

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

December 8, 2021, RPBCWD Board of Managers Public Hearing and Monthly Meeting

PRESENT:

Managers: Jill Crafton, Treasurer

Larry Koch

Dorothy Pedersen, Vice President

David Ziegler, Secretary

Staff: Amy Bakkum, Office Administrator

Zach Dickhausen, Water Resources Technician II

Liz Forbes, Grant Program Coordinator

Terry Jeffery, Interim District Administrator and Watershed Planning Manager

Josh Maxwell, Water Resources Coordinator

Louis Smith, Attorney, Smith Partners

Scott Sobiech, Engineer, Barr Engineering Company

Other attendees: Shanna Braun, Barr Engineering Tom Lindquist

Corey (last name not provided) Eleanor Mahon

Dave (last name not provided) Marilyn Torkelson

Patty Duryee Jeff Weiss

Fred Kamps

Note: this meeting was held remotely via meeting platform Zoom in abidance with the District's procedures in response to state COVID-19 actions, mandates, and guidance.

1. Call to Order

1 Vice President Pedersen called to order the Wednesday, December 8, 2021, Board of Managers
2 Public Hearing and Regular Meeting at 7:00 p.m. The meeting was held remotely via meeting
3 platform Zoom. Vice President Pedersen noted President Ward is recovering from surgery. She
4 stated she proposes limiting tonight's meeting to three hours, and if the Board hasn't completed
5 its business in three hours, the Board could continue its meetings.

6

2. Approval of Agenda

7 Manager Ziegler moved to approve the agenda as presented. Manager Crafton seconded the
8 motion.

9 Manager Koch moved to amend the agenda to remove Consent Agenda items 9a – Accept
 10 November Staff Report, 9b – Accept November Engineer’s Report, 9c – Accept November
 11 Construction Inspection Report, 9h – Approve Watershed Stewardship Grant with St. Luke
 12 Presbyterian Church for the restoration of 1.4 acres of Woodland with a Not-to-Exceed Amount
 13 of \$11,800, 10g – Consider Exception Request for Permit 2021-077 Ravines 4 & 5 Stabilization
 14 as Related to Floodplain Compensatory Storage, 10h – Approve Permit 2021-077 Ravines 4 & %
 15 Stabilization as Presented in the Proposed Board Action Section of the Permit Review Report,
 16 and 10k – Approve Task Order 037 for Sediment Analysis of Lake Susan, Rice Marsh Lake, Lake
 17 Riley, and Lake Susan Preserve Wetland. There was manager discussion to clarify the changes
 18 and the items Manager Koch is requesting to move on and off the Consent Agenda. Managers
 19 Ziegler and Crafton accepted Manager Koch’s friendly amendment.

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

21

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

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3. Matters of General Public Interest

23 Mr. Thomas Lindquist of 16750 Baywood Terrace, Eden Prairie, read his comments, as presented
 24 along with photos on a PowerPoint slide he provided, about Duck Lake fishing:

25 On December 11, 1998, DNR Regional Management signed and initiated a Lake Management
 26 Plan for Duck Lake that states, “Following a severe winterkill that occurs on average one in 10 to
 27 20 years, stock 10 largemouth bass, 10 black crappie, and 10 bluegills as adults in spring for
 28 brood stock.”

29 From December 11, 1998 through January 29, 2002, a time range for which the DNR Lake Finder
 30 data is publicly available, the average measured water level of Duck Lake was 914.0 feet. This is
 31 substantially higher than what current DNR management states that the level should be.

32 During this interval, fishing was excellent on Duck Lake. Foot-long bass [Mr. Lindquist noted
 33 fish photos displayed on his PowerPoint slide] were common (their length indicating that there
 34 was not total winterkill for at least the preceding three years).

