



STATE OF WASHINGTON

CONSERVATION COMMISSION

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July 16, 2018

Thurston Conservation District Investigation Report

EXECUTIVE SUMMARY

In November 2017 the Washington State Conservation Commission (the Commission) empowered Commission Executive Director Mark Clark to issue notices of hearing, pursuant to RCW 89.08.200, to the Supervisors of the Thurston County Conservation District (the District). The Commission gave this directive in response to complaints it had received about the conduct of the District and its Supervisors.

In response to the Commission's direction and continuation of concerns received by the Commission, Executive Director Clark directed his staff to carry out an investigation of the complaints and report whether any of the activities complained of amounts to a neglect of duty or malfeasance in office.

Two statutes and an agency rule authorize and guide the Commission's actions in reviewing the conduct of District supervisors:

- RCW 89.08.200 authorizes the Commission to remove any district supervisors within Washington State for neglect of duty or malfeasance in office.
- RCW 89.08.070 provides authorization to the Commission to review district programs and assist districts and district supervisors to carry out their powers and programs.
- WAC 135-110-960 requires notices detailing the specific elements of any neglect of duty or malfeasance for which removal is sought.

Although the Commission may review the conduct of District staff in the context of reviewing district programs, the Commission has little legal authority over staff.

This report is intended to support his decision making process and possible preparation of notices to District Supervisors under RCW 89.08.200 and WAC 135-110-960.

This report covers the time period January 1, 2016 through June 15, 2018 and is based on the review of emails, documents, meeting minutes, meeting audio recordings, and interviews with past and present District staff and supervisors.

The report has eight sections:

1. Background
2. Applicable law
3. Investigation process
4. Analysis of complaints received by the Commission
5. Summary of conclusions
6. Recommendations
7. Process and next steps
8. Appendixes

This report documents the following facts that warrant a Commission hearing into the conduct of District Supervisors Eric Johnson and Richard Mankamyer as to their engagement in acts of malfeasance and neglect of duty in office.

Exhibited Neglect in Duty by:

1. Utilizing one's position as District Supervisor to obtain special privileges or exemptions for themselves;
2. Not maintaining timely and accurate records of District business;
3. Not responding to public disclosure requests promptly,
4. Delaying the signing of District checks and timesheets, and
5. Inappropriate conduct toward staff.

Exhibited Malfeasance:

1. By wrongful conduct in failing to participate in a scheduled hearing;
2. Inappropriate conduct toward staff creating potential liabilities for the district; and
3. Failure to comply laws and rules of the state.

Based on the conclusions and findings of this report it is recommended there is sufficient justification for Executive Director Clark to issue notices to Supervisors Johnson and Mankamyer in order to obtain their written responses pursuant to WAC 135-110-960. In addition to recommending the issuance of such notices, this report provides a number of recommendations to District staff and supervisors for Executive Director Clark's consideration.

Sincerely,

Ron Shultz, Policy Director, Washington Conservation Commission

Kirk Robinson, Lead Investigator, Washington Conservation Commission



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THURSTON CONSERVATION DISTRICT INVESTIGATION REPORT

1. BACKGROUND

a) **Complaints Before the Commission:**

On November 30, 2017, the Conservation Commission held their regular business meeting at Richland, Washington. At this meeting, a letter was presented to the Commission from then Thurston Conservation District (District) board supervisor Samantha Fleischner. The letter expressed concerns with the activities of other members of the Thurston District board and requested the Commission take action to remove Thurston District supervisors Eric Johnson and Richard Mankamyer.

In her letter, Fleischner identified several areas of concern regarding the conduct of Johnson and Mankamyer including:

- Ongoing harassment and discrimination of board and staff.
- Neglect of duties and spread of malicious misinformation.
- Unethical conduct.
- Lack of good governance.

After the letter was presented to the Commission, other public comment was heard from individuals who had attended recent Thurston District board meetings. These commenters also expressed concerns regarding the conduct of board members at the board meetings they had attended.

Following discussion among the Commission a motion was adopted as follows:

Motion by Commissioner Miller to empower the Executive Director to issue a notice of a hearing to each supervisor of the Thurston Conservation District regarding removal of supervisors under RCW 89.08.200. Seconded by Commissioner Longrie. Motion passed.

b) Washington State Conservation Commission and Conservation Districts:

The Commission consists of ten members whose powers and duties are established in RCW 89.08.030, RCW 89.08.070, and RCW 89.08.200. The Commission supports 45 state conservation districts by providing fiscal and technical assistance, program review, guidance, coordination and promotion of district activities and services. RCW 89.08.070 Together, the Commission and the districts provide voluntary, incentive-based programs to empower private landowners to implement conservation measures on their property <http://scc.wa.gov/about-the-commission/>. Included in the provisions of RCW 89.08 is the authority for the Commission to remove district supervisor(s), upon notice and hearing, for the neglect of duty or malfeasance in office. RCW 89.08.200

Each conservation district is an independent, non-regulatory local government entity governed by a local board of five supervisors, three elected and two appointed by the Commission. RCW 89.08.160, RCW 89.08.210, RCW 89.08.220 All serve terms of 3 years. RCW 89.08.200. Supervisors serve without compensation, but are entitled to expenses incurred in the discharge of their duties. RCW 89.08.200

Based on a review of annual reports submitted to the Commission, local conservation districts are funded by a mix of funding sources including local assessments on parcels of property, rates and charges, grants (local, state and federal), pass through Commission operating funds and funds appropriated by the legislature.

c) Thurston Conservation District:

The District is located within the boundaries of Thurston County excluding the cities of Rainier, Yelm and Tenino. (The cities of Rainier, Yelm, and Tenino were incorporated after the formation of the District and would require petitioning to the Commission by those cities to become part of the District.) RCW 89.08.180. Activities of the District are overseen by a five-member board of supervisors and two associate supervisors (non-voting board members). The District has adopted a number of policies and procedures which guide the operation of the District.

Current District Board Supervisors:

- Eric Johnson, Chair – Serving since September 2013. Term expires May 2019.
- Linda Powell, Vice Chair – Serving since November 2017. Term expires May 2019.
- Richard Mankamyer, Auditor – Serving since August 2016. Term expires May 2020.

- Doug Rushton – Serving since January 1996. Term expired May 2018. (Rushton continues to serve as board supervisor pending decision by Commission to fill the position.)
- Paul Pickett – Serving since May 2018. Term ends May 2021.
- Chris Sterns, Associate Member – Serving since January 2016. Position reappointed annually by board of supervisors

Past District Board Supervisors (serving during the time period investigated)

- Samantha Fleischner – Served May 2015 – May 2018
- David Hall – Served April 2001 – April 2016.
- Aslan Meade – Served May 2016 – July 2017.
- Treacy Kreger – Served April 2013 – March 2016.
- Joel Hansen, Associate Member – Served January 2017 – May 2018

The District has supported a variety of programs and activities promoting conservation practices and agriculture in Thurston County. Programs included; Voluntary Stewardship, South Sound GREEN, Clear Choices for Clean Water and South Sound FarmLink. District staffing levels supporting these programs have ranged from the current level of 8 to as high as 15.

Several sources of funding have supported District activities and programs since 2016. A major source of funding was an assessment on land parcels within the boundaries of the District. This source of funding ended December 31, 2017. The District also receives funding through grants and cooperative agreements with other agencies.

2. APPLICABLE LAWS

RCW 89.08.070 authorizes the Commission to review district programs, including administrative procedures and operations, and to assist districts – including district supervisors -- as they implement their powers and programs. RCW 89.08.200 authorizes the Commission to remove supervisors for neglect of duty or malfeasance in office. Read together, these statutes empower the Commission to remove district supervisors but, not to direct the activities of, or to remove district staff.

With regard to the legal standard for removal of supervisors, the Commission’s rules define “malfeasance” as wrongful conduct that affects, interrupts, or interferes with the performance of a supervisor’s official duty. WAC 135-110-110. Commission rules define “neglect of duty” as the failure of a supervisor or supervisors to perform mandatory duties. Such duties include, but are not limited to:

- a) Compliance with laws and rules imposed by local, state and federal government entities;

- b) Attendance at a sufficient number of board meetings so as to not impede the work of the conservation district;
- c) Maintaining a full and accurate record of district business;
- d) Securing of surety bonds for board officers and employees;
- e) Carrying out an annual financial audit;
- f) Providing for keeping current a comprehensive long-range program;
- g) Providing for preparation of an annual work plan;
- h) Providing for informing the general public, and occupiers of lands within the conservation district of conservation district plans and programs;
- i) Providing for including affected community members in regard to current and proposed plans and programs; and
- j) Providing for the submission of the conversation district’s proposed long-range program and annual work plan to the commission. WAC 135-110-110

Laws and District policy that impose mandatory duties on the District’s Supervisors, and which therefore can form the basis of an allegation on “neglect of duty” include, but are not limited to:

- a) The duties imposed by RCW 89.08, including but not limited to the duties described in RCW 89.08.210 to maintain a full and accurate record of all district proceedings, resolutions and regulations;
- b) The Open Public Meeting Act, RCW 42.30, including but not limited to the duty described in RCW 42.30.035 to promptly record meeting minutes and make them available to public inspection and the requirements in RCW 42.30.110 pertaining to executive sessions;
- c) The Public Records Act, RCW 42.56 including but not limited to the duties described in RCW 42.56.070(1) and RCW 42.56.520 to promptly provide records;
- d) The Code of Ethics for Municipal Officers, RCW 42.23, which provides that “no municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.” RCW 42.23.070(1);
- e) District Fiscal Policies and Procedures for payments of reoccurring expenses (Exhibit U); and District Governance Action Plan adopted by the District Board January 30, 2018. (Exhibit E)

3. INVESTIGATION PROCESS

a) Steps Preceding the Investigation:

Following receipt of complaints about the District and District Supervisors, the Commission at their November 30, 2017 business meeting authorized Commission Executive Director Mark Clark to issue notices of hearing pursuant to RCW 89.08.200, to any District Supervisor potentially involved in neglect of duty or malfeasance in office. (Exhibit C)

Prior to instigating an investigation or issuance of notices of hearing, Clark attended the December 19, 2017 District Board meeting. During the meeting, Clark was given the opportunity to share the Commission's continued concerns and provided an offer to have Commission staff assist District Board Supervisors and staff in developing a path forward in addressing the concerns raised. In January 2018, Commission staff did assist District Board Supervisors and then acting Executive Director Sarah Moorehead in development of a Governance Action Plan approved by the board on January 30, 2018. As of June 15, 2018, the Governance Action Plan has yet to be fully implemented or signed by all Supervisors.

In response to the Commission's direction and continuation of concerns received by the Commission, Executive Director Clark directed his staff to carry out an investigation of the complaints and prepare this report. (Exhibit F).

b) Scope of the Investigation:

The investigation and this report covered the time period between January 1, 2016 and June 15, 2018. A timeline of key events related to the investigation are attached as Appendix C. Numerous concerns pertaining to the District or District Supervisors were presented to the Commission and brought up during the investigation. The report attempts to address all relevant concerns, with the investigation's primary focus on determining neglect of duty or malfeasance by District Supervisors. The investigation looked into the conduct of current District Supervisors Johnson, Mankamy, Rushton, Powell, Pickett and Associate Supervisor Stearns; Past District Supervisor Fleischner and Past Associate Supervisor Joel Hansen. The investigation and report recognized the Commission has statutory authority to take action only with regard to District Supervisors and not District Staff. District Supervisors and District staff were interviewed as part of the investigation and their testimony is referenced in the report. Appendix D. District Supervisors Johnson and Mankamy declined an invitation to be interviewed in person.

c) Conduct of the Investigation:

Commission staff conducted interviews of District Supervisors (with the exception of Supervisors Johnson and Mankamy) and District staff. No members of the public were interviewed. The reasoning for not interviewing the public was because this stage of the investigation was to determine whether the complaints were supported by sufficient facts to warrant a notice and hearing for the potential removal of any District Board members.

4. ANALYSIS OF COMPLAINTS RECEIVED BY THE COMMISSION

Complaint #1: Supervisor's use of position to secure special privileges or exemptions for himself:

This complaint was raised against Supervisor Johnson in relation to a cost-share project implemented on his dairy farm and funded by the Commission through the District. It was alleged Johnson utilized his position as District Supervisor to gain approval and additional funding for the project. Additionally, it was alleged Johnson attempted on two occasions to influence soil sample testing procedures.

