

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.

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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.

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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 16th. 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 10th. 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>
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

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

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

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

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

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

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277 said he thinks the project before the Board, the Spring Road Conservation Project, is a once in
278 a decade, or maybe a once in a generation, type of a project. Manager Duevel said in a few
279 years it could look like one of the biggest, best strategic things the District could have done as
280 a watershed. He said he will not repeat much of what is in the other documentation tonight
281 other than to say time is short and do the right thing. Manager Duevel said the Spring Road
282 Conservation Project could be a centerpiece of how the Watershed moves forward as a leader
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:

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<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.”

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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

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

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
558

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

9. Workshop Calendar Discussion

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Administrator Jeffery displayed his proposed 2024 District work session schedule to hold quarterly work sessions.
 Manager Koch asked Administrator Jeffery to rethink the proposed calendar and the proposal to only hold quarterly work sessions. Manager Koch said he thinks there needs to be more than four work sessions so the Board can address specific topics and have discussion.

10. Adjourn

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566

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

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

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

The meeting adjourned at 8:49 p.m.

Respectfully submitted,



Dorothy Pedersen, Secretary