

**MEETING MINUTES**

**Riley-Purgatory-Bluff Creek Watershed District**

**November 16, 2023, RPBCWD Board of Managers Meeting**

**PRESENT:**

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

Staff: Amy Bakkum, Office Administrator  
 Zach Dickhausen, Natural Resources Coordinator  
 Liz Forbes, Communications Manager  
 Terry Jeffery, District Administrator  
 Joshua Maxwell, Water Resources Coordinator  
 Louis Smith, Attorney, Smith Partners  
 Scott Sobiech, Barr Engineering Company

Other Attendees: Andrew Aller, CAC                      Morgan Jacobs  
 SB    Ted Melby  
 Chesney Engquist                                      Marilyn Torkelson  
 Tina Decker    Natalie  
 Tracy Hardy    Alaina Portoghese  
 iPhone 358    Zach S.  
 iPhone 7436467    Mark Weber  
 iPhone    Teri Willow  
 John    Rachel Whittington

*Note: the Board meeting was held remotely via meeting platform Zoom because it was deemed not prudent to meet in person due to COVID-19.*

**1. Call to Order of Board of Managers Meeting**

1                      President Ziegler called to order the Thursday, November 16, 2023, Board of Managers Meeting  
 2                      at 7:00 p.m. He stated the Board is conducting this meeting via Zoom out of an abundance of  
 3                      caution regarding COVID.

4                      Louis Smith called attendance for the Board of Managers as follows:

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

5 \*Manager Koch stated he is present only for the purposes of raising his objection to the holding of this meeting.

6  
 7 Manager Koch said he raises his objection to this meeting because he does not believe this was a  
 8 regularly scheduled meeting. He said he did not see it listed as a special meeting. Manager Koch  
 9 said no one mailed him a notice of this meeting.

10 Administrator Jeffery stated this meeting is a scheduled meeting and on the Board’s calendar. He  
 11 said his understanding is there is no distinction between a workshop and a regular Board meeting.  
 12 He said business items are added to this meeting’s agenda.

13 Mr. Smith agreed this meeting was on the regular meeting calendar and the designation of a  
 14 workshop is a designation of what the agenda is. He said the Board took action at one of its  
 15 meetings in October to notice the public hearings for this evening’s meeting, which set up the  
 16 business items for this meeting.

17 Manager Koch renewed his objection. He said the statute is clear that changing the time or place  
 18 of a meeting or substance requires a special notice. Manager Koch said this meeting was not  
 19 scheduled as a special meeting. He said the Board does not turn work sessions into active  
 20 meetings and therefore he believes to hold this would be in violation of the Open Meeting Law  
 21 and a violation of 103D.315 subdivision 10, which does require a written notice if a meeting is  
 22 being called. He said he looked at the schedule of meetings adopted and there was no meeting  
 23 listed in the schedule in December.

24  
**2. Approval of Agenda**

25 Manager Pedersen moved to accept the agenda as submitted. Manager Crafton seconded the  
 26 motion.

27 Manager Koch said he needs to know when exactly the notice went out to BWSR [Minnesota  
 28 Board of Water and Soil Resources] and the counties. Administrator Jeffery said the notice went  
 29 out October 16<sup>th</sup>. Manager Koch asked when the review period under 103B.231 ends.  
 30 Administrator Jeffery said at the end of the business day yesterday.

31 Manager Koch asked if that was 60 days. Administrator Jeffery responded that the review period  
 32 for a minor plan amendment is 30 days.

33 Manager Koch said there is no provision for shortening the review period. He said the statute is  
 34 very clear that for any amendments the 60-day rule applies. Manager Koch said the District  
 35 cannot take away the rights of the county or anyone to comment on this plan provision. He said  
 36 his opinion is that the review period is still open until December 10<sup>th</sup>. Manager Koch said BWSR  
 37 does not have the authority to shorten the review timeframe and has not been given that authority  
 38 to shorten the statutory time frame.

39 Manger Koch moved to table this item until after the review period and that a meeting is not held  
 40 earlier than 14 days after the end of the review period as specified by statute.

41 The motion died due to lack of a second.

42 Mr. Smith stated the District’s Plan, Section 9.14 spells out the plan amendment process and it  
 43 specifically identifies that amendments to the plan will be presumed to be minor amendments. He  
 44 said BWSR, the agency responsible for approval of the District’s Plan, also reviewed the plan,  
 45 pursuant to Minnesota Rule 8410.0140 and concurred it was a minor amendment, subject to any  
 46 objection from either Hennepin or Carver County. Mr. Smith said both counties were aware of  
 47 the minor amendment posture and neither county entered an objection.

48 Manager Koch disagreed with Mr. Smith’s analysis. Manager Koch repeated his statement that  
 49 neither BWSR nor the District has the ability to shorten the statutory timeframe. He said he  
 50 knows for a fact that Carver County was unaware this was going to be a minor plan amendment.  
 51 Manager Koch noted the rules established by BWSR do not comply with the statute and therefore  
 52 those rules are ineffective. He said there is no provision for those rules to shorten or change the  
 53 timeframe. He said the statute is explicit. Manager Koch said there is no appropriate definition of  
 54 minor and the presumption carries no weight on that basis.

55 Manager Koch said how anybody can conclude that a plan amendment that would call for the  
 56 expenditure of \$5.77 million dollars in a given year, which would be over 90 percent of the  
 57 normal amount, could possibly in any way, shape, or fashion be minor, would be a totally  
 58 erroneous conclusion.

