager Ziegler seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

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

Pedersen	Aye
Ward	Aye
Ziegler	Aye

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7. CAC

85 Ms. Sharon McCotter reported the CAC met virtually via the Zoom platform on March 16, 2020,
 86 and approved a motion supporting the Staring Lake Stormwater Capture and Reuse Project. She
 87 talked about CAC discussions on ways to further facilitate youth engagement with the watershed
 88 and the CAC, and she noted the CAC is establishing a new subcommittee with this focus. Ms.
 89 McCotter said the new subcommittee is in the process of writing its charter. She announced there
 90 is a Speakers Bureau engagement scheduled with the Chanhassen Rotary, and she believes it will
 91 move forward as a virtual presentation to the Rotary. Ms. McCotter shared her update on working
 92 with the City of Chanhassen to develop a spring cleanup such as buckthorn removal.

8. Consent Agenda

93 Manager Ziegler moved to approve the Consent Agenda, which comprised 8f – Approve
 94 Permit 2020-08 The Ridge. Manager Crafton seconded the motion. Upon a roll call vote,
 95 the motion carried 5-0 as follows:

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

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9. Action Items

a. Pulled Consent Agenda items

i. Accept March Staff Report

98 Manager Koch asked about the Aquatic Invasive Species information on page 2 of
 99 the report and asked if there have been discussions about delaying the inspections
 100 in response to COVID-19. Administrator Bleser said the discussions were about
 101

102 the District’s commitment to AIS inspections. Manager Koch asked if there are
 103 any impacts to the District’s Cost-Share Program in light of COVID-19.
 104 Administrator Bleser responded the District has notified all grant share recipients
 105 that site visits are postponed at this time as they fall under the category of non-
 106 essential work during this time of COVID-19 response. Manager Koch had
 107 several other comments and questions, such as his suggestion the District consider
 108 creating a video as an education and outreach tool and his suggestion regarding
 109 surveying that the District utilize LiDAR measuring and use a drone to capture
 110 video of projects as they progress.

111 Manager Pedersen asked staff for an update on conversations with BWSR about
 112 updating the wetland management system. Mr. Jeffery reported BWSR’s
 113 suggestion of using Excel and that BWSR wasn’t involved with or planning any
 114 database projects at this time. Manager Koch suggested using Microsoft Database.
 115 Manager Pedersen asked if the District could involve MAWD to organize a
 116 statewide effort regarding coming up with one system. The Board directed staff
 117 to contact Emily at MAWD on this issue. Engineer Sobiech commented that
 118 watershed rules require a MnRAM to be submitted, and he thinks this is an
 119 opportunity for the District to be a leader in this initiative.

120 Manager Pedersen moved to accept the staff report. Manager Crafton seconded
 121 the motion. Upon a roll call vote, the motion carried 5-0 as follows:

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

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124 ii. **Accept March Engineer’s Report (with attached Inspection Report)**

125 Manager Koch asked staff for an update on the District’s corrective actions
 126 regarding erosion prevention and sediment control inspections. Mr. Jeffery
 127 provided an update. Manager Koch remarked if work is being done on the site, the
 128 District needs to follow up again. Manager Crafton asked Engineer Sobiech for
 129 more information on MTDs, or Manufactured Treatment Devices. Engineer
 130 Sobiech responded. Manager Crafton moved to accept the March Engineer’s
 131 Report. Manager Pedersen 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	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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- iii. **Approve Pay App #1 Lake Susan Spent Lime Filter Modification**
Manager Koch asked why there were no retainages with this contract. Engineer Sobiech explained why. Manager Ziegler moved to approve Pay App #1 Lake Susan Spent Lime Filter Modification. Manager Pedersen seconded the motion.

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

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

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- iv. **Approve Pay App #3 Lower Riley Creek Branch Stabilization**
Manager Koch asked what remains to be done in this project and asked staff to walk through the retainage calculation. Engineer Sobiech replied the project is 90% complete and provided details on the tasks remaining. He explained the retainage calculation. Manager Crafton moved to approve Pay App #3 Lower Riley Creek Branch Stabilization. Manager Ziegler seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

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

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v. **Approve Permit 2020-003 Moments of Chanhassen**

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Manager Ziegler asked for more information about TDA, Tire Derived Aggregate – the aggregate material referenced in the Board packet information about this permit. Engineer Sobiech replied in detail about the Engineer’s review of TDA research and the applicant’s submitted information about TDA, including a MnDOT study. Engineer Sobiech explained the MnDOT study shows TDA is effective as long as the material isn’t inundated for more than 48 hours. He said the District Engineer is requiring as a permit condition that the applicant conduct infiltration testing in the locations the applicant is proposing to use the TDA material and ensure the water contact would be less than 48 hours. Engineer Sobiech noted this is the first time the District has reviewed a project in which the applicant is proposing to use TDA.

