### **MEETING MINUTES**

## Riley-Purgatory-Bluff Creek Watershed District

June 8, 2022, Continuance of June 2, 2022, RPBCWD Board of Managers Special Meeting

PRESENT:

Managers: Jill Crafton, Treasurer

Larry Koch, Vice President Dorothy Pedersen, Secretary David Ziegler, President

Staff: Amy Bakkum, Administrative Assistant

Zach Dickhausen, Water Resources Technician II

Terry Jeffery, Interim District Administrator Josh Maxwell, Water Resources Coordinator

Louis Smith, Attorney, Smith Partners

Scott Sobiech, Engineer, Barr Engineering Company

Other Attendees: Mark Casey

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. Continuation of Special Meeting

President Ziegler continued the June 2, 2022, Board of Managers Special Meeting at 7:00 p.m. on
 Wednesday, June 8, 2022. He said there is one topic to discuss and that is the Personnel

4 Committee's Recommendation of an Offer Letter.

Manager Koch said that is not an item on the agenda for this meeting continuation. He moved to table this meeting to a time to be determined pending a response from the Executive Committee at the Minnesota Board of Water and Soil Resource regarding an email he sent to the Executive Committee on Monday regarding the processes that have taken place so far with regard to this matter. He reported he received a voice message from BWSR saying they were taking this under

**10** advisement.

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The motion died due to lack of a second.

Manager Koch said at the last meeting Mr. Casey and Mr. Smith were to provide an offer letter regarding an offer of employment. Manager Koch said there was no discussion regarding the

Personnel Committee. Manager Koch said he received the draft of an agreement, not an offer

letter, from Mr. Smith. Manager Koch said he had to mark that letter up extensively and returned

it to Mr. Smith.

- Manager Koch moved to table this continuation until the managers have had a chance to receive
  Mr. Smith's comments and have had a chance to see Manager Koch's proposed changes.

  Attorney Smith said he received comments from Manager Koch and reviewed them and is
  available to review them with the Board if that is the Board's request.
- Manager Koch moved to table this continuation until all the managers have had an opportunity to review his mark ups and comments on the agreement. The motion died due to lack of a second.
- Manager Koch said he has requested through the Minnesota Data Practices Act all of the recordings and data pertaining to the selection. He said he has not received even an acknowledgement of those requests, nor has he received any response of those requests.
- Manager Koch moved that this continuation be tabled until a response to those have been completed. The motion died due to lack of a second.

# 2. Selection of Candidate to Whom to Extend Offer for RPBCWD District Administrator and Discuss Offer Letter

- Manager Pedersen reported Mr. Casey worked with Attorney Smith to draft an employment agreement. Manager Pedersen said the information she had collected regarding salary surveys and ranges she provided to Attorney Smith, who distributed it to the managers.
- Manager Koch moved to table this meeting, this discussion, this determination until the vacancy on the Board of Managers has been filled and Manager Ziegler's position has been filled. The motion died due to lack of a second.
  - Attorney Smith said one of the key terms is the compensation, and it might be helpful to have the Board review that first.
    - Manager Pedersen said the grade level for the District Administrator position is 9, and she said she has shared the District's minimum, mid-point, and maximum for that grade level as it stands right now. She said the minimum is \$95,000 the mid-point is \$118, 500, and the maximum is \$142,000. Manager Pedersen said in the past the District has considered 0-5 years of service aligns with the minimum of the salary range, 6-10 years of service aligns with the mid-point of the salary range, and greater than 10 years of service aligns with the maximum of the salary range. Manager Pedersen said the minimum salary level is for people who are new to the job and are still acquiring the experience needed to perform all of the areas they are accountable for. She said the mid-point salary is for someone who is doing the entire scope of the job and is effective at their position. Manager Pedersen said the maximum salary is for outstanding performance.
    - Manager Pedersen said the Minnehaha Creek Watershed District shared its salary information with the RPBCWD last December. She reported the Minnehaha Creek Watershed District's minimum salary for the District Administrator is \$98,509, it's mid-point is \$118,211, and it's maximum salary is \$137,913. Manager Pedersen reported the District was part of the salary survey for Forest Comfort Lake, and she listed the minimum, mid-point, and maximum salary provided in that report.
    - Manager Pedersen reminded the Board that it hasn't made salary adjustments since it put that process on hold in 2020, during the pandemic. She said compensation adjustments typically have

been approximately 3% to 3.5% but she is seeing information that because of inflation, compensation adjustments might be 7.0% to 7.5% this year.

