

## MEETING MINUTES

### Riley-Purgatory-Bluff Creek Watershed District

#### September 3, 2014, Board of Managers Monthly Meeting and Public Hearing

#### PRESENT:

Managers: Mary Bisek, Vice President  
Jill Crafton, Treasurer  
Perry Forster, President  
Leslie Yetka

Administrator: Claire Bleser

Staff: Michelle Jordan, RPBCWD  
Louis Smith, Attorney (Smith Partners)  
Scott Sobiech, Engineer (Barr Engineering Company)  
Michael Welch, Attorney (Smith Partners)

Recorder: Amy Herbert

Other attendees: Barry Dallavalle, Lake Lucy Homeowners Association; SWMLC  
Anne Florenzano, Eden Prairie Resident  
David Florenzano, Eden Prairie Resident  
Tom Huberty, Chanhassen Resident  
Julie Koch, Chanhassen Resident  
Larry Koch, Chanhassen Resident  
Sharon McCotter, CAC  
Dennis Seeger, CAC  
Bill Satterness, Eden Prairie Resident  
Liz Stout, City of Minnetonka

#### 1. Call to Order

President Forster called the RPBCWD Board of Managers' Wednesday, September 3, 2014, Board of Managers Monthly Meeting and Public Hearing to order at 7:03 p.m. in the Council Chambers at Eden Prairie City Center 8080 Mitchell Road, Eden Prairie, MN 55344.

#### 2. Approval of the Agenda

Attorney Smith noted the absence of the Board of Managers' Secretary from tonight's meeting and requested the Board elect a Secretary Pro-Tem. President Forster nominated Manager Yetka. Manager Crafton seconded the motion. Upon a vote, the motion carried 4-0 [Manager Wencel absent from vote].

Manager Yetka commented that some questions were raised at the Board's previous meeting regarding the legal authority for the Board of Managers to enact rules. She requested that the Board have an opportunity on tonight's agenda to discuss that issue. President Forster said the issue could be discussed under the Managers Discussion.

Administrator Bleser requested the addition to Board Action two items: Item C ó University of Minnesota Contract and Item D ó Auditor Engagement Letter.

Manager Yetka moved to approve the agenda as amended. Manager Crafton seconded the motion. Upon a vote, the motion carried 4-0 [Manager Wencil absent from vote].

### 3. Reading and Approval of Minutes

#### a. July 2, 2014, RPBCWD Meeting Minutes

President Forster requested an edit on page 7 to replace öBardö with the correct spelling of öBarb.ö Attorney Smith requested that on page 4 the words öas finalö be deleted and be replaced with öfor distribution as part of the rulemaking record.ö Manager Crafton requested an edit on page 4 to replace ö10 fitö with ö10 feet.ö Administrator Bleser requested a correction to the spelling of two names in the list of attendees. Manager Crafton moved to approve the minutes as amended. Manager Bisek seconded the motion. Upon a vote, the motion carried 4-0 [Manager Wencil absent from vote].

#### b. July 28, 2014, RPBCWD Meeting Minutes

President Forster requested a revision on page 2. He said that the minutes currently read öthe project was initiated by the City of Minnetonka in 2008.ö President Forster clarified that the project wasn't initiated in 2008 but instead the RPBCWD received a petition in 2008 from the City of Minnetonka for the District to look at this. He requested that the phrase öwas initiatedí ö be removed and replaced with öwas petitioned by the City of Minnetonka in 2008.ö Manager Crafton moved to approve the minutes as amended. Manager Bisek seconded the motion. Upon a vote, the motion carried 4-0 [Manager Wencil absent from vote].

### 4. Public Hearing – Budget and Levy for 2015

Administrator Bleser announced that she would talk about what the District has been doing in 2014, what it plans to do in 2015, and the budget numbers for the 2015 year. She used PowerPoint slides as part of the presentation.