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There was lengthy discussion about Engineer Sobiech’s findings from research about the efficacy of TDA, managers’ concerns about potential leaching from TDA, potential cost impacts to the applicant to use natural material in place of TDA, and the District’s Rules.

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Engineer Sobiech pointed out the District’s Rules do not require natural materials. Attorney Smith stated if the Board is considering requiring a material different from the one the applicant proposed, the Board would need to consider its basis for the requirement. He said the District Engineer has presented information indicating TDA is not a generally accepted material in the industry. He said it’s within the District Engineer’s technical interpretation of what the appropriate material or medium is, and it’s within the Board’s discretion to consider that technical information. Attorney Smith said the Board might also consider that if the applicant is proposing a material considered experimental or that poses certain risks to ground water, the District might require the applicant to post a larger surety that would be adequate to re-do the system if it turns out site monitoring, done by the applicant, indicates there was leaching or other problems. Attorney Smith highlighted that it is reasonable for the Board to interpret its rules to provide that the applicant needs to use a material that’s generally accepted in the

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181 industry, and it sounds like the material proposed by the applicant is experimental
182 and raises risk concerns. He said if the District has documented technical
183 information shared for the public record, as shared tonight by Engineer Sobiech,
184 that TDA is not a widely accepted material in the industry, then the Board has the
185 basis either to reject the material and require stone or other natural material or to
186 treat the TDA as an experiment and put the risk of the experiment on the applicant
187 by requiring tight monitoring.

188 Engineer Sobiech said the Board could take action to extend the permit review
189 period. The managers discussed the information presented. Engineer Sobiech
190 remarked if the Board so directs, staff can do additional research to clarify the
191 potential risks this product. President Ward said it makes sense for the Board to
192 act to extend the permit review period. Attorney Smith said it would be a
193 reasonable course of action, and he said another option is for the Board to approve
194 the permit on the condition the applicant chooses to use a widely accepted
195 material, as specified by the District Engineer, or if the applicant insists on using
196 the TDA, the District would need more time in order to perform research on the
197 material.

198 Manager Koch moved to approve Permit 2020-003 based on tonight's discussion
199 and subject to the conditions raised tonight, including the applicant substitutes a
200 material generally accepted in the industry in place of the TDA, or if the applicant
201 responds it wants to proceed with the TDA, the permit review period will extend
202 by 60 days, thereby delaying permit action, to allow for additional information on
203 the material to be received and evaluated by the Board. Manager Ziegler seconded
204 the motion.

205 Manager Pedersen asked about tracking staff time spent on this permit. Engineer
206 Sobiech stated it is his intent that any time staff spends on this permit is tracked to
207 this permit, which is tied to the applicant's permit fee, for which the District has a
208 mechanism in place for replenishment.

209 Manager Ziegler asked for the motion to be reiterated. Attorney Smith said the
210 motion is for the applicant to substitute the TDA with a material generally
211 accepted in the industry, or if the applicant wants to use the TDA material, the
212 time for the District's permit review is extended by 60 days to allow the Board to
213 review additional information produced by the applicant regarding risks and
214 associated issues posed by TDA use for the Engineer's review and for the
215 consideration by the Board. Manager Ziegler asked for clarification of the
216 Engineer's review that will take place if the applicant substitutes the TDA with a
217 generally accepted material. Engineer Sobiech responded.

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

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

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222 vi. **Approve Duck Lake Raingarden Quote**

223 Manager Ziegler said he asked to have this item pulled from the Consent Agenda
224 because he noticed the contractor name Sunram wasn't specified but should be to
225 indicate the District is awarding the bid to Sunram. Manager Ziegler moved to
226 accept the Duck Lake Raingarden quote from and award the bid to Sunram.
227 Manager Crafton seconded the motion.

