

**MEETING MINUTES**

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

**April 18, 2024, RPBCWD Board of Managers Work Session**

**PRESENT:**

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

Staff: Terry Jeffery, District Administrator  
 Dylan Monahan, Administrative Assistant  
 Louis Smith, Legal Counsel, Smith Partners

Other Attendees: Andrew Aller\*  
 Ted Melby  
*Note: \*Attended virtually.*

**1. Call to Order**

1 President Pedersen called the Board work session to order at 7:00 p.m.

2 President Pedersen stated that by declaration of the president this meeting is being held in person  
 3 in public and hybrid while the District recognizes a manager may, based on advice from a  
 4 healthcare professional, have a legitimate reason for not attending a meeting in a public place in  
 5 person, such as Covid-19 exposure or infection, and in such circumstances may participate in the  
 6 meeting remotely.

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

8

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

9

## 2. Approval of Agenda

10 Manager Crafton moved to approve the agenda as proposed. Manager Duevel seconded the  
11 motion. Upon a roll call vote, the motion carried 5-0 as follows:

12

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

13

## 3. Review of Governance Manual Draft Revisions

### 14 a. Committee-Proposed Revisions and Manager Koch-Proposed Revisions

15 Administrator Jeffery stated tonight's review will go through the Governance Manual  
16 (Manual) up to the Financial policies. He said the financial policies will be going to  
17 the Audit and Finance Committee next. Administrator Jeffery said the Governance  
18 Manual revision process started in the summer of 2022 per the Board's direction to  
19 the Governance Committee (Committee). He explained the Committee started the  
20 review by soliciting comments from CAC members and managers. Administrator  
21 Jeffery reported comments were received from Manager Larry Koch and CAC  
22 member Sharon McCotter.

23 Administrator Jeffrey said the Committee reviewed comments and either accepted,  
24 accepted with edits, or rejected them. He said Manager Koch submitted additional  
25 comments yesterday, which were distributed to the managers. He said the version the  
26 managers have is the version recommended by the Committee and Manager Koch's  
27 comments are displayed on the screen.

28 Manager Koch commented the current Governance Committee had 15 months to  
29 review the manual to recommend revisions and he had only three days, which he  
30 does not think is sufficient time to devote to reviewing the document. He said he  
31 hopes tonight Louis Smith will walk the managers through the comments and then  
32 the managers will have more time to review them. Manager Koch said he asked for  
33 the versions of the Manual along the way and he did not receive them. Manager Koch  
34 said he is not aware of the Governance Committee meetings being recorded and if  
35 they were, he would like access to those recordings. He asked about the process for  
36 reviewing the Manual going forward.

37 Administrator Jeffery said tonight we will walk through the revisions and comments  
38 made. He said other portions of the manual remain to be reviewed by the Audit and  
39 Finance Committee and the Governance Committee. Administrator Jeffery said he  
40 does not see this coming back to the Board for approval in May, so there is time for  
41 the managers to review the document.

42 Louis Smith recommended the Board follow a procedure tonight to provide the  
43 managers an understanding of the Governance Committee's recommended changes  
44 and comments Manager Koch raised recently that are substantive issues.

45

46 **Governance Manual Introduction**

47 Mr. Smith launched into the review, explaining the substantive issue raised around  
48 the Governance Manual's introduction section is regarding the process for amending  
49 the Manual. Mr. Smith said the recommendation by the Governance Committee  
50 (Committee) is that notice of any proposed amendment be contained in the notice of  
51 the meeting at which the proposed amendment is to be considered, with instructions  
52 or links to obtain a copy of the proposed amendment. Mr. Smith said Manager Koch  
53 proposed language on that point including specific instructions in the notice and  
54 Manager Koch's comment was that the inclusion of the proposed amendment in the  
55 agenda to the meeting alone does not satisfy the requirement.

56 Mr. Smith reported the Committee proposes new language in the last paragraph of  
57 the introduction to state managers, District staff, and contractors are expected to  
58 conduct District business in accordance with the manual and to alert the Board to  
59 improvements and additions needed. Mr. Smith said Manager Koch's proposed  
60 added language is that managers, staff, contractors, and other constituents of the  
61 District are encouraged to alert the Governance Committee and the Board to the  
62 Manual.