Manager Pedersen said she felt from her review of the data that the District's pay grade of grade 9 for the District Administrator position is pretty right on for the market. She said she looked at the fact that Terry Jeffery isn't new to the job, as he has been on the job for 14 or 15 months, and he hasn't mastered everything the job entails. Manager Pedersen said she feels a fair staring point is 50% between the minimum and mid-point of the job, which is \$106,750 with a review in six months and some development work. She said Terry Jeffery has expressed an interest in coursework in public administration and is taking a course in finance currently. She said she thinks it would be helpful for him to have coaching in HR and benefits and to have an administrative plan. Manager Pedersen said he could include in his work plan items in which he wants to develop his skills and bring the plan to the Board by August to discuss. She said she tried to look at the data and recommend what is fair to the District and fair to Terry Jeffery.

Manager Koch asked the amount of Terry Jeffery's current salary. Manager Pedersen said \$86,320 plus as the Interim Administrator, an additional \$1,500 a month. Manager Koch said since March 2021 Terry Jeffery has received two written letters of reprimand that are public. Manager Koch said since then, Terry Jeffery in this position has failed to comply with the Minnesota Data Practices Act. Manager Koch said during that time, presentation regarding the rules at the last monthly meeting was mediocre at best. Manager Koch said on that basis, I can't see paying him any more than what he is being paid now.

Manager Koch recommended maintaining Terry Jeffery's salary where it is, at which time the Board would take a look at his performance. Manager Koch said Terry Jeffery is at the lowest level of time on the job and you can't equate other work in the work force. Manager Koch said Terry Jeffery doesn't have that seniority in the position of District Administrator, and he has a number of issues. Manager Koch said if Terry Jeffery is approved and hired, then a review in December would make sense. Manager Koch said the District needs to have a budget that takes into account possible increases.

Manager Koch said he can't see giving much if any of a raise at the end of this year unless performance has dramatically improved.

Manager Crafton supported Manager Pedersen's recommendation of \$106,750 because he has done a lot of new projects, sought out new partnerships, and has been doing the work. She said she thinks he has earned the \$106,750. President Ziegler said percentage wise the difference between \$104,000 and \$106,000 is only 2%. President Ziegler noted inflation pressure and lack of enough workers in the workplace.

Manager Pedersen moved to offer Mr. Terry Jeffery \$106,750 a year starting at the next pay period and with a six-month review. Manager Koch moved to lay this item over until the Board has heard from Attorney Smith regarding the terms of the employment letter.

Manager Koch asked if all managers need to be visible during the meeting. President Ziegler said the managers are visible on screen. Manager Koch said Manager Crafton at times has not been on camera. Attorney Smith said the District is still operating under the pandemic conditions per

declaration of the president of the Board, so that provision does not require all members be visible.

Attorney Smith said he believes it is appropriate for the managers to consider the motions on the two key terms of the offer of salary and the six-month review period. He said once this salary piece is clear, we can move on to the agreement.

Manager Koch moved to amend the motion to round the number down to the nearest \$1,000, so to \$106,000. The motion died due to lack of a second.

Manager Crafton seconded Manager Pedersen's motion.

