

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

March 1, 2023, RPBCWD Board of Managers Regular Monthly Meeting

PRESENT:

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

Staff: Amy Bakkum, Administrative Assistant
Zach Dickhausen, Natural Resources Coordinator
Liz Forbes, Communication Manager
Terry Jeffery, District Administrator
Joshua Maxwell, Water Resources Coordinator
Mat Nicklay, Natural Resources Technician
Louis Smith, Attorney, Smith Partners
Scott Sobiech, Engineer, Barr Engineering Company

Other Attendees: AP Louise Ludford
Arne Bjork Sharon McCotter
Rod Fisher Marilynn Torkelson

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


1. Call to Order of Board of Managers Regular Monthly Meeting

1 President Ziegler called to order the Wednesday, March 1, 2023, Board of Managers Regular
2 Meeting at 7:00 p.m. He announced that pursuant to Minnesota Statute 13D.021, the RPBCWD
3 Board President has determined that because of the Covid-19 pandemic it is not prudent for the
4 Board of Managers to meet in person, so the RPBCWD is conducting this meeting via Zoom.
5

2. Approval of Agenda

6 Manager Pedersen moved to accept the agenda. Manager Duevel seconded the motion.
7 Manager Koch requested removing from the Consent Agenda items 6e – Approve Reduction of
8 Financial Assurance Amount from \$328,405 to \$181,500 for Permit #2021-068 Erhart Farms and

9 6g – Adopt Resolution 2023-023 to Authorize Payment on St. Hubert’s Water Quality Project
 10 Payment Application #2.

11 Manager Koch said he will leave the staff and engineer’s reports on the Consent Agenda if the
 12 managers agree he can raise his questions about them during the Administrator’s report – Agenda
 13 item 10. The Board agreed the staff and engineer’s reports can be discussed during the
 14 Administrator’s Report agenda item. Upon a roll call vote, the motion to adopt the agenda 
 15 amended carried 5-0 as follows:

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

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3. Matters of General Public Interest

18 President Ziegler announced the procedure for raising matters of general public interest. No
 19 matters of general public interest were raised.

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4. Reading and Approval of Meeting Minutes

21 **a. Approve Minutes of the February 1, 2023, Regular Monthly Meeting of the**
 22 **RPBCWD Board of Managers**

23 Manager Pedersen moved to approve the minutes. Manager Duevel seconded the motion.

24 Manager Koch said the District has not been following its process to circulate the draft
 25 minutes for managers to review and provide comments, so he will vote no on the motion.

26 Manager Crafton requested an edit on line 560 to correct the acronym CRAS. Manager
 27 Pedersen accepted the change as a friendly amendment. Upon a roll call vote, the motion
 28 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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b. Approve Minutes of the February 16, 2023, Work Session of the RPBCWD Board of Managers

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Manager Crafton moved to approve the minutes of the February 16, 2023, work session of the RPBCWD Board of Managers. Manager Duevel seconded the motion.

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Manager Koch said he has the same objection to approving these minutes as he stated regarding the minutes of the Board’s February 1st meeting.

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Manager Crafton had an edit to line 166 to replace “in terms of what” with “for the levy.”

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Manager Duevel accepted the friendly amendment. Upon a roll call vote, the motion carried 3-1 with one abstention as follows:

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

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5. Committee Report

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a. Acceptance of the Citizens Advisory Committee Report and Minutes

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Ms. McCotter reported on the CAC’s meeting, which included a review presented by Mr.

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Jeffery on the District’s rules. Ms. McCotter thanked Manager Crafton for sharing an

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article with the CAC. Ms. McCotter reported the CAC did not make any motions or

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recommendations to bring to the Board. She said there had been a question from the

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Board on if the CAC records its meetings, and she said the CAC does not record them.

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She said the presentations are recorded. Ms. McCotter said the CAC is unclear if there is a

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reason behind the interest in recording the meetings. She said it would require additional

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District staff time and at this point the CAC does not see a reason to record the meetings.

51 President Ziegler said it is up to the CAC if it wants to record its meetings or not. He said
52 the Board of Managers discussed the idea but did not vote on it nor reach a consensus.

53 Manager Koch said he would like to know where the CAC presentation recordings are and
54 what will be done with the recordings. He said he would like the CAC meetings recorded
55 because it will give him an opportunity to listen in and know what the various discussions
56 were and who participates in what ~~so he knows and~~ so when it comes to reappointing
57 CAC members he will have a better idea of how he should act or vote.