63 Mr. Smith said it would be helpful to get direction from the Board on the changes as  
64 they are reviewed tonight, so the Committee and staff can come back to the Board  
65 with a version consistent with majority of the Board's thinking.

66 Manager Pedersen said Mr. Smith and Administrator Jeffery can review and decide  
67 how to proceed regarding non-substantive edits. She said regarding substantive  
68 changes, which are the ones being presented to the Board, managers should speak up  
69 with their comments.

70 Manager Koch said his purpose is to make the process regarding changes and  
71 obtaining comments inclusive to the broader audience. He wants to make sure people  
72 are well aware of the changes the Board will be discussing and aware of at least a  
73 summary of the changes. He said he wants people to be aware of the actual topics the  
74 Board will be discussing, like amendments to the Governance Manual, and that there  
75 are links to appropriate documents.

76 Administrator Jeffery said he is hearing Manager Koch say he wants to make sure the  
77 actual item to be acted on, for example the Governance Manual, is available for the  
78 public to review. Manager Koch said he wants to make sure the topic adequately  
79 describes exactly what we are going to be addressing without any obfuscation and  
80 members of the public have the opportunity to review the documents according to the  
81 process we arrive at. He said he thinks there should be a 30-day comment period.

82 Manager Duevel asked for context on why the Board is reviewing its Governance  
83 Manual at this time. Administrator Jeffery said the District's Governance Manual  
84 states the District will review the Manual annually. He said in the summer of 2022,  
85 when this review began, the Committee and Board knew the Manual would need to  
86 be updated to at least reflect the changes in operations in response to the Covid  
87 pandemic.

88 Mr. Smith stated the current Governance Manual was adopted in 2020 and it is good  
89 practice to review the policies and improve them as possible and to reflect any  
90 changes in state statute.

91 Manager Koch said the District needs to have reasonably detailed policies and  
92 procedures in place that can be followed by any future staff and Board.

93 Manager Pedersen said she is not seeing the need for more detail, such as the detail  
94 Manager Koch proposes. Manager Crafton said she is comfortable with the language  
95 recommended by Committee. Manager Duevel said he feels the same. Manager  
96 Ziegler said he is also very comfortable with the wording recommended by the  
97 Committee.

98 Manager Koch said based on his experience he thinks we should be as detailed as  
99 possible and he recommends the Board accept his proposed changes.

100

## 101 **General Governance Policies**

### 102 **Contracting Provision**

103 Mr. Smith said the Governance Committee recommends adding Paragraph e – that all  
104 contracts with the District shall provide that the District have not less than 45 days  
105 from receiving an invoice for payment without interest or penalty. He said this seems  
106 to be a change all managers support.

107

### 108 **Per Diems**

109 Mr. Smith reported the Committee recommends changes to this section including that  
110 a manager may receive one per diem for preparation for each meeting of the Board of  
111 Managers but no per diem shall be provided for preparation to attend a workshop.

112 Mr. Smith said his understanding of Manager Koch's proposed changes is a per diem  
113 could be available for preparation of each meeting regardless if it were a workshop  
114 and it would not be restricted to one per diem for preparation of a meeting.

115 Mr. Smith explained the Committee’s recommendation is more limiting as to per  
116 diems and Manger Koch’s suggestion is broader.

117 Manager Koch said he has grave concerns that this compensation per diem policy we  
118 have complies with the Fair Labor Standards Act. He said he believes it does not and  
119 certainly not under the policy recently adopted by the Biden Administration.

120 Manager Koch said if anybody is doing their job and is looking at an item for a  
121 workshop and spending time doing so, the manager should have opportunity to claim  
122 a day spent reviewing those materials that will be addressed at the workshop. He said  
123 his understanding of the Fair Labor Standards is if you do work you get paid whether  
124 it is authorized or not because the law is the law. Manager Koch recommended staff  
125 talk that over with Labor and Employment lawyers. Manager Koch said he thinks  
126 managers should have the opportunity to be paid for preparation for workshops no  
127 different than for any other meeting. He said his format suggestions are to make it  
128 clear for what items managers are entitled to a per diem.