Investigation:

In June 2015, Johnson's project to install a manure transfer system (piping and pump) on his dairy farm was approved for him to receive \$38,000 in cost-share funds provided to the District by the Commission. For Johnson to receive the funding he must first have completed the project according to the specifications called for in the design and installation of the manure transfer system. The cost-share agreement requires implementation certification by District staff prior to a landowner receiving cost-share funds. Implementation certification requirement include a site inspection by District staff to verify completion and the project meeting required standards. Information from interviews, contract notes (Exhibit 15) and an email from District Resource Specialist David Nygard (Exhibit A11) confirmed Nygard went to Johnson's dairy farm in September 2016 to conduct a site inspection of the project. When arriving at Johnson's dairy farm he was unable to verify if the piping installed met the required standards as the pipe had already been covered. Johnson stated to Nygard the piping did meet the required standards and requested he approve the project so he could receive the funding. Nygard was hesitant to approve the project without being able to see how and what type of piping was installed. Nygard stated he felt pressured by Johnson to go ahead and approve the project. Nygard stated previously that Johnson had spoken negatively of other District staff to him. Since Nygard was close to retirement, he did not want to cause trouble with Johnson. Out of concern for possible retaliation from Johnson, Nygard went ahead and approved the project so Johnson could receive the funding.

District Executive Director Kathleen Whalen stated in her interview Johnson approached her during the time he was installing the manure transfer system and requested of her to petition the Commission for additional funds to cover the costs of his project. Mr. Johnson had been approved to receive \$38,000 in cost-share funds. She stated he continued to request of her to seek additional funds for his project. Eventually, she did approach the Commission and was able to receive an

additional \$4,296 for Johnson's project. In the end, Johnson received \$42,296 in cost-share funds for his project on his personal dairy farm.

The District has a long-standing program of assisting landowners and farmers with collecting and analyzing soil samples. As a dairy farmer in Washington State, Johnson is required under RCW 90.64 to submit annual soil sample test results to the Washington State Department of Agriculture Dairy Nutrient Management Program. District Resource Technician Warren and Nygard reported two occasions where Johnson provided them with soil samples from his personal dairy farm to be sent to a lab for testing. On both occasions staff reported Johnson provided them with a very small amount of soil. Staff shared with Johnson their concerns on him not providing enough soil for the lab to be able to conduct the testing of the soil samples. They reported when Johnson was told he might need a larger sample he would become frustrated with staff. Warren reported as a new District employee she was concerned in upsetting Johnson and went ahead and sent the sample in as did Nygard. Additionally, Warren stated Johnson became upset when she questioned how he labeled the sample. The lab conducting the testing has certain requirements for labeling of samples and Warren stated she was just trying to help him meet the requirements, yet he continued to be frustrated with her. (Exhibit A12) In this situation, Warren asked District Acting Executive Director Moorehead to help her in working with Johnson. Moorehead then worked with Johnson to try to address his labeling concerns.

Discussion and Conclusion:

RCW 42.23.030 prohibits municipal officers from receiving a beneficial interest in any contract that may be made by, through or under the supervision of such officer. A "municipality" is defined to include districts. RCW 42.23.020(1). Conservation Districts are governmental subdivisions of the state. RCW 89.08.220. Municipal officers include all elected and appointed officers of a municipality. RCW 42.23.020(2). Therefore, Conservation District Supervisors are officers covered under the prohibition from receiving a beneficial interest.

That said, RCW 89.08.220(4) specifically exempts Conservation District Supervisors from the RCW 42.23.030 prohibition. Although the exemption specifically exempts Conservation District Supervisors from the RCW 42.23.030, Supervisors are not exempted from RCW 42.23.070(1) which states: "No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others." Johnson may be justified in applying for and receiving cost-share funding, but whether he used his position to secure special privileges for himself is another issue.

From the account of a now-retired District employee, Johnson appeared to utilize his position as a District Supervisor to secure special privileges or exemptions for himself by utilizing his position to obtain completion approval for his manure transfer system without demonstrable compliance with the design specifications. This action would be in violation of RCW 42.23.070(1).

Johnson also appeared to utilize his position to influence staff's handling of soil samples for testing as required for his personal dairy farms. This would be in violation of RCW 42.23.070(1) as an effort to secure special privileges or exemptions for himself by pressing staff to not follow proper protocols.

Johnson's violations of RCW 42.23.070(1) by utilizing his position to secure special privileges or exemptions for himself would constitute neglect of duty by a supervisor because he failed to perform a mandatory duty. As a violation of RCW 42.23.070(1) Johnson specifically failed to comply with a law or rule imposed by state law. RCW 89.08.200; WAC 135-110-110

According to the Conservation Commission's administrative rules, malfeasance is defined as: "wrongful conduct that affects, interrupts, or interferes with the performance of a supervisor's official duty. Johnson's conduct of utilizing his position to secure special privileges amounted to malfeasance as wrongful conduct affecting his performance as a supervisor. Exerting his position in the way he did prevented him from exhibiting an appearance of fairness as a Board Supervisor with respect to other grant awards.

Complaint #2: Supervisors not providing a timely and accurate record of District business:

District meeting minutes are a record of actions and decisions made by District Supervisors. District procedure is to not share with the public or post on the District website meeting minutes until approved by the board and signed by the chair. Beginning in 2017, the time taken for approval and chair signing meeting minutes has lengthened, at times taking up to fourteen months for approval. As of June 1, 2018, some meeting minutes dating back to February 28, 2017 have not been approved and/or signed by the District Board Chair Johnson. (Exhibit A14)

Investigation:

District procedures for approval and posting of board meeting minutes calls for review of meeting minutes by supervisors, supervisors to vote on approval of meeting minutes and chair signing the approved meeting minutes. Once approved and signed by the chair meeting minutes are to be posted on the District's website.

A review of District Board meeting minutes and audio from the beginning of 2017 to current shows several potential violations including:

- The board failed to approve and the chair failed to sign past meeting minutes some dating back fourteen months before approval and being signed by the chair.
- Meeting minutes show several past meeting minutes being approved but not being signed by Johnson as chair.
- Additionally, Johnson would remove approval of meeting minutes off meeting agendas or place discussion on approval of meeting minutes toward the end of meetings. This resulted in the board not getting to them prior to the end of the meetings.
- Supervisors Mankamyer and Johnson would state in meetings they did not have time to review meeting minutes or would need additional time to review meeting audio before voting on approval as they had forgotten what was said and discussed.

This failure to act on approval of minutes has impacted other Supervisors and the public. Supervisor Fleischner stated to Johnson and Mankamyer at several meetings her frustration with the delay in approval of meeting minutes. Because of the time lag in review and approval, Supervisor Rushton also appeared confused in what had been discussed and agreed upon. Commission Regional Manager Joy attempted to remind the board of the need for timely approval of meeting minutes. (Exhibit B)

Addressing the issue of timely approval and chair signing meeting minutes was also part of the Governance Action Plan adopted by the District Board on January 30, 2018. (Exhibit E) Yet by the end of the investigation (June 15, 2018) several meeting minutes dating back to February 28, 2017 have not been signed by the chair and/or approved by the District Board.

Discussion and Conclusions:

According to the state's Open Public Meetings Act (OPMA), minutes of all regular and special meetings except executive sessions of such boards, commissions, agencies or authorities shall be promptly recorded and such records shall be open to public inspection. RCW 42.30.035. In addition to the OPMA, all supervisors are responsible for review and timely approval of minutes to ensure the keeping of a full and accurate record of all proceedings, resolutions, regulations and orders issued or adopted. RCW 89.08.210

Johnson and Mankamyer appeared to be postponing or slowing down the process for approval of meeting minutes by stating in meetings that they did not have time to review meeting minutes or would need additional time to review meeting audio because they had forgotten what had been discussed. The District Board did approve several past meeting minutes during April and May 2018 District Board meetings yet Johnson as chair has not signed the approved minutes. Board members Powell and Rushton have questioned the delays in approval of meeting minutes, but Fleischner had been the most vocal in raising her concerns up until the end of her term (May 2018) as supervisor.

With respect to the response of Johnson and Mankamyer of insufficient time to review the minutes, our conclusion is this was a result of various factors including: the Board members receiving minutes prior to the meeting but Johnson and Mankamyer not reviewing them; and Johnson and Mankamyer indicating at the meetings that they had forgotten what happened at the meeting in question and had to review the recording.

From the review of approved meeting minutes, draft meeting minutes and meeting audio both Johnson and Mankamyer appear deliberate in attempting to delay the process for approval and signing of meeting minutes. This conduct resulted in a neglect of duty in not maintaining timely and accurate records of District business in violation of RCW 89.08.210 and RCW 42.30.035. This conduct is also malfeasance due to the negative impact on the other Board Supervisors as documented in the statements of those Supervisors at District Board meetings.

Complaint #3: Improper responses to public records requests in violation of the Public Records Act:

On February 27, 2018 at the District Board meeting Deston Denniston made a public disclosure request of Johnson and Mankamyer to provide their meeting notes and audio recordings. Denniston followed-up on his request with a letter to the District and later with a second request (Exhibit X). As of June 15, 2018, the request has not been fulfilled.

On February 16, 2018 Supervisor Johnson filed a complaint in Thurston County Superior Court against the Washington State University (WSU) Energy Program Office. The WSU Energy Program Office is the administrator of the Thurston District email system. Johnson is seeking records from the District email system as part of an investigation of wrongdoing by District staff. Copies of the court filings have been submitted to the Commission investigators by Johnson's legal counsel presumably to be considered as part of this investigation.

Investigation:

February 27, 2018 meeting audio confirms Denniston did make the request for notes and recordings from Johnson and Mankamyer and has documented his request in two letters to the District. (Exhibit X) District Acting Executive Director Moorehead has made attempts, documented by emails, to Johnson and Mankamyer requesting the information to fulfill the request. (Exhibit S) As of June 15, 2018, the requested information has not been provided to Denniston because Johnson and Mankamyer have not provided the records to Moorehead.

With respect to Johnson's legal case against the WSU Energy Program Office, all legal documents provided by Johnson's legal counsel have been reviewed.

Discussion and Conclusions:

All public entities are subject to the state's Public Records Act (PRA). Chapter 42.56 RCW A conservation district fits under the PRA definition of a "local agency." RCW 42.56.010(1). Conservation district supervisors, as officials of a local agency, are subject to the requirements of the PRA. Agencies must make non-exempt public records available for inspection and requests for public records must be responded to promptly. RCW 42.56.070(1); RCW 42.56.520.

Denniston has made a valid request for records under the PRA. Email documentation supports Moorehead acted in good faith in providing a response

back to Denniston and her repeated requests of Johnson and Mankamyer to provide the requested information. Due to their lack of response, the District is currently out of compliance with RCW 42.56 creating the potential for litigation by the requester, which if successful could result in the District having to pay statutory penalties and the requestor's costs, including attorneys' fees. RCW 42.56.550.

Johnson and Mankamyer exhibited neglect of duty by not providing a response back to Moorehead or providing the requested public records. WAC 135-110-110

With respect to the legal proceeding brought by Johnson against the WSU Energy Program Office, it's unclear the purpose of submitting this information to the Commission staff conducting the investigation. In a light most favorable to Johnson, we will assume the information was provided to show conduct on the part of District staff failing to comply with his PRA requests.

As noted earlier in this report, the Conservation Commission has no authority over the conduct of District staff. The District Board has ultimate authority over District staff. Therefore we make no conclusions or recommendations relating to the dispute. Furthermore, the issues relating to Johnson's complaint have no bearing on the issue under investigation, the failure of Johnson and Mankamyer to comply with the public records request submitted by a member of the public.

Complaint #4: Supervisors delaying approval of timesheets and signing of checks:

Supervisor Mankamyer has refused for up to two months to sign District checks since his appointment as District Board Auditor during the November 1, 2017 District Supervisor meeting. Many of these checks were for reoccurring payments (rent, leased vehicles, utilities, etc.) already approved in the District's annual budget. This has resulted in late fees assessed to the District and the District not following established fiscal procedures previously approved by the Board.