59 Manager Koch said he saw no analysis by BWSR as to whether or not this did qualify as a minor  
 60 plan amendment. He said at minimum there should have been an analysis and he was very  
 61 disappointed in the response the District received from BWSR in that regard. Manager Koch said  
 62 absent a finding that it was actually a minor plan amendment under the rules, he does not believe  
 63 BWSR’s approval to shorten the review time frame is sufficient under 103.231.

64 Manager Koch said the subject matter of the amendment is not within the purview of BWSR. He  
 65 said this is not an improvement project but is at best an acquisition of a piece of property.  
 66 Manager Koch said the project does not fall within 103B and is not within the purview of the  
 67 District in the first place to grant. He said if one is claiming it does, then 103B.231 would apply  
 68 for all the reasons he previously stated. Manager Koch said the rules are the rules and cannot be  
 69 overridden by a blanket statement.

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

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

72 \*Before voting Manager Koch stated, “Without waiving his other objections to holding this meeting.”

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**3. Public Hearing: Intent to Amend the RPBCWD 10-Year Plan to Include the Spring Road Conservation Project and for the Board of Managers to Order the Project**

74 President Ziegler explained the process for commenting. He said any member of the public who  
 75 would like to speak gets three minutes to speak, managers get ten minutes to speak, and rebuttals  
 76 get one minute. President Ziegler opened the public hearing.

77 Mr. Smith stated the purpose of these public hearings are to consider comments on the proposed  
 78 plan amendment, specifically the amendment to the Plan to add the opportunity project now  
 79 designated as the Spring Road Conservation Project.

80 Mr. Smith said under the watershed management law, in order for a project to proceed, first it  
 81 needs to be amended into the District’s Plan. He said the District’s Plan identified, in Section 9.13  
 82 of the Plan, opportunity projects like this that arise. Mr. Smith said the first public hearing is  
 83 about amending the District’s Plan to include this project with the detailed language in the  
 84 proposed plan amendment.

85 Mr. Smith explained that under watershed law the next step would be to order the project under  
 86 Minnesota Statutes 103B.251 and there is also a public hearing tonight to provide for that step.

87 Administrator Jeffery displayed the PowerPoint presentation “Spring Lake Rd Conservation  
 88 Project – November 16, 2023.” He explained the proposed project is located in Hennepin County  
 89 in Eden Prairie, Minnesota. Administrator Jeffery talked about the regional benefit of the site and  
 90 the project benefits to the watershed including:

- 91 • Could potentially house the District offices
- 92 • Would provide a variety of educational, scientific, and recreational opportunities;
- 93 • Is immediately accessible from Hennepin, Carver, and Three Rivers Park District trail  
 94 networks
- 95 • Would provide water resources protection

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97 Administrator Jeffery explained this project relates to the following goals in the District’s 10-  
 98 Year Plan:

- 99 • Protect, manage, and restore water quality of District lakes and creeks to maintain  
100 designated uses.
- 101 • Preserve and enhance the quantity, as well as the functions and values of District wetlands.
- 102 • Preserve and enhance habitat important to fish, waterfowl, and other wildlife.
- 103 • Protect and enhance the ecological function of District floodplains to minimize adverse  
104 impacts.
- 105 • Limit the impact of stormwater runoff on receiving waterbodies.

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107 Administrator Jeffery highlighted the importance of this parcel:

- 108 • Contains a population of Kitten Tail;
- 109 • Contains Patella Evening Primrose;
- 110 • Includes the last remnant of dry prairie;
- 111 • Is identified in the DNR Regional Ecological Corridor Map;
- 112 • Is identified as a regionally significant ecological area by the Minnesota Dept. of Natural  
113 Resources, CBS;
- 114 • In the valley there are numerous seeps and springs in the area including the Frederick  
115 Miller Spring, although to the best of the District’s knowledge Frederick Miller Spring is  
116 not fed by this property;
- 117 • Is adjacent and tributary to Riley Creek and the Minnesota River, both of which are  
118 impaired waters; and,
- 119 • Provides protection of existing floodplain wetland.

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121 Administrator Jeffery pointed out the parcel is located in a high-risk erosion area based on  
122 evaluated criteria including percent slope, soil texture, contributing watershed, and groundwater-  
123 surface water interaction.

124 Administrator Jeffery said the District has been in contact with Hennepin County Land and  
125 Water, who is very interested in being a major part of the restoration of this land. He said  
126 Hennepin County Land and Water was responsible for the restoration of the prairie bluff area to  
127 the east of this parcel.

128 Administrator Jeffery talked about the tax burden of this \$5.77 million project, which is a  
129 property acquisition. He displayed a table “Tax Burden by Adjusted Estimated Market Value.”  
130 He explained the data regarding Hennepin County tax burden is directly from a spreadsheet the  
131 County provided the District. He said the Carver County numbers are based on a calculation the  
132 District made based on information Carver County provided the District.

133 Administrator Jeffery said approximately 75.5% of the tax burden will come from Hennepin  
134 County and approximately 24.5% will come from Carver County. He said for the District’s total

135 levy, not just for this property, a little over \$3 million will come from Hennepin County and just  
136 under \$1 million will come from Carver County.