129 Administrator Jeffery said Minnesota Watersheds did an annual survey and some  
130 watersheds have established a process or practice of doing a per diem for a meeting  
131 and an hourly rate for outside obligations or preparation.

132 Manager Crafton said she does not think it is necessary to establish an hourly rate.  
133 She said she tries to restrict what she charges because she thinks it is generous  
134 already.

135 Manager Duevel said he thinks fundamentally this is an issue of defining the role of a  
136 Board manager versus staff. He said he interprets the role of the managers to be that  
137 of broad oversight of what is going on in the District and overseeing the work and  
138 recognizing everyone has a different definition of what level of detail to get involved  
139 with. Manager Duevel said we hire expert consultants and a very talented and skilled  
140 staff and from his perspective he does not think it is a manager’s role to burrow down  
141 into as much detail as we do so often. He said his perspective is the Board is here to  
142 steer and not manage every detail of what is going on.

143 Manager Ziegler said he is in agreement with recommendation by the Committee. He  
144 said he believes per diems are appropriate and the amount is set by state law and he  
145 does not think an hourly rate for a Board member is appropriate.

146 Manager Pedersen concurred with the discussion of the managers here in person and  
147 she sees serving as a manager more of as community service. She said she agrees  
148 with the discussion points made by Manager Duevel, Manager Crafton, and Manager  
149 Ziegler. Manager Pedersen commented she would prefer her extra dollars go toward  
150 projects in the watershed.

151 Manager Koch said there is an adage “You get what you pay for.” He said the statute  
152 specifically states, “the managers are in charge.” He commented this is not a board of  
153 directors. Manager Koch remarked nobody he knows of on the staff has the tenure in  
154 their positions to be able to do something without anybody giving it a second  
155 thought. He recommended everyone read the manager’s oath of office. Manager

156 Koch commented he thinks some compensation on an hourly basis could be  
157 workable. Manager Koch said the statute says the maximum amount we can be paid  
158 in any day is \$125 but statute does not say how we get paid – hourly or per diem  
159 amount. He said a lot of people operate under the misconception that we operate  
160 under a per diem process, but that is because we made it that way and not because  
161 that is what statute says. Manager Koch said he would like to be shown where in the  
162 District’s per diem policy language it states that anybody is supposed to get paid for  
163 anything other than attending meetings or preparation for meetings. He said if the  
164 language does not say that, then we have been violating our own policy and  
165 procedure and we should be making an appropriate adjustment and claims for  
166 payments that have not been duly authorized or in violation of our very own rules.

167 Manager Koch said would like these per diem items in the Manual to go back to the  
168 Governance Committee and the Committee should involve the Audit and Finance  
169 Committee and get the advice of the District’s legal counsel. Manager Koch stated  
170 we do not have slavery in the United States any more but you are also not required to  
171 take money if you do not want it, but you are not allowed to not pay for work, based  
172 on his understanding of the law.

173 Mr. Smith commented it is within the legal authority of the Board to define necessary  
174 duties of the managers.

175

#### 176 **Records Management and Retention**

177 Mr. Smith said there is no real substantive differences between the language the  
178 Committee recommends and the language Manager Koch proposed, so it is a matter  
179 of whether language is redundant or superfluous of what is already stated.

180

#### 181 **Journal of Votes**

182 Manager Koch said he recommends we have a folder or physical binder with all the  
183 signed resolutions in it.

184 Administrator Jeffery said the District already has an electronic journal of votes and  
185 it would not be much work to add a folder to the Governance page or Board of  
186 Managers page to include a copy of the signed resolutions.

187

#### 188 **Managers Authority**

189 Mr. Smith said regarding the Manual language stating the Board president is  
190 authorized to speak for the District, Manager Koch requested a revision to state no  
191 manager may speak on behalf of the District unless authorized by the Board.