228 Engineer Sobiech reported that after the bid process, Sunram supplied to the
229 District a letter related to COVID-19 and the Stay-at-home work order. He
230 reported Sunram has closed its shop for a temporary, two-week period, and as part
231 of the letter Sunram has requested additional time on the back end of the contract
232 by an additional two weeks. The managers and staff discussed the probability of
233 Minnesota's Stay-at-home order being extended, and how to address Sunram's
234 request for an extension. Attorney Smith asked Engineer Sobiech if there would
235 be adverse effects to the District or additional costs resulting from Sunram's
236 delay. Engineer Sobiech replied the contract hasn't asked for additional costs, but
237 at some point in time, such as if the delay extends into a new season, there is a
238 chance the contractor would ask for a change in rates or something similar.

239 Attorney Smith recommended the Board put a bookend in place as to how far out
240 the District is willing to extend without revisiting the terms of the contract, and
241 the Board should be specific about that bookend in its communication back to
242 Sunram. Engineer Sobiech said right now the contract is slated to complete at the
243 end of June. He said given July and August are the warmest months, he suggests
244 the Board extend the contract into early October, so the plants can be established
245 outside of the peak heat months. Attorney Smith suggested the Board set a firm
246 completion date with no price increase. Engineer Sobiech recommended setting
247 the completion date as October 15, 2020.

248 Manager Ziegler moved to amend his motion to include a completion date of

249 October 15 at no additional cost. Manager Crafton seconded the motion.

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251 Upon a roll call vote, the motion to amend carried 5-0 as follows:

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

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254 President Ward called the question on the amended motion. Upon a roll call vote,
255 the amended motion carried 5-0 as follows:

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

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258 vii. **Approve Proposal from Wenck & Associates on the Review Aquatic**
259 **Vegetation Management in Mitchell Lake and Red Rock Lake**

260 Manager Koch asked about the commencement and completion dates and delays
261 considering COVID-19. Attorney Smith said his understanding is Wenck’s belief
262 is this work is exempt and Wenck has no concerns with performing the work
263 consistent with the Minnesota Department of Health guidelines. He said the
264 District doesn’t anticipate delays with this project. Administrator Bleser
265 commented about critical work and noted the topic of critical work is on tonight’s

266 meeting agenda.

267 Manager Koch remarked he thinks the District should have in its contracts the
 268 right to terminate contracts as the District may see a situation in which the District
 269 wants to stop work and pay the contractor for work performed but doesn't want
 270 the contractor to proceed further. He asked the Board and staff to consider
 271 including such language in contracts going forward. Manager Koch asked what
 272 type of work District staff will perform related to this project. Administrator
 273 Bleser responded.

274 Manager Ziegler moved to approve the proposal from Wenck & Associates on the
 275 Review Aquatic Vegetation Management in Mitchell Lake and Red Rock Lake
 276 and approve Wenck as the contractor. Manager Pedersen seconded the motion.
 277 Upon a roll call vote, the motion carried 5-0 as follows:

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

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280 **b. Accept February Treasurer's Report**

281 Treasurer Crafton communicated that the report has been reviewed in accordance with
 282 the District's internal controls and procedures. She moved to accept the February
 283 Treasurer's Report as presented. Manager Pedersen seconded the motion.

284 Manager Koch asked for an update on the costs of the annual audit and inquired about
 285 Redpath costs reflected in the report. He asked about the expenses from Fortin
 286 Consulting. Administrator Bleser provided details about the annual audit costs and
 287 Redpath costs. She explained the work performed by Fortin Consulting was for
 288 preparation for the property management training, and she said this item should be
 289 classified under the Hennepin County Chloride Initiative. Manager Koch asked several
 290 other questions about specific expenses.

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

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

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c. Approve Paying of Bills

Manager Crafton moved to pay the bills. Manager Pedersen seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

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

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e. Order Pioneer Wetlands at 101 Resolution (Resolution 2020-05) and Approve Task Order 30B Design of Wetlands at Pioneer Trail

Mr. Jeffery summarized the work included in the Task Order. Manager Ziegler moved to approve Task Order 30B Design of Wetlands at Pioneer Trail. Manager Pedersen seconded the motion.

Manager Crafton spoke about her concerns about water coming into the site and her belief that there should be more diverse species of vegetation restored into the wetland. Manager Koch asked staff to clarify the options staff recommended, and he moved to amend the motion to state this task order is to proceed as related to the design option 1 and that the task order specifically refer to the existing overriding agreement between the

310 District and Barr Engineering. Administrator Bleser said the Task Order is based on the
 311 design recommendation staff presented as part of the public hearing.