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Manager Koch said Terry Jeffery has only been in the job for a short period of time, and in that time he has received two letters of reprimand for the same thing within a 12-month period. Manager Koch said Terry Jeffery's testing scores show he is below average in attention to detail, and that was demonstrated at the last meeting, and as late as today, when Manager Koch emailed Terry Jeffery to say the recent treatment on Lotus Lake didn't seem to have any effect on Eurasian Milfoil, contrary to the information on the web regarding diquat. Manager Koch described Terry Jeffery's response. Manager Koch said he is sorry, but he can't see the Board offering something to someone who is not going to pay more attention to the detail and someone who is not going to follow the rules or is below average in following the rules. Manager Koch said he already mentioned the Minnesota Data Practices Act, those failures as recently as of this last week. Manager Koch said regarding recordings requests it should take about 30 seconds to respond to those. Manager Koch said he has received nothing regarding those, not even an acknowledgement of receipt. Manager Koch said this goes way back, and at the last meeting of the Board of Managers, Terry Jeffery showed his reticent to follow rules, in regard to Mr. Smith saying multiple permits were needed on that project. Manager Koch said Terry Jeffery was basically arguing against following the rules. Manager Koch said he doesn't think we should have somebody and shouldn't be paying them this money if they are not willing to follow the rules.

Manager Koch said Terry Jeffery has been in charge of permitting. Manager Koch said he brought three sites on Lotus Lake to Terry Jeffery's attention and Terry Jeffery has done nothing. Manager Koch said at the last Board meeting Mr. Smith said they would bring something to the Board, and we'll see if that happens, but that's just another example. Manager Koch said Terry Jeffery isn't a bad person but he's not the person to be running our organization if he doesn't pay attention to details and follow the rules. Manager Koch said what concerned him the most was Terry Jeffery's unwillingness to mention the two letters of reprimand when he was asked if he had done anything wrong and thought he should have done something different and how did it turn out. Manager Koch said he never even mentioned those during the interviews. Manager Koch said he thinks that it is telling. Manager Koch said Terry Jeffery never apologized or said he was going to correct the conduct after the last letter of reprimand, so Manager Koch can't see the Board approving paying compensation to a person Manager Koch doesn't think should be our administrator.

Attorney Smith said he is expecting Ms. Wolfe to dial in, but he will proceed regarding the discussion of terms. Attorney Smith said the first section of the draft agreement details the two parties. Manager Koch interrupted Attorney Smith to make a point of order. Manager Koch asked for a copy of the agreement to be put up on the screen. Ms. Bakkum shared on the screen the

agreement Attorney Smith emailed her after Manager Koch asked for the agreement to be displayed on the screen. Attorney Smith said one of the issues the Board briefly discussed is the starting date for this position and salary and the offer letter has a blank. He said the date is a good thing for the Board to set this evening. Manager Pedersen suggested the next pay period, which starts on June 15. Manager Koch said he thinks because the Board doesn't know when or if it is going to be signed, it would be better to have the effective date July 1, because then it is a sixmonth period and it is easier to deal with.

Manager Koch asked if Attorney Smith has Manager Koch's mark up. Attorney Smith said yes, he could email that to Ms. Bakkum now. Attorney Smith emailed Manager Koch's version of the offer letter to Ms. Bakkum. Manager Koch requested to have all of the recordings of the meetings including this one so he can forward to the appropriate people at the Minnesota Board of Water and Soil Resources. Manager Koch directed Ms. Bakkum regarding what part of his marked-up agreement to display on the screen. Manager Koch said he doesn't want to [continue to] speak out of order, and he directed President Ziegler to decide how to go back and forth.

President Ziegler said he would like Attorney Smith to go through the agreement with discussion of any questions at the time.

Attorney Smith went through the agreement he drafted and noted Manager Koch's recommended changes, such as inserting the effective date in the first paragraph. Attorney Smith said he doesn't have a problem with Manager Koch's suggestion to insert the effective date into the first paragraph. Attorney Smith said it sounded like the Board agreed the effective date would be June 15. Manager Koch interrupted Attorney Smith and commented he doesn't know we actually agreed to June 15 and there was a discussion about June 15 but he [Manager Koch] mentioned July 1 as a nice, neat start date because we don't know when this is going to be signed or if it is going to be or if it's going to be done by the 15<sup>th</sup>. Manager Koch said he wanted to point this out that we've had a discussion but it's an open issue and we haven't voted on it.