35 During more recent years, meaning from May 8, 2013, and onward, available data suggests Duck
 36 Lake’s average water level has been 0.5 to 1.0 feet lower than it was in the period from December
 37 11, 1998 to January 29, 2002. Since Duck Lake’s average depth is only about three feet, a one-

38 foot decrease in its depth would equate to a 33% decrease in water volume, and accordingly a
39 33% decrease in the amount of dissolved oxygen available to sustain the fish population during
40 the winter. It should therefore be no surprise that in these more recent years, winterkill has been
41 the norm, not the exception.

42 As winterkill has become the norm for Duck Lake, restocking the lake with bass, crappies and
43 bluegills has become impractical.

44 Mr. Lindquist concluded that to make Duck Lake a good fishing lake again, make the real-world
45 measured average lake water level at least as high as it was for the 31 years from September 15,
46 1970 through January 29, 2002, which was 914.1 feet.

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4. Public Comment on 2022 Budget and Levy

48 Vice President Pedersen opened the floor for public comment on the District’s 2022 budget and
49 levy as the Board adopted in September. No comments were raised.

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5. Public Hearing on Upper Riley Creek Stabilization Project

51 Manager Ziegler moved to open the public hearing on the Upper Riley Creek Stabilization
52 Project. Manager Crafton seconded the motion. Manager Koch said he didn’t think the
53 attachment about this item was sufficient for the public to be able to discuss it. He said he was
54 taken aback by this agenda item. He asked if the District published notice about a public hearing.
55 Interim Administrator Jeffery responded yes, the District did publish the public notice as
56 required. Administrator Jeffery said no action is being taken on the project tonight, and the
57 feasibility study has previously been presented, and the District is looking to take public comment
58 tonight on this project. Manager Koch said he thinks it would be appropriate to discuss whether
59 the District wants another public hearing or public comment opportunity on this project. Interim
60 Administrator Jeffery added that the CAC will have an opportunity to review and comment on
61 this project as well. Upon a roll call vote, the motion to open the public hearing carried 4-0 as
62 follows:

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

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Interim Administrator Jeffery summarized the project and introduced Ms. Shanna Braun, senior environmental scientist at Barr Engineering Company. Ms. Braun presented a PowerPoint presentation “Upper Riley Creek Ecological Enhancement Plan” and noted she is the project manager working to help develop this plan. She summarized the project’s vision to provide an ecologically diverse stream reach that: improves ecological functions, provides diverse habitat layers, significantly reduces streambank erosion, and enhances public access and understanding of the importance of stable streams.

Ms. Braun explained the adaptive management approach being taken with this project. Ms. Braun explained the District prioritized this reach of Upper Riley Creek in 2018 and that the reach was included in the District’s 10-Year Plan. She went through the District’s total benefit score for the project, describing how and why the 2018 score of 39 was adjusted in 2021 to a score of 48. She said this project score is higher than other not-yet-implemented projects in the District’s 10-Year Plan, which is why this project is a higher priority.

Ms. Braun discussed the issues the project addresses and possible enhancement measures that have been identified. She summarized the project’s anticipated outcomes, including:

- Total estimated reduction in pollutant loading of 470,000 pounds per year of Total Suspended Solids (TSS) and 250 pounds per year of Total Phosphorous (TP)
- Critical ecological health improvement of Upper Riley Creek and Lake Susan.

Ms. Braun said this project is essential for working toward the District’s goal of removing Lake Susan and Riley Creek from the MPCA Impaired Waters list. She added that this project also supports the City of Chanhassen in achieving its Minnesota Pollution Control Agency MS4 permit requirements.

Ms. Braun went through the project’s proposed future steps, outlined by year, estimated cost, and leader. She talked about the future steps including ordering of the project and its design, bidding and awarding of the contract, implementation, and post-construction and long-term activities. She stated the District’s estimated total financial contribution is \$1,885,000, including 50% storm sewer outfalls, and the City of Chanhassen’s estimated contribution is \$571,000, also including 50% storm sewer outfalls.

Vice President Pedersen called for comments and questions from the public.