192 Manager Ziegler said makes sense to clarify what the president can speak to.

193 Manager Crafton said she thinks the Committee's recommended revision is well  
194 written.

195 President Pedersen recommended the Committee review this language to word it a  
196 little more specifically.

197

### 198 **Managers Request for Information**

199 Mr. Smith summarized Manger Koch's requested language deletions regarding  
200 limiting the amount of staff time on requests and language insertion about timely  
201 access to all information upon request subject to applicable laws and that nothing in  
202 this language will restrict a manager's rights under any applicable law.

203 Mr. Smith said any person has a right to request information from the District under  
204 the Data Practices Act and the District is obligated to make it available pursuant to  
205 the terms of the Data Practices Act. Mr. Smith explained the issue here is that by  
206 virtue of being a manager what rights of access to information do managers have  
207 concerning use of staff time. He said Manager Koch's language puts a parameter in  
208 place but does not restrict the right of a manager to request any information,  
209 generally.

210 Manager Koch said he takes his oath very seriously and the oath specifically says he  
211 has to do it to the best of his ability. Manager Koch said he cannot do his job to the  
212 best of his ability if he does not have what he believes is the pertinent information.  
213 He said an arbitrary time limit is an artificial impediment to him having the  
214 information he believes is necessary to make a decision. Manager Koch said he is not  
215 interested in abusing time but managers are the ones given the responsibility to  
216 administer this watershed in accordance with the laws. Manager Koch said as we will  
217 see over the next few months, it is no excuse to having delegated or assuming  
218 somebody else is going to do something and you are going to be responsible for what  
219 they do.

220 Manager Ziegler said he thinks this is an issue about monopolizing staff time. He said  
221 in most cases the information is available on the District website. Manager Ziegler  
222 said he thinks if information is made available to one manager, it should be made  
223 available to all managers. He said if it requires a workshop to explain the  
224 information, then the Board should schedule a workshop.

225 Manager Duevel agreed with Manager Ziegler's comments and said the process is  
226 reflective of everyone's role. Manager Duevel said his perspective is there has been  
227 more than enough information given to managers through the access the managers  
228 have and the Board packets. Manager Crafton agreed. Manager Pedersen concurred  
229 with the comments made by Manager Ziegler and Manager Duevel and said she does  
230 not think the language as proposed by the Committee should be changed.

231

232 **Bylaws**

233 **Duties of officers**

234 Mr. Smith explained Manager Koch offered additional language having to do with  
235 notices of meetings and secretary duties related to such and adding a reference to  
236 Minnesota Statute 103D.315 Subd. 10. Mr. Smith said as of today that provision is  
237 amended and therefore does not read the same way anymore.

238 Mr. Smith said additional proposed language from Manager Koch regarding secretary  
239 duties is to keep an electronic file for each meeting's notice, agenda, and materials.

240 Mr. Smith said Manager Koch proposed language that each committee of the District  
241 have an audio or video recording and for those to be posted to the District's website.

242 Mr. Smith said it is within the Board's purview to require it but it is not a  
243 requirement and it is not currently the District's practice.

244 Manager Ziegler said we have already had discussions with CAC and the feedback is  
245 the CAC does not feel their meetings need to be recorded except for presentations by  
246 staff or outside experts. He said he does not think the District needs to record its  
247 Board of Managers workshops and he is fine with recording the Board of Managers  
248 meetings. He asked if this needs to be specified in the Bylaws and has some concerns  
249 about requiring all our meetings to be recorded or videotaped.