Manager Crafton asked to be recognized by President Ziegler, and President Ziegler recognized her to speak. Manager Crafton asked if we could have Attorney Smith go through the whole agreement and then come back and discuss any discrepancies or anything we want to discuss. President Ziegler said that seems like a reasonable request, we can do comments at the end.

Attorney Smith said the drafted offer agreement was developed based on the template commonly used by the League of Minnesota Cities and is also consistent with employment agreements that Ms. Wolfe drafted as well as ones Smith Partners uses and the one Mr. Casey provided, so the drafter offer agreement is all consistent, so that is the background.

Attorney Smith said the first paragraph of the agreement identifies the position of District Administrator and that the employee is agreeing to serve in that position in accordance with state statute, the District's Governance Manual, District Rules, Board policies, and to perform such other legally permissible and proper duties and functions that the Board from time to time assigns. Attorney Smith summarized the next section of the agreement, which is regarding the PERA, or pension plan. He went through the section regarding the annual salary and performance reviews. He said the annual salary the Board identified is \$106,750, and the agreement provides for an initial six-month performance review and then conducted annually thereafter. Attorney Smith said the employer agrees to consider an increase after the six-month period but it not

obligated to. Attorney Smith went through next section of the agreement, noting the section is regarding seniority for purposes of benefits and that Terry Jeffery would continue with the same existing credit for years' service he has with the organization. Attorney Smith went through the section of the agreements regarding sick leave, the section regarding vacations, the section regarding holidays, the section recognizing insurance benefits, section 9 regarding dues and subscriptions, section 10, which provides for professional development. Attorney Smith went through section 11 regarding general expenses reimbursed, section 12 regarding hours of work, section 13 regarding general conditions of employment, and then stating the final piece of the agreement provides for execution by both parties.

Manager Koch went through his recommended revisions to the agreement presented by Attorney Smith to make it a much better agreement. Manager Koch said irrespective of the sources of the original agreement, he has been dealing with employment agreements for a long time, and this agreement needs all the work he put into it plus it could probably use some more. Manager Koch asked Ms. Bakkum to display a section of the agreement that he had recommended be deleted regarding the employee will use good judgement in outside activities. He said he recommends leaving it in, noting the District Administrator should be coming to the Board with a professional development plan and these activities shouldn't be left up to the desires of the employee. Manager Koch said the job description needs to be attached as an appendix so there's no argument over what the employee is supposed to be doing, make sure we can change it at any time. Manager Koch continued speaking about his recommended changes.

Manager Koch stated he recommends his changes to the original agreement submitted by Attorney Smith to better cover the various issues as Manager Koch described. Manager Crafton said she finds this too restrictive, it deviates from what the District had in place with the previous District Administrator, and she would like to stick with the agreement Counsel Smith brought forward. Manager Koch said with all due respect, this is exactly what we should be doing. He said just because we did something wrong or inappropriately or not in accordance with best practices in the past is no reason to continue.

Manager Koch said this is not overly restrictive, it calls for accountability. He said we should require this of every employee, this kind of accountability. Manager Koch said he hopes we don't just let employees show up one day and say, "I'm going to be gone for two or three weeks, bye, I'm out of here." Manager Koch said he thinks we should expect the same of Mr. Jeffery because the District Administrator position is no different than any other position and especially given the issues that Manager Koch has raised.

Manager Crafton said she doesn't see it the same way as Manager Koch because of the nature of the work. She said the Administrator needs the flexibility to make judgments based on what's happening, and she doesn't see that as not following best practice. Manager Crafton said she sees that flexibility is crucial to making sure a person is able to do their job and do it well.