Administrator Bleser highlighted the 2014 and 2015 projects and noted that all of the projects are part of the District's 10-year plan. She said that the District was awarded a Clean Water grant in the amount of \$150,000 for the Bluff Creek project. She explained that the District's goal is to get Bluff Creek taken off the Impaired Waters List for fish biota. Administrator Bleser provided more details about the Bluff Creek project.

She described the assessments that District staff did to help identify projects that will help the District to meet state standards. Administrator Bleser provided more information about the projects that were identified and the 2014 projects such as: the spent lime treatment project to benefit Lake Susan; the Rice Marsh Lake Paleolimnological study; and, the management of the carp population in Riley Creek including managing the invasive species and restoring the native species. She also spoke about the treatment of invasive species curlyleaf pondweed in Lake Susan and Lake Riley and added that the District received grants from the Department of Natural Resources for those projects.

Administrator Bleser mentioned the discussions with the University of Minnesota and the Department of Natural Resources about an alum treatment on Lake Riley and said that the dialog will continue. She touched on the work the District has been doing with its hydraulic and hydrology model. She described the work the District has undertaken with the Carver County Soil and Water Conservation District to do a subwatershed assessment of Duck Lake. She reminded the Board that the District has a UAA for Duck Lake, and it identifies implementing 50

raingardens to help reduce the amount of nutrients entering Duck Lake.

Administrator Bleser talked about the plant management plan for Lake Lucy, Mitchell Lake, and Red Rock Lake and that the District is working on in conjunction with the City of Chanhassen and the City of Eden Prairie.

She reported that the District has petitioned the Minnesota Pollution Control Agency to deslist Red Rock Lake from the Impaired Waters List. She said that in the past few years Red Rock Lake has met all water quality parameters and mentioned mechanical harvesting as well as targeting curlyleaf pondweed.

Administrator Bleser briefly described the work being done through the University of Minnesota to manage the carp population in Staring Lake and the Purgatory Creek Recreation Area.

Administrator Bleser moved on to talk about the budget for 2015 including the new projects for 2015. She explained that a new process for 2015 is that the District plans to levy and work through only one fund, the Plan Implementation Levy, instead of through multiple funds and levies as in past years. Administrator Bleser announced that the proposed levy for the 2015 budget is 2,431,500 and noted that the budget levied for the 2014 budget was 2,273,000.

She went through the budget table project by project describing the proposed 2015 budget and comparing it to the 2014 budget.

President Forster opened the public hearing for comments.

**Liz Stout**, City Engineer for the City of Minnetonka, introduced herself and said that Minnetonka city staff has reviewed the proposed budget. She said that the City believes the District is taking a balanced approach across the watershed district and across watershed goals. Ms. Stout said that it has been over a decade since a watershed project has been done in the City of Minnetonka and so the City is welcoming the opportunity to work with the District on the Purgatory Creek project. She noted that the City of Minnetonka petitioned the District on that project in 2008, and she provided background on the project and the need for it. She described public outreach efforts by the City on the project and reported unanimous support by the public outreach participants, Minnetonka residents neighboring the Purgatory Creek project. Ms. Stout provided details about the project, its Best Management Practices, its benefits, and the benefits to coordinating the timing of the Purgatory Creek project with the City's and County's project.

She thanked the Board for its continued dedication to the quality and health of the entire watershed. Ms. Stout said that the City of Minnetonka supports the District's proposed 2015 budget.

**Larry Koch** of 471 Bighorn Drive in Chanhassen thanked the Board for the opportunity to speak. He asked if the Minnesota Board of Water and Soil Resources (BWSR) provided an opinion or guidance regarding the accounting using individual accounts versus one account. He also asked if the Attorney General and the State Auditor have weighed in on the proposal to use one account versus the multiple accounts. He said that he believes that having one account is contrary to Minnesota state statute. Mr. Koch said that he believes that statutes were intended to prescribe limits on various expenditures. He said that the one that jumps out at him is the particular limit on gathering data, which he believes has a limit of \$50,000, but the District's proposed budget is approximately \$170,000.