58 Ms. Marilyn Torkelson said the CAC made a motion in February 2022 and has not heard
59 back from the Board unless the topic is being folded into the Ecological Health
60 Assessment project. Administrator Jeffery said it is part of the Ecological Health
61 Assessment project. Manager Koch said he would like the CAC to maintain its list of
62 requests and continue to follow up on the request until the Board says yes, no, or forget
63 about it. Manager Duevel agreed maintaining a list of open items would be helpful.

64 Manager Koch suggested staff develop a resolution to cover acceptances for all
65 committees and for the resolution to include check boxes for minutes and other items
66 discussed.

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68 **b. Confirm Board Representative for March 20, 2023, CAC Meeting**

69 Manager Duevel volunteered to be the Board representative at the CAC's March 20th
70 meeting.

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72 **c. Receive Personnel Committee Report and Minutes [no meeting held]**

73 [No discussion.]

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75 **d. Receive Governance Committee Report and Minutes**

76 President Ziegler reported the draft minutes from the Committee's March 3rd meeting are
77 still being reviewed.

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79 **e. Receive Audit and Finance Committee Report**

80 Manager Crafton reported the Committee met and reviewed the budget line by line.
81 Manager Duevel added that the Committee reviewed the financial reports and identified
82 some disconnects with the District's 10-year budget. He said regarding the handling of the
83 managers' per diems, the managers and the Committee have discussed whether or not
84 managers are considered employees or something else. He said the [District's MAWD](#)
85 handbook states that the current regulations for watershed districts determine that
86 managers are to receive 1099s. Manager Duevel said Mr. Smith is going to do more
87 research about how other watershed districts handle it. Manager Duevel said the
88 Committee has a meeting on March 16th to discuss this with Redpath.

89 Manager Duevel said the Committee also talked about the financial report’s sub schedules
 90 and how they change over time with the District’s 10-Year Plan and also about whether
 91 the District’s budget can be changed throughout the year.

92 Manager Crafton said she thinks it is the District’s payroll provider that did not correctly
 93 handle the reporting about per diems and manager expenses, and the Committee will
 94 discuss this with Redpath.

95 Manager Koch moved to adopt a resolution that the Board of Managers hereby accept the
 96 Committees’ reports and minutes. Manager Ziegler seconded the motion. Upon a roll call
 97 vote, the motion carried 5-0.

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

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6. Consent Agenda

101 President Ziegler listed the items remaining on the Consent Agenda, including 6a – Adopt
 102 Resolution 23-021 to Approve Consent Agenda; 6b – Accept February Staff Report; 6c –
 103 Accept February Engineer’s Report; and 6f – Approve Permit #2022-075 Eden Prairie Well
 104 House 17 as Presented in the Proposed Board Action Section of the Permit Review Report.

105 Manager Pedersen moved to accept the Consent Agenda. Manager Crafton seconded the
 106 motion.

107 Manager Koch moved to amend the motion to adopt Resolution 23-021 to Adopt the
 108 Consent Agenda with the following changes that the Consent Agenda consists of item 6b,
 109 6c, and 6f. Manager Pedersen and Manager Crafton accepted the friendly amendment. Upon
 110 a roll call vote, the motion carried 5-0 as follows:

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

Koch	Yes
Pedersen	Yes
Ziegler	Yes

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7. Action Items

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a. Items Pulled from Consent Agenda

i. Approve Reduction of Financial Assurance Amount from \$328,405 to \$181,500 for Permit #2021-068 Erhart Farms

Manager Crafton moved to approve the reduction of the financial assurance amount from \$328,405 to \$181,500 for Permit #2021-068 Erhart Farms. Manager Duevel seconded the motion

Manager Koch asked if any financial assurances have been deposited with the District with respect to this permit. Administrator Jeffery said yes, the District has received a letter of credit in that amount and the permit-holder wants to offer an amendment to that letter to reduce it to the proposed amount.

Manager Koch moved to amend the proposed resolution to resolve that staff and District Legal Counsel are hereby authorized to release the existing financial assurances **and** upon receipt of financial assurances in the amount of \$181,500. Manager Ziegler seconded the motion.