250 Manager Crafton said Committees have meeting minutes.

251 Manager Koch recited cases in which comments he heard from committee meeting  
252 recordings were not included in the committee meeting minutes and he said he can  
253 find other examples. Manager Koch said he raised about the Board meeting minutes  
254 where he thought the person writing the minutes took it upon themselves to insert  
255 their own characterization of what people said or how they said it and he brought this  
256 up that is totally inappropriate to do that and it is not the job of the recorder or the  
257 secretary to insert their view or characterization of comments. Manager Koch he has  
258 just given two pretty powerful reasons why we should be recording. Manager Koch  
259 said he does not trust what goes on at these meetings and it is impractical for people  
260 who are still working to attend the meetings if they are held in the day and if they  
261 were held in the evening it is up to him if he would want to show up but he would  
262 prefer not to because of Covid and his condition. Manager Koch said he has facts of  
263 situations where the minutes did not accurately reflect what was said and he is very  
264 concerned about exactly what is said during these meetings and he is always  
265 suspicious of anybody who is not willing to have what they say be recorded,  
266 especially in a public forum – it is public information and the public is entitled to  
267 know. He said he thinks it is in the interest of the public to have the opportunity to be  
268 able to go and listen to a discussion of topics that were held. He said he does not  
269 believe minutes in and of themselves are sufficient especially given that he knows the  
270 minutes are lacking. He said he posits that we should include the provision that these  
271 meetings including committee meetings be recorded and the CAC can conduct its  
272 meetings anyway they want. Manager Koch said we do have the ability to say if the  
273 CAC does not want to have their meetings recorded then maybe we do not have the

274 right people on that committee and because why are they concerned about the public  
275 knowing what they are talking about. Manager Koch said he has concerns about what  
276 people are talking about. He said he recommends we require audio or video  
277 recordings.

278

279 **Committees**

280 Mr. Smith reported Manager Koch's suggested language and explained the main  
281 policy questions have to deal with the function of the committees, noticing committee  
282 meetings, and that any committee member would be able to call a committee  
283 meeting. Manager Koch said he thinks it is important to spell out how we do things.  
284 Administrator Jeffery noted another of Manager Koch's suggested changes is that the  
285 committee minutes be provided for the next monthly meeting. Administrator Jeffery  
286 said that is not always possible to provide them for the next meeting due to timing.

287

288 **Meetings**

289 Mr. Smith referenced language proposed by Manager Koch stating meetings  
290 including committee meetings would be made available for simultaneous viewing  
291 and participation by the public via video technology such as Zoom.

292 Manager Ziegler said having the ability to hold committee or subcommittee meetings  
293 on Zoom is convenient but he does not think making access to the public on Zoom  
294 should be a requirement.

295 Manager Duevel agreed with Manager Ziegler. Manager Duevel said there is a level  
296 of efficiency factors to consider.

297 Manager Crafton said the committees make recommendations, which come to the  
298 Board.

299 Manager Koch said he is in favor of complete transparency so people know what  
300 goes on because it would inform their decisions on how they might respond to the  
301 Board or their elected officials.

302

303 **Agenda Setting**

304 Mr. Smith reported Manager Koch's recommended revisions to the current practice  
305 for setting Board meeting agendas include that items for inclusion on the agenda that  
306 are sent three business days preceding the date of the meeting are to be included in  
307 the proposed agenda. Manager Ziegler said agenda items that might be requested by a  
308 manager could require additions to Board packet, so he thinks it needs to be within  
309 the District staff's and Board presidents' purview to decide whether to add something  
310 brought up more recently. Manager Koch said this is a red herring because getting  
311 information in a timely manner is a red herring, unless we are going to enforce it on

312 all items on the agenda. He suggested putting in place a deadline for submitting  
313 requests for items to be added to the meeting agendas.

314

315 **Recognition of each member wishing to be recognized and heard**

316 Mr. Smith said Manager's Koch point that once time limits are recognized and  
317 imposed they must be applied consistently is a point well taken. Mr. Smith said he  
318 thinks Robert's Rules of Order covers this. Manager Koch said his point is we should  
319 have the mechanism and the process set forth, whether through his proposed  
320 language or a reference to more specific points from Robert's Rules of Order  
321 regarding equal access and equal time on items.

322 Manager Ziegler recommended allowing each manager one time to speak and one  
323 rebuttal per item and he likes the time limits of five minutes and one minute.  
324 Manager Pedersen agreed with Manager Ziegler.

325

326 **Compliance, Suspension, and Amendment**

327 Mr. Smith stated Manager Koch proposes language to extend the amount of time  
328 within which a manager could enter an objection. Mr. Smith said Manager Koch's  
329 revision would replace the phrase "seasonably taken" with "is made not later than the  
330 close of business of the meeting of the managers held immediately after the meeting  
331 of the managers." Mr. Smith explained Manager Koch's proposed language extends  
332 the managers' right to object to the next meeting or whenever the minutes are read  
333 and would expand that objection procedure to not only the Bylaws but to any part of  
334 the Governance Manual.