Additionally, since Mankamyer has been appointed to sign Acting Executive Director Moorehead's timesheets, timesheets have gone unsigned for over two months. Because timesheets must be submitted to various funders, the failure to sign the timesheets has created delays in billings to grants and payments back to the District.

Investigation:

Failure to Sign Checks

The District employs a bookkeeper to manage District accounts and process checks to pay bills. Amy Franks has served since 2012 as District Treasurer/Bookkeeper. Since 2000, CPA Steven Davis has contracted with the District to provide external oversight of District finances. Until November 21, 2017, District checks were signed by the District Treasurer/Bookkeeper Franks and CPA Steven Davis.

The District Supervisors appoint a District Board Auditor who would review the check register and District finances. During monthly District Supervisor meetings the Board Auditor would report back any concerns or assist the treasure/bookkeeper in answering questions supervisors would have regarding District finances. The board would then review and approve the check register. This was a long-standing practice implemented in 2000 to provide internal and external review of District Finances. Board Supervisor Fleischner served as Board Auditor from March 2016 until November 1, 2017.

Routine audits of the District conducted by the Washington State Auditor's Office during the time Franks served as District Treasurer were found to be clean audits with no findings.

On November 1, 2017, the board voted 3 to 1 (Johnson, Mankamyer and Powell for and Fleischner against) to appoint Mankamyer as board auditor. Rushton was

not in attendance and Fleischner expressed concerns to the chair on making appointments without the full board (Rushton) not being present. Powell was appointed supervisor earlier in the meeting. On November 21, 2017 the board voted 3 to 1 (Johnson, Mankamyler and Powell for Fleischner against and Rushton was not allowed to vote because he was participating remotely by phone) to discontinue having Davis sign checks and Mankamyler as board auditor would be signing checks issued by the District. Mankamyler stated he would not be signing checks until he received training and stated “the board needed to take back control of District finances”. Offers were extended by District Treasurer Franks (Exhibit 16) and CPA Steven Davis (Exhibit A7) to provide Mankamyler training and education on the District finances. Mankamyler did receive training yet continued to ask for more training as he stated he did not understand District finances. It should be noted in a review of meeting minutes from September 2016 to when Mankamyler was appointed auditor he voted to approve several check registers.

Based on Mankamyler’s statement on not signing checks, Franks and Moorehead expressed concerns to the board during the November 21, 2017 District Board meeting on the timely issuance of checks. Johnson stated to Moorehead that he would come into the office prior to the December 20, 2017 District Board meeting and sign checks. It should be noted Johnson did not come into the office prior to December 20, 2017 and sign checks. Mankamyler did begin to sign some checks in late 2017 but has continued a pattern in delaying the signing of checks. The majority of checks being issued by the District since Mankamyler’s appointment as District Board Auditor have been related to on-going expenses (rent, utilizes, vehicle leases, etc.) approved by the District Supervisors in the 2018 budget. Delays in payment of bills incurred by the District has resulted in late fees incurred by the District and the District not meeting a contractual agreement with the Conservation Commission for leased vehicles. (Exhibit 5)

Timesheet Signature

As District Board Auditor, Mankamyler is responsible for the approval of Moorehead’s timesheets. Mankamyler has continued to delay approval of her timesheets stating he has questions or needs training before signing the timesheets. Franks and Moore reached out to Mankamyler attempting to address his concerns. (Exhibit A6)

Signed timesheets are oftentimes required under various grant and funding agreements. Failure to approve the timesheet means a signed timesheet cannot be provided to the funder, and therefore no payment made to the District. Delays in approval of Moorehead’s timesheets has resulted in postponing billing of grants Moorehead is funded by.

Discussion and Conclusion:

Prior to November 1, 2017, the District had complied with internal fiscal policy, paying bills on time and meeting contractual obligations. The District's "Policy and Procedures Section 6: Financial Policies and Procedures" established policy for the timely payment of on-going expenses (rent, utilities, vehicle leases, etc.) previously approved in the District's budget. Delaying these payments has resulted in late fees charged to the District, the District not meeting contractual agreements, and potentially creating harm to the District's credit rating.

Delays approving timesheets have hampered the District's ability to receive reimbursements from grants and completing reports required by grants. These delays in reporting or invoicing grants have the potential to impact the ability of the District to receive future grants and funding.

Mankamyer exhibited neglect of duty in the delay of signing checks and timesheets. WAC 135-110-110. Emails and statements from District staff established Mankamyer has been given ample opportunity to receive training, ask questions and be provided resources needed to fulfill his duties as appointed District Board Auditor. His actions resulted in the delay in payment of on-going expenses in violations of District policy.

Johnson exhibited neglect of duty in not following through with his commitment to Moorehead in signing checks when Mankamyer had stated his refusal to sign checks. His actions resulted in the delay in payment of on-going expenses in violations of District policy. WAC 135-110-110

Complaint #5: Supervisors engaging in inappropriate conduct and making inappropriate comments when working with District staff and failing to respond to the District's insurance carrier's risk-management recommendations:

On February 28, 2017, a memo was presented by District staff to board supervisors stating their concerns on the relationship between staff and board supervisors. (Exhibit V) Included in the memo were descriptions and allegations of inappropriate treatment of staff by supervisors, including alleged unwelcome conduct, mockery of staff at public meetings, bullying of staff, repeated hearsay of staff conduct to third parties, and offensive name-calling.

Additionally, concerns on the conduct of Supervisors Johnson and Mankamyer toward staff were filed by staff with the Washington State Human Rights Commission.

Investigation:

The circumstances surrounding the presentation of the staff memo to the district board can be best understood in the context of events in the months prior to the submittal of the memo.

December 13, 2016:

At the District Board meeting the Board adopted a 2017 District work plan that included filling the soon upcoming open position due to the retirement of District Resource Specialist Nygard and one additional part time position. When Johnson learned of the potential candidates he became frustrated with District staff on the selection process and potential candidates not meeting the expectations he felt were needed for the position.

February 21, 2017:

At the District Board meeting Johnson requested the board reopen the recruitment for Nygard's position and expand the salary. Johnson suggested firing the current staff as a solution to addressing a potential budget deficit that would be created by expanding the salary for the position.

February 7 and February 21, 2017:

District Board meeting minutes documented tension continued to build between staff and Johnson over the process to fill the positions.

February 28, 2017:

At the District Board meeting Amy Hatch-Wineka presented to the board a memo from staff expressing their concerns regarding the process to fill the positions and concerns on unwelcome conduct by supervisors including mockery, bullying, repeated hearsay and offensive name-calling. (Exhibit V) Upon receiving the memo, the board proceeded with the meeting and did not provide comment or feedback to Hatch-Wineka or staff concerning the memo.

March 29, 2017:

The District Board held a special board meeting. During the meeting supervisors met in executive session with Enduris legal representative Fossum to discuss complaint/charges from employees and performance of employees. (Enduris is an insurance provider who, in addition to providing a variety of insurance coverages for the District and Board, provides advice on potential risks to assist the District in addressing risks.) Resulting from these discussions the board initiated an investigation of the concerns. The investigation was conducted by Enduris and overseen by Fossum. The investigation took place in April and early May of 2017 and included interviews with District staff.

July 25, 2017:

The board met in executive session with Fossum and ProAct Law(contractor for Enduris) representative Middleton to discuss the investigation. Middleton assisted Fossum in conducting the staff interviews. Additionally Fossum provided recommendations to the board. It should be noted neither a written investigation report nor written recommendations were ever provided to the board by Fossum.

September 26, 2017:

Fossum again met with the board in executive session to review the recommendations from Enduris

November 29, 2017

Supervisor Fleischner presented a letter to the Commission stating her concerns on the ongoing harassment and discrimination of staff.

January 30, 2018:

In response to the several business concerns raised by the Commission, District Supervisors adopted a Governance Action Plan. The plan included a section calling for the board to create an action plan/response to the advice given to the board by Enduris (Fossum). (Exhibit E) It should be noted the plan was signed by Johnson, Fleischner, Rushton and Powell, Mankamyer declined to sign the Governance Action Plan.

March 6, 2018:

District Treasurer/Bookkeeper Franks files a complaint of discrimination against the District with the Washington State Human Rights Commission. (Exhibit A19)

March 26, 2018:

District Acting Executive Director Moorehead files a complaint of discrimination against the District with the Washington State Human Rights Commission. (Exhibit A20)

May 21, 2018:

The District received a letter from the Washington State Human Rights Commission regarding their investigation into the concerns filed by Franks and Moorehead and the duty of the District to preserve documents. (Exhibit A1). This letter stated the Human Rights Commission was conducting the investigation. At the time of the writing of this report, the investigation had not concluded.

June 1, 2018:

The District board received by certified mail a letter from Enduris stating, “she (Fossum) made several recommendations to mitigate your (District board) risks, none of which were followed. The failure to cooperate with risk management requests has resulted in deteriorating circumstances” (Exhibit W). The letter went on to inform the board Enduris has applied an experience rating increase to the District’s annual contribution and increasing the District’s deductible to \$50,000 per occurrence. Enduris is threatening to terminate coverage if circumstances do not improve.

In interviews conducted with staff for this investigation, staff shared concerns they experienced or witnessed regarding the conduct of Johnson and Mankamyler. Examples of the concerns shared by District staff include:

- Johnson making the comment to Nygard that Hatch-Wineka was a “witch”.
- Hatch-Wineka stating Johnson and Mankamyler continued to make negative comments about her after an investigation found no wrongdoing in her role as Lead Entity Coordinator.
- Negative comments made by Mankamyler toward District Treasurer/Bookkeeper Franks. Franks stated when she brought to the board’s attention on May 30, 2017 her concerns on the increased travel reimbursement requests by Mankamyler and the impact they would have on the District’s budget Mankamyler made comments she may not be competent to do her work as District Treasurer. (Exhibit A18)

- Mankamyer’s comment to Moorehead and Warren “it was cold outside and they should cuddle” during a break at a workshop attended by Mankamyer, Moorehead and Warren.
- Franks’ concern Mankamyer would find the contact information for her new job and attempt to contact her there, or contact her new employer.
- Franks, Warren, Berger expressed concerns on being alone in the office with Mankamyer.
- Hatch-Wineka stating fear in bringing her children to the District’s annual plant sale for fear Johnson and Mankamyer would find out who her children were.
- Franks, Moorehead, Whalen witnessing sudden mood changes in Mankamyer going from being friendly to becoming combative and confrontational.
- Franks and Moore witnessing Mankamyer stating how he loved everyone and then started crying.
- Warren, Franks and Moorehead stated when attending meetings away from the District office that Mankamyer and Johnson were also attending, when the meeting concluded Johnson and Mankamyer would sometimes follow them back to the District office.
- Moorehead and Warren having observed Mankamyer parked in front of the District office and just sitting in his car but not coming into the office. The most recent example shared was in early June 2018.
- Johnson’s questioning of Franks and Moorehead about Whalen’s marital status after he learned Whalen had taken leave under the Family Medical Leave Act (FMLA).
- Hatch-Wineka shared Johnson had requested of her to assist him in writing an application for a Conservation Easement for his personal dairy farm. She had turned down his request and felt this was another reason for his negative treatment of her.
- Moorehead, Franks, Warren, Berger all expressed concern on having Johnson and Mankamyer know where they live.
- Hatch-Wineka shared to this investigation her belief negative treatment and comments toward her and other District staff by Mankamyer and Johnson have increased since her providing the memo from staff to the board on February 28, 2018.

Discussions and Conclusion:

As of June 15, 2018 the District Board has yet to respond to the concerns raised by staff at the February 28, 2017 District Board meeting.

Supervisor Fleischner, as shown in her November 29, 2017 letter to the Commission, continued to remind the Board of the need to respond to the concerns raised as did Rushton.

Johnson and Mankamyer have not responded to staff concerns or implemented the recommendations provided by Enduris. Based on interview comments from staff and other Board members, Johnson's and Mankamyer's negative conduct toward staff has increased since receiving the concerns from staff.

According to the Conservation Commission's administrative rules, malfeasance is defined as: "wrongful conduct that affects, interrupts, or interferes with the performance of a supervisor's official duty" and neglect of duty is defined as "the failure to perform mandatory duties." WAC 135-110-110

The actions of Johnson and Mankamyer have resulted in an increase in insurance costs, increase in deductible costs for liability claims, a toxic work environment for staff and potential legal liabilities for the district. Their behavior has exhibited malfeasance and neglect of duty in wrongful conduct by impacting the financial health of the District, exposing the District to increased exposure to liability costs and potential lawsuits.