Mr. David Benedict said he lives on Lake Susan, and he is excited about this public hearing and project. He sees this project as necessary and exciting, as the phosphorous effects on Lake Susan are very evident. He asked if there are estimated numbers about how many pounds of Total Phosphorous this project would prevent from entering Lake Susan. Interim Administrator Jeffery didn’t have that number but commented that reducing even one pound of phosphorous from entering Lake Susan could reduce the amount of blue-green algae in the lake by about 500 pounds. Mr. Benedict said he understands that this one project wouldn’t fix all of Lake Susan’s problems but will help. He encouraged the District to move forward with this project as soon as possible.

103 Mr. Fred Kamps said he has been a resident of Lake Susan for 21 years and has been involved
 104 with the District during some of that time. He said the algae bloom in the lake this year was more
 105 extensive than in any year since he has lived there. Mr. Kamps asked if the proposed project is
 106 successful, will the lake have different issues, such as watermilfoil or other things in the lake. He
 107 also asked how lake levels will be addressed.

108 Interim Administrator Jeffery said he is happy to meet with Mr. Benedict and Mr. Kamps to talk
 109 in more detail. Interim Administrator Jeffery said yes, as lake water clarify improves, there is an
 110 increased propensity for growth of aquatic vegetation, and there is a possibility for aquatic
 111 invasive species to grow. Mr. Benedict commented it's his understanding that the District needs
 112 to do projects to reduce phosphorous entering the lake before the District would undertake
 113 investing in projects such as alum treatments. He asked if it is correct to characterize the proposed
 114 project as a beneficial first step of other possible large and essential steps. Interim Administrator
 115 Jeffery said yes.

116 Manager Koch asked if this project would be similar to the project in Lower Riley Creek. Interim
 117 Administrator Jeffery said a better comparison would be to the Middle Riley Creek project.
 118 Manager Koch asked that the feasibility report be circulated again to the managers. Manager
 119 Koch asked if estimated costs could be added to the project timeline, to indicate estimated
 120 projects costs in line with the project tasks and years. Manager Koch asked what the next step
 121 would be. Interim Administrator Jeffery said the next step would be solicitating feedback on the
 122 project from the CAC and asking the Board to order the project.

123 Manager Crafton moved to close the public hearing on the Upper Riley Creek Stabilization
 124 project. Manager Ziegler seconded the motion.

125 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
Ward	Absent
Ziegler	Aye

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6. Reading and Approval of Meeting Minutes

129 a. November 3, 2021, RPBCWD Board of Managers Regular Meeting

130 Manager Crafton moved to accept the minutes of the November 3rd RPBCWD Board of
 131 Managers Regular meeting. Manager Ziegler seconded the motion. Manager Ziegler noted

132 an edit to include the title of President after Dick Ward’s name in the attendee list. He
133 noted on line 45 the word “wants” should be “want.” He asked to revise the sentence on
134 line 239 to clarify the point will be brought to the Board at a future meeting to discuss. He
135 said the words “did not” should be inserted into line 366. Manager Ziegler said the word
136 “outlet” should be inserted before the word “elevation” in line 512.

137 The managers agreed to the friendly amendment by unanimous consensus. Upon a roll
138 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
Ward	Absent
Ziegler	Aye

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141 **b. November 15, 2021, RPBCWD Board of Managers Special Meeting**

142 Manager Ziegler moved to approve the minutes of the November 15th RPBCWD Board of
143 Managers Special Meeting. Manager Crafton seconded the motion. Manager Ziegler noted
144 one change to line 79 to replace the word “consultant” with “headhunter.” Manager
145 Crafton accepted the friendly amendment.

146 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
Ward	Absent
Ziegler	Aye

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7. CAC

149 Mr. Jeff Weiss reported on the CAC’s November 15th meeting. He said the CAC appreciated
150 Interim Administrator Jeffery’s presentation on the District’s rules and permit review process.

