

## MEETING MINUTES

### Riley-Purgatory-Bluff Creek Watershed District

#### February 2, 2022, RPBCWD Board of Managers Work Session and Regular Monthly Meeting

**PRESENT:**

**Managers:** Jill Crafton, Treasurer  
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  
Eleanor Mahon, Education and Outreach Coordinator  
Joshua Maxwell, Water Resources Coordinator  
Mat Niklay, Natural Resources Technician  
Louis Smith, Attorney, Smith Partners  
Scott Sobiech, Engineer, Barr Engineering Company

**Other attendees:** Chesney Engquist\*                      Jesse Mercado\*  
Nicole Banks\*    Neclam\*  
Sue Bennett\*    Rebecca Prochaska\*  
Jeff Borowiak\*    Paul D. Reuvers\*  
Paige Carlson\*    Otto Strack, PhD. \*  
Heidi Groven\*    Marilyn Torkelson  
Susu Jeffery\*    Teri Willow\*

*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.*

\*Indicates attendance at the Board meeting only

### 1. Workshop

1            At 5:02 p.m. on Wednesday, February 2, 2022, Mr. Josh Maxwell, District Water Resources  
2            Coordinator, started his presentation of the District's 2021 water quality program activities and  
3            results. He shared the PowerPoint "2021 Water Resources Report." Mr. Maxwell said he will  
4            present about the water quality of the watershed's creeks, including Bluff Creek, Riley Creek, and  
5            Purgatory Creek, and lakes, including the Riley Chain of Lakes and Purgatory Creek Chain of  
6            Lakes. He noted he will address alum treatments, carp monitoring, plant management, and AIS,  
7            among other updates.

8 Mr. Maxwell talked about the 2021 water quality monitoring program and monitoring sites. He  
9 provided details about impaired waters and the creeks' impairments. Mr. Maxwell gave a CRAS  
10 update for Middle Bluff Creek.

11 Mr. Maxwell noted the low water flows in 2021, explaining Lake Susan saw an increase in algae.  
12 Mr. Maxwell referenced the July and August algae results for Lake Susan, including record high  
13 blue-green algae. He reported on the response of Rice Marsh Lake to the alum treatment,  
14 explaining the lake responded really well. He stated cores from Rice Marsh Lake will be collected  
15 in February, and the data will help determine when the second dose of the alum treatment will  
16 take place.

17 Mr. Maxwell talked about zebra mussel population growth in Lake Riley, pointing out the growth  
18 is very cyclical with booms and crashes. He said for example in Lake Riley the 2018 plate  
19 inspections showed 4 zebra mussels per plate, in 2020 there were 2,623 per plate, and in 2021  
20 there were 574 per plate. He summarized the 2021 carp monitoring on Lake Riley. Mr. Maxwell  
21 noted there was a higher number of young of year captured in 2021, so the District will want to  
22 consider installing a temporary barrier in the spring. Regarding Lake Riley aquatic vegetation,  
23 Mr. Maxwell said the District will likely perform a treatment for Eurasian Watermilfoil this  
24 spring.

25 Mr. Maxwell reported on the Purgatory Creek and Purgatory Creek Chain of Lakes water quality,  
26 highlighting that all the lakes in the chain met the state's water quality standard for clarity. He  
27 briefly talked about the 2021 alum treatment on Round Lake, and he said the City of Eden Prairie  
28 conducted that treatment. He summarized the results of the Lotus Lake alum treatment and the  
29 target areas that will be treated next. Regarding the zebra mussels survey for Lotus Lake, Mr.  
30 Maxwell reported no veligers have been found since the initial ones were discovered, and in 2021  
31 no adults were seen on the 10 plates, the scanning survey resulted in no zebra mussels found, and  
32 the eDNA sampling showed evidence in three deep-water sites.

33 Mr. Maxwell ended the presentation with a report on Staring Lake's aquatic vegetation and  
34 aquatic invasive species. He reported Eurasian milfoil has been steadily increasing since it was  
35 first found, and the District is planning a whole-lake Fluoridone treatment this year.