He commented that he didn't believe he has ever seen a budget that lacks the detail of the budget available to the public beforehand. He said that he believes that the budget information should be available per project, and he asked for that information provided on the slides at the last meeting but he did not receive it. Mr. Koch continued by saying he doesn't think it is possible for the public to adequately comment on this budget due to the manner in which it was prepared. He added that he knows that the District is looking to move to using one account in order

to make things easier, but he believes first and foremost that entities such as this must follow the rules and statutes and if changes need to be made, then the entity goes to the legislature to get the change instead of the entity changing it on its own.

Mr. Koch said that he still doesn't believe that the funding of the Purgatory Creek project is appropriate for the size of it. He said he would like the managers to relook at that project. He commented that the proposed allocation for AIS for 2015 is the same as in 2014 even though there is an increase in minimum wage, meaning the inspections will cost more. Mr. Koch said he believes the AIS is inadequately funded and should be increased and the AIS inspection program should increase to seven days a week from ice out to ice in.

Mr. Koch commented that the total budget proposed for 2015 is a significant increase over last year. He said that it looks to him like the District has \$900,000 in reserve unless he is misreading the information. President Forster said that the District receives funding in two lump sum payments, once in December and once in June, which is why it may appear that the District has that money in reserve, but it is the District's operating money.

Mr. Koch said that he would like to see a project by project budget and accounting report at least each quarter.

Attorney Smith responded to Mr. Koch's earlier comment about the state statutes. Attorney Smith said he thinks that Mr. Koch is referring to the limitations that are found in Chapter 103D, the original watershed law created in 1955 and which creates several discrete funds and levies. Attorney Smith explained that the Metropolitan Surface Water Management Act was adopted and provided Chapter 103B, a separate levy for the development and implementation of a metropolitan watershed district's plan. He stated that this District operated for a number of years under 103D. Attorney Smith commented that the metro watershed districts in the region have over time moved toward operating under a single fund because it has been expressed that it generally simplifies the accounting and is more transparent to the public. He noted that Ramsey Washington in the metro area has been operating under one fund for 15 to twenty years and that he knows of at least three other watershed districts in the metro area that are operating under one fund.

Attorney Smith stated that BWSR has been consulted about this process and has expressed concurrence a number of times. Attorney Smith said that he is not aware of a written opinion or the occasion for anyone to ask for a written opinion from BWSR, the Attorney General, or the State Auditor. He added that all watershed districts must be audited each year on their financial statements and file those audits with the state auditor's office and BWSR. Attorney Smith explained that the watershed districts that have operated under one fund have done so and there have not been any objections from either the State Auditor's Office or the Board of Water and Soil Resources. He said that the authority for operating under one fund is found in Minnesota state statute 103B .241.

There was a short discussion. Mr. Koch warned of audits not being done correctly or under the appropriate interpretation and to not take everything at face because it could lead to misinformation and being misled on some of these issues. Administrator Bleser said that the District's annual audit is included in its annual report, which is available on the District's website.

**Bill Satterness** of 8597 Red Oak Drive in Eden Prairie said that he would like to ask the question he has asked multiple times before. He described his participation with the District including working on its 10-year plan and being a member of the Citizen Advisory Committee (CAC). Mr. Satterness commented that this year he is not a CAC member but he is still a taxpayer. He said his question comes down to ROI ó Return on Investment ó and the cost-benefit analysis. He described his background and experience in the private sector with market analysis. Mr. Satterness said that his question to the Board is: "Are you convinced that you are spending this 2.4 million dollars next year in the most effective way to accomplish the purpose of this watershed district?" He volunteered to contribute his time making suggestions and figuring out formulas and factors.

Mr. Satterness gave the example of the Purgatory Creek project and said that the fact that the City of Minnetonka wants the project is not relevant to what this District should be spending money on. He said that the fact that the City of Minnetonka plans to implement Best Management Practices (BMPs) is not related to the District's decision. Mr. Satterness said that last month he heard that this District has been charged with reducing the amount of sediment flowing into the Minnesota River and the District was asked how much sediment is flowing into the Minnesota River now and how much will be prevented from this project. He said it seems to him that the District cannot necessarily answer those questions.