151 Mr. Weiss noted the CAC will meet next week and will appoint a Committee chair and secretary.
152 Mr. Weiss stated three of the CAC members volunteered to assist Interim Administrator Jeffery
153 on an MPCA planning grant application for stormwater, wastewater, and community resilience.
154 Mr. Weiss reported that 12 of the 14 current CAC members plan to continue to serve on the
155 Committee in 2022.

156 Interim Administrator Jeffery said the last time the Board discussed CAC member numbers, the
157 Board decided 12 members is the minimum member number. The Board and staff discussed the
158 number of CAC members planning to serve in 2022 and member term lengths. Manager Koch
159 expressed his opinion that the current CAC members shouldn't automatically be reappointed.

160 Manager Koch moved to authorize staff to execute public solicitations for CAC members in the
161 same way the District did so last year, for the Board to discuss applications received and
162 appointments at its January meeting for appointments to be effective February 1. Upon a roll call
163 vote, the motion carried 4-0 as follows:

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

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167 Vice President Pedersen said the Board needs to appoint a representative for the CAC's
168 December 20th meeting. Staff Forbes clarified the CAC meets on January 13th. Manager Crafton
169 volunteered to be the Board representative for the January 13th meeting.

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8. Personnel Committee

a. Committee Report

171 Vice President Pedersen reported on the delay of receiving the benefits information from
172 the District's benefits representative. She said the Personnel Committee spent its meeting
173 time this week reviewing for the first time the benefits information. She said the
174 Committee had questions and hasn't received all the answers yet. Vice President
175 Pedersen recommended this item be continued. The Board agreed by unanimous consent
176 to continue this item at a time and date to be determined later in this meeting.
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9. Consent Agenda

179 Manager Koch moved to approve the Consent Agenda as amended earlier in the meeting and
 180 adopt all the resolutions referred to in the Barr reports that are part of those various items on the
 181 Consent Agenda. Manager Ziegler seconded the motion. The Consent Agenda included item 9d –
 182 Approve Payment Application #1 for Pioneer Wetland Restoration, Approve , 9e – Approve
 183 Payment Application #1 for Middle Riley Creek Restoration, 9f – Approve Permit 2021-048
 184 Vogel Shoreline Stabilization as presented in the proposed Board action of the permit review
 185 report, 9g – Approve Permit 2021-076 Purgatory Creek Sediment Removal at Scenic Heights as
 186 presented in the proposed Board action section of the permit review report, 10g – Consider
 187 Exception Request for Permit 2021-077 Ravines 4 & 5 Stabilization as Related to Floodplain
 188 Compensatory Storage, 10h – Approve Permit 2021-077 Ravines 4 & 5 Stabilization as presented
 189 in the proposed Board action section of the permit review report, 10k – Approve Task Order 037
 190 for Sediment Analysis of Lake Susan, Rice Marsh Lake, Lake Riley, and Lake Susan Preserve
 191 Wetland.

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

193

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

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10. Action Items

196 a. Items Pulled from Consent Agenda

197 i. Accept November Staff Report

198 Manager Koch said under page 1, regulatory programs, he needs to know what
 199 is happening with the three Lotus Lake items. Interim Administrator Jeffery
 200 said one of the items, the Eliassen after-the-fact permit, is on the agenda tonight.
 201 He said he hasn't worked out how to proceed regarding the sand blanket
 202 application and the violation, even though Manager Koch reported he saw it
 203 occur. Manager Koch said he has pictures and video he can send to Interim
 204 Administrator Jeffery and would be happy to fill out an affidavit. Manager
 205 Koch said the gentleman knew better. Manager Koch said he is of the school of

206 thought that if you have them on the books, enforce them. He asked Interim
207 Administrator Jeffery to consult with Counsel Smith about possible ways to
208 proceed. Manager Koch asked going forward for these types of violations to be
209 addressed or for the Board to make a decision not to address them.