137 Administrator Jeffery said without the purchase of this land, the District projected a 4% increase  
138 in its total levy for 2024. He said with the land acquisition, the District would increase its total  
139 2024 levy by an additional 4%, meaning a total increase of 8% percent. He said the levy  
140 including funding this property acquisition means the District projects it would increase its total  
141 levy by an additional 4% per year for three years – 2024, 2025, and 2026, over the previously  
142 projected total increase for those years of 4%, 5%, and 7%, respectively. Administrator Jeffery  
143 displayed a table “Tax Burden by Adjusted Estimated Market Value CC” to show the anticipated  
144 tax burden on households in Carver County and Hennepin County, such as:

145 •For a Carver County parcel with an estimated market value of \$150,000, the proposed 8%  
146 tax levy increase would increase the tax burden for 2024 compared to 2023 by \$1.12.

147 Administrator Jeffery said the District reached out to several organizations to look for  
148 partnerships in funding this property acquisition. He said so far the only partner funds the District  
149 has identified is a \$500,000 grant, which came through Hennepin County through its partner the  
150 Minnesota Land Trust. He said the District received a verbal commitment from Hennepin County  
151 about that grant. He said Carver County has not dedicated funds to this. Administrator Jeffery  
152 said Eden Prairie is not dedicating funds to this property acquisition but does understand there  
153 may be watershed projects located in Eden Prairie that the City may be able to help offset some  
154 project costs so those projects can advance on the planned schedule. He said the U.S. Fish and  
155 Wildlife Service was not interested due to the separation of the property by Flying Cloud Road.  
156 Administrator Jeffery said it is a year-long process to get Conservation Partners Legacy Funds,  
157 which is still a possibility.

158 Administrator Jeffery described the potential Capital Improvement Plan implications of moving  
159 forward with this project. He explained the two capital projects whose schedules would be moved  
160 out are Red Rock Lake 7 and Mitchell Lake 3. He said these two projects scored 28 and 24,  
161 respectively, in the District’s priority scoring and the land acquisition scores a 49 when including  
162 the partner funding grant from Hennepin County. Administrator Jeffery said the project scores a  
163 33 in the absence of the grant.

164 President Ziegler opened the floor for public comments.

165 Morgan Jacobs introduced himself as a volunteer with Spring Valley Friends and said he serves  
166 as the group’s president. He said the group has been struggling to preserve these remaining bluff  
167 lands for the past three years. Mr. Jacobs said the group sees the District’s proposed acquisition of  
168 the property as a win-win for the seller and the public. He said the group has already pledged its  
169 full support and gratitude for taking this step. Mr. Jacobs said he is also commenting tonight as a  
170 lifelong resident of this river valley, living first in Chaska and currently in Carver. He said these  
171 bluffs have been a part of his life for as long as he can remember. Mr. Jacobs said the drive into  
172 Eden Prairie through the hills has made such an impact on him as a kid. He said every generation  
173 should be able to enjoy local nature in same way he has. He said when he imagines how the  
174 property is going to be saved from the destructive crawl of modern development, the only thing  
175 he can see working is new, out-of-the-box thinking from the community and governing bodies,  
176 and that is what this plan really represents to him. Mr. Jacobs said it is a shift toward a better  
177 future where we save and enjoy the nature we still have left. He said he is not alone in this

178 sentiment and everyone he has spoken with about this issue offers this same desire for change he  
 179 yearns for. Mr. Jacobs said we all love this area’s land and deserve to see it preserved, so let’s  
 180 celebrate the watershed for helping to achieve it. He yielded the rest of his time to Larry.

181 Larry Koch introduced himself as a resident of Chanhassen, Lotus Lake, and Carver County. He  
 182 said he has no problem with preserving this property, but the watershed is not the mechanism for  
 183 accomplishing it. Mr. Koch said he appreciates people thinking outside the box, but under the rule  
 184 of law we are not allowed to think out of the box. Mr. Koch said he would love to learn how to do  
 185 this. He said Ted Melby and Rebecca Prochaska pitched him on this idea of acquiring the  
 186 property and said they already have the money lined up and just need a partner. He said that has  
 187 not come to fruition. Mr. Koch said if this is important to the Friends then go out to help the  
 188 District to find the money. He said he does not believe it is appropriate under the rules for the  
 189 people of Hennepin County and Carver County to be carrying this boat of money. Mr. Koch said  
 190 up at Lake Vermillion, which Mr. Smith is clearly familiar with, the DNR got legislative funding.  
 191 He said that is where the money should be and the money should not be put on the backs of the  
 192 taxpayers in Hennepin County and certainly not in Carver County. He said what we are talking  
 193 about with this project is more of a park and not a water project. Manager Koch said he is not  
 194 against preserving it but the District has its rules and its role and the state legislature decides on  
 195 who does what in this state.

196 Morgan Jacobs commented he wants to correct one thing he heard Larry say. Mr. Jacobs said  
 197 Larry commented with some suggestion about some selling from the group on an extra partner on  
 198 this acquisition. Mr. Jacobs said that was not sold to him from the group but from an individual  
 199 volunteer who was confused about where the funding was coming from. He said that message  
 200 never came from Spring Valley Friends.

201 Mr. Smith said if all comments from public have been raised, he suggests closing the public  
 202 hearing on the plan amendment.