36 Manager Koch said he has a number of questions and will provide them to Mr. Maxwell as to not  
37 take up time now. Manager Koch said he would like to see from Mr. Maxwell his general  
38 conclusions based on the data and any recommendations he has, based on the data shared, for  
39 continuing as is or modifying the District's 10-Year Plan. Manager Koch commented that future  
40 presentations such as this should be recorded, and the District should post the recording on its  
41 YouTube channel.

42 Ms. Liz Forbes, District Grant Program Coordinator, presented on the District website update.  
43 She shared a PowerPoint presentation titled "Website Refresh," and she went through the  
44 proposed website updates. Ms. Forbes explained how the managers can provide feedback on the  
45 proposed changes and asked for comments by February 14<sup>th</sup>.

46 The workshop concluded at 6:22 p.m.

47

## 2. Call to Order of Regular Monthly Meeting

48 President Ziegler called to order the Wednesday, February 2, 2022, Board of Managers Regular  
49 Meeting at 7:00 p.m. The meeting was held remotely via meeting platform Zoom.

50

## 3. Approval of Agenda

51 President Ziegler announced the agenda changes requested by District staff. He said staff requests  
52 adding an item to discuss a new application to the CAC and an update to the Board by Mr. Paul  
53 Reuvers. Attorney Smith clarified his recommendation is the update by Mr. Reuvers take place in  
54 closed session and be added to the agenda directly after item 10a – Attorney’s Report. President  
55 Ziegler said one more agenda modification from staff is to accommodate the request by Professor  
56 Otto Strack for additional time to comment, over the three minutes allotted in the Matters of  
57 General Public Interest. President Ziegler said this item would come immediately after the  
58 Matters of General Public Interest.

59 Manager Koch suggested the following agenda changes: adding as 6c the approval of new CAC  
60 applicant as CAC member, add to 6d his Board liaison update on the past CAC meeting, to table  
61 item 7a – Accept January Staff Report - until the Board’s next meeting, move item 7b – Accept  
62 January Engineer’s Report – and 7g – Approve Resolution 2022-017 for Grant Agreement with  
63 Eden Prairie Schools for a Chloride Reduction Grant Funded by the Lower Minnesota  
64 Collaborative, and the item about the Chanhassen grant agreement off the Consent Agenda.  
65 Manager Koch requested adding a closed session to discuss Mr. Jeffery’s leave of absence.  
66 Attorney Smith clarified one proposed closed session would be related to the performance  
67 evaluation of the District’s Interim Administrator, Mr. Jeffery, and the item Mr. Reuvers is  
68 speaking to is a closed session to discuss litigation strategy in the Spring Valley Friends.

69 Manager Koch requested moving item 8b – Accept December Treasurer’s Report and 8c –  
70 Approve Paying of the Bills – to the Consent Agenda, and tabling 8e -Approval of Final  
71 Reconciliation of 2021 Budget – to a future meeting or the continuation of this meeting if there is  
72 one, tabling 8f - Approve Fee Schedule and tabling 8g – Lotus Lake Violations Report – until the  
73 Board’s next meeting or meeting when staff is prepared to speak on the item. President Ziegler  
74 requested moving item 9a – Duck Lake Outlet Elevation off of tonight’s agenda and adding it to  
75 the Board’s next meeting. Manager Koch noted he has two items to report under item 10d –  
76 Manager Report.

77 Manager Koch moved to adopt the agenda with the modifications just presented. Attorney Smith  
78 recommended the Board add to the agenda after item 8a, which is now the closed session  
79 Evaluation of the Interim Administrator, a new item – the Appointment of a Temporary Interim  
80 Administrator. Manager Koch accepted the recommendation of Attorney Smith as a friendly  
81 amendment to his motion. Manager Pedersen seconded the motion. Manager Koch made the  
82 friendly amendment to table item 8d – Accept 2021 Scoresheet. Manager Pedersen accepted the  
83 friendly amendment.

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

85

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

86

**3. Matters of General Public Interest**

87 President Ziegler summarized the District’s process for raising matters of public interest.

88 Ms. Sue Bennett stated it is her goal tonight and the goal of others who will speak tonight to share  
89 information with the Board and informally ask the Board to cancel the Spring Road permit. She  
90 listed the order of presenters and turned the floor over to the next presenter.