312 Mr. Jeffery specified the design recommendation is for Concept A and outlet Option 2.
 313 Manager Koch made a friendly amendment to his motion to amend to specify grading
 314 plan Concept A and outlet Option 2. Manager Ziegler seconded the motion to amend to
 315 specify grading plan Concept A and outlet Option 2. Manager Crafton asked for
 316 clarification about grading plan Concept A, and Mr. Jeffery responded Concept A does
 317 not include the excavation to the east.

318 Upon a roll call vote, the motion to amend carried 3-2 as follows:

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

320

321 President Ward called the question on the amended motion.

322 Upon a roll call vote, the amended motion carried 3-2 as follows:

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

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325 Manager Ziegler moved to approve Resolution 2020-05. Manager Koch seconded the
 326 motion. Attorney Smith commented this resolution orders the project and it is appropriate

327 to insert into the second “Be it resolved” the project specification of Concept A and
 328 Option 2. Manager Koch moved to amend the motion to insert into the second “Be it
 329 resolved” the project specification of Concept A and Option 2. Manager Ziegler seconded
 330 the motion to amend.

331 Upon a roll call vote, the motion to amend carried 3-2 as follows:

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

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334 President Ward called the question on the amended motion.

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336 Upon a roll call vote, the amended motion carried 3-2 as follows:

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

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339 **f. Order Middle Riley Creek Resolution and Approve Task Order 29B Design**
 340 **of Middle Riley Creek (Resolution 2020-06)**

341 Manager Crafton moved to approve Task Order 29B. Manager Ziegler seconded the
 342 motion. Manager Koch asked for more explanation about what Task Order 29B orders.
 343 Administrator Bleser responded it orders final design and permitting of the project.

344 Manager Koch moved to amend the motion to add the condition that Bearpath commit in
 345 writing to all the conditions set forth in its letter to the District. Administrator Bleser
 346 noted that the District would enter into a Cooperative Agreement with Bearpath for this
 347 project. There was discussion about the level of detail about Bearpath’s commitment that
 348 would be included in the Cooperative Agreement. Manager Crafton asked for motion on
 349 the table to be reiterated. Attorney Smith said the motion to amend is to add the condition
 350 that the commitments Bearpath is making in its letter to the District would be committed
 351 with dollar amounts in the Cooperative Agreement. Manager Ziegler seconded the
 352 motion to amend.

353 Upon a roll call vote, the motion to amend carried 4-1 as follows:
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<i>Manager</i>	<i>Action</i>
Crafton	No
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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357 Upon a roll call vote, the amended motion carried 5-0 as follows:
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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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361 Manager Ziegler moved to approve Resolution 2020-06 Ordering the Middle Riley Creek Stabilization Project. Manager Crafton 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	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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g. Accept Land Transfer of 770 Pioneer Trail, Chanhassen from City of Chanhassen to RPBCWD (Resolution 2020-070)

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Attorney Smith went through the requirement on the conveyance of the property that the Commissioner of the Minnesota Management and Budget approves the conveyance. He said the District directed him to investigate whether the City of Chanhassen obtained approval from the Commissioner for the City’s conveyance. Attorney Smith reported the answer is no, the City has not obtained approval but is working on it. He said one of the requirements in the process of obtaining approval is to indicate who it is that wants to acquire the property, and for that reason the City has asked the District to adopt this resolution to confirm the District’s interest in acquiring the property.

Manager Koch asked follow-up questions. Attorney Smith responded. There was discussion about possible encumbrances against the property in the future. Attorney Smith said he believes the encumbrance runs with the land, but he will check to verify. President Ward directed Attorney Smith to get clarification on this issue and said he doesn’t think the encumbrance would run with the land.

Manager Koch asked about the declaration to be recorded with the deed to the property in regard to a general obligation bond grant contract with the City. He asked for more information about the declaration. Mr. Jeffery provided detail, including that the encumbrance is part of the grant and does lay with the property. The Board discussed possible courses of action on Resolution 2020-070. Attorney Smith said he recommends the Board assumes it is obligated to record the declaration and it lays with the land. He said if the Board is comfortable with approving the Resolution on that basis, then the Board could adopt the Resolution. Attorney Smith noted that the language in this resolution is the same language the Board adopted with the other two properties. Manager Koch asked about whether the District is concerned about title insurance, and he recommended the District order a phase 1 environmental assessment on the property. Attorney Smith responded about title insurance, saying the specific requirement of having

394 title insurance hasn't been discussed and it wouldn't be difficult to obtain title insurance
 395 if the Board directs such action. The managers and staff discussed Manager Koch's
 396 recommendation about a phase 1 environmental assessment.