210 Manager Koch asked about the violation on the west side of Lotus Lake.
211 Interim Administrator Jeffery said that property on Frontier Trail is immediately
212 adjacent to the lake and needs to put in a stormwater BMP. Interim
213 Administrator Jeffery said he met with the City of Chanhassen twice to talk
214 about the bigger picture of making sure there is alignment between the City's
215 permit process and the District's process. He reported the City of Chanhassen is
216 in process of implementing an online permitting system, and that system will
217 indicate to applicants if they need to contact the District about a watershed
218 permit. Interim Administrator said he will follow up on that violation.

219 Manager Koch asked if the District could come up with a lidar program as part
220 of its monitoring program. Interim Administrator Jeffery said Carver County
221 updates its lidar every other year, and the District could reach out about
222 participating. Engineer Sobiech said Hennepin County is in the early stages of
223 setting up a lidar program, and now would be a good time to reach out to
224 Hennepin County if the District is interested in participating.

225 Manager Koch also asked if staff is considering correlating this year's runoff
226 data with its rainfall data to help calibrate the District's models.

227 Manager Koch talked about the wetland metrics work done by the state of
228 North Dakota, and he was wondering if the District could make use of that
229 work.

230 Manager Koch talked about the Hennepin County chloride program and how
231 the target audience seems narrow. He commented the District should want to
232 include as broad an audience as possible. Interim Administrator Jeffery noted
233 this campaign is focused on the audiences Hennepin County identified as not
234 yet being engaged, but the program as a whole will target a broader audience.

235 Manager Koch commented on the staff report item about the Lower Riley Creek
236 Stabilization, and he asked if staff could figure out a way to capture project
237 progress in ways other than photographs.

238 Manager Koch said regarding the Rice Marsh Lake project and the Kraken
239 device installation issues, is there monitoring in and out of that equipment so
240 the District gets good data on how well they do. Interim Administrator Jeffery
241 said yes, there is an access port in the equipment, so staff member Maxwell can
242 get the monitoring data.

243 Manager Koch asked if the Board should move into closed session to discuss
244 the Molnau Trucking item because he doesn't want the District to blow its
245 client-attorney privilege and doesn't want to let the District's bargaining
246 positions be known before they have to be known. Attorney Smith said the

247 Minnesota Supreme Court is very clear on the scope of going into a closed
 248 meeting is for cases where litigation strategy is the topic and in cases where
 249 litigation is much more present than in the District’s issue with Molnau
 250 Trucking. Attorney Smith said District Legal Counsel doesn’t see the Molnau
 251 Trucking item to be an appropriate subject for closing the meeting. He said
 252 there are some actions the Board could take this evening that would be first
 253 steps, and he could talk further with Manager Koch if he wants.

254 Manager Koch moved to accept the November staff report. Manager Crafton
 255 seconded the motion. 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
Ward	Absent
Ziegler	Aye

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258 **ii. Accept November Engineer’s Report**

259 Manager Koch said on page 4 of 8 regarding Silver Lake Water Quality, he
 260 looked at the two pictures and they struck him as showing extreme compaction.
 261 He wanted to make sure the sites are not in final condition. Interim
 262 Administrator Jeffery said staff is in communication about the final punch list
 263 with the contractor, who needs to provide adequate topsoil and decompaction
 264 on the site.

265 Manager Koch commented photos included in the Engineer’s report on page 5
 266 regarding Middle Riley Creek seem to show steep grading on the slopes. He
 267 noted he isn’t an engineer but has some physics background, and he would like
 268 to make sure going forward the District puts adequate slopes to minimize
 269 erosion on these banks.

270 Manager Koch moved to accept the November Engineer’s report. Manager
 271 Ziegler seconded the motion. Upon a roll call vote, the motion carried 4-0 as
 272 follows:

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

Koch	Aye
Pedersen	Aye
Ward	Absent
Ziegler	Aye

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iii. **Accept November Construction Inspection Report**

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Manager Koch asked if going forward it would be possible to add updates to the report to indicate what has been addressed and what has been done. Vice President Pedersen thanked staff for adding the location maps into the report.