91 Ms. Chesney Engquist said she will be speaking tonight on biological imperative and ethical  
92 imperative. She said regarding biological imperative, biological imperative number 1 is she  
93 drinks water out of Minnequan, which is sometimes known as Fredrick Miller Spring. Ms.  
94 Engquist said by compositions she is 70% water that comes from the watershed district this Board  
95 protects. She said it’s essential to her to understand the implication and impacts of any given  
96 project, action, or permit taken or granted by the Watershed Board. Ms. Engquist said she  
97 believes that in the District’s strategic action plan there’s an opportunity to examine the  
98 infrastructure rating of the segment of the creek that surrounds the spring. She said it is ranked  
99 quite lowly and as far as drinking water goes, we might want to examine that level of  
100 infrastructure and pay a little more attention and prioritize that segment of the spring. She said  
101 biological imperative number 2 is the situation where carbon cycling on the planet is out of  
102 balance to the tune of way too many parts per million of carbon dioxide in the atmosphere. She  
103 said it is her biological imperative to make sure we are considering any amount of canopy tree  
104 cover mycorrhizal network, which is sequestering the carbon and cycling oxygen into the air. Ms.  
105 Engquist said this project also would impact greatly in terms of deforestation and our carbon  
106 impact-footprint. She said what you have is a priority corridor of natural resource protection, and  
107 she referenced the county GIS map of the corridor along the river. Ms. Engquist said the parcel in  
108 question is an open green space where surrounding it is quite a bit of land that is a high  
109 percentage of impervious surface, and she doesn’t believe the cumulative impacts of that  
110 impervious surface increase has been studied, and she believes that needs to be considered. Ms.  
111 Engquist said regarding ethical imperative, her family has been in this land for five generations  
112 and has profited from the euro-colonial-industrial-centric practices for that time, and it’s  
113 appropriate and time now to give back and to make that right. She said she is here to  
114 acknowledge that this area is Dakota territory and sacred land, and it is not for her to profit or for  
115 any of us to profit, so we need to make that right and take into consideration the cultural  
116 significance of this place. Ms. Engquist said regarding the second ethical imperative, she is an

117 engineer, so when she learned about the potentially catastrophic design shortcomings and  
118 inadequacy of the safety analysis, she read Dr. Strack's reports and reached out to her civil  
119 engineering colleagues from the U and government agencies, and they have all reiterated and  
120 confirmed Dr. Strack's preeminence in his field. She said she appreciates the Board taking time  
121 this evening to hear what Dr. Strack has to say and his insights. Ms. Engquist said she believes  
122 the Board will have enough information after that report, but if the Board doesn't, she suggested  
123 the Board spend time in a special meeting with Dr. Strack to come to an understanding of what is  
124 essential to make sure this project that is proposed is safe, and right now it is not. She urged the  
125 managers to adhere to the hundreds of letters of petition as well as the months-long series of  
126 testimonials from the public that the right thing to do and what we are called to do based on our  
127 biological and ethical imperative is to cancel this permit and to make sure we are protecting the  
128 land. She said she hopes that after this evening, we have an opportunity to move forward and  
129 begin examining the critical infrastructure and cultural significance around this portion of the  
130 creek that's adjacent to the spring. She thanked the Board for its time.

131 Ms. Nicole Banks thanked the Board for this opportunity to speak. She said she knows there are  
132 many perspectives on this topic, and one perspective she represents is that of the American E  
133 movement. She said there is new evidence showing this is a sacred site. She said we would like to  
134 ensure the future generations get to enjoy the resources and have the history connected to our past  
135 recognized and heard. Ms. Banks said she would like the Board to cancel the permit. She said  
136 building here is not something we want, and we are going to continue to monitor what happens.  
137 Ms. Banks said so if this just way to find a loop to get rid of the lenses, there is more interest in  
138 the community, and leaders have asked her to be the point of contact for what happens in this  
139 situation. She asked for that land to be protected, and she thanked the Board for listening.