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 398 Manager Ziegler moved to adopt Resolution 2020-07 and authorize staff to investigate
 399 the questions raised regarding encumbrances and declarations specific to this land
 400 transfer and report back to the Board, obtain title insurance at the District's cost, and
 401 order a phase 1 environmental assessment at the District's cost. Manager Koch seconded
 402 the motion.

403 Upon a roll call vote, the motion failed 2-3 as follows:

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

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 406 Manager Crafton moved to adopt resolution 2020-07 and direct to proceed to buy title
 407 insurance. Manager Pedersen seconded the motion.

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

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

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h. Approve Policy Decision on Mission Critical Projects

Administrator Bleser reported the exercise District staff undertook to evaluate its work based on the Minnesota Governor’s Order and identifying mission critical work. She listed the District’s mission critical work. Manager Koch moved to adopt the District’s policy and Resolution 2020-08 about the District’s mission critical work. Manager Ziegler seconded the motion. Attorney Smith said his firm has drafted a letter that many of his firm’s clients have adopted and sent to contractors to make a record that the contractors are willingly wanting to perform such work and believe they can do it safely, so it is clear that the contractors have given this due consideration. The Board agreed and directed staff to prepare and distribute such a letter on behalf of the District.

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

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

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10. Discussion Items

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a. Administrator Report

i. Minnesota Governor’s Order

Administrator Bleser reported on the staff’s adoption of work processes in response to the Governor’s Order.

ii. Lower Riley Creek Stabilization/ Restoration Update

Administrator Bleser reported on the Lower Riley Creek Stabilization/ Restoration Project, displaying before and after photos and summarizing the project and work completed. She said the work is 90% complete. Engineer Sobiech added that he believes the WOMP station will be a great way to benchmark results from this project.

iii. Duck Lake Road Reconstruction

Engineer Sobiech updated the Board on project changes that have transpired since project conception last spring. Engineer Sobiech displayed a layout of the concept plan. He provided a summary of the project’s 2019 Rule Compliance and summarized the six variance requests. Engineer Sobiech pointed out that the

440 impacts of the proposed culvert replacement/ upsizing are unknown at this time.
 441 He highlighted design options for discussion, specifically the decision about the
 442 box culvert or the bridge. Administrator Bleser stated the bridge cost would be
 443 approximately \$2 million dollars plus work costs, and she noted the City of Eden
 444 Prairie is in favor of the bridge option and would like the District to partner.

445 Administrator Bleser presented next steps. She said the District should to consider
 446 if it is interested in partnering on the bridge option. She reported the City of Eden
 447 Prairie is seeking \$1.5 million in partner funds from the District and the City is
 448 offering to contribute \$750,000. Administrator Bleser said if the District is
 449 interested in partnering on the bridge option, she recommends the District hold a
 450 public informational meeting to collect input from stakeholders. She said if the
 451 District isn't interested in pursuing the bridge option, she recommends the District
 452 consider investigating wetland restoration options.

453 President Ward said this is an informational update but since the City of Eden
 454 Prairie is asking the District to consider partnering on the bridge, the Board could
 455 take the step of gathering stakeholder input through a public informational
 456 meeting. The Board indicated consent. President Ward said it seems the District
 457 would want to hold the stakeholder meeting at a time in which an in-person
 458 meeting could be conducted. Administrator Bleser said she would report this
 459 update to the City of Eden Prairie.

460 iv. **Journal of Votes**

461 Manager Ziegler moved to accept the legal opinion presented . Manager Pedersen
 462 seconded the vote. Upon a roll call vote, the motion carried 4-1, as follows:

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

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 465 **b. Legal Report**

466 Attorney Smith reminded the Board it directed Legal Counsel to prepare a request for an
 467 advisory opinion from the State Department of Administration about whether there is a
 468 requirement in addition to the District's minutes that there is a separate journal of votes.
 469 He reported Legal Counsel prepared that request and, as a courtesy, checked with the

470 City Attorney for the City of Chanhassen, the City Attorney for the City of Minnetonka,
 471 and the Hennepin County Attorney, who advises the Hennepin County Board of
 472 Commissioners. Attorney Smith shared the feedback he received from those sources. He
 473 said Roger Knutson, the head of Campbell Knutson law firm, which represents many
 474 cities in the metro area, had a strong feeling that minutes meet that general requirement
 475 and had never heard of any cities that keeps a separate journal of votes and he felt it was
 476 not required or necessary. Attorney Smith reported additional feedback, and it aligned
 477 with the same view as Roger Knutson’s. He reported that Beth Stack, head of the Civil
 478 Division of Hennepin County Attorney’s office, held the same view in terms of the legal
 479 requirement, and she asked the District to consider deferring a request to the state given
 480 the COVID-19 and other current issues facing the Department of Administration as it
 481 might not be the best time for careful consideration of the issue. Attorney Smith said he
 482 has the Board’s direction regarding sending the letter, and he can send the letter if that is
 483 still the action the District wants to pursue, but he wanted to first report this information
 484 to the Board.