203 Manager Pedersen moved to close the public hearing on the plan amendment. Manager Crafton  
 204 seconded the motion. Upon a roll call vote, the motion carried 4-1 as follows:

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

206 \*Before voting Manager Koch stated, “Without waiving his prior objections.”

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209 President Ziegler declared the public hearing open regarding Resolution 23-073 Ordering the  
 210 Spring Road Conservation Project.

211 Chesney Engquist said she has followed as closely as she can as a member of the public about the  
 212 activity about rezoning and the potential conservation of this site. She said she has spoken to the  
 213 Board and has submitted written testimony for years. Ms. Engquist said what is happening is an  
 214 unprecedented opportunity to preserve the last public source of drinkable ground water in the  
 215 region. She said she has spoken to people within neighboring states who have traveled here to  
 216 drink that water. Ms. Engquist encouraged the Board to examine its ranking structure for  
 217 infrastructure because of the jeopardy we are all in. She thanked the District for amending its  
 218 plan.

219 Larry Koch of Chanhassen, Lotus Lake, and Carver County said regarding ordering this project,  
 220 this project is not necessary and the land acquisition is not necessary to fulfill the District’s  
 221 obligations. He said he lived within this District previously. He said the acquisition does not fit  
 222 within the District’s purposes either under 103B, because it is not a capital improvement project,  
 223 nor does it fall within the express purposes under 103D. He commented that as he has said before  
 224 this may be a great conservation project but the District is not the mechanism for accomplishing  
 225 it. Manager Koch said the Friends of the Valley should be out there trying to raise money for this.  
 226 He said a good deal of them live outside the watershed district, and if they think this is important,  
 227 they should be volunteering and contributing toward this so their property can be levied as much  
 228 as the people in the district. Manager Koch said if this property is this important then it is a state  
 229 issue like Vermillion and we should not be putting the cost on our backs and on little pieces of  
 230 Hennepin and Carver counties. He said this property acquisition has no benefit to the purposes for  
 231 which the Riley Purgatory Bluff Creek Watershed District (RPBCWD) is formed He said the  
 232 District is not in the park business. He said the District is in the water protection business and for  
 233 very specific water protection benefits. Manager Koch said in his opinion this project does not  
 234 fall within the District’s bailiwick. Manager Koch said the property should be preserved but the  
 235 District is not the vehicle for doing so. He said he does not think he should be nor his fellow  
 236 taxpayers should be carrying the burden of buying this property, especially when none of the  
 237 other conservation entities, who are in the business of preserving property, apparently showed  
 238 any interest in doing that. He said if that is the case, the District should be rethinking about why  
 239 the District is putting its money there. Manager Koch said we should be putting our money where  
 240 it needs to be put, which is protecting our waters, which is our task given to us by the legislature.  
 241 He said it can be protected but the District is not the vehicle for accomplishing that.

242 Manager Crafton moved to close the public hearing on ordering the Spring Road Conservation  
 243 Project. Manger Pedersen seconded the motion. Upon a roll call vote, the motion carried 4-1 as  
 244 follows:

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

Ziegler

Yes

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\*Before voting Manager Koch stated, “Without waiving his prior objections.”

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#### **4. Adopt Resolution 23-072 to Adopt Plan Amendment to add Spring Road Conservation Project**

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Manager Crafton moved to Adopt Resolution 23-072 to Adopt Plan Amendment for the Spring Road Conservation Project. Manager Pedersen seconded the motion.

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Manager Crafton said she has long been a supporter of this and appreciated the comments and feedback she received from other people in support of this project. She said it reinforced her interest in doing this project. Manager Crafton said we have learned so much about ecosystems from science findings through soil health studies. She said this is an opportunity to really do good research, to do restoration, and to allow for more ground water recharge. She said there are so many positives and the District cannot protect the property if it does not own it. She said she is strongly behind adopting this amendment.

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Manager Pedersen thanked the Spring Hill Friends and said she had 71 positive comments sent to her separately and one comment against this project. She said she, like Manager Crafton, feels appreciative of the time people spent to comment and reaffirms how she feels about this project. Manager Pedersen said out of the long-term the District will be able to get out of its \$8,000 a month rental that the District Office is in, not including the maintenance costs. She said she sees this as a huge resource for educational opportunities, such as letting the public come and see what can be done to preserve areas to help water and conserve an ecologically precious area where there is only one percent of this left. She said she see this as a recreational thing, too, if the City of Eden Prairie pathway through it is included. Manager Pedersen said in her mind she finds this to be a once in a lifetime opportunity for the Watershed District. Manager Pedersen said this will be an outstanding area where people can go and see what it looked like and what people can do to help our water resources. She said she is soundly behind all of this.