Complaint #6: District supervisors intimidating and/or excluding other District Supervisors:

Former District Supervisor Fleischner reported her experience of intimidation and threats made to her by Supervisor Johnson during and outside of District Board meetings. Additionally, Supervisor Rushton shared a decision made at the November 21, 2017 board meeting by Johnson acting as chair denying Rushton the ability to vote by phone on motions or board actions during the meeting and by scheduling meetings when he knew Rushton was unavailable.

Investigation:

During her interview for this investigation, Fleischner related an experience she had on November 1, 2017 when the board was in executive session to review candidates for the open supervisor position. Fleischner stated she had shared her concerns with Johnson on the board making decisions without the full board being in attendance (Rushton was unable to attend the meeting). Fleischner stated to Johnson she planned on leaving the meeting so there would not be a quorum and the board would not be able to select a candidate for the supervisor position. Fleischner stated Johnson became upset with her and threatened to go to the local newspaper (The Olympian) and report to them she was not fulfilling her duties as a supervisor. Fleischner decided to stay at the meeting and Powell was chosen as the new supervisor. Johnson and Mankamyer voted for and Fleischner voted against.

On November 29, 2017, Fleischner emailed a letter to the Commission stating her concerns and requesting the removal of Johnson and Mankamyer from the board. (Exhibit D) During the January 30, 2018 District Board meeting Johnson confronted Fleischner, questioning who actually wrote the letter. Johnson believed the letter was written by a District staff person. Fleischner stated to Johnson that she was the author of the letter. In the interview with Fleischner for this investigation, Fleischner stated she was the author of the letter.

Throughout the remaining months of her term as supervisor (ending in May 2018), Johnson and Mankamyer continued to question her and make statements concerning Fleischner not writing the letter. Johnson and Mankamyer continued to insist the letter was written by District staff. Additionally, Johnson did a public disclosure request through WSU Energy (WSU Energy hosts the District's servers) for data on District computers to support his claim Fleischner did not write the letter submitted to the Commission.

Rushton expressed his concern on not being able to carry out his duties as a supervisor when Johnson decided to not allow him to vote during the November 21, 2017 District Board meeting. Rushton was recovering from a medical issue and asked to participate by phone. As the meeting began, Johnson informed Rushton he would not be able to vote by phone. It should be noted at the time the meeting took place the District did not have a policy in place to allow or disallow supervisor participation remotely by phone. A review of past District Board meetings did show participation of supervisors by phone had occurred. Additionally, the board had agreed by email exchange for participation by phone for the November 1, 2017 hearing and meeting on rates and charges. (Exhibit H)

Rushton in his interview for this investigation and in an email exchange to Moorehead expressed his continued concerns regarding Johnson scheduling meetings after Rushton had shared with Johnson having a conflict with other meetings he was scheduled to attend. (Exhibit 17)

Discussion and Conclusions:

According to the Conservation Commission's administrative rules, malfeasance is defined as: "wrongful conduct that affects, interrupts, or interferes with the performance of a supervisor's official duty." WAC 135-110-110. We interpret this rule to mean conduct which affects, interrupts, or interferes with the performance not only of the Supervisor initiating the conduct, but also including conduct affecting, interrupting, or interfering with the performance of other Supervisors on the Board.

At a November 6, 2017 Board meeting, Board members were allowed to call in, including Johnson. This establishes at least the potential for calling-in to the meetings. This was agreed to by the full Board. Johnson exhibited malfeasance by not allowing Rushton to vote during the November 21, 2017 District Board meeting. At the time of that meeting, there was not a District policy on supervisors remotely participating in meetings. There was some discussion among board members at the beginning of the meeting on the legalities of remote participation. Even without a policy, because Rushton could not participate due to a medical condition, to be consistent he should have been provided an opportunity to carry out his duties as a supervisor during the meeting. Johnson exhibited malfeasance when he unilaterally prohibited Rushton from calling in to the meeting, thus affecting and interfering with the performance of another Supervisor.

Fleischner summarized her concerns on the actions of Johnson and Mankamyer in her November 29, 2017 letter to the Commission and continued to state that she

was the author of the letter. Even if the allegations of the letter being written on a District computer made by Johnson and Mankamyler were correct, Fleischner would have had the right as supervisor to utilize a District computer to construct the letter. The District does not have a policy on supervisor use of district computers.

As Fleischner stated in her letter to the Commission, repeated in her interview, and commented during several meetings, she has concerns about the conduct and actions of Johnson and Mankamyler as supervisors. These concerning actions include long meetings, meeting minutes not being approved and the board not responding to District staff concerns. She stated in her interview she felt she had been singled out by Mankamyler and Johnson for stating her concerns.

During her term as supervisor Fleischner has been able to carry out her duties as a supervisor. She was also able to express her concerns regarding conduct of Johnson and Mankamyler impacting the District and staff. Johnson and Mankamyler may be in disagreement with her on many issues and policies but their actions have not resulted in her not being able to carry out her duties as supervisor. Therefore we conclude no malfeasance in the conduct of Johnson and Mankamyler relating to this complaint.

Complaint #7: Failure of supervisors to attend a District public hearing to consider future county funding for the District:

A complaint was made regarding the failure of Johnson and Mankamyer to attend a District Board meeting critical to the continued funding of the District through county rates and charges. Complaints allege Johnson and Mankamyer deliberately avoided this critical meeting in order to force a lack of quorum and thus no vote by the board could be taken. This resulted in the District losing over \$600,000 in annual revenue from the county.

Investigation:

Prior to 2017, the District was financially supported in part by a county assessment. To obtain an assessment, the District Board submits to the County Commissioners a budget plan and a proposal for assessment of a per parcel and per acre assessment. These are developed by the district following public hearings. This process is specified in statute at RCW 89.08.400. The District had been receiving approximately \$600,000 per year under the assessment. The assessment expired five years after initial adoption, ending in December 2017.

In order to continue funding, the District must propose to the County Commissioners either the continuation of the assessment or implementation of a rate and charge system. In either case the District was required to submit the proposal to the County Commissioners before the expiration of the current assessment at the end of 2017 in order to avoid any interruption in, or loss of, funding.

District Supervisors (Johnson, Meade, Mankamyer, Fleischner and Rushton) serving during 2017 demonstrated an ongoing commitment to the process of adopting a proposed rates and charges system to provide funding to the District. An example of their commitment included unanimous approval by the supervisors on February 7, 2017 to hire a consultant for \$27,990 to assist the District in the rates and charges development process. During a District presentation to County Commissioners, Mankamyer spoke favorably of the proposal and on the importance of the funding to support District's programs. A review of District Board meeting minutes and audio recordings up to November 6, 2017 showed none of supervisors raised any concerns on proceeding with the proposal.

Throughout 2017, staff provided updates and status reports to the board on the rates and charges proposal. Supervisors were provided an opportunity to ask questions of the consultant hired to assist the District and the Supervisors were

made aware of the need to complete the process prior to December 31, 2017 or the District would lose approximately \$600,000 in funding.

District Director Whalen served as District lead in coordinating the efforts and process for adoption of rates and charges. When Whalen went on Family Medical Leave on July 18, 2017, the responsibilities as lead for the proposal went to District Acting Director Moorehead. In mid-October 2017 Moorehead was contacted by the county and informed that the District would need to hold a public hearing and after the hearing supervisors would need to vote on approving the rates and charges proposal before the County Commissioners could act on the proposal. The hearing and approval by the District Board would need to be completed by early November 2017 to allow time for the county to schedule a meeting for the proposal to come before the County Commissioners prior to the end of the year.

In an October 18, 2017 email to District Supervisors, Moorehead informed supervisors of the need to hold the hearing and vote on approving the rates and charges proposal. (Exhibit H) Supervisors expressed concerns on the short notice in scheduling the hearing, but worked with Moorehead through emails to schedule the hearing for November 6, 2017 to receive public comment and then vote on the proposal. Supervisors were aware a quorum of three supervisors (four supervisors were serving at the time of the scheduled hearing) would need to be present to have a quorum.

Early on in the discussions to set the hearing, Mankamyer stated he would not be available for the meeting, Rushton and Fleischner said they would participate by phone, and Johnson stated to Moorehead he would call in by phone as he will be attending a dairy conference.

On the day of the hearing, Fleischner and Rushton called into the meeting and Johnson and Mankamyer did not call into the meeting. Without the participation of at least three supervisors to establish a quorum, the meeting was canceled. The cancelation of the hearing resulted in the District not being able to complete the process by December 31, 2017 to adopt the rates and charges proposal.

It should be noted in interviews with Franks and Moorehead, they stated observing Joe Hanna (citizen present at the hearing) receiving a phone call from Johnson just prior to the scheduled start of the meeting. Hanna's phone was turned on and announced the caller as Johnson. This observation was also supported by a public statement made by District Associate Supervisor Joel Hanson. During the time of the scheduled hearing, Johnson was in Yakima

attending the Washington State Dairy Federation Annual Conference at the Yakima Convention Center in downtown Yakima.

Although Johnson has stated in public his support for the rates and charges proposal he was quoted in a February 27, 2018 news article stating, “the loss of the revenue also could be viewed as a savings for the taxpayers. Tax payers saved nearly \$600,000 that would have gone to overcompensated bureaucrats sucking the public teat.” (Exhibit P)

A review of meeting minutes prior to the November 6, 2017 meeting showed Johnson and Mankamyer had almost perfect attendance of board meetings during their terms as District supervisors.

Discussion and Conclusions:

According to the Conservation Commission’s administrative rules, malfeasance is defined as: “wrongful conduct that affects, interrupts, or interferes with the performance of a supervisor’s official duty.” WAC 135-110-110

In the same administrative code provision, “neglect of duty” is defined a failure by a supervisor or supervisors to perform mandatory duties. WAC 135-110-110

Mankamyer and Johnson have placed blame on Moorehead and District staff in missing deadlines in the process for approval of the proposal. From email documentation, review of meeting minutes and audio it appears staff did keep the board current on the process. Rushton and Fleischner stated District staff was supportive in working with the board throughout the process. Email documentation supports Moorehead was diligent in working with the board when it was brought to her attention the need for the November 6, 2017 hearing and meeting to vote on the proposal.

Mankamyer was quoted in the February 27, 2018 news article the District did not have a policy on participating in meetings remotely. (Exhibit P) Yet there is no record of this concern being brought up during the discussion on scheduling the meeting.

Up until the November 6, 2017, Johnson and Mankamyer appeared to be supportive of the proposal yet chose not to attend a meeting critical to the approval of the proposal and future funding of the District. With a history of faithful attendance to previous meetings and having the ability to phone into the meeting it appears difficult to understand their lack of participation other than lack of support for or interest in the proposal. While they are free to oppose or

express concerns about the proposal, their repeated prior actions in support of advancing the proposal makes their later conduct appear misleading. And by indicating early support with other Board members, funds and time were expended in the exploration of renewing the rates and charges.

By all accounts gathered by the investigation Johnson did have the ability to call into the meeting. He was in an area with cell reception and witnesses confirm he was able to make a call to Hanna just prior to the meeting.

Malfeasance was exhibited by Johnson in not participating in the November 6, 2017 meeting. Johnson had given Moorehead, Rushton and Fleischner reason to believe he would be participating in the meeting. His conduct interfered with Rushton's and Fleischner's ability to perform their duties as District supervisors in receiving comments from the public and making a decision on the rates and charges proposal.

Mankamyer did not exhibit malfeasance or neglect of duty. When the discussions on scheduling the November 6, 2017 meeting took place, he was upfront with Moorehead and the other three supervisors on not being available to participate in the meeting. It should be noted his accusations of blaming staff for the failure of approval of the funding proposal appears to be unfounded.

Complaint #8: Conflict of interest between District Lead Entity Coordinator and a non-profit organization:

Citizen concerns were raised to the board concerning a possible conflict of interest in the work conducted by the District's Lead Entity Coordinator Hatch-Wineka, and her relationship with the executive director (her husband) of a non-profit organization receiving funding for salmon restoration projects.