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Manager Koch moved to accept the November Construction Inspection Report.

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Manager Ziegler seconded the motion. 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
Ward	Absent
Ziegler	Aye

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iv. **Approve Watershed Stewardship Grant with St. Luke Presbyterian Church for the Restoration of 1.4 Acres of Woodland with a Not-to-Exceed Amount of \$11,800**

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Manager Koch explained he pulled this item off the Consent Agenda because the project seems to be focused on restoring woodlands, and he is against without good reason spending money on woodlands without direct connection to improving waters. Interim Administrator Jeffery talked about the ecosystem approach to restoring soil health and the beneficial impact of such to water resources. Ms. Forbes talked further about the grant review committee discussions and future points of discussion as well as about this project with St. Luke Presbyterian Church.

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Manager Koch said he believes it is really important the District has clear criteria that ties into waterbodies or groundwater, so the District can say it has

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298 as objective a process as possible. He said he is not in favor of this project.
 299 Interim Administrator Jeffery said the District does complete a scoresheet on
 300 grant projects. He said he hears Manager Koch’s comments.

301 Managers Ziegler and Crafton commented about the need for increasing
 302 infiltration and restoring functionality of the landscape for groundwater
 303 recharge. Manager Crafton spoke about the benefits of this proposed project.

304 Manager Crafton moved to approve the watershed stewardship grant with St.
 305 Luke of Minnetonka Presbyterian Church as recommended by staff. Manager
 306 Ziegler seconded the motion.

307 Upon a roll call vote, the motion carried 3-1 as follows:

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

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b. Approve Payment Application #1 for Molnau Trucking LLC for Silver Lake Water Quality Improvement Project and Consider Action in Response to Contractor Delay

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Interim Administrator Jeffery explained that in front of the Board is Payment Application #1 from Molnau Trucking for work it performed and is owed. He said there is another item in front of the Board, and he summarized the situation. Interim Administrator Jeffery stated Molnau Trucking was given two windows within which to complete its work, the latest of which had a substantial completion date of September 30, 2021.

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Interim Administrator Jeffery listed the dates and details of Molnau Trucking’s activities, starting on October 15, 2021, the date Molnau Trucking mobilized onto the site to begin the clearing. Interim Administrator Jeffery said on October 27th pipes and structures were installed but not to spec or meeting the requirements of the District. He said part of this issue with the installation was not Molnau Trucking’s fault as the manufacturer did not send the correct slab collar. Interim Administrator Jeffery detailed activities throughout November, explaining that on November 23rd the District provided a punch list of items to be completed by November 30th, He said that on November 30th, Barr staff member Jen Koehler went onto the site and found eight of nine punch list items not yet completed.

329 Interim Administrator Jeffery stated Molnau Trucking contacted him on December 2nd
330 asking if the District could pay the Payment Application #1 by December 3rd. He said
331 Molnau Construction will submit another payment application. He explained the second
332 payment application will be substantial enough to cover the \$30,000 in liquidated
333 damages staff owed to the District from Molnau Trucking per performance issues.
334 Interim Administrator Jeffery acknowledged the additional amount of time Barr
335 Engineering had to spend on this project. He said Molnau Trucking is still under
336 contract with the District, and he brought up the idea of the District dissolving the
337 contract with Molnau and working directly with Prairie Restorations for the remaining
338 work.

339 Attorney Smith reiterated the District has a payment application, which the District
340 Engineer has certified is complete and conforms to plans and specifications and
341 recommends payment. Attorney Smith noted that as Interim Administrator Jeffery
342 outlined, there is a series of performance problems that triggered the liquidated damages
343 provision of the contract. Attorney Smith said the amount of liquidated damages is
344 \$30,000, and the amount anticipated to be included in payment application #2 would
345 cover the liquidated damages. Attorney Smith explained that as Interim Administrator
346 Jeffery stated, the District continuing to work with Molnau Trucking is not in the
347 District's best interest and it would be better to proceed to terminate the agreement and
348 turn to work directly with Prairie Restoration. He said ideally the District and Molnau
349 Trucking would negotiate an end to the contract to avoid any additional cost to the
350 District.