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Manager Duevel said he put together some notes with his comments. He said he thinks this is an extraordinary time period in which we live. Manager Duevel said he has attended other water and watershed conferences across the state over time, and he has come to see and appreciate how other watersheds have done business. He said he has looked at the kinds of projects those watersheds have done and sometimes warts and all. Manager Duevel said the RPBCWD deals with water most of the time, and in the District’s three subwatersheds, thirteen lakes, and twenty-five parks and how it is integrated into seven local communities. He said he thinks the project before the Board, the Spring Road Conservation Project, is a once in a decade, or maybe a once in a generation, type of a project. Manager Duevel said in a few years it could look like one of the biggest, best strategic things the District could have done as a watershed. He said he will not repeat much of what is in the other documentation tonight other than to say time is short and do the right thing. Manager Duevel said the Spring Road Conservation Project could be a centerpiece of how the Watershed moves forward as a leader

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283 in dealing with our natural resources from a holistic point of view. He said the fact of the  
284 matter is the water quality and quantity, lakes, streams, wetlands, habitat, and urban  
285 development are all related. Manager Duevel said having been on this Board for only a year  
286 and a half, he has come to realize the District has an extremely talented staff guided by  
287 Administrator Jeffery. Manager Duevel said Administrator Jeffery and his staff of eight  
288 exceptionally talented people have done an extraordinary job of managing and moving  
289 projects toward completion. Manager Duevel highlighted that in his opinion and experience,  
290 having worked with many lawyers and engineers on projects all around, the District has the  
291 finest attorneys and engineers advising the District in Louis Smith of Smith Partners and Scott  
292 Sobiech of Barr Engineering. Manager Duevel said he thinks the District has done a fine job  
293 with the 34 or 35 projects currently in the District's 10-Year Plan. He said his opinion is that  
294 now is the time to change how the District goes about doing things. Manager Duevel said  
295 from his perspective now is the time to move away from the model of only looking at what  
296 needs fixing or is broken and working it into the 10-Year model if it ranked high enough. He  
297 said we have developed our cities and related landscape in a piecemeal basis from the  
298 beginning of time. Manager Duevel said it is always difficult if not impossible to see the  
299 future and see where everything will end up. Manager Duevel commented he thinks the  
300 Spring Road Conservation Project moves thinking forward to not just fixing things that are  
301 broken but how we address underlying causes that lead to the problems in first place. He said  
302 he is very excited and very much in favor off adding this Spring Road Conservation Project to  
303 the Watershed District portfolio.

304 President Ziegler commented he knows one of his goals that is not in the District's 10-Year  
305 Plan is that the District should have a climate change plan to get to net zero carbon. He said it  
306 seems foolish to have a plan if we do not have a permanent address and we cannot get there  
307 while the District is renting. He said hopes this moves the District to a position where the  
308 District can add to its 10-Year Plan a net-zero carbon goal.

309 Manager Koch said by definition this is not capital improvement project so it does not qualify  
310 under 103B. He said acquiring property is inconsistent with the District's current Plan.  
311 Manager Koch said this is not an opportunity project and it is not a special situation. He said  
312 the property has been available for purchase for years, in fact back to at least 2021. Manager  
313 Koch said a permit has been granted to develop this property and was even extended as of a  
314 couple of years ago, all under rules adopted by the District, which decided they were sufficient  
315 in order to protect our waters. He said there is nothing in the rules that says we are going to  
316 acquire land to protect them on that basis. He repeated this would be an opportunity project  
317 only if there was third-party funding and there is not third-party funding. Manager Koch  
318 reminded the group about the property including three houses the District purchased but it was  
319 a flood control issue and we received money elsewhere to pay for that. He said this project is  
320 totally different and is not a project within 103B.255. Manager Koch said if you read all the  
321 purposes, they talk about water. Manger Koch said that we decided when we issued a permit  
322 that what we required them to do for getting the permit was sufficient to protect our waters.  
323 He said nothing has changed. He commented we are in the water business and not in the  
324 general environment business and we are not in the carbon neutral business. Manager Koch  
325 said regarding the proposed plan amendment, ecological benefits are not spelled out in our  
326 purposes. He said what is spelled out is dealing with water and protecting our waters. He said  
327 there has been no demonstration this will be beneficial to our waters. Manager Koch said there

328 are already permits that the Board decided is sufficient to protect the water. He said there is no  
329 reason to acquire this property. Manger Koch said maybe it is great to buy this property, but it  
330 is not within our purposes. He said we are not the be all, end all, general purpose entity. He  
331 said we are a limited purpose government entity, and we are required to operate within the  
332 purposes. He said this does not fall within the purposes of either 103B, because it is not a  
333 capital improvement project, nor does it fall within 103D, because it does not address any of  
334 the purposes for which we can do business. Manager Koch commented 103D has to do with  
335 flood control, drainage, reclaiming land, water supply for irrigation, streams, diverting water  
336 courses, conserving water supply, sanitation, hydroelectric power, and so on. He said there is  
337 no reference in there to ecological diversification or carbon neutral. He said we are going  
338 outside of our box and the legislature has decided what boxes are appropriate. He said if you  
339 want to change the statute, fine, but the statute is as it was. Manager Koch said in his opinion  
340 the plan amendment is misleading. He remarked ecology does not apply under the various  
341 purposes for which we are established. Manager Koch said more importantly the scoring is  
342 what he used to call in the business MAI or Made As Instructed. He said it strikes him we  
343 wanted a certain result and filled in the boxes. Manager Koch said the goal index is rated as a  
344 5 but if you really analyze it, there is no creek or lake to restore, there are no wetland impacts  
345 not covered by the rules, there is no evidence of fish or waterfowl issues, there are no  
346 floodplain issues, and so giving it a 5 rating is a bogus determination. He said at best he would  
347 rate it a 3. Manager Koch said the sustainability index for this project is rated as a 7 with 44 of  
348 the sustainability index items considered applicable. Manager Koch said he went through the  
349 items and there were only 23 that were even reasonably applicable to this project.  
350 Furthermore, he said, volume management was rated a 1. He said he thinks giving a 1 for  
351 something that has no impact is distorting the whole matter of evaluating this issue. He said it  
352 should be rated a 0 as should pollutant management, stabilization, and habitat restoration.  
353 Manager Koch said partnership should be at best rated a 1 if the District is going to get  
354 \$500,000. He said partnership certainly is not a 7 rating. Manager Koch said Education is not  
355 within our bailiwick and although education is a great thing it is not something to be used to  
356 determine whether or not we fund a project or put it in our plan. Manager Koch said the  
357 scoring system is inappropriate and if one adds up the ratings, the total score is under 30, and  
358 the District has stated 30 is the threshold for moving any project forward. He said by our own  
359 metrics this project does not qualify for being included in the Plan or being funded at all.  
360 Manger Koch said the proposed plan amendment does not take into account the years after  
361 2028, but we are proposing to fund this, or bond this, over 20 years. Manager Koch said we  
362 have no plan to cover from 2029 onward, so we have no idea the impact this may have on  
363 other projects. Manager Koch stated for that reason alone this plan amendment is inaccurate,  
364 inadequate and should not be approved. He commented that putting this project in 2023 as an  
365 acquisition, somehow someone is sneaking in \$2.5 million, which is not even discussed and  
366 he does not know where that came from. Manager Koch said this plan amendment is wholly  
367 inadequate because does not cover post 2028 numbers. Manager Koch said the bottom line is  
368 this is not a capital improvement project and does not fit within the definitions of the Plan and  
369 therefore we should not be adopting this at all. He said we should be in no hurry. Manager  
370 Koch said nobody is going to develop this property and we still have litigation going on. He  
371 said that without a written document signed by the litigants, we have to assume the litigation  
372 could continue and if it is successful would eliminate any need to purchase this property.  
373 Manager Koch said the plan does not take that scenario into account. Manager Koch remarked