Mr. Satterness asked for clarification of the estimated cost of the Purgatory Creek project.

Administrator Bleser explained that two options were presented for the Purgatory Creek project and the District directed staff to look at option two, which has an estimated cost of \$614,500. She said that \$300,000 was levied for the project in 2014 and the District is proposing to levy \$250,000 next year with the assumption that the District would be taking the remaining project balance from the accrued money in the basic water management fund.

Administrator Bleser reiterated that all of the projects tonight were identified in the District's 10-year plan. There was a brief discussion. Manager Yetka brought up a conference taking place on September 11<sup>th</sup> and a specific presentation about the costs and benefits of green infrastructure. She said that she put information on the table by the door about the conference and suggested that Mr. Satterness consider attending. Mr. Satterness requested that the managers also attend. He commented that until the District has an objective way of prioritizing projects people will have questions.

Manager Yetka commented that she would like to hear back from staff if it has ideas on what it would take to assess an entire watershed to understand costs and benefits of doing a particular project. Administrator Bleser talked about what the District currently does to assess projects and said that she could look at the District's 2014 fund and discuss it with the District engineer and see if there is a possibility of using some of this year's funds toward it.

Manager Crafton moved to close the public hearing. Manager Yetka seconded the motion. Upon a vote, the motion carried 4-0 [Manager Wencl absent from vote].

President Forster directed the Administrator to work with the District Engineer to look at 2014 and the remaining 2014 budget to see if there are funds available for assessment. Administrator Bleser said that she will bring this information back to the Board. There was a discussion about the assessments the District is doing currently.

President Forster said that the Board has two resolutions in front of it, one to adopt the 2015 budget and one to levy Carver and Hennepin Counties.

Manager Crafton moved to adopt the 2015 budget as presented. Manager Yetka seconded the motion. By call of roll, the motion carried 4-0 [Manager Wencl absent from vote]:

<i>Manager</i>	<i>Yes</i>	<i>No</i>
Bisek	X	
Crafton	X	
Forster	X	

Yetka	X	
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Attorney Smith requested adding language to the levy resolution so that it includes, "subject to the condition that the Purgatory Creek Stabilization Project is ordered by the Board of Managers on or before December 20, 2014." Attorney Smith read aloud the resolution to certify the levy \$2,431,500 to Carver and Hennepin Counties. Manager Crafton moved to adopt the resolution as amended. Manager Bisek seconded the motion. By call of roll, the motion carried 4-0 [Manager Wencil absent from vote]:

<i>Manager</i>	<i>Yes</i>	<i>No</i>
Bisek	X	
Crafton	X	
Forster	X	
Yetka	X	

## 5. Hearing and Discussion of Matters of General Public Interest

President Forster noted that Manager Wencil is absent tonight because he is recovering from back surgery. No other issues were raised.

## 6. Citizen Advisory Committee

CAC Chair Dennis Seeger reported that the CAC has had issues come up regarding the Committee's quorum and voting at the meetings. He said the CAC decided to review its Bylaws and has set a special meeting to review and discuss them and the CAC's procedures. Mr. Seeger said that the CAC has had a fairly extended discussion on the 10-year plan mainly for education purposes. Manager Yetka announced that she had attended the last CAC meeting, and she provided a brief report.

Administrator Bleser stated that the District has received two applications for CAC appointments. The Board discussed the timing and decided staff will contact the applicants to see if they are interested in the District holding onto their applications for consideration for the 2015 CAC appointments since that application process opens fairly soon. There were Board comments about looking for representation on the CAC from underrepresented areas of the watershed. President Forster said that maybe the Board should consider for 2015 expanding the CAC to 15 or so members.

## 7. Treasurer's Report

Manager Yetka moved to accept the Treasurer's Report as submitted. Manager Crafton seconded the motion. Upon a vote, the motion carried 4-0 [Manager Wencil absent from vote].