351 Engineer Sobiech commented the majority of the remaining work on the site is tied to
352 vegetation establishment over the next three years. Interim Administrator Jeffery asked
353 if Molnau has outstanding payment for work performed that is equal to the liquidated
354 damages owed to the District. Engineer Sobiech said yes.

355 Manager Crafton moved to follow through to work out an end to the contract with
356 Molnau Trucking and to deduct the \$30,000 in liquidated damages. Interim
357 Administrator Jeffery noted that the District is considering approval of paying payment
358 application #1, which the District owes, and consideration of authorizing working
359 directly with Prairie Restoration for the remaining work, and authorizing him, Attorney
360 Smith, and Engineer Sobiech to negotiate an end to the contract. Manager Crafton
361 amended her motion to approve paying Molnau Trucking's payment application #1 in
362 the amount of \$88,243.39. Manager Ziegler agreed to the amendment.

363 Interim Administrator Jeffery reminded the Board that Molnau Trucking has already
364 completed work beyond what it invoiced in Payment Application #1, and the cost of the
365 work not yet invoiced totals more than \$30,000. Manager Koch asked what work
366 Molnau Trucking hasn't yet completed. Interim Administrator Jeffery listed the
367 incomplete work.

368 Manager Koch asked if liquidated damages is the sole remedy. Attorney Smith said
369 liquidated damages is the District's key remedy. Manager Koch said he doesn't think
370 the District should leave everything until the last payment application without an

371 agreement to the contrary. He said he thinks the District should be telling Molnau
 372 Trucking the District is planning to pay the payment application #1 in the amount of
 373 \$88,000 minus the \$30,000 unless an agreement is reached to terminate, at which point
 374 the District would look at splitting the \$30,000 over two payments. Manager Koch said
 375 the District needs to look at what it will cost to do the work Molnau hasn't done, which
 376 is the amount the should District retain. Manager Koch moved to amend the motion on
 377 the table to pay \$88,000 minus \$30,000 unless an agreement is reached with Molnau
 378 Trucking to terminate the contract and spread the \$30,000 across two payment
 379 application payments. Interim Administrator Jeffery asked if the District couldn't just
 380 terminate the contract. Attorney Smith said it could, based on cause, but it's in the
 381 District's best interest to get to the most expeditious way to complete this and protect
 382 the interests of the District. He noted the District knows \$30,000 is the fixed sum of
 383 liquidated damages, and the District is entitled to that sum.

384 Vice President Pedersen asked how much it will cost above and beyond what was
 385 budgeted for the District to have Prairie Restorations do the work. Interim
 386 Administrator Jeffery said the contract would be directly with Prairie Restorations, and
 387 while the cost is a contracted amount, Prairie Restorations has already done some work
 388 costing more than the contracted amount.

389 Manager Koch said he disagrees with paying the full amount of Payment Application #1
 390 when the District has the right to \$30,000. He said he doesn't want the District to waive
 391 its rights to the \$30,000 in liquidated damages. He reiterated his motion to amend the
 392 motion on the table. Manager Koch's motion to amend the motion died due to lack of a
 393 second. Manager Ziegler asked if Attorney Smith is comfortable with the motion on the
 394 table. Attorney Smith said yes, the District's legal counsel is comfortable with the
 395 action moved because the amount of the second payment application will be more than
 396 the liquidated damages. He said legal counsel is comfortable either under the motion on
 397 the table or the motion suggested by Manager Koch. Upon a roll call vote, the motion
 398 carried 3-1 as follows:

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

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401

c. Approve Amendment to Task Order 024B for Additional Engineering Services During Construction of Silver Lake Restoration

Interim Administrator Jeffery explained the amendment is for the additional incurred costs and additional costs that will be incurred for Task Order 024B. Interim Administrator Jeffery said there may be costs for future work by Barr Engineering that District staff can assume, such as vegetation inspection. He said he would, however, like the task order amendment to be approved in its entirety at this time, and District staff and Barr can work out details about the tasks the District can assume.