Upon a roll call vote, the motion to amend 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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Upon a roll call vote, the amended 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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ii. Adopt Resolution 2023-023 to Authorize Payment on St. Hubert’s Water Quality Project Payment Application #2

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Manager Koch stated the Board should have resolutions for all of its actions as he believes **is they are** called for in the District’s Bylaws. Manager Koch moved to approve payment of payment application #2 by Minger Contracting conditional upon the receipt of signed statement by the engineer or staff to the effect that to the best of their knowledge all of the services for which payment is being requested have been completed. He amended his motion to adopt Resolution 23-023 to Authorize Payment on St. Hubert’s Water Quality Project Payment Application #2 contingent **that upon receipt from the** engineer or staff **of a signed a** statement that all the services for which payment is being requested have been completed in accordance with the terms of the contract.

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Mr. Smith said he believes the Board meeting packet includes a memo from Administrator Jeffery that recites the work for which this payment is being requested has been completed but perhaps Manager Koch is asking for a signed statement.

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Manager Duevel seconded the motion.

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

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

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154 **b. Accept January Treasurer’s Report**

155 Manager Crafton moved to accept the January Treasurer’s Report as submitted.
 156 Manager Duevel seconded the motion.

157 Manager Koch asked for clarification on the disbursement to the City of Eden Prairie.
 158 Administrator Jeffery said it is for the chloride grant and the City put sensors in some of
 159 their road pavement to know the temperature of the surfaces to know the correct amount
 160 of salt to apply. He said the funding is reimbursed from the grant and the District has
 161 submitted the reimbursement request to the Minnesota Board of Water and Soil
 162 Resources (BWSR) and the reimbursement should arrive in the next 60 days.

163 Manager Koch said an issue to bring up with the accountants is the 2022 invoices that
 164 the District paid in January because it misrepresents the District’s January
 165 disbursements. Manager Koch stated he does not believe the District is doing proper
 166 accounting when it comes to the District’s Visa account reporting and asked the Audit
 167 and Finance Committee to look into it and if the accountant is willing to sign a letter
 168 stating the accounting is in line with Generally Accepted Accounting Principles
 169 (GAAP) and government accounting principles, then he will be fine with it. Manager
 170 Koch said he has had too many accountants say it is not proper accounting.

171 Manager Koch raised the potential issue of the District’s obligation to pay interest for
 172 the 2022 invoices the District paid in 2023 unless the District’s contracts have waived
 173 the obligation. Manager Crafton said the invoices were paid in a timely manner.
 174 Administrator Jeffery said the University of Minnesota Regents invoice is a unique case
 175 and a corrected invoice was submitted to the District and was paid within the required
 176 timeframe.

177 Manager Duevel commented the letter from Redpath that accompanies each month’s
 178 financial statements notes the format does not necessarily follow GAAP and that is due
 179 to the direction of the Board of Managers to help the Board make more informed
 180 decisions. He said the letter explains what the accountant does and why, and he said the
 181 Finance and Audit Committee will discuss this in more detail when it meets with the
 182 accountant.

183 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

185 **c. Adopt Resolution 23-022 to Approve Paying of the Bills**

186 Manager Crafton moved to Adopt Resolution 23-022 to Approve Paying of the Bills.
 187 Manager Pedersen seconded the motion. Upon a roll call vote, the motion carried 5-0 as
 188 follows:

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

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191 **d. Authorize Administrator to Enter into Agreement with NMCWD for a**
 192 **Shared Office Assistant**

193 Manager Koch stated he did not see a resolution for this agenda item. He moved to lay
 194 this item over to the next meeting unless the Board wants to call a special meeting.
 195 Manager Koch said the managers did not have adequate time to review information and
 196 he will not approve a contract he has not had time to review. The motion died due to
 197 lack of a second.

198 Manager Pedersen moved to adopt the agreement between the District and Nine Mile
 199 Creek Watershed District (NMCWD) for a Shared Office Assistant. Manager Crafton
 200 seconded the motion.

201 Manager Koch asked if the Personnel Committee reviewed the agreement. Manager
 202 Pedersen said the Committee did not review the agreement but did review the work
 203 behind the contract and the Committee leaves the contract review to the District's Legal
 204 Counsel.

205 Manager Koch said everyone knows the adage about "ASSUME" and if one does not
 206 read the contract one does not know what is in it and whether it is consistent with the
 207 terms. He said the Board should not be voting on something it has not had a decent
 208 opportunity to review and discuss.

209 Mr. Smith explained this agreement takes the direction from the Board and the Nine
 210 Mile Creek Watershed District (NMCWD) to seek the sharing of services whereby the
 211 RPBCWD is the employer of a person and as the agreement spells out, RPBCWD will
 212 provide services through that person to NMCWD.