Manager Pedersen agreed with Manager Crafton that the revisions Manager Koch proposed are too restrictive. Manager Koch said he doesn't know what Manager Crafton is reading because his revised agreement isn't restrictive at all on performance, and in fact it's requiring performance. Manager Koch said this is why he said before, and he is a little irritated, that we should be tabling this and giving everyone a chance to actually read it and understand it. Manager Koch said other

than the fact that we want people to be accountable for their time, there is no restriction under his proposed revised agreement. Manager Koch said none of the examples of restrictiveness Manager Pedersen mentioned are covered the proposed revised language. Manager Koch said this is not an 8-hour-a-day, 40-hour-a-week job, and we need to know when the people are working and when not. He said we don't need people showing up all the sudden saying I'm going to take a leave of absence or I'm going to take a vacation. Manager Koch said this is a typical provision in an agreement with an executive. He said he is sorry if the League of Cities or whoever put this agreement together doesn't have the experience to incorporate standard procedures on reasonable notice and reasonable approvals, and he is sorry, he can't help that, but that doesn't mean we make the same mistake.

Manager Ziegler said his experience in the business world is that once the position is at the director and VP level, vacation policies are often written in terms of vacation as required. He said people are given more flexibility, not less, the higher the position in the organization. Manager Ziegler said he agrees with Manager Crafton that Manager Koch's revisions seem overly restrictive.

Manager Ziegler asked if there are any motions. Manager Pedersen said she would like to...Manager Koch interrupted Manager Pedersen. Manager Koch said he had a comment to address President Ziegler's comment. Manager Koch said maybe President Ziegler has a different definition of restrictive. Manager Koch said he is just talking about accountability. Manager Koch said he has drafted many, many executive employment agreements. He said his proposed provisions are what you see. Manager Koch said there are no directors or presidents who are just going to let their people decide one day they are going to take a vacation and instead there is a plan for people taking time off. Manager Koch said if we have experience, that's one thing, but we don't have experience. Manager Koch said he believes all these changes are best practices, particularly the references to the policies by which these decisions are going to be made.

Manager Koch said if you are going to go with what was presented, we don't even know what the policies are. He said in fact, one of his requests was please send me or make available to me all of our policies, and he said he hasn't received a response to that. Manager Koch said if his recollection serves him correctly, Terry Jeffery responded back something like I'd like to know where they are all at as well. Manager Koch said the question is where all our policies are and what are all our policies. He said at a minimum these should always refer to our policies, always reserve the right to change our policies, and that is just a best practice. Manager Koch said something needs to be in the agreement regarding notice and accountability.

Manager Pedersen moved to accept the employment agreement as drafted by Attorney Louis Smith. Manager Crafton seconded the motion. Manager Koch said the agreement as presented is, in his opinion, a very poorly draft agreement. He said he doesn't hold it against Mr. Smith and is sure it was probably taken out of the League of Cities. Manager Koch said based on all the things Manager Koch sees coming out of some of these organizations, they're not based on best practices, they're not what a competent company or organization would have. Manager Koch said it's inadequate not to address the issues that he has raised in his draft.

President Ziegler said the Board could have Mr. Smith take a second look at the agreement with his HR people and if there needs to be anything adjusted, they can make the required adjustments,

or we could leave the motion and second as it stands. Manager Pedersen said she is fine with the friendly amendment authorizing Attorney Smith and Julie to make changes if they feel it is necessary. Manager Crafton said she doesn't want to get this held up. Manager Pedersen said she is saying the friendly amendment is to authorize legal counsel to make the minor changes. Manager Crafton said she is fine with that, but she does not want more restrictive language added but she if fine with legal counsel reviewing it and making any minor changes. Attorney Smith said he understands the direction.