Manager Crafton moved to pay the bills. Manager Yetka seconded the motion. Upon a vote, the motion carried 4-

0 [Manager Wencil absent from vote].

Manager Bisek remarked that the Board should think about how people who have questions about the District's project budget can obtain that information such as the District posting the project budget on the website. Mr. Koch said that he would appreciate it if it would be posted. Administrator Bleser pointed out that currently on page 3 of the Treasurer's Report there is the all-fund project performance analysis that tracks current spending and year-to-date.

## 8. Engineer's Report

Manager Crafton had a question about the lab reports listed under Data Management and asked when the data was collected. Engineer Sobiech said that the data being loaded is current data collected in 2014. Manager Yetka asked for more detail on the BWSR tools used in the additional analysis for the Purgatory Creek Project. Engineer Sobiech described the online tool, what data is entered, and what estimates it provides.

Manager Crafton moved to accept the Engineer's Report as submitted. Manager Bisek seconded the motion. Upon a vote, the motion carried 4-0 [Manager Wencil absent from vote].

Ms. McCotter commented that she would like to hear the information that the Engineer is providing to the homeowners at the upcoming meeting about the Lake Lucy spent lime treatment. Administrator Bleser said that a representative of the lake association could attend the meeting.

## 9. Administrator's Report

Administrator Bleser reported that the District has moved into its new office. She also reported that the District has applied for a target watershed demonstration grant from BWSR in the amount of 2,500,000 for Riley Creek Watershed improvements.

President Forster asked Administrator Bleser if she is going to write up a summary of what she learned at the conference in Portland and provide it to the managers. Administrator Bleser said yes.

Ms. McCotter asked for more information on the District's mobile decontamination station. Administrator Bleser provided more details and said that staff will go up to the Pelican River Watershed in October for help getting it set up. Mr. Satterness suggested that the District take the mobile decontamination station to eco-fairs and events as a way to educate people about decontamination.

## 10. Board Action

### a. Rules

Administrator Bleser said that last week the District held an information session on the rules. She reported that approximately 40 residents attended. She listed the feedback that the District received from the session. Administrator Bleser said that there is a memo in tonight's meeting packet with a summary of the feedback.

Attorney Welch announced that this afternoon the District received a letter from the Eden Prairie City Manager saying that last night the Eden Prairie City Council voted to ask the watershed to delay indefinitely the adoption of the rules. The letter said that the City Council also has asked the City Attorney to provide the council with background on watersheds in general and specifically on watershed rulemaking authority. Attorney Welch said that the City Attorney will be reporting back to the City

Council at a meeting two weeks from last night. Attorney Welch said that it would be helpful for the managers to attend that meeting to be on hand to answer questions.

There was discussion. Manager Bisek commented about the fact that part of Eden Prairie is in the Nine Mile Watershed, which has rules. Administrator Bleser said that staff has provided the City Council with the memo prepared by counsel on the District's rulemaking authority. Manager Yetka asked if the Minnesota Association of Watershed Districts (MAWD) has been made aware of these questions that have come up. Administrator Bleser said that staff will be going to MAWD about this. There was further discussion.

Attorney Welch outlined the status of the rules. He said that the rules distributed in the meeting packet for tonight's meeting contain all of the changes to the rules since the rules were first issued at the onset of the public comment period. He said that the latest copy has marked in highlights the most recent changes, which address updates stemming from the Board's direction to staff at the July 28<sup>th</sup> meeting: reviewing comments from the Coalition of Southwest Metro Lakes, soliciting review and comments from three watershed professionals who were asked to read the rules and provide feedback on ways the rules could be made clearer, and comments about making the document more user friendly, which incorporated feedback from last week's rules information session.

Attorney Welch brought up the language about the placement of sand blankets and said that the language right now is that if a sand blanket is put down, it would trigger a buffer on the creek or wetland. There was discussion. There was consensus that the requirement for buffers on creeks and wetlands due to sand blanket placement be removed.