213 Mr. Smith stated the agreement follows the District’s template for professional services
 214 agreements and is informed by other shared arrangements like the Soil and Water
 215 Conservation District (SWCD) arrangement with the District.

216 Manager Koch commented there is not a summary of terms and people have not read
 217 the agreement and everyone knows he is a lawyer and he would never want ~~a client~~
 218 bring something the client has not read, and even more so in this case because Mr.
 219 Smith’s firm represents both parties. Manager Koch said he still holds the position that
 220 **[representing both parties]** is a non-waivable conflict and can only be waived upon
 221 appropriate notification to the parties and with advice to the parties.

222 Mr. Smith said if the managers feels they are not familiar with the terms of the
 223 agreement or need more time to read it and understand it, he respects that. He said the
 224 Board waived the conflict of interest at the District’s last Board meeting. Mr. Smith said
 225 the NMCWD Board has waived the conflict of interest as well. Mr. Smith said the key
 226 to this agreement and for the shared service to work is for the administrator of each of
 227 the watershed districts to have a good working understanding of how this arrangement
 228 will operate on a regular basis. Mr. Smith said he is happy to answer questions or if the
 229 managers want more time to review it, this is at the pleasure of the Board.

230 Manager Crafton said the Board discussed this last month and she is comfortable after
 231 that conversation with accepting this agreement. Manager Pedersen and Manager
 232 Duevel concurred with Manager Crafton’s comments.

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

234

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

235

236 **e. Confirm Date for Duck Lake Bridge Ribbon Cutting Ceremony**

237 Administrator Jeffery reported the Eden Prairie City Council met and agreed the
 238 ceremony will be on either June 1 or June 6 at 3:00 p.m. and would like to know the
 239 District’s preference. The managers agreed that either date would work. Administrator
 240 Jeffery said he will let the City of Eden Prairie know either date will work for the
 241 District.

242 Manager Koch suggested the Board ask Administrator Jeffery to be as involved as
 243 possible to make sure the District’s participation in the ceremony is commensurate with
 244 the District’s contribution to the project.

245 Manager Koch moved to authorize staff to solicit information and work with the City of
 246 Eden Prairie on the format of the bridge opening ceremony and to bring the information
 247 back to the Board for consideration. President Ziegler seconded the motion.

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

249

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

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251

8. Discussion Items

252 **a. Schedule of Workshop Topics**

253 Administrator Jeffery shared a spreadsheet and said it is populated with topics required
 254 as stated in the District’s Governance Manual as well as with presentations staff has
 255 lined up like on the topic of flood risk and an update from the University of Minnesota.
 256 He said he has sent this spreadsheet to the managers for review and comment. He
 257 suggested closing each workshop with staff summarizing the status of District projects.
 258 Administrator Jeffery said additional workshop topics should be added at the consensus
 259 of the Board, so the workshops are utilizing the Board’s time in the best way.

260 Manager Koch suggested the managers funnel comments to Administrator Jeffery and
 261 the Board take time on March 16th to review and then the Board can take action, if
 262 needed, at the Board’s next regular meeting. Manager Koch said maybe the CAC wants
 263 to review it as well. Administrator Jeffery noted the Board-CAC joint workshop needs
 264 to be added.

265 Ms. McCotter commented she appreciates when staff identifies project status as
 266 represented by a scale that is used consistently to identify status across all projects.

267 Manager Koch said regarding workshops he thinks it is imperative the Board receive
 268 materials in time to review it, and it works better for him to receive the materials by the
 269 Friday before the workshop.

270 Manager Crafton commented the District has not done a lot with the Master Water
 271 Stewards recently and there might be some projects to do in the Big Woods and that
 272 would need to be discussed before summer.

273 Manager Pedersen clarified the managers agree to provide Administrator Jeffery with
 274 comments about the workshop topics by March 16. President Ziegler said yes.

275

276 **b. Process Per Diem Claims as Vendor Checks**

277 Administrator Jeffery said Manager Duevel introduced this topic earlier in the meeting
 278 regarding should the mangers be treated as employees or vendors. Administrator Jeffery
 279 said Mr. Smith has noted that different watershed districts handle it differently.

280 Administrator Jeffery said staff does not have a recommendation and wants to know the
 281 process the Board wants to use that meets all legal requirements.

282 Manager Koch moved to authorize Administrator Jeffery, the Audit and Finance
 283 Committee, and Mr. Smith to research the issues regarding payroll payment employee
 284 versus vendor and come back to the Board with a report and recommendations
 285 regarding how to address payroll and significant legal issues regarding employee versus
 286 vendor. Manager Pedersen seconded the motion.