Manager Koch asked Mr. Smith if there is anything illegal or plain outright wrong with any of Manager Koch's proposed changes. Attorney Smith said he is not aware of any of the proposed changes that would be considered illegal. Attorney Smith said that in general our review of your suggested changes is we did find them overly restrictive. Manager Koch interrupted to ask Attorney Smith to repeat that. Attorney Smith said he thinks that many of Manager Koch's suggested changes on things like taking vacation, leave and those things we found overly restrictive and unnecessarily complicating the agreement. Attorney Smith said but defining the salary at an annual rate and clarifying at will employment means one could be discharged for no reason, seem like reasonable adjustments. Manager Koch interrupted to ask if Attorney Smith would agree or disagree that it would be a good idea to actually refer to the policies that govern those various areas such as vacations or holidays so as to remove any doubt as to what benefits the person would have. Attorney Smith responded he thinks in general the idea of having any employee receive the employee handbook and sign and acknowledge that they've received it, then it is not required in the agreement. Attorney Smith said legal counsel can review that again but he thinks that in general it is covered by having employees sign and acknowledge the handbook. Manager Koch interrupted, saying none of that was proposed and that is one of the purposes of the acknowledgement section. Manager Koch continued asking Attorney Smith questions, such as if he has an issue with putting that section in the agreement. Attorney Smith responded yes, he thinks it unnecessarily complicates the agreement and the law is what it is and he doesn't think further defining it with that language is necessary. Manager Koch responded he will refer Attorney Smith to recent Minnesota Supreme Court on those issues, in particular, to the effect that basically even a well-drafted policy may not be enforceable so why would we leave it wide open. Manager Koch stated with all due respect he would expect it better.

By roll call vote, the motion carried 3-1.

Manager	Action
Crafton	Yes
Koch	No
Pedersen	Yes
Ziegler	Yes

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President Ziegler asked if there should be a separate motion on the effective date. Manager Koch said he had a point of order. President Ziegler acknowledged Manager Koch to proceed. Manager Koch said the agreement approved had a blank for the effective date. Manager Koch said without a motion or an amendment there is no separate effective date. Manager Koch said usually the effective date would be the date the last party signs the agreement. Manager Crafton said she thinks June 15 seems very reasonable. Manager Pedersen seconded Manager Crafton's comment. Manager Crafton said she moves that June 15, 2022, is the effective date, which Manager Pedersen seconded. President Ziegler said he assumes this date will be documented and added to the agreement. Attorney Smith said yes. By roll call vote, the motion carried 3-1.

Manager	Action
Crafton	Yes
Koch	No
Pedersen	Yes
Ziegler	Yes

Attorney Smith said legal counsel will review the agreement and will get it and the other necessary documents to Terry Jeffery. Manager Koch said does he take it from the comments of Mr. Smith that we do not have any conditions to the employment whether they be testing, no changes, etc., etc., which is often included in the offers of employment that Manager Koch has been involved in drafting. Manager Koch said what the Board approved was to put together an offer letter and the Board didn't approve putting together the employment agreement. Manager Koch said that is what he understands is a better practice, which is to put together an offer letter saying here's the proposed employment agreement, here's where you can find all of the policies, this offer is subject to XYZ conditions, and often communicating it's not binding until it's been duly executed by both parties, so he takes it we are not going to be doing it like that. Manager Koch asked if he is correct. Manager Ziegler asked Attorney Smith to respond. Attorney Smith stated yes, he is ready to proceed as the Board has authorized.

#### 3. Adjournment

Manager Pedersen moved to adjourn the special meeting. Manager Crafton seconded the motion. Manager Koch stated, and noting he will follow this up in writing, his Minnesota Data Practices Act request for a copy of the recording of this meeting and the documents and any evidence the documents presented and discussed were appropriately posted to the District's website. Upon a roll call vote, the motion carried 3-1.

Final Board-Approved Minutes of 6/8/22 Continuance of 6/2/22 RPBCWD Board of Managers Special Meeting

Manager	Action
Crafton	Yes
Koch	No
Pedersen	Yes
Ziegler	Yes

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326	The meeting adjourned at 8:18 p.m.	
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330		Respectfully submitted,
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334		Dorothy Pedersen, Secretary