Engineer Sobiech provided more details about the overage, which was a result of the amount of extra time the Engineer spent working with the contractor.

Manager Crafton moved to approve the amendment to Task Order 024B. Manager Ziegler seconded the motion. Manager Koch said if this is approved with a not-to-exceed amount, Barr Engineering can charge up to that amount. Manager Koch proposed a friendly amendment to the motion to amend Task Order 024B and authorize an expenditure for \$10,00 for work already done and up to \$13,100 for future work for the items listed on that same line item under description, and for total work not to exceed \$23,995.08. He suggested District staff doesn't do the work and instead for Barr Engineering complete the work. Manager Crafton said that is the motion, but she takes Manager Koch's details as a friendly amendment of detail added. Manager Ziegler agreed to the friendly amendment of details added to the motion. Upon a roll call vote, the motion carried 4-0 as follows:

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

d. Accept October Treasurer's Report

Treasurer Crafton stated the report has been reviewed in accordance with internal controls and procedures. She moved to accept the October Treasurer's Report. Manager Ziegler seconded the motion.

Manager Koch asked for a rundown of items currently having expended more than 83% of their budget and for information on whether the excess is going to grow by year end or not and ideas on how to rebalance the budget. Treasurer Crafton and Interim Administrator Jeffery addressed several line items. Interim Administrator Jeffery said

433 he will have recommendations prepared by the Board’s January regular meeting and
434 will try to have them prepared in time for the continuation of this meeting if the Board
435 does decide to continue it.

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

437

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

438

439

440 **e. Approve Paying of Bills**

441 Manager Crafton moved to pay the bills. Manager Ziegler seconded the motion. Upon a
442 roll call vote, the motion carried 4-0 as follows:

443

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

444

445 **f. Consider Changes to the District’s 2022 Budget and Levy**

446 Manager Pedersen noted the time, and the Board discussed continuing this meeting.
447 Manager Koch said it would be helpful to have the information from Interim
448 Administrator Jeffery about budget overages and underages before discussing this item.
449 Manager Koch moved to continue the meeting to Wednesday, December 15 at 2:00 p.m.
450 Manager Ziegler seconded the motion.

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

452

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

453

454

At 9:54 p.m., the Board continued its meeting to Wednesday, December 15 at 2:00 p.m.

455

456

i. Approve After-the-Fact Permit 2020-041 Eliassen Shoreline Stabilization Solutions for Hennepin County Chloride Initiative Project

457

458

Item to be addressed at the Board’s continuation of this meeting on December 15.

459

460

j. Authorize Administrator to Enter into an Agreement with MP&G Marketing Solutions for Hennepin County Chloride Initiative Project

461

462

Item to be addressed at the Board’s continuation of this meeting on December 15.

463

464

11. Discussion Items

465

a. Attorney Report

466

1. Update on Friends of Frederick Miller Spring Lawsuit

467

Item to be addressed at the Board’s continuation of this meeting on December 15.

468

469

b. Engineer Report

470

1. Duck Lake Outlet Review

471

Item to be addressed at the Board’s continuation of this meeting on December 15.

472

473

c. Administrator Report

474

1. Grant Application for Climate Action Plan

475

Item to be addressed at the Board’s continuation of this meeting on December 15.

476

d. Manager Report

477 Item to be addressed at the Board's continuation of this meeting on December 15.

12. Upcoming Board Topics

478 a. **Regulatory Program**

479 b. **Feasibility Report Scope**

480

13. Upcoming Events

481 • January 5, 2022, Board of Managers Regular Monthly Meeting

482 • January Workshop Marketing Firm/Administrator Search

14. Adjournment

483 Item continued to December 15.

484

485

486

Respectfully submitted,

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489

490

David Ziegler, Secretary