287 Manager Duevel commented the process should be streamlined and comply with the
 288 rules and in a manner that is much simpler than the current process.

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

290

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

291

292

293 **c. Closed Session to Discuss the Potential for Acquisition of Property Located**
 294 **at 9955 and 9875 Spring Road, Eden Prairie, MN [PID 281162232005]**

295 Manager Pedersen moved for the Board of Managers to go into closed session to discuss
 296 the potential acquisition of property located at 9955 and 9875 Spring Road, Eden
 297 Prairie. Manager Ziegler seconded the motion.

298 Manager Koch said he takes a narrow interpretation of the exception to the Open
 299 Meeting Law and unless the Board is discussing price and terms, he believes the Board

300 should have an open discussion. He said he thinks the Board needs to clarify what it
 301 plans to discuss in closed session and before he votes he needs a summary memo about
 302 who, what, where, when, and why.

303 Mr. Smith quoted from the Open Meeting Law so that the text of the statute could be
 304 top of mind for everyone. He said the law is in Minnesota Statutes Chapter 13D Section
 305 13.05 and Subdivision 3 list reasons why meetings may be closed, including “to develop
 306 or consider offers or counteroffers for the purchase or sale of real or personal property.”
 307 He said he understands the purpose of the Board’s discussion to be in the development
 308 phase and he does not believe the statute is narrowly construed to only allow for closed
 309 session to specifically discuss only specific terms of price but also to have a closed
 310 session for the purpose of developing a potential offer or counter offer. Mr. Smith stated
 311 it is his understanding that the discussion the Board proposes it is within the scope of
 312 what the statue allows for closed session and if the conversation would seem to stray
 313 from what is allowed, Mr. Smith will be sure to alert the Board.

314 Manager Koch said he does not believe the District has decided if it is interested in
 315 making an offer and the Board should not be going into a closed session until it has
 316 decided if it wants to buy property and what for. He wondered if there is urgency for
 317 doing something. President Ziegler said he thinks the Board has discussed the property
 318 quite a bit and before the Board could decide if it could make an offer, the Board needs
 319 to discuss if the District can afford it. He said the Board directed staff to identify and
 320 prepare information about financing such a purchase and the Board needs to know price
 321 before it can determine if it wants to pursue this. Manager Koch said the Board has had
 322 maybe only 15 minutes of discussion about this property. He said there has been no
 323 further discussion and President Ziegler must be further down the road and Manager
 324 Koch does not even know what the District would be using the property for and there
 325 are other parcels the District should consider if it is considering purchasing property. He
 326 said at minimum there should be a memo about what the District would do with
 327 properties and this discussion is not appropriate for closed session.

328 Upon a roll call vote, the motion to move into closed session carried 4-1 as follows:

329

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

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331 The Board moved into closed session at 8:43 p.m.

332 The Board reconvened the regular monthly Board meeting at 9:35 p.m.

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9. Manager Reports

334 Manager Ziegler reported he attended one of the two Legislative Days and it was very
335 educational. He said he had discussions with several legislators and there seems to be
336 movement on Minnesota Watersheds' top priority items like the salt agenda and increased
337 funding for out of state watersheds.

338 Manager Koch said he has a report and it is lengthy and in the form of questions and asked if
339 he could have a few minutes at the next Board workshop to speak his piece because they are
340 not action items. The managers indicated consent. Manager Crafton asked Manager Koch to
341 send his written report in advance. Manager Koch said he will send his report to the
342 Administrator.

343

10. Administrator Reports

344 Administrator Jeffery said he will have his work plan ready for the managers at the next
345 Board workshop. He noted the Lakes Summit is rescheduled for April 11 and the volunteer
346 event will be rescheduled for a later date.

347 Manager Koch said due to the late hour, he will forward his questions and comments about
348 the staff report and engineer's report to the Administrator. Manager Koch said the
349 Administrator can respond to them or address his questions and comments at the next
350 workshop, however Administrator Jeffery would like to proceed.

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11. Legal Counsel Reports

352 Mr. Smith stated the Friends of Frederick Miller Springs matter continues on appeal and
353 there is nothing else to report on that.

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12. Upcoming Board Topics

355 Manager Koch asked the Administrator to add to the Board's meeting agenda the topic on the
356 District's Covid Response.

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13. Upcoming Events

358

- RPBCWD Board of Managers Workshop – March 16, 2023