140 Ms. Rebecca Prochaska thanked the Board for the opportunity to speak. She said she sent an  
141 email earlier today addressed to all of the managers. She explained the email was a summary of  
142 her concerns. Ms. Prochaska said she won't go into detail about the information in her email, but  
143 she wants to preface Dr. Strack's presentation by stating that a lot of the prior discussion and  
144 assessment on this permit was solely on the slope stability study back in August. She said what  
145 was overlooked was the placement of the infiltration basins, which is another serious safety  
146 concern as it relates to the engineering design. Ms. Prochaska remarked she is happy the Board  
147 will hear Dr. Strack speak on that topic as he definitely has the experience and credentials. She  
148 pointed out she has done further homework and found specific watershed rules, C, D, and J, are  
149 not being met. Ms. Prochaska said she heard the sellers are trying to cancel the purchase  
150 agreement, and with that along with the safety issues and the non-conformity to rules, she is  
151 asking the watershed to cancel permit 2021-012. She said if the stance is being taken that the  
152 project is being abandoned, then why would the Watershed District want to spend more time,  
153 money, and resources on something that's not going to happen. Ms. Prochaska asked why the  
154 District wouldn't just cancel the permit and why would the District keep the permit in place. She  
155 asked again for the District to cancel the permit because it is still alive and can be transferred. Ms.  
156 Prochaska said the Board will hear from Dr. Strack on why that's a bad idea.

157

158

159

**4. Dr. Paul Strack Comments**

160 Mr. Paul Strack, PhD., shared his screen to show illustrations depicting soil with water in its  
161 pores and the pores interconnected, noting that as pore pressure (water pressure) increases, the  
162 pressure pushes the solid particles apart, which weakens the soil. He said this is a problem in  
163 dealing with tremendous rainstorms and the resulting runoff. Dr. Strack said a solution being  
164 utilized to deal with all the runoff is trying to capture some of the rainfall in a catch basin and  
165 infiltrate it into the ground. He said this is a good idea, but the problem is if it is done in a slope,  
166 it's no longer such a good idea.

167 Dr. Strack provided an explanation about soil particles, water movement, and soil stability, as  
168 depicted in his illustration. He said regarding infiltration on a slope, when the pressure on soil  
169 pores from water increases, the pressure pushes the soil particles apart, and the soil becomes  
170 weaker. He explained if a basin is filled with water very rapidly, then the pressure in the soil and  
171 on the slope also increases very rapidly, before the water can flow away, inducing weakness.

172 Dr. Strack said examining the stability of a slope is very difficult. He said it needs to be done  
173 using very sophisticated field programs, such as FLAC3D as used by Barr Engineering. Dr.  
174 Strack said in his opinion, before doing a project like the one proposed in Eden Prairie and before  
175 building these kinds of slopes with infiltration ponds, quite a bit of research needs to be done. He  
176 stated the evaluations that have taken place are standard engineering practice, but the problem is  
177 that's no longer good enough. Dr. Strack said things like he has described can drastically change  
178 what can happen in these slopes. He said as an engineer, he is really worried about the proposed  
179 building on the slope and being faced with a collapsed slope with buildings on it, which is a risk  
180 that can't be taken.

181 Dr. Strack said he is not saying he is certain that the building can't be done, but he is certain it  
182 hasn't been examined carefully enough. He commented he has been involved in a project similar  
183 to this one, and in that case, the project was cancelled because of this issue. Dr. Strack said  
184 whatever happens here, he will try to get money to do the analysis for the state and get  
185 engineering practices updated. He said as conditions changes, engineering practices need to be  
186 changed. Dr. Strack said it is out of concern for safety that he shares this information. He said he  
187 is not certain the slope would fail, but he is certain it would make the slope a lot less stable.

188

**5. Reading and Approval of Meeting Minutes**

**a. January 5, 2022, RPBCWD Board of Managers Regular Monthly Meeting**

189 Manager Ziegler moved to approve the minutes of the January 5, 2022, Board of  
190 Managers Regular Meeting. Manager Crafton seconded the motion. Manager Pedersen  
191 noted a correction to be made to the recorded votes on page 16 regarding the banking  
192 signatures, to replace the word Pedersen with Ay. She said on line 688 to insert the word  
193 "meeting" after "Personnel Committee" and later in that section add "to recommend to  
194

195 the Board.” Manager Crafton noted on line 244 to remove TAC and insert CAC and again  
196 on line 268. Manager Ziegler and Manager Crafton concurred to the changes requested.