485 Manager Koch commented that he doesn’t see a reason why the Department of
 486 Administration wouldn’t give due consideration to any type of a requirement. He said he
 487 would like to see a copy of Attorney Smith’s letter before it goes out.

488 President Ward said he thinks the Board should listen to the feedback from the resources
 489 Legal Counsel contacted, and it appears that no one is saying there is a legal requirement
 490 and it sounds like on one else is keep a separate journal of votes. Manager Koch
 491 remarked that whether anyone else is doing something is irrelevant. He said maybe
 492 MAWD could get the statute clarified.

493 Manager Crafton said she is hearing consensus that the votes are being documented
 494 already in the minutes, so she doesn’t see a reason to pursue this issue further. Managers
 495 Pedersen and Ziegler agreed with Manager Crafton’s comment.

496 Manager Ziegler moved to accept the legal opinion presented and to not send the letter to
 497 the state. Manager Pedersen seconded the motion.

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

499

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

11. Upcoming Board Topics

500 President Ward noted that upcoming Board topics are listed on the agenda and include
501 Pleasant View Road Drainage Improvement Cost-Share Public Hearing and the Audit
502 Presentation. Administrator Bleser said the Public Hearing for the Pleasant View Road
503 Drainage Improvement Cost-Share would be held at the Board's May 6 meeting.
504 President Ward asked Administrator Bleser to find out from the auditor when the audit
505 will be complete and then the Board can discuss scheduling the audit presentation.
506

12. Upcoming Events

- 507
- Citizen Advisory Committee Meeting, April 20, 2020, 6:00 p.m., Zoom meeting. Details on
508 RPBCWD website.
 - Board of Managers Meeting, May 6, 2020, 7:00 p.m., Zoom meeting. Details on RPBCWD
509 website.
510

13. Closed Session – Contract with Human Resources Consultant not to Exceed \$5,000

511 Mr. Smith recommended that the Board adopt a motion to go into a closed session for the
512 purpose of continued discussion of the performance evaluation of the Administrator.
513 Manager Ziegler moved to go into closed session for this purpose. Manager Pedersen
514 seconded the motion. Manager Koch suggested the matter be laid over to a future meeting.
515 Manager Crafton said she felt it was urgent to proceed.

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

517

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

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519 Whereupon, the Board of Managers went into closed session at 11:10 p.m..

520 Following the closed session, the Board of managers returned to open session. Manager
521 Pedersen moved to authorize the hiring of Barbara Strandell for human resources consulting

522 services in an amount not to exceed \$5,000. Manager Crafton seconded the motion. Mr.
 523 Smith suggested the motion provide for a professional services agreement prepared with
 524 advice of legal counsel, and that the agreement include the basis for compensation in the
 525 event of early termination, such as an hourly rate. Manager Koch moved to amend the
 526 motion to add this provision described by Mr. Smith, and further that the Board of Managers
 527 be substituted for the Personnel Committee as the point of contact for the consultant. The
 528 motion failed for lack of a second.

529 Manager Pedersen moved to amend the motion to add the provision for a professional
 530 services agreement prepared with advice of legal counsel, and that the agreement include
 531 the basis for compensation in the event of early termination, such as an hourly
 532 rate. Manager Crafton seconded the motion. Upon roll call vote, the motion to adopt this
 533 amendment carried 4-1 as follows:

534

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

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President Ward asked for a roll call vote on the amended motion. Manager Koch stated that he objected to the process for searching for and retaining the consultant, and he felt that several details had not been addressed. Upon roll call vote, the motion to adopt this amendment carried 4-1 as follows:

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

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14. Adjournment

545 Manager Pedersen moved to adjourn the meeting. Manager Crafton seconded the motion.

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

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

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548 The meeting adjourned at 11:25 p.m.

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Respectfully submitted,

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David Ziegler, Secretary

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