374 this is not within our wheelhouse and we should not be approving this plan because we can  
 375 adequately protect this land without acquiring it because we have rules to that effect that  
 376 would adequately protect it. He said he remembers that during the permitting meeting he  
 377 asked about the impact on the creek and Administrator Jeffery explicitly said there are no  
 378 problems with the creek. Manager Koch said the map in the District’s 10-Year Plan does not  
 379 indicate any blue or red squiggles or dots indicating projects or needed restoration near or  
 380 having to do with this property.

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

382

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

383 \*Before voting Manager Koch stated, “Without waiving any of his prior objections.”

384

**5. Adopt Resolution 23-073 Ordering Spring Road Conservation Project**

385 Manager Pedersen moved to adopt Resolution 23-073 Ordering the Spring Road  
 386 Conservation Project. Manager Crafton seconded the motion.

387 Manager Crafton commented that for years the District has been focused on water volume,  
 388 velocity, and the rate of waters going through the District and ending up in the Gulf. She said  
 389 that focus has not really improved things. Manager Crafton said this property is an  
 390 opportunity. She said as we are learning from nature, there is a water cycle involved as part of  
 391 ecosystems and when nature is fully functioning with native plants and the different  
 392 organisms that are associated with that either in the soil or above, those things have evolved  
 393 together and have at least four environmental functions that are really important. Manager  
 394 Crafton said one of those functions is the water cycle, and we are learning that when rain  
 395 falls, if it does not fall on an organic sponge, it is going to run off, but if it does, there is an  
 396 opportunity for transpiration to happen as water comes back up through the vegetation,  
 397 whether trees or prairie or whatever, and that can actually cool the local environment.  
 398 Manager Crafton commented this is an opportunity for us to figure out exactly how we can  
 399 work with nature and how we can reduce some of the aridity in the soil and the heat and the  
 400 drought. She said from what she is learning, what we do in an urban area is contributing to  
 401 that statewide and nationwide. Manager Crafton stated she thinks this is an extremely  
 402 important project, which is why she supports ordering this project.

403 Manager Pedersen said she is very much in support of Manager Crafton's comments.  
404 Manager Pedersen said she has already commented on her reasons for supporting this project.

405 Manager Duevel said he is in support with what Manager Crafton said and he has already  
406 provided his comments on the proposed resolutions.

407 President Ziegler said he agrees with Manager Crafton's comments and the water cycle is  
408 definitely something that cleans up the water. He said we do not have a problem with the  
409 water that actually lands on the lakes but with the water that lands on hard surfaces - the  
410 developed surfaces. President Ziegler said the water that lands on the forest or the prairie  
411 ends up fairly clean just through nature. He said the water that lands on rooftops and roads  
412 and other hard surfaces ends up pretty dirty and polluted with salt and so on, so that is where  
413 we have the biggest problem.