197 The managers agreed by consensus to the amendments to the minutes as described. Upon  
198 a roll call vote, the motion carried 3-0 with one abstention as follows:

199

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

200

201 **b. Board of Managers December 15 Continuation of December 8, 2021 Public**  
202 **Hearing and Regular Meeting**

203 Manager Crafton moved to accept the minutes of the December 15<sup>th</sup> continuation of the  
204 December 8<sup>th</sup> public hearing and regular meeting. Manager Pedersen seconded the  
205 motion. Manager Ziegler noted changing lines 218 and 219 to “...treatments available to  
206 melt ice, and a liquid ice melt is chlorine free.” He asked for a change on lines 221 and  
207 222 to read “...liquid ice melt pretreatment. He said if the chloride-free pretreatment turns  
208 out to be a better option than rock salt, the District could consider adding it to the  
209 District’s salt-reduction program.” Manager Crafton and Manager Pedersen agreed to the  
210 friendly amendment to include the revisions noted by Manager Ziegler.

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

212

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

213

**5. CAC**

214 **a. Report and CAC Minutes**

215 Ms. Torkelson reported the CAC had one person, Larry Koch as an individual, not

216 representing the Board, speak on Matters of General Public Interest on training for CAC  
217 members and how the CAC conducts business. She said the CAC did not discuss the  
218 items he raised, except the CAC chair did immediately implement the practice of taking a  
219 roll call vote. Ms. Torkelson commented the practice is a lot easier when five people are  
220 voting compared to twelve to fourteen people, which is the number of CAC members. She  
221 noted the CAC set its 2022 calendar.

222 Ms. Torkelson said the CAC discussed the idea of a joint meeting between the CAC and  
223 the Board of Managers once a year, such as when there is a workshop or action items of  
224 interest to both the CAC and the Board. She said this would be one way to have the two  
225 groups work together more closely.

226 Ms. Torkelson asked for clarification on the point raised in the Matters of Public Interest  
227 that the sale of the Noble Hills property isn't going through. Attorney Smith said that  
228 point is a matter of record that the purchase agreement conditions have not been met and  
229 the purchase is not proceeding at this time.  
230

231 **b. Confirm Board Representative for February 21 CAC Meeting**

232 Manager Pedersen volunteered to be the Board representative at the CAC's February 21<sup>st</sup>  
233 meeting.  
234

235 **c. Training**

236 Manager Koch discussed training he thought would be beneficial for the CAC and the  
237 idea of joint training between the Board and CAC regarding laws and rules.  
238

239 **d. Appointment to CAC**

240 President Ziegler reported the District received one additional application for the CAC.  
241 Manager Crafton moved to appoint Mike Sorenson to the CAC. Manager Pedersen  
242 seconded the motion. Upon a roll call vote, the motion carried 4-0 as follows:  
243

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

244  
245 Manager Koch recommended the District send a short letter of congratulations to Mr.  
246 Sorenson to welcome him to the CAC. The managers indicated agreement to the

247 recommendation. President Ziegler directed Ms. Bakkum to draft the letter for his  
248 signature.  
249

### 7. Consent Agenda

250 President Ziegler listed items on the Consent Agenda items as revised by the Board under  
251 Approval of the Agenda. Manager Pedersen moved to approve the Consent Agenda. Attorney  
252 Smith reminded the Board it approved adding items 8b and 8c to the Consent Agenda. Manager  
253 Pedersen amended her motion to accept the Consent Agenda as presented by President Ziegler  
254 and Attorney Smith. Manager Crafton seconded the motion.

255 The Consent Agenda included items 7c – Accept January Construction Inspection Report, 7d -  
256 Approve Payment Application #2 for Rice Marsh Lake Water Quality Project, 7e \_Approve  
257 Payment Application #3 for Middle Riley Creek Restoration, 7f – Approve Permit 2021-082  
258 Mister Car Wash – Minnetonka as presented in the Board Action section of the Permit Review  
259 Report, 8b – Accept December Treasurer’s Report, and 8c – Approve Paying of the Bills.