Investigation:

District Deputy Director Hatch-Wineka also serves as Lead Entity Coordinator for WRIA 13. In her role as lead entity coordinator, Hatch-Wineka is to coordinate the activities of WRIA 13, a workgroup utilized to review and approve projects to enhance and support salmon recovery efforts. Funding and support for these projects is provided by the Washington State Recreation and Conservation Office (RCO).

Beginning in early 2017, and at the July 25, 2017 District Board meeting, Joe Hanna (a citizen) expressed concerns about a conflict of interest between Hatch-Wineka and the South Puget Sound Salmon Enhancement Group (SPSSEG), a local non-profit organization involved in salmon recovery efforts. Hanna alleged funds from the WRIA 13 workgroup Hatch-Wineka coordinates were being awarded to the SPSSEG, an organization her husband is the executive director of. Upon receiving the concerns from Hanna, District Chair Johnson, in consultation with Commission Regional Manager Joy, made a request of Enduris (the District's liability insurer) to investigate the alleged conflict of interest concerning Hatch-Wineka's role as Lead Coordinator and the SPSSEG.

During the September 26, 2017 District Board meeting, Enduris' legal representative Michelle Fossum shared her finding in executive session with the board. Later, as stated in the District Board meeting minutes Fossum shared her findings during the public portion of the district meeting. Fossum indicated the investigation found "no findings of concern" related to Hatch-Wineka's role as District Lead Entity Coordinator for WRIA 13 and funding to the SPSSEG.

Although the Enduris investigation found no findings of concern, Johnson and Mankamyer continued to raise concerns about Hatch-Wineka and her role as lead entity coordinator. Hatch-Wineka stated during her interview for this investigation, Johnson has continued to make accusations of conflict of interest against her to third parties even after the results of the investigation concluded no findings of concern.

Mankamyer shared with the Commission an email and documents related to Hatch-Wineka's departure from her job at the Mason Conservation District. Mankamyer stated this information was part of his continuing investigation concerning Hatch-Wineka. (Exhibit Y)

Discussion and Conclusions:

Johnson was responsive in requesting the investigation when the concerns against Hatch-Wineka were presented to the board. The investigation conducted by Enduris did not find a conflict of interest.

The actions of Mankamyer and Johnson after the investigation do raise concerns on their continued attempts to discredit Hatch-Wineka. Their attempts to discredit her may not raise to the level of neglect of duty but do raise concerns if they are continuing to discredit her after completion of the investigation. It is unclear the purpose of sending the Mason Conservation District materials to the Commission investigation staff. Because Mankamyer and Johnson declined to be interviewed for this investigation, we are unable to determine what Mankamyer and Johnson thought the relevance of the information was. Regardless, the conduct of District staff and any employment concerns the District board may have of District staff are not issues within the authority of the Conservation Commission.

Complaint #9: Potential elections irregularities related to the District's March 3, 2018 supervisor election:

The District completed the election process for District Supervisor on March 3, 2018 resulting in Paul Pickett being elected the District's newest supervisor. During and after the election, the Commission received several complaints regarding the conduct of the election. Included in the complaints submitted to the Commission were concerns from District Supervisor Mankamyer on possible election improprieties. On March 27, 2017, Mankamyer stated his concerns on possible election improprieties to the Commission and to the office of the Washington State Secretary of State. In his communication to the Commission and Secretary of State, he stated several examples of alleged election irregularities and asked for an independent investigation of the election. (Exhibit O)

Investigation:

On March 8, 2018, the District released the unofficial results of the election. Paul Pickett 2,101 votes, Joe Hanna 275 votes and two candidates withdrawing from the race prior to the election receiving 17 votes.

On May 1, 2018, the Office of Washington State Secretary of State provided a response to Mankamyer's letter of concerns and request for an investigation. In their response they stated having no authority over the election of conservation district supervisors.

Due to the concerns raised to the Commission, Commission Election Officer Bill Eller conducted an investigation of the District's March 3, 2018 election. Eller presented his findings in a May 17, 2018 memo to Commission Members and Executive Director Clark. Eller's investigation concluded "no significant noncompliance with the election rules and procedures. Therefore, we recommend the announcement of the official winner of the TCD (District) election". (Exhibit A13)

During the May 17, 2018 Commission Business meeting Commission Members certified the March 3, 2018 District Supervisor election with Paul Pickett as the winner of the election.

Discussions and Conclusions:

The investigation conducted by Eller found no issues in the conduct of the election affecting the outcome. Furthermore, the complaint raised no issues relevant to this investigation.

It should be noted Mankamyer submitted his concerns and request for an investigation to the Commission and Washington Secretary of State representing himself as District Auditor. A review of District meeting minutes and audio recordings found Mankamyer had made a reference to his allegations of election irregularities during the March 27, 2018 District Board meeting. During that same meeting there was no discussion by the District Board authorizing Mankamyer, acting as District Board Auditor, to request an investigation into the District Supervisor election.

State law describes the powers and duties of the board of a conservation district as residing with the full board with the option for delegating powers and duties to other board members. RCW 89.08.210. Supervisors who assume board powers without a proper delegation of authority act in violation of RCW 89.08.210. The purpose of the statute and delegation requirements is because Supervisor actions could legally bind the entire board or could put the entire board in legal risk. Failure to follow the requirements of RCW 89.08.210 and assume powers not properly delegated is a violation of state law.

Complaint #10: Washington State University Energy Program (manager of District's IT servers) not fulfilling a public disclosure request and Supervisor Johnson taking unauthorized action:

Since the submission of the letter of concern by Supervisor Fleischner to the Commission, Supervisors Mankamyer and Johnson have made allegations and accused Fleischner of not writing the letter, the letter having been written on a District computer and the letter actually being written by District staff. (Exhibit D) Johnson and Mankamyer initiated an investigation into the source of the Fleischer letter.

This matter was brought before the Commission as part of this investigation by Mankamyer and by legal counsel for Johnson.

A request for public information was submitted to WSU by Johnson representing himself as District Board Chair. In response to Johnson's request WSU staff referred the request to District Acting Executive Director Moorehead.

On February 16, 2018, Johnson filed a claim in Thurston County Superior Court claiming WSU has not responded to his request despite its duty to provide the requested information by specific deadlines. RCW 42.56.510; .520

Investigation:

In 2011, the District entered into a MOU with WSU IT to store and maintain District information. The MOU was for the time period 2011-2014. Although the MOU was never updated, WSU IT has continued to store and maintain District information. Upon learning WSU IT held District information Johnson and Mankamyer made an initial inquiry to WSU IT Support Specialist Pierson. Upon receiving the inquiry Pierson contacted Moorehead informing her of Johnson's interest in District information stored by WSU.

On January 25, 2018, Johnson and Mankamyer met with WSU IT staff to discuss their interest in inspecting District records stating they were investigating wrongdoing by District staff. Moorehead was invited by WSU IT to attend the meeting. During the meeting, Johnson and Mankamyer questioned WSU IT on why Moorehead was invited to the meeting as they were conducting an investigation of wrongdoing by staff.

On January 31, 2017, Johnson representing himself as District Chair submitted two requests for information from WSU IT. (1) District emails and metadata related to the creation and modification of the November 29, 2017 letter Fleischer provided to the Commission. (2) Any and all emails sent to and from the District

containing the names of Johnson, Mankamyler, Fleischner, Rushton, Moorehead, Joy, Clark, Franks, and Hatch-Wineka from November 1 to December 5, 2017.

Johnson's request for District information was redirected by WSU IT to the District. On February 8, 2018, Moorehead responded to Johnson asking him to send any public requests to her and she would get the information for him.

Since not receiving the requested information from WSU IT, on February 16, 2018 Johnson filed with the court claiming WSU IT refused to provide District records retained by WSU IT requested by him.

Discussion and Conclusions:

On June 15, 2018 the court ruled WSU IT violated the State Public Records Act (PRA) by directing Johnson to the District to respond to his information request.

Johnson, through his attorney, has presented information to Commission staff conducting this investigation regarding the legal proceedings. It is unclear as to the relationship of the legal proceedings to this investigation. However, taken in a light most favorable to Johnson, we assume the purpose of sending the legal proceeding information is to demonstrate the conduct of Moorehead in handling the matter. Whether or not Moorehead or any other district staff member impeded the release of documents is a matter for the court to decide. As noted previously, the Commission has no authority over district staff.

Throughout the process in requesting information held by WSU Johnson and Mankamyler made claims they were investigation wrongdoing by District staff. In his request for information from WSU Johnson stated his request as "I Eric Johnson, Chair Thurston Conservation District (TCD)". A review of District meeting minutes and meeting audio from December 1, 2017-January 31, 2018 found no reference of discussion by the board on having the board chair or auditor conduct an investigation.

As a private citizen Johnson and Mankamyler have the right to request information from a state agency. But when requesting the information Johnson represented himself as District Board Chair. Those to whom he made this representation could reasonably assume he was acting by direction of the board or at least with the knowledge of the board. There is no evidence to support the board was made aware of his intent to request District information or to conduct an investigation as District Board Chair.

RCW 89.08.210 states the Supervisors may delegate to the chair, or to one or more Supervisors, such powers and duties as the Supervisors deem proper.

District policy on the roles and responsibilities of the board chair does not provide direction to the chair in conducting investigations on their own and expects all supervisors to act with respect to other board supervisors. (Exhibit U) There was no specific action by the Board authorizing Johnson or Mankamyer to conduct an “investigation” as they held themselves out to others to be doing.

Johnson’s actions in representing himself as District Board Chair when requesting information to conduct an investigation could be viewed as malfeasance resulting in the remaining District Supervisors not having the opportunity to perform their official duties in determining a need to request information, to make a claim to the courts, or to conduct an investigation of staff.

State law describes the powers and duties of the board of a conservation district as residing with the full board with the option for delegating powers and duties to other board members. RCW 89.08.210. Supervisors who assume board powers without a proper delegation of authority act in violation of RCW 89.08.210. The purpose of the statute and delegation requirements is because Supervisor actions could legally bind the entire board or could put the entire board in legal risk. Failure to follow the requirements of RCW 89.08.210 and assume powers not properly delegated is a violation of state law. Conduct in violation of a state law is neglect of duty. WAC 135-110-110.

Johnson and Mankamyer are in neglect of duty for holding themselves out as conducting an investigation on behalf of the District Board when the Board gave them no authority to do so.

Complaint #11: Dismissal of District Associate Supervisor Joel Hansen:

Complaints have been filed with the Commission regarding the dismissal of Joel Hansen as district associate supervisor. Hansen was appointed District Associate Supervisor during the February 7, 2017 District Board meeting. At the end of the May 29, 2018 District Board meeting District Board Chair Johnson moved to discontinue Hansen as district associate supervisor. In making the motion, Johnson stated Hansen's lack of participation in District Board meetings, upholding District policies and not acting appropriately in representing the District. The board proceeded in voting 3 to 2 to discontinue Hansen as district associate supervisor.

Investigation:

District Policy 1.5 states associate supervisors serve the District in a capacity similar to a member of the board of supervisors, with the primary exception of not having authority to vote on official actions of the board. Minimum job requirements of an associate board supervisor include: (1) associate board supervisors are to attend board meetings on at least a quarterly basis; (2) serve on one or more sub-committees, as defined by the board; and (3) participate in development or implementation of one program or service annually. (Exhibit U)

There is no set term for associate board supervisors; however, if the board or staff has not had contact with the associate board supervisor for a period of three months, he or she will be contacted by the District Board to determine if continuing the appointment is appropriate or warranted. Associate board supervisors serve at the discretion of the District Board of Supervisors, and the board may terminate the appointment at any time. Prior to the termination of the appointment, the District Board Chair or Executive Director will attempt to contact the associate supervisor to schedule an interview before terminating the appointment.

Review of District meeting minutes and meeting audio document Hansen attending meetings in March, July and November 2017 and January, February and March 2018. This would support Hansen meeting the meeting attendance requirements for an associate supervisor.

During the last six months of Hansen's term he has been vocal in expressing his concerns toward Johnson and Mankamyer, stating his concerns on how Johnson has conducted District Board meetings, Johnson's and Mankamyer's treatment of staff and Johnson calling Joe Hanna prior to the November 1, 2017 public hearing on rates and charges but not calling into the meeting. Johnson has also expressed

his concerns toward Hansen on comments Hansen has made against him in District meetings and to the public.