335 Manager Ziegler said his concern is this would carry the disagreement beyond the  
336 vote and into the next meeting. Manager Koch said he does not know what  
337 seasonably means and he was trying to propose something more objective.

338 Mr. Smith said he thinks the concern could be addressed by defining seasonably  
339 more precisely. He said it typically it would be understood to be within the same  
340 meeting at least. Mr. Smith said Manager Koch's language would also extend the  
341 objection to not only the bylaws but also to all other provisions of the Manual. Mr.  
342 Smith explained you have other parts of your policies and typically these procedural  
343 objections would be confined to the bylaws and not extend to the rest of the  
344 governance manual.

345 Mr. Smith said the bylaws are intended to be the rules by which you transact your  
346 business at your meetings and basic organization so he thinks most bodies would  
347 confine an objection to bylaws to departing from the bylaws. Mr. Smith summarized  
348 that there will be other devices for expressing at meetings concerns about not  
349 complying with other provisions of the manual and he thinks the concern is  
350 adequately addressed without Manager Koch's suggested additional language.

351 Manager Pedersen, Manager Crafton, Manager Duevel, and Manager Ziegler  
352 concurred with Mr. Smith.

353

354 **Code of Conduct**

355 **2b**

356 Mr. Smith reported Manager Koch proposed striking the language of 2b regarding  
357 that Board members shall not express concerns about the performance of a District  
358 employee in public, to the employee directly, or to the employee’s supervisor and  
359 comments about staff performance shall be made solely to the administrator through  
360 private correspondence or conversation or through performance evaluations, which  
361 may be held in closed session.

362 Mr. Smith said he pretty strongly recommends against deleting that language.  
363 Manager Pedersen said she strongly concurs with Mr. Smith’s recommendation.  
364 Manager Ziegler and Manager Duevel agreed with Manager Pedersen and Mr.  
365 Smith’s recommendation.

366

367 **Managers Fiduciary Duty – Use or Disclosure of Information**

368 Mr. Smith said the language recommended by the Committee reads “A Board  
369 member shall not use or disclose any information gained in the course of or by reason  
370 of his or her official position in any way that violates his or her fiduciary duty to the  
371 District or the Minnesota Government Data Practices Act. Mr. Smith explained  
372 Manager Koch proposed to strike out language related to fiduciary duty and to refer  
373 instead to applicable law.

374 Manager Koch said the purpose is that he is not sure the degree to which there are  
375 fiduciary duties but there are laws and to the extent the disclosure would violate the  
376 law seems to cover it more explicitly and clearly than referring to the somewhat  
377 nebulous concept of fiduciary duty and is a better way to describe the legal concept  
378 or legal constraints on the board members.

379

380 **Policies and Procedures for Public Access to Documents**

381 Mr. Smith suggested picking up the Manual review next time with this section, which  
382 is data practices.

383

384 Manager Koch asked about the plan to finish the rest of the provisions of the current  
385 manual. Administrator Jeffery said the plan is to review financial policies at the April  
386 29<sup>th</sup> joint meeting the Governance Committee and Audit and Finance Committee and  
387 maybe to schedule a workshop in June to go through the rest. He said a tentative

388 schedule would include asking the Board at its July meeting to authorize opening the  
389 30-day comment period.

390 Manager Koch said he would like to see the Governance Committee and  
391 Administrator Jeffery discuss consolidating in one place all of our policies so they are  
392 easy to find.

393 Manager Koch said with respect to Data Practices Act, he would like Attorney Smith  
394 to review and make sure the Governance Manual reflects the correct definitions.

**4. Adjournment**

395 Manager Ziegler moved to adjourn the work session. Manager Duevel seconded the motion.  
396 Upon a roll call vote, the motion carried 5-0 as follows:

397

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

398

399 The work session adjourned at 9:00 p.m.

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403

Respectfully submitted,

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406

Tom Duevel, Secretary