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

261

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

262

### 9. Closed Session

263 Manager Koch moved to go into closed session for the purpose of the performance evaluation of  
264 the Interim Administrator Terry Jeffery. Manager Pedersen seconded the motion. Upon a roll call  
265 vote, the motion carried 4-0 as follows:

266

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

Ziegler	Aye
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At 7:54 p.m. the meeting moved into closed session.

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272

After conducting the closed session, the Regular meeting reconvened. Manager Koch moved that Be it resolved that the Board of Managers approves the leave requested by Mr. Jeffery as set forth in the memo prepared by Attorney Smith dated February 2, 2022. Manager Pedersen seconded the motion. Upon a roll call vote, the motion carried 4-0 as follows:

273

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

274

#### **10. Appointment of Temporary Interim Administrator**

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277

Manager Ziegler summarized Barr Engineering's preparedness to take on the role of temporary interim administrator and documentation of areas of conflict of interest. He suggested Amy Bakkum take on tasks identified as conflicts of interest, such as financial tasks.

278

279

280

Attorney Smith displayed and went through the proposed resolution he drafted for the Board regarding Appointing a Temporary Interim Administrator. He summarized the points in the resolution, including:

281

- The District has had an interim administrator since March 15, 2021.

282

- The Board has approved a leave of absence of 30 days for Mr. Jeffery, until March 3, 2022.

283

284

- The District Engineer, Scott Sobiech, has current knowledge of District operations and is willing to assume duties as temporary interim administrator during that time.

285

286

- Scott Sobiech proposes to provide such services pursuant to the existing services agreement between Barr Engineering Company and the District.

287

288

- Task Order 38 identifies the District Administrator duties Scott Sobiech and Barr Engineering will be responsible for.

289

290

291

Attorney Smith noted the importance of the Board identifying a single individual as being delegated this temporary interim administrator responsibility by the Board, for example in order to sign permits if necessary and other specific tasks, but with the understanding that Barr

292 Engineering Company is providing the services pursuant to the existing binding services  
293 agreement.

294 Attorney Smith went through the duties this proposed resolution does and does not assign to Mr.  
295 Sobiech.

296 Manager Pedersen moved to accept Resolution Appointing a Temporary Interim Administrator.  
297 Manager Crafton seconded the motion. Manager Koch said as a matter of principle he can't  
298 approve something he hasn't had enough time to review. He said he is not opposed to contracting  
299 with Barr. He provided his feedback on the resolution. Manager Koch recommended laying this  
300 item over until the managers have had time to review the resolution. He moved to lay this over to  
301 a continuance of this meeting at a time the Board decides on tonight. Manager Koch's motion  
302 died due to lack of a second. Upon a roll call vote, the motion on the table carried 4-0 as follows:  
303

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

304

## 8. Action Items

- 305 a. **Items Pulled from Consent Agenda**  
306 i. **Accept January Engineer's Report**

307 Manager Koch asked staff questions about the draft term sheet, Riley Lake  
308 alum treatment and additional core analysis, and if there is a tracking log in  
309 place for calls or time staff spends on permit inquiries before they are formal  
310 permit applications. Manager Koch asked staff to document his question "when  
311 is the point where it's more than minimal that the District starts tracking" in  
312 terms of time spent on conversations about permits before those inquiries are  
313 formal permit applications.

314 Manager Koch asked about Task Ordre 29B Middle Riley Creek and if  
315 additional funding is going to be needed. Engineer Sobiech said additional  
316 funds are not being sought at this time, but the budget is close to being fully  
317 expended, and he wants to analyze what any additional funding request might  
318 be before the Board is approached with any request. Manager Koch asked Mr.  
319 Sobiech to consider if there is an additional funding request, if it is a one-off  
320 request or if there is anything the District should do to reduce costs on the part  
321 of the District. Manager Koch asked for more details about Task Order 34 –

322 Lotus Lake Vegetation Management Plan. Mr. Sobiech said at this point the  
323 plan comprises looking at existing information to determine what the plan  
324 should include, and that plan will be brought to the Board for consideration as a  
325 draft and discussion on how to finalize it.