Although, Johnson did express his concerns about Hansen's comments there is no documentation to support Johnson or Moorehead ever reached out to Hansen prior to the vote to discontinue Hansen as associate supervisor as required by District policy.

At the end of the May 29, 2018 District Board meeting Johnson moved to discontinue Joel Hansen as associate supervisor for lack of participation prior to January 2018 and for not upholding District policies or acting appropriately to represent the Conservation District in a good light. Prior to the vote, Rushton noted Hansen's name is included as attendee at November 21, 2017 board meeting. Powell then seconded Johnson's motion. Johnson, Mankamyer and Powell approved. Pickett and Rushton opposed. The motion passed.

Discussion and Conclusions:

As stated in District Policy district associate supervisors serve at the discretion of the board and the board has the right to terminate an associate district supervisor after following the process stated in District policy. Although, it may not raise to the level of malfeasance Johnson did not follow the required process in contacting Hansen prior to making the motion to terminate. In voting in favor of discontinuing Hansen as associate supervisor Johnson, Mankamyer and Powell violated the District's process prior to making a decision on discounting Hansen's position as associate supervisor. In both cases District policy was not followed.

5. SUMMARY of CONCLUSIONS

For many years, the Thurston Conservation District had been operating in a “strong staff” scenario. This is a situation where a conservation district board gives the district manager broad leeway in the management and operation of the district. In this setting District staff are generally free from daily oversight by the district board. More recently new District board members at the Thurston Conservation District have sought to bring more authority and control of District operations back to the board and away from the District manager and staff.

There is no “right way” to operate a conservation district. Either of these scenarios – a strong staff, or a strong board – can function effectively in the right circumstances. But the transition from a “strong staff” structure to a “strong board” structure can lead to bad feelings among staff who do not want new or additional oversight, and frustrations by board members who want more say in the operation of a district. Such a transition can also lead to frustration among board members who may feel staff is resisting efforts at change. None of this relieves any of the board members from an obligation to follow existing laws and district policies.

It is the conclusion of the investigators that this is the situation now facing the Thurston Conservation District. At least two Supervisors of the District would like to implement a transition from a “strong staff” to a “strong board”. As noted, neither of these approaches is necessary wrong. Where the problems can arise is how the staff or Supervisors react to the challenges of the transition.

For the Thurston Conservation District, over the time period reviewed by the investigation the district has seen significant deterioration in fiscal health, accountability and its standing in the community. This deterioration is the result of the actions of Johnson and Mankamyer in their attempts to “take back control of the District”. Through their actions they have exhibited malfeasance and neglect of duty by creating a toxic work environment for staff, not following District policies, not being accountable to the public, using their positions for personal gain and disregard for the financial well-being of the District.

It has been alleged the District staff had a role to play in the current condition of the District. Accusations towards the staff have included questions regarding the mishandling public funds, reluctance of staff to implement programs as requested by board members, and engaging external stakeholders to undermine board efforts. Some of these issues were investigated, such as the questions regarding expenditure of funds between the district and the SPSSEG, by other entities with no findings of wrongdoing. (See Complaint #9) Other questions are being

litigated. (See Complaint #11) Although the Commission may review the conduct of District staff in the context of the Commission's authority to review district programs and guide districts, the Commission does not have the authority to remove or discipline District staff. As stated at the beginning of this investigation report, the legal authority of the Commission to review and possibly remove applies only to conservation district supervisor.

But the conduct of staff has, on some occasions, created suspicion by some district supervisors. As a result, a lack of trust has built between some district supervisors and staff that has impacted the operation of the district. This distrust will take time and effort by all parties to correct for the best interest of the work of the Thurston Conservation District.

6. RECOMMENDATIONS

Based on the conclusions found by Commission staff conducting this investigation, staff offer the following options and recommendations:

Option 1:

Exercise its power to remove under RCW 89.08.200 by removing Supervisor Eric Johnson for neglect of duty and malfeasance.

Option 2:

The Commission should not reappoint Eric Johnson when his term expires in 2019.

Option 3:

Exercise its power to remove under RCW 89.08.200 by removing Supervisor Richard Mankamyer for neglect of duty and malfeasance.

Option 4:

Exercise its power to review district programs under RCW 89.08.070 by issuing a letter of guidance to the District that addresses Supervisor Mankamyer's actions in lieu of removal from office.

Option 5:

All current Thurston Conservation District supervisors should take training on the conduct of meetings and the Open Public Meetings Act, the Public Records Act, the Municipal Ethics Act, and pertinent District policies. The Conservation Commission should withhold funding to the district until all supervisors complete the training consistent with the Commission's authority in RCW 89.08.070(5).

Option 6:

All current Thurston Conservation District staff and supervisors should take training on the state Public Records Act, the Public Records Act, the Municipal Ethics Act, and pertinent District policies. The Conservation Commission should withhold funding to the district

until all staff and supervisors complete the training consistent with the Commission's authority in RCW 89.08.070(5).

Option 7:

The Commission have an audit conducted to review the fiscal operations and fiscal status of the District based on the Commission's authority in RCW 89.08.070(5). The audit could be conducted through the state Auditor's Office or through a private accounting firm.

Investigation Staff Recommended Action:

Based on the conclusions and findings of this report, it is recommended there is sufficient justification 1) for the Executive Director to issue notices to Supervisor Johnson and Supervisor Mankamyer for their responses under WAC 135-110-960 and 2) for forwarding this report and the Supervisors' responses to the Commission for hearing.

Staff recommends the following action:

- Recommend implementing Options 1 and 3 on removal of Johnson and Mankamyer for the reasons stated in this report for each complaint and itemized in the summary of findings herein.
- Recommend implementing Options 5 and 6 on training for District Supervisors and staff.

Pursuant to the Commission's authority under RCW 89.08.070(1) to review district programs and to assist and guide districts, staff also recommends Options 5 and 6. Supervisors of the Thurston District would benefit from training on the state Open Public Meetings Act, the Public Records Act, the Municipal Ethics Act, and pertinent District policies. Tensions continue to be high at the board with respect to the conduct of meetings and executive sessions. It is hoped training for all board members and staff would help alleviate some of the tensions at the meetings. Also, all board supervisors and staff of Thurston District would benefit from additional training in the state Public Records Act.

Staff also recommends Conservation Commission funding, or some percentage of funding, be withheld from the district until all staff and supervisors complete this training.

Staff also recommends implementation of Option 7. Questions of the fiscal standing of the district arose in the investigation. This is a question that can only be resolved through

an independent audit. Although the State Auditor may be requested to conduct the audit, staff recommends the audit be conducted by an independent private firm.

Summary of Specific Findings:

Johnson

Exhibited Neglect in Duty by:

1. Utilizing his position as District Supervisor to obtain special privileges or exemptions for himself;
2. Not maintaining timely and accurate records of District business;
3. Not responding to public disclosure requests promptly,
4. Delaying the signing of District checks, and
5. Inappropriate conduct toward staff.

Exhibited Malfeasance:

1. By wrongful conduct in failing to participate in a scheduled hearing;
2. Inappropriate conduct toward staff creating potential liabilities for the district;
3. Failure to comply laws and rules of the state; and
4. Not allowing a supervisor to perform their duties.

Mankamyer

Exhibited Neglect in Duty by:

1. Not maintaining timely and accurate records of District business,
2. Not responding to public disclosure requests promptly,
3. Delaying the signing of District checks and timesheets, and
4. Inappropriate conduct toward staff.

Exhibited Malfeasance:

1. By wrongful conduct in exhibiting inappropriate conduct toward staff creating potential liabilities for the district; and
2. Inappropriate conduct toward staff.

Fleischner

Did not exhibit Neglect of Duty or Malfeasance. Expressed her concerns in board meetings and knowledgeable of District operations and policies.

Rushton

Did not exhibit Neglect of Duty or Malfeasance. Long time board supervisor, did appear at times to be passive in board meetings.

Powell

Did not exhibit Neglect of Duty or Malfeasance. New supervisor to the board (7 months into her term). Did appear to be taking some direction from Johnson and Mankamyer.

Pickett

Did not exhibit Neglect of Duty or Malfeasance. New supervisor to the board (1 month into his term).

Sterns

Associate Supervisor Sterns did not exhibit Neglect of Duty or Malfeasance with respect to the complaints covered in this investigation.

Hansen

Associate Supervisor Sterns did not exhibit Neglect of Duty or Malfeasance with respect to the complaints covered in this investigation.

7. PROCESS AND NEXT STEPS

The Conservation Commission staff conducting the Thurston District investigation will present the investigation report and recommendations to the Commission's Executive Director Mark Clark. Once presented to Director Clark the report will be available to the public, but not to the Commission, for review. No public comment on the report will be taken by the Commission at this time.

Director Clark will review the report and recommendations and make a determination which recommendations he will advance to the full Conservation Commission.

If the director does not recommend removal of any board supervisor(s), the director will submit the investigation report to the full Conservation Commission along with the director's recommendations for further action by the Commission.

If the director recommends removal of any board supervisor, the supervisor(s) will receive notice of this decision from the director. The supervisor(s) will then have 30 days in which to submit a written response to the director. WAC 135-110-960. After the 30-day response period has passed, all written responses will be submitted to the full Conservation Commission, along with the report, for the Commission's further action under WAC 135-110-960.

WSCC THURSTON CD INVESTIGATION REPORT – APPENDICES

APPENDIX A

SUPPORTING DOCUMENTS

- **Exhibit A** – RCW 89.08
- **Exhibit B** – Shana Joy letter to District Board of Supervisors November 1, 2017
- **Exhibit C** – Commission Business meeting minutes and motion to issue a notice of a hearing November 30, 2017
- **Exhibit D** – Samantha Fleischner letter to WSCC Executive Committee November 29, 2017
- **Exhibit E** – District Governance Action Plan adopted January 30, 2018
- **Exhibit F** – Commission public announcement on the investigation February 27, 2018
- **Exhibit G** – WAC 135.11
- **Exhibit H** – Email chain related to scheduling November 6, 2017 Rates and Charges Public Hearing
- **Exhibit I** – Notice for November 6, 2017 Rates and Charges Public Hearing notice
- **Exhibit J** – Approved 2017 District Budget and Work Plan
- **Exhibit K** – Memo from Mr. Mankamyer to staff and board members October 2016
- **Exhibit L** - Memo from Mr. Mankamyer June 30, 2017
- **Exhibit M** – Commission’s response to Mr. Mankamyer
- **Exhibit N** – Email exchange with Mr. Mankamyer
- **Exhibit O** – March District election concerns stated by Mr. Mankamyer
- **Exhibit P** – News article in the Olympian February 27, 2018
- **Exhibit Q** – Claim filed with the courts Johnson vs WSU February 16, 2018
- **Exhibit R** – Meeting notes from Shana Joy
- **Exhibit S** – Email exchange on status of public disclosure requests
- **Exhibit T** – Supervisor training dates provided by the Commission
- **Exhibit U** – District Policy and Procedures (current and past)
- **Exhibit V** – Memo from District staff to District Board of Supervisors February 25, 2017
- **Exhibit W** – Letter from Enduris to District Board of Supervisors June 4, 2018
- **Exhibit X** – Citizen’s freedom of information act first and second requests
- **Exhibit Y** – Email and documents from Mr. Mankamyer concerning Ms. Hatch-Winecha
- **Exhibit Z** – Example letter from Commission sent to District Board Supervisors April 20, 2018
- **Exhibit A1** – Notices from Washington State Human Rights Commission May 11, 2018
- **Exhibit A2** – Emails on training opportunities provided to District Board Supervisors
- **Exhibit A3** – Memo from District to community on District funding December 4, 2017
- **Exhibit A4** – Email and website link forwarded from Mr. Mankamyer to Ms. Kronenbury