414 Manager Koch commented he is against ordering this project because it is not necessary. He  
415 said 103D.335, subdivision 11 states there can be no acquisition of real personal property  
416 unless it is necessary. Manager Koch said it has not been demonstrated as being necessary to  
417 acquire this piece of property. He stated we have already demonstrated our rules are sufficient  
418 to protect the waters on this property. He said President Ziegler already talked about water  
419 running off of hard surfaces and our rules address that and provide for holding ponds,  
420 etcetera, to reduce or eliminate the pollutants, discharge, and erosion. Manager Koch said  
421 acquiring this property is not necessary to advance the purposes under 103D.201, particularly  
422 because this is not a capital improvement project. Manager Koch said we are not in a position  
423 to authorize a capital improvement project as this is an acquisition and by definition this is  
424 not a project. He stated he has already mentioned that this is already the subject of permits  
425 and we decided it was more than adequate to do this. Manager Koch said the environment  
426 and other issues are great but are not within our wheelhouse and is not what we are organized  
427 to do. He said if we want to change it then let us go to legislature and get it changed. Manager  
428 Koch stated that as of now we are limited to the purposes as set forth in 103D and 103B. He  
429 remarked that 103D requires us to have rules and we are supposed to operate in accordance  
430 with rules. Manager Koch said we have no rules regarding land acquisition as required by  
431 103D. He said the only rules we have are in regard to permitting, so we are not in a position  
432 of dealing with land acquisition in any way shape or form because we have no rules. Manager  
433 Koch mentioned the fact that this acquisition, whenever it may happen, would cause us to  
434 exceed our budget, which would be a violation of 103D. He remarked that as Attorney Smith  
435 has said on a number of occasions, we cannot increase our budget amount. Manager Koch  
436 said acquiring this property would at a minimum cause us to exceed our expenditure level by  
437 approximately \$600,000 in this year. Manager Koch said increases of 8% and 11% a year are  
438 unacceptable. He said people are dealing enough with inflation and adding to their burden is  
439 not an answer. Manager Koch stated that going to the public and getting the entire public to  
440 contribute is an answer. He said it is not an answer to put this burden on a limited number of  
441 taxpayers, especially the people of Carver County because they receive no benefit from this.  
442 He said what will happen is their projects will be delayed and those people will end up paying  
443 more money for projects. He said \$5.77 million dollars is 90% of one year's budget. Manager  
444 Koch said we do not go acquiring other properties. He pointed out the Board just approved a  
445 permit for Xcel to put in a maintenance center. He said there were wetlands on that property  
446 and he did not see anybody coming out and saying we should acquire that land so we could  
447 save those wetlands. Manager Koch said this is a great project but not for the District because

448 it is not within the statutes that we are dealing with. He said it is adequately protected by our  
 449 permits and other Minnesota environmental laws including the DNR. Manager Koch stated  
 450 there has been no evidence of needing to do any further protection other than our rules. He  
 451 said we should be voting no on ordering this project. He remarked that as he has already said  
 452 ordering this project is premature. He said the review period has not run the minimum period  
 453 of time between the end of the review and a hearing has not occurred and therefore it would  
 454 be improper - illegal in his opinion – to order this project when the review period has not run,  
 455 notwithstanding what Attorney Smith has said. Manager Koch asked everyone to go out there  
 456 to find the money. He said if nobody else wants to put in the money, we would be fiscally  
 457 irresponsible to put up this kind of money when we cannot get any conservation organization  
 458 to put up that kind of money. He said it is because they know that money could be better  
 459 spent elsewhere. Manager Koch said it is not that buying this property would be bad but it is  
 460 down in the priorities. Manager Koch asked what could be done with \$5.77 million dollars  
 461 instead of buying this property, especially when our own rules say we are adequately  
 462 protecting the waters in the development. He said we are not here to run a prairie program as  
 463 it is not within our bailiwick. He said we do not need to acquire the whole property. Manager  
 464 Koch said if there is a risk to the slopes, those slopes under the development plan are being  
 465 dedicated to Eden Prairie for free, so why would we pay for them. He said that is plain silly to  
 466 pay for something that one could get for free. He said no one has demonstrated the need to  
 467 acquire this property within the purposes for which we are organized. Manager Koch said he  
 468 thinks we need to go look at 103D. He said as he reads it, we are supposed to be using other  
 469 public facilities. Manager Koch said he does not anywhere see that it says we can go lease or  
 470 buy or build a building. Manager Koch said what Nine Mile or Capitol Region watershed  
 471 districts do does not concern him. He said if they want to go break the rules and the law they  
 472 can go ahead and do that. Manager Koch said we cannot build this. He said he was under a  
 473 mistaken impression a long time ago and when he looked at the rules he saw we should be  
 474 using other public facilities and there is no exception. He said we should not get trapped into  
 475 thinking we could have this education facility or offices because we are not allowed to do  
 476 that. Manager Koch said it would be great to protect this [property]. He said that is not in our  
 477 wheelhouse. He said we would be saddled with it. Manager Koch said we took a solemn oath  
 478 to uphold the constitutions, which means we took a solemn oath to uphold the laws. He  
 479 commented that ordering this project would be a violation of those laws and our oaths and we  
 480 should be removed if we are going to go and violate our solemn oaths. Manager Koch stated  
 481 education is great and he is not against education but it is not one of the purposes listed for  
 482 the Watershed District. He remarked that as he has said, it would be great to do it, but this  
 483 project does not meet our very own criteria. Manager Koch said we do not have any  
 484 independent determination and we have no evidence that shows it meets our criteria. He said  
 485 he has shown, in fact, that it does not meet our criteria and it should not be ordered.

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

487

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

Duevel	Yes
Koch	No*
Pedersen	Yes
Ziegler	Yes

\*Manager Koch stated before voting “Without waiving my prior objections.”

488  
489

**6. Adopt Resolution 23-074 Requesting Long-term Bond Funding from Hennepin County**

490 Manager Pedersen moved to adopt Resolution 23-074 Requesting Long-term Bond Funding  
491 from Hennepin County. Manager Crafton seconded the motion.