326 Manager Koch moved to accept the January Engineer's Report. Manager  
327 Crafton seconded the motion. Upon a roll call vote, the motion carried 4-0 as  
328 follows:

329

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

330

331

332 **ii. Approve Resolution 2022-017 for Grant Agreement with Eden**  
333 **Prairie Schools for a Chloride Reduction Grant Funded by the**  
334 **Lower Minnesota Collaborative**

335 Manager Koch said his concern is that since this is a grant and the District is  
336 going to put money to buy equipment that the indemnification provision should  
337 be stronger to make it clear that the District is just a funder and Eden Prairie is  
338 going to protect this from the purchase/use and all the way through disposition  
339 of this equipment. He said he would like to see the indemnification language  
340 tightened up and revised. Manager Koch said he has no problem with the grant,  
341 and he just wants to make sure the District is protected.

342 Manager Koch moved to authorize Attorney Smith to revise the indemnification  
343 language appropriately and provide a copy of the grant agreement for President  
344 Ziegler to sign. Manager Pedersen seconded the motion.

345 Manager Crafton asked Attorney Smith to comment. Attorney Smith said he  
346 could take a look at that language, he understands Manager Koch's point, and it  
347 can be addressed. Attorney Smith said he understands the motion to be approval  
348 of the resolution subject to the District's legal counsel revising the  
349 indemnification language and authorization of President Ziegler to sign the  
350 grant agreement.

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

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

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Manager Koch brought up the topic of a Chanhassen grant agreement. Manager Koch moved to lay over the item, although not on the meeting agenda, to the Board's next meeting and to authorize Attorney Smith and President Ziegler to review the agreement to make sure it matches the request by the City of Chanhassen and appropriately indemnifies the District from liability arising from their program. Manager Crafton seconded the motion.

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Ms. Forbes said she has communicated with the City of Chanhassen and there is time to adjust the grant agreement. Manager Koch amended his motion to have staff Forbes and Mr. Smith review the agreement and present it at the next meeting. Manager Crafton pulled her second. Manager Koch and Manager Crafton discussed procedure about pulling motions off the table and if a second motion to lay an item over makes the first motion moot. Manager Crafton seconded Manager Koch's motion to lay the item over. Upon a roll call vote, the motion carried 4-0 as follows:

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

369

370

371

**b. Accept December Treasurer's Report**

372

Item moved to Consent Agenda.

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374

**c. Approve Paying of the Bills**

375

Item moved to Consent Agenda.

376

377

**d. Accept 2021 Scoresheet**

378

Item laid over to the Board's next meeting.

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380

**e. Approve Final Reconciliation**

381

Item laid over to the Board's next meeting.

382

383

**f. Approve Fee Schedule**

384

Item laid over to the Board's next meeting.

385

386

**g. Lotus Lake Violations Report**

387

Item laid over to a future Board meeting.

388

**10. Informational Items**

389

**a. Duck Lake Outlet Elevation**

390

Item laid over to a future Board meeting.

391

**11. Discussion Items**

392

**a. Attorney Report**

393

Attorney Smith recommended that at this time the Board go into closed session for purposes of receiving confidential litigation advice concerning legal strategy in the Spring Valley Friends versus Riley Purgatory Bluff Creek Watershed District matter. Manager Pedersen moved to go into closed session as described by Attorney Smith. Manager Koch seconded the motion. Upon a roll call vote, the motion carried 4-0 as follows:

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399

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

400

401 The Board moved into closed session at 9:08 p.m.

402 The Board reconvened its regular meeting at 9:38 p.m.

403 **b. Engineer Report**

404 Engineer Sobiech said he received word today that the University of Minnesota has  
405 completed its wakeboard study. Manager Koch said he was sent a link and he will  
406 forward it to Engineer Sobiech. Engineer Sobiech said he will forward the link to the  
407 managers and staff.  
408

409 **c. Administrator Report**

410 Temporary Interim Administrator Sobiech said he has nothing to report in this capacity.  
411

412 **d. Managers' Report**

413 Manager Pedersen reported on the search to find a consultant to help the Board search for  
414 a permanent District Administrator. She said after contacting nine consultants she has  
415 found two she believes are qualified, willing, and able to assist the District. Manager  
416 Pedersen provided more details about the two consultants and the individuals who would  
417 work with the watershed. She talked about the information the consultants provided about  
418 their typical processes, including that they usually work with a personnel committee or  
419 other representative subset.