- **Exhibit A5** – Example of late fees charged to the District
- **Exhibit A6** – Email exchanges concerning approval of timesheets
- **Exhibit A7** – Email to District Board Supervisors from Steve Davis, CPA December 20, 2017
- **Exhibit A8** – District Board Supervisor start dates
- **Exhibit A9** – Kathleen Whalen letter of resignation November 17, 2017
- **Exhibit A10** – Correspondence from James Goche’
- **Exhibit A11**-. Nyard emails
- **Exhibit A12** – Emails between Warren and Johnson on soil test results
- **Exhibit A13** – District elections investigation by Commission
- **Exhibit A14** – List of District meeting minutes not approved and signed by the chair
- **Exhibit A15** – Johnson cost-share project documents
- **Exhibit A16** – Email exchange between Franks and Mankamyer
- **Exhibit A17** – Rushton email to Moorehead and Joy
- **Exhibit A18** – Franks email related to supervisor reimbursements
- **Exhibit A19** – Concern filed by Franks to the Washington State Human Rights Commission
- **Exhibit A20** – Concern filed by Moorehead to the Washington State Human Rights Commission

APPENDIX B

MEETING MINUTES

2016

- **Exhibit BA** – Board meeting minutes January 26, 2016
- **Exhibit BB** – Board meeting minutes February 29, 2016
- **Exhibit BC** – Board special meeting minutes March 17, 2016
- **Exhibit BD** – Board meeting minutes March 29, 2016
- **Exhibit BE** – Board meeting minutes April 26, 2016
- **Exhibit BF** – Board meeting minutes May 31, 2016
- **Exhibit BG** – Board meeting minutes June 28, 2016
- **Exhibit BH** – Board meeting minutes July 26, 2016
- **Exhibit BI** – Board meeting minutes August 30, 2016
- **Exhibit BJ** – Board work session minutes WACD resolutions motions September 12, 2016
- **Exhibit BK** – Board meeting minutes September 27, 2016
- **Exhibit BL** – Board meeting minutes October 25, 2016
- **Exhibit BM** – Board meeting minutes December 13, 2016

2017

- **Exhibit BN** – Board meeting minutes February 7, 2017
- **Exhibit BO** – Board special meeting minutes February 21, 2017
- **Exhibit BP** – Board meeting minutes February 28, 2017
- **Exhibit BQ** – Board meeting minutes March 28, 2017
- **Exhibit BR** – Board special meeting minutes March 29, 2017
- **Exhibit BS** – Board work session minutes April 10, 2017
- **Exhibit BT** – Board meeting minutes April 25, 2017
- **Exhibit BU** – Board work session minutes April 28, 2017
- **Exhibit BV** – Board special meeting minutes May 18, 2017
- **Exhibit BW** – Board meeting minutes May 30, 2017
- **Exhibit BX** – Board special meeting minutes June 6, 2017
- **Exhibit BY** – Board meeting minutes June 29, 2017
- **Exhibit BZ** – Board meeting minutes July 25, 2017
- **Exhibit BBA** – Board special meeting minutes July 31, 2017
- **Exhibit BBB** – Board special meeting minutes August 15, 2017
- **Exhibit BBC** – Board meeting minutes August 21, 2017
- **Exhibit BBD** – Board special meeting minutes August 29, 2017
- **Exhibit BBE** – Board special meeting minutes September 5, 2017
- **Exhibit BBF** – Board work session and board meeting minutes September 26, 2017

- **Exhibit BBG** – Board special meeting minutes October 2, 2017
- **Exhibit BBH** – Board meeting minutes November 1, 2017
- **Exhibit BBI** – Board work session and board meeting minutes November 21, 2017
- **Exhibit BBJ** – Board work session and board meeting minutes December 20, 2017

2018

- **Exhibit BBK** – Board special meeting minutes January 9, 2018
- **Exhibit BBL** – Board work session and board meeting minutes January 30, 2018
- **Exhibit BBM** – Board work session and board meeting minutes February 27, 2018
- **Exhibit BBN** – Board special meeting minutes March 5, 2018
- **Exhibit BBO** – Board work session and board meeting minutes March 27, 2018
- **Exhibit BBP** – Board meeting minutes April 24, 2018
- **Exhibit BBQ** – Board meeting minutes May 29, 2018
- **Exhibit BBR** – Board special meeting minutes June 7, 2018

MEETING MATERIALS AND AUDIO LINK

<https://www.thurstoncd.com/board-meeting-materials/>

APPENDIX C

TIMELINE

- **January 26, 1996** - Doug Rushton begins first term as supervisor
- **September 19, 2013** – Eric Johnson begins first term as supervisor
- **May 21, 2015** – Samantha Fleischner begins serving as supervisor
- **January 26, 2016** – Board meeting
 - Supervisors present – Hall, Johnson, Rushton, Kreger
- **February 29, 2016** – Board meeting
 - Supervisors present – Hall, Johnson, Rushton, Kreger and Fleischner
 - WSCC staff- Shana Joy
 - Approval of 2016 Work Plan
- **March 17, 2016** – Special board meeting
 - Supervisors present – Hall, Johnson, Fleischner, Rushton
 - Supervisor Treacy Kreger resigns from board
 - Board approved resolution #03-2016 Board of Supervisor Guidelines & Officer Descriptions Policy
- **March 29, 2016** – Board meeting
 - Supervisors present – Hall, Johnson, Fleischner, Rushton
 - WSCC staff – Shana Joy
 - Supervisor Fleischner appointed by board to be auditor
- **April 26, 2016** – Board meeting
 - Supervisors present – Fleischner, Hall, Johnson, Rushton
 - WSCC staff – Shana Joy
- **May 31, 2016** – Board meeting
 - Supervisors present – Fleischner, Rushton, Meade, Johnson
 - Aslan Meade joins board replacing David Hall
 - New board positions approved by board
 - Johnson - Chair
 - Rushton - Vice-chair
 - Fleischner – Auditor

- **June 28, 2016** –Board meeting
 - Supervisors present – Johnson, Fleischner, Meade, Rushton
 - Board approved resolution #12-2016 Update of Tele Commute/Flextime Policy

- **July 26, 2016** – Board meeting
 - Supervisors present – Johnson, Fleischner, Rushton, Meade
 - WSCC staff – Shana Joy
 - Approved updated 2016 budget
 - Board was presented with update on researching a possible Easement Program
 - Board approved Conservation Easements as #1 unfunded activity
 - Joe Hanna, citizen raised concern regarding supervisor(s) communications with possible applicants for open board supervisor position
 - Board approved moving forward with process to fill open board supervisor position

- **August 30, 2016** – Board meeting
 - Supervisors present – Rushton, Fleischner, Johnson, Meade
 - Richard Mankamyer appointed by the board to fill current vacant position

- **September 12, 2016** – Work Session
 - Supervisors present – Mankamyer, Rushton, Meade, Johnson
 - WACD special meeting to discussion WACD resolutions motions

- **September 27, 2016** – Board meeting
 - Supervisors present – Mankamyer, Johnson, Meade
 - WSCC staff – Shana Joy
 - Board updated Authorized Bank Account Signers

- **October 25, 2016** – Board meeting
 - Supervisors present – Mankamyer, Johnson, Rushton, Meade
 - Mr. Mankamyer shared a memo to board and staff
 - WSCC staff – Shana Joy
 - Supervisor Mankamyer requested the Executive Director provide him with supervisor training
 - Board was presented with and reviewed 2017 staffing plan
 - Board decided to stop rotating meeting chairs and just keep with one chair appointed by the board, currently Mr. Johnson

- **December 13, 2016** – Board meeting
 - Supervisors present – Mankamyer, Johnson, Rushton, Meade, Fleischner
 - Board received a report from staff on the process of hiring a Habitat Specialist and Resource Tech (David Nygard’s position, he will be retiring soon)
 - Supervisor Johnson requested to be involved in the hiring process
 - Board approved 2017 budget and related staffing plan
 - Issue of supervisors receiving cost share funds was discussed. No actions taken
 - Board tabled resolutions updating policies on Board of Supervisors Guidelines and Public Disclosure Requests
 - Approved 2017 Shellfish Protection District work plan
 - Supervisor Mankamyer moved and board approved pursuing a Rates and Charges fee system
 - Executive Director Whalen shared with board members dos and don’ts when three or more supervisors are at meetings or public events

- **February 7, 2017** - Board meeting
 - Supervisors present – Mankamyer, Johnson, Rushton, Meade, Fleischner
 - WSCC staff – Shana Joy
 - Discussions on meetings being too long
 - Staff shared with board newly hired Habitat Tech is working with the CREP programs and have identified candidate for the Resource Tech positions the hiring committee would like to make an offer to
 - Staff reviewed with the board December 20, 2016 District sub-committee on Conservation Easements summary notes
 - Board approved staff moving ahead with filling out a Conservation Futures application
 - Supervisor Johnson shared with board concerns he had heard from Capital Land Trust
 - Appointed Joel Hansen and Chris Stearns as Associate Board Supervisors
 - Board approved hiring a contractor for up to \$27,990 to assist the district in the Rates and charges process
 - Supervisors Johnson and Mankamyer expressed concerns in relation to the hiring process for filling Mr. Nygard’s District Resource Specialist position
 - Tabled policy update for Board of supervisors Guidelines

- **February 21, 2017** - Special board meeting
 - Supervisors present - Mankamyer, Johnson, Rushton, Meade, Fleischner
 - Policy review discussions
 - Discussions on path forward in filling the Resource Tech position(s)
 - Supervisor Johnson expressed his continued frustrations with the process
 - Board approved the hiring of a part-time Natural Resource Tech
 - Board decided to move forward with the hiring process for the Resource Tech position

- **February 28, 2017** - Board meeting
 - Supervisors present – Mankamyer, Johnson, Rushton, Meade, Fleischner
 - WSCC staff – Shana Joy
 - Letter from staff to board of supervisors was presented to the board by District staff member Amy Hatch-Winecka
 - Tabled discussions on policy updates to Board of Supervisors Guidelines and Officer Position Descriptions
 - Board agreed to take up the offer from Commission to assist the District in district development

- **March, 2017** - Nicole Warren joins TCD staff as a part time Natural Resource Tech

- **March 28, 2017** - Board meeting
 - Supervisors present – Mankamyer, Johnson, Rushton, Meade
 - WSCC staff – Shana Joy
 - Joe Hanna, citizen gave lengthy statement of his concerns related to the District and staff during public comment period
 - Supervisors Meade and Rushton expressed concerns Chair Johnson had engaged in discussions with Mr. Hanna outside the board to orchestrate his statements to the board
 - Discussions on the format for meeting minutes
 - Update on the hiring status of the Resource Tech Position and review of the position description

- **March 29, 2017** - Special board meeting
 - Supervisors present – Mankamyer, Johnson, Rushton, Meade, Fleischner
 - WSCC staff – Shana Joy
 - Meeting was for an Executive Session to meet with Michelle Fossum, Attorney for Enduris to discuss Complaint/Charges and Performance of Employee

- **April 2017** - Enduris conducts investigation into staff concerns interviewing TCD staff

- **April 10, 2017** - Work session
 - Supervisors present – Mankamyer, Johnson, Rushton, Fleischner
 - WSCC staff – Stu Trefry
 - Work session to update TCD Strategic Plan

- **April 25, 2017** - Board meeting
 - Supervisors present – Mankamyer, Johnson, Rushton, Meade, Fleischner
 - WSCC staff – Shana Joy
 - Lengthy public comment by Joe Hanna, Citizen
 - Board approved moving forward with advertising for the Resource Tech Position

- Board approved check register (note: Supervisor Mankamyer abstained from the vote)
- Board approved extending current building lease for 12-18 months
- **April 28, 2017** - Work session
 - Supervisors present – Mankamyer, Johnson, Rushton, Fleischner
 - WSCC staff – Shana Joy
 - Board approved 2017-2022 Strategic Plan
- **May 18, 2017** - Special board meeting
 - Supervisors present – Mankamyer, Johnson, Rushton, Fleischner
 - WSCC staff – Shana Joy
- **May 30, 2017** - Board meeting
 - Supervisors present – Mankamyer, Johnson, Rushton, Meade, Fleischner
 - WSCC staff – Shana Joy (by phone)
 - Discussions on concerns of having long meetings. Board approved having just a 3 hour meeting
 - Board was updated by staff and John Ghilarducci, FCS Group (Consultant to District on Rates Charges) on the statue and next steps for moving ahead with the Rates and Charges proposal
 - Amy Franks brought before the board new reimbursement requests from supervisors. Supervisor Mankamyer expressed his concerns for there not being significant funding in the budget to cover his reimbursement requests. (Note: District currently does not have a policy for supervisor travel reimbursements)
- **June 6, 2017** - Special board meeting
 - Supervisors present – Mankamyer, Johnson, Rushton, Meade
 - Discussion on board meeting minutes and recording of meetings no specific format was agreed on.
 - Approved the update of Board Supervisor Guidelines and Officer Position Descriptions
 - Board was provided an update on the status of the Rates and Charges Process
- **June 29, 2017** - Board meeting
 - Minutes not available
- **July 18, 2017** - Kathleen Whalen, District Executive Director goes on Family Medical Leave (FMLA)
- **July 25, 2017** - Board meeting
 - Supervisors present – Mankamyer, Johnson, Rushton, Meade, Fleischner
 - WSCC staff – Shana Joy