492 Manager Koch said he thinks it is important to repeat the problem that the District’s Plan  
493 ends in 2028 and the resolution proposes bonds that are going to exceed the length of the  
494 District’s Plan. He said the Plan needs to be amended to deal with years beyond 2028 during  
495 which, as he understands it, these bonds would be paid back or at least money would be  
496 collected to be paid at least in interest and principal. Manager Koch said he is opposed to  
497 adopting this resolution.

498 Manager Koch commented that statute 103D is particularly clear that we are not allowed to  
499 borrow more than \$2 million from any county or financial institution. He said if Hennepin  
500 county issuing bonds, the County is getting the bonds and lending us the money. Manager  
501 Koch said when it is more than \$2 million, as it is in this case, it would be a violation of that  
502 particular provision in 103D.

503 Mr. Smith responded that Legal Counsel is comfortable that this action is within the District’s  
504 statutory authority within Minnesota Statutes Chapter 103B.

505

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

507

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

508 \*Manager Koch stated before voting “Without waiving my prior objections.”

509

**7. Adopt Resolution 23-075 to Call a Special Meeting for December 6, 2023, at 7:00 p.m.**

510 Manager Pedersen moved to adopt Resolution 23-075 to Call a Special Meeting for  
 511 December 6, 2023, at 7:00 p.m. Manager Crafton seconded the motion.

512 Manager Koch reiterated his objection to this because he does not believe the review period  
 513 required under statute will have expired by that period of time and having a meeting prior to  
 514 the earliest possible date in the statutes for having a hearing has not passed and therefore  
 515 this is not an appropriate subject matter for a meeting, whether it be a special or regular  
 516 meeting. Manager Koch reiterated that this financing is also going to be subject to the  
 517 limitation on the amount of borrowings under 103D.355, Subdivision 17. Manager Koch  
 518 said he would like to know the basis for a position being taken that there is only a 30-day  
 519 window to object to the plan.

520 Mr. Smith said the 30-day comment period comes under Minnesota Rule 8410.0140, as he  
 521 quoted earlier, concerning the provision for minor plan amendments. He said that is the  
 522 provision BWSR cited in its comment and is consistent with District’s plan.

523 Manager Koch reiterated his prior position that the rule, if it says what Mr. Smith says, goes  
 524 beyond the authorization of BWSR in shortening the period of time as that would be  
 525 contrary to the explicit provisions within the statute and the manner for minor plan  
 526 amendments do not provide for shortening that period of time. Manager Koch said he  
 527 objects to the shortening of the period of time. He said he reiterates his objection to this  
 528 meeting having a hearing on the plan and ordering the plan at this point prior to the  
 529 expiration of the 60-day window under the statute.

530 Manager Crafton said she will be in Mankato December 5-6 and expects to be back in time  
 531 for the meeting time the Board proposes but there is a possibility she will be delayed due to  
 532 weather.

533

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

535

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

536 \*Manager Koch stated before voting “Without waiving my prior objections.”

537

**8. Approve After-the-Fact Permit 2023-066 for 6607 Horseshoe Curve**

538 President Ziegler moved to approve After-the-Fact Permit 2023-066 for 6607 Horseshoe  
539 Curve. Manager Duevel seconded the motion.

540 Administrator Jeffery said this permit did not rise to the level of needing engineer review as  
541 it would have been an administratively reviewed permit. He said the builder LDK came to  
542 the District noting the construction project had already started. Administrator Jeffery said  
543 LDK prepared plans and a maintenance declaration and they have been reviewed against the  
544 District’s rules. He said LDK has provided financial assurance and the project is nearly  
545 complete.

546 Manager Koch said he wants to make sure that a condition for after-the-fact permits is the  
547 District gets paid for time and effort of staff and the managers. He asked if that condition is  
548 included in the fees. Administrator Jeffery said yes, it is, and Engineer Sobiech’s recovery  
549 has been included in the fee. Manager Koch said he thinks it is important to have that  
550 spelled out unless he overlooked it. He said he thinks the cost recovery is the best incentive  
551 to get people to comply with the District’s permitting rules. Manager Koch added that he  
552 thinks, on the topic of education, that the District needs to repeatedly get the word out about  
553 the need for permits. He said he thinks now is a good time to get the word out because over  
554 winter people are going to start thinking about projects.

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

556

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

Koch	Yes*
Pedersen	Yes
Ziegler	Yes

557 \*Manager Koch stated before voting “Without waiving any of my prior objections.”

558

**9. Workshop Calendar Discussion**

559 Administrator Jeffery displayed his proposed 2024 District work session schedule to hold  
560 quarterly work sessions.

561 Manager Koch asked Administrator Jeffery to rethink the proposed calendar and the proposal  
562 to only hold quarterly work sessions. Manager Koch said he thinks there needs to be more than  
563 four work sessions so the Board can address specific topics and have discussion.

**10. Adjourn**

564 Manager Pedersen moved to adjourn the meeting. Manager Crafton seconded the motion.  
565 Upon a roll call vote, the motion carried 5-0 as follows:

566

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

567 \*Manager Koch stated before voting “Without waiving my prior objections.”

568

569 The meeting adjourned at 8:49 p.m.

570

571

572

Respectfully submitted,

573

574

\_\_\_\_\_

575

Dorothy Pedersen, Secretary