420 Attorney Smith commented on the legal framework of the process. He said there are  
421 sensitive issues about the Open Meeting Law and the Data Practices Act in this process.  
422 Attorney Smith said Smith Partners has worked with a lot of watersheds to design a  
423 process that complies and meets the needs. He said a key thing to be aware of is once  
424 someone is deemed to be a finalist for a position, their information is public. Attorney  
425 Smith explained there is a fair amount of sensitivity that revolves around the decision to  
426 become a finalist and then to be identified as a finalist.

427 Attorney Smith said there is a process and some amount of legal interpretation around the  
428 creation of a committee that takes on a search process and how public that business needs  
429 to be. He said Smith Partners has developed a process that allows a subgroup of Board  
430 members to take initiative and have a greater level of involvement if that is the desire of  
431 the Board.

432 Attorney Smith said a critical item throughout the process is that all information has to be  
433 equally accessible to all Board members, so the Committee is not performing a function  
434 of delegated decision-making in any way. He said he could provide the information he  
435 just summarized in a more detailed memo. Attorney Smith said if the Board wants two  
436 Board members to take the lead, then he would want to carefully consider if it could be  
437 two members of the Personnel Committee because it is an existing standing committee of  
438 the Board, and he thinks that changes the Open Meeting Law analysis.

439 Attorney Smith said if the Board wants to designate two managers or one manager to take  
440 the lead in launching the search process, not the selection process, then legal counsel will

441 make sure the process is designed to make sure all information is equally accessible, with  
442 safeguards, to all Board members.

443 Manager Koch moved to authorize Attorney Smith to put together a memo on the proper  
444 procedures to be applied in the search for a permanent administrator and to authorize  
445 Manager Pedersen and the Personnel Committee to gather the information on the search  
446 firms and to bring that to the Board at its next meeting. Manager Ziegler made the  
447 friendly amendment that instead of using the Personnel Committee, to just have Manager  
448 Pedersen lead the process. Attorney Smith clarified his point was that once the search  
449 process commenced, there should be a difference between the Personnel Committee and  
450 the lead managers in the permanent District Administrator search process. He said for the  
451 mere purpose of bringing search consultant proposals to the Board, it's not an issue.  
452 Manager Ziegler withdrew his amendment and seconded Manager Koch's motion.

453 Manager Pedersen asked if the Board wants the consultant proposals at its next regular  
454 Board meeting or if there should be a special meeting before the March regular Board  
455 meeting. The managers discussed continuing this item at the continuation of this meeting,  
456 date, and time to be set. The Board directed Attorney Smith to prepare the memo on  
457 process and procedure as discussed.

458 Manager Koch amended his motion to add amending the meeting agenda to include the  
459 consultant topic and to continue the meeting to Wednesday, February 9 at 9 a.m.  
460 Manager Pedersen seconded the motion. The managers and staff discussed meeting time.  
461 Manager Koch made the friendly amendment to his motion to set the meeting time for 11  
462 a.m. Manager Pedersen accepted that friendly amendment.

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

464

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

465

466 At 9:55 p.m. the meeting was continued to 11:00 a.m. on February 9<sup>th</sup>.

467

468 **e. Governance Committee Report**

469 [Item continued to February 9<sup>th</sup>.]

470

471

**12. Upcoming Board Topics and Events**

472 [Item continued to February 9<sup>th</sup>.]

473

**13. Adjournment**

474 [Item continued to February 9<sup>th</sup>.]

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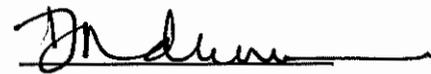
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Respectfully submitted,

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Dorothy Pedersen, Secretary