- Joe Hanna, Citizen gave a lengthy presentation on his concerns related to possible staff conflict of interest, not moving forward on Easements and board not dealing with his perceived staff issues. No comments back from the board.
 - Board spent just over 2 hours in executive session with Michelle Fossum and Cheryl Middleton from Enduris

- **July 31, 2017** - Special board meeting
 - Supervisors present – Mankamy, Johnson, Fleischner
 - WSCC staff – Stu Trefry
 - Meeting minutes format discussed, no decisions made
 - Received update on resource Tech position hiring
 - Thirteen applications to review
 - Board had discussions on WRIA 13 Lead entity funding, no decisions made

- **August 15, 2017** - Special board meeting
 - Supervisors present – Mankamy, Johnson, Fleischner, Rushton
 - WSCC staff – Shana Joy and Rayledgerwood
 - Executive session to discuss evaluating the performance of a public employee(s) and receiving and evaluating complaints or charges against a public officer or employee

- **August 21, 2017** - Board meeting
 - Supervisors present – Mankamy, Johnson, Fleischner Rushton
 - WSCC staff – Shana Joy
 - Board received update from staff on Conservation Easements
 - Board met in executive session with Enduris Legal Representative Michelle Fossum
 - Discussion on District path forward, Fossum suggested board put out Request for Qualifications for legal representation
 - Moorehead appointed District Acting Executive Director
 - Received update on Rates and Charges process

- **August 29, 2017** - Special board meeting
 - Supervisors present – Mankamy, Johnson, Fleischner
 - WSCC staff – Shana Joy
 - Discussions on approval of meeting minutes
 - Board met in executive session to evaluate a complaint/charge and potential litigation and performance of a public employee

- **September 5, 2017** – Special board meeting
 - Supervisors present – Mankamy, Johnson, Fleischner, Rushton
 - WSCC staff – none

- Met in executive session with Enduris Legal Representative Fossum by phone to evaluate a complaint/charge and potential litigation and performance of a public employee
 - Reviewed WRIA 13 Lead Entity amendment with RCO
 - Staff updated board on Rates and Charges process
- **September 26, 2017** - Work session and board meeting
 - Supervisors present – Johnson, Mankamy, Fleischner, Ruston
 - WSCC staff Shana Joy
 - Report to board in executive session and then in the public meeting from Ms. Michelle Fossum representing Enduris.
 - No findings of concerns found in relation to concerns raised pertaining to Ms. Hatch-Winecha and possible conflict of interest in her role as lead coordinator
 - Ms. Fossum shared with the board possible suggestions as an outcome from the interviews with staff related to the February 2017 memo from staff to the board
 - Discussed authority of Acting Executive Director
 - Ms. Moorehead shared her concerns on getting conflicting direction from different board members
- **October 2, 2017** - Special board meeting
 - Supervisors present – Mankamy, Johnson, Fleischner, Rushton
 - WSCC staff –None
 - Board met in executive session to evaluate the qualification of a candidate for appointment to elective office
 - Tabled discussions on candidate interviews
- **October 19, 2017** - Ms. Moorehead shares with board notice received from Thurston County staff related to the need for the District to hold a public hearing on the proposed Rates and Charges by early November 2017
- **November 1, 2017** - Shana Joy, Commission Regional Manager presents letter to supervisors concerning District Operations and Behavior
- **November 1, 2017** - Board meeting
 - Supervisors present – Johnson, Mankamy, Fleischner
 - Linda Powel (appointed supervisor during the meeting)
 - WSCC staff – Shana Joy
 - Discussed RFP for possible District legal representation
 - Reviewed candidates for open supervisor position and appointed Linda Powell to fill the open position

- Supervisor Fleischner shared concerns on filling the open supervisor position without the full board being present
 - Board supervisors positions approved
 - Johnson – chair
 - Powell – vice chair
 - Mankamyer - auditor
 - Discussed conservation easements and ways to move forward on them.
- **November 6, 2017** - Rates and Charges Public Hearing
 - Meeting canceled due to lack of quorum
- **November 17, 2017** - Kathy Whalen, District Executive Director submits her letter of resignation to the board.
- **November 21, 2017** - Work session and special board meeting
 - Supervisors present – Johnson, Mankamyer, Fleischner, Powell and Rushton (by phone)
 - WSCC staff – Stu Trefry, Shana Joy
 - Chair decides Mr. Rushton cannot vote during meeting by phone
 - Decision is made to not have outside CPA review and sign monthly checks
 - Mr. Mankamyer, Board Auditor stated his concerns in signing checks until he had training
 - Mr. Johnson stated he would come in and sign checks prior to the December 20 meeting.
 - Mr. Johnson makes comments on the importance of the Rates and Charges proposal to the District
 - Shana Joy expressed concerns on three supervisors (Johnson, Mankamyer and Powell) making decisions outside of open meetings
 - Discussions on letter from Recreation and Conservation Office (RCO) and continuation with lead entity role
- **November 21, 2017** - Mr. Mankamyer submits letter to District Board of Supervisors and to the Commission concerning District activities
- **November 29, 2017** - Ms. Fleischner submits letter to the Commission concerning board supervisors
- **November 30, 2017** - Washington State Conservation Commission Business meeting
 - Letter from Ms. Fleischner read to Commission members
 - Statements are provided to Commission members related to concerns of conduct by Mr. Mankamyer and Mr. Johnson

- Commission members approve motion for Mark Clark, Commission Executive Director to proceed with a hearing related to Thurston Conservation District Supervisors
- **December 20, 2017** - Work session and board meeting
 - Supervisors present – Johnson, Mankamy, Fleischner, Powell, Rushton
 - WSCC staff – Shana Joy, Mark Clark
 - Several minutes of comments by the public related to concerns they had
 - Concerns raised by Ms. Moorehead on checks not getting signed
 - Mr. Steve Davis CPA offer Mr. Mankamy an invitation to provide him training on District fiscal procedures and policy
 - Mark Clark spoke to the board on his concerns and the urgency of the board taking steps to address those concerns
- **January 9, 2018** - Special board meeting
 - Supervisors present – Johnson, Mankamy, Powell, Fleischner and Rushton
 - WSCC staff – Shana Joy
 - Reviewed policies on travel reimbursements, fiscal and work time.
- **January 30, 2018** - Work session and board meeting
 - Supervisors present – Johnson, Mankamy, Powell and Fleischner
 - WSCC staff – Shana Joy
 - Discussed and approved Governance Action Plan
 - Updated 2018 budget
 - Postponed discussion on Acting Executive Director Action Plan
 - Mr. Johnson questioned Ms. Fleischner if she really wrote the November 29, 2017 letter to the Commission as he feels it appeared to be written on a District computer
- **January 30, 2018** - District Governance Action Plan approved by board
 - Plan signed by four of the 5 District Board Supervisors
 - Mr. Mankamy refused to sign the Governance Action Plan
 - Ms. Moorehead, Acting Executive Director also signed the plan
- **February 15, 2018** - District Policy and Procedures sub-committee meeting
- **February 16, 2018** - Mr. Johnson files a lawsuit with Washington State University Energy Program Office over a public disclosure request for information related to the District
- **February 27, 2018** - Work session and board meeting
 - Supervisors present – Johnson, Mankamy, Powell, Fleischner, Rushton
 - WSCC staff – Shana Joy

- Budget update presented by staff to board
 - Board gave oversight delegation to Mr. Mankamyer, Board Auditor for employee timesheets and Public Disclosure requests.
 - Shana Joy shared Commission document on process for the investigation of District Board Supervisors
- **February 27, 2018** - Freedom of Information Act Request made by Mr. Denniston in relation to Mr. Johnson's and Mr. Mankamyer's meeting notes and recordings.
- **March 3, 2018** - Thurston Conservation District Board Supervisor Election
 - Mr. Paul Pickett is elected District Board Supervisor
- **March 5, 2018** – Special board meeting
 - Supervisors present – Johnson, Mankamyer, Fleischner , Powell, Rushton
 - WSCC staff – none
 - Approved new tele commute and off-site work policy for District staff
- **March 6, 2018** – Ms. Amy Franks, District Treasurer and Bookkeeper files a concern with the Washington State Human Rights Commission
- **March 26, 2018** – Ms. Sarah Moore, District Acting Executive Director files a concern with the Washington State Human Rights Commission
- **March 27, 2018** - Mr. Mankamyer's files with Washington Secretary of State a letter of concern related to the recent District election
- **March 27, 2018** - Work session and board meeting
 - Supervisors present – Johnson, Mankamyer, Fleischner, Rushton
 - WSCC staff – Stu Trefry
- **April 25, 2018** – Board meeting
 - Supervisors present – Mankamyer, Johnson, Fleischner, Powell, Rushton, Supervisor Elect Pickett
 - WSCC staff – Shana Joy
 - Discussed November 21, 2017 meeting minutes and approved January 30 and March 27, 2018 meeting minutes.
 - Board discussed agricultural easements
 - Reviewed and discussed District Governance Action Plan
 - Discussed relocation of District office
 - Discussed Fleischner's letter to the Commission and claims made the letter was created at the District
- **May 29, 2018** - District staff officially become part of the WFSE labor union

- **May 29, 2018** – Work session and board meeting
 - Supervisors present – Mankamyer, Johnson, Powell, Rushton, Pickett
 - WSCC staff – Shana Joy
 - Board met in executive session to receive and evaluate complaints or charges brought against a public officer or employee
 - Annual Plan approved and District Governance Action Plan items included in the Annual Plan
 - Board discussed human rights complaints, Johnson V. WSU and WFSE
 - Debriefed on Rates and Charges public hearing
 - Board vote unanimous in adopting a system of Rates and Charges for the District

- **June 7, 2018** – Special board meeting
 - Meeting minutes were not available by the close (June 15, 2018) of the investigation , meeting audio available

APPENDIX D

WITNESSES INTERVIEWED IN THE DEVELOPMENT OF THE REPORT

- **Exhibit DA** - Amy Franks, TCD staff Treasure/bookkeeper
 - Interviewed Thursday April 12, 2018 2:00 PM
- **Exhibit DB** - Sarah Moorehead, TCD staff (Acting) Executive Director
 - Interviewed Thursday April 19, 2018 1:00 PM and May 23, 2018 – 11:00 AM
- **Exhibit DC** - Amy Hatch-Winecka, TCD staff Deputy Director/Lead Entity Coordinator
 - Interviewed Thursday April 19, 2018 3:20 PM
- **Exhibit DD** - Nicole Warren, TCD Natural Resource Technician
 - Interviewed April 20, 2018 9:00 AM
- **Exhibit DE** – David Nygard, former (retired) District Resource Specialist
 - Interviewed by phone May 2, 2018 3:00 PM
- **Exhibit DF** – Kathleen Berger – staff District Habitat Specialist
 - Interviewed May 23, 2018 10:00 AM
- **Exhibit DG** - Doug Rushton, TCD Board Supervisor
 - Interviewed April 24, 2018 9:00 AM
- **Exhibit DH** - Samantha Fleischner, TCD Board Supervisor
 - Interviewed April 20, 2018 3:20 PM
- **Exhibit DI** – Kathleen Whalen, former (retired) District Executive Director
 - Interviewed by phone May 22, 2018 1:30 PM

APPENDIX E

EVIDENCE RECEIVED AND CONSIDERED

- **Exhibit EA** - Letters, correspondence and emails from citizens
- **Exhibit EB** - Hand notes submitted by board supervisor
- **Exhibit EC** - Claims submitted by staff to Washington State Human Rights Commission
- **Exhibit ED** - Miscellaneous Emails
- **Exhibit EE** - Commission policies and procedures for board supervisors