Attorney Welch raised the topic of the effective date of the rules once adopted. He said that the timeframe the Board originally discussed has passed but asked if the Board is comfortable with a timeframe that would include the rules being adopted with an effective date that would be quite soon and a three-month grace period where property owners who have projects underway could come in with their project plans and show how far along the project is and ask for consideration from the District. The Board consented to staff developing such a timeframe.

Administrator Bleser said staff would like to write a press release to distribute to the District's official publications and post on the website as a more general response to comments.

Attorney Welch remarked that there is no statutory requirement that the District respond to comments but noted that this watershed has responded to received comments. He said that staff prepared an initial Statement of Need and Reasonableness (SONAR) and an update. Attorney Welch said that he recommends preparing a final document that addresses the development of the rules and how the watershed has responded to the major issues overall and also provides an ongoing document that would provide reference to the rules and then to leave the matrix of comments and responses in the record. Administrator Bleser added that the most efficient process would be to move ahead as Attorney Welch recommended and create a final SONAR and then prepare a press release. Attorney Welch said that after the rules are adopted the rules will be distributed. He said that there are very specific rules for the District to follow regarding the distribution.

There was a short discussion. The Board indicated consent to Attorney Welch's recommendation and to the creation of the press release.

**b. Argo - Reliance Insurance Claim**

Attorney Welch provided background on the claim and reported that Argo has contacted the District

again, this time to offer \$0.15 on the dollar, or \$3,846.74, in exchange for the District relinquishing its right to the claim that~~s~~ in the amount of approximately \$15,000. President Forster recommended that the District accept the offer. Manager Yetka moved that the Board accept Argo~~s~~ offer of \$3,846.74. Manager Crafton seconded the motion. Upon a vote, the motion carried 4-0 [Manager Wencil absent from vote].

**c. University of Minnesota Contract**

Administrator Bleser explained that the District is at the end of Dr. Sorensen~~s~~ grant, which was initiated in late 2008. She reported that Dr. Sorensen provided to the District permission to continue extend services to the District at a no-cost extension to continue work on Purgatory Creek. Administrator Bleser said that before the District acts on this item she would like to discuss a few things with Dr. Sorensen in terms of budget allocations and the outcomes of the project. She said she is raising with him questions about mileage, truck fees, and personnel such as if he will do a full-time hire just for this project.

Attorney Smith stated that his firm was~~n~~ot involved with the initial agreement for this work, but he has read Dr. Sorensen~~s~~ letter and agrees that there are some issues that could stand greater clarity in terms of deliverables and understanding what funds need to be allocated toward those deliverables. He said it would be appropriate for District Counsel to work with Administrator Bleser to put those questions back to the University. President Forster said he would like the District to convey that the District is very much interested in going ahead and doing the work for 2015 but at the same time there are some questions that need to be answered.

Manager Bisek raised the question about liability with the District boat and truck used by the University of Minnesota and the appropriate insurance for the use of those vehicles. Attorney Smith said that this is an example of a detail not addressed in the contract and the appropriate step is for District Counsel to work with the Administrator to identify those issues. President Forster requested that the meeting between the District and the UMN include the full roster of people as identified in the letter to the District from Dr. Sorensen.

**d. Auditor Engagement Letter**

Administrator Bleser reported that the District received an engagement letter from Redpath and Company. She recommended that the Board approve engaging Redpath and Company to conduct the District~~s~~ annual audit. Administrator Bleser said that the cost for this year has slightly increased over last year to \$12,500 from \$12,000. Manager Crafton moved that the District send an engagement letter to engage the auditor. Manager Yetka seconded the motion. Upon a vote, the motion carried 4-0 [Manager Wencil absent from vote].

## 11. Manager's Discussion

**a. Special Meeting**

Administrator Bleser said that the District will be holding a special meeting to look at District projects. She suggested the meeting be scheduled for Monday, September 22. The Board agreed on meeting at 5:30 p.m. on Monday, September 22.

**b. Legal Authority for RPBCWD to Enact Rules**

President Forster noted that the Board discussed this within previous agenda items at tonight~~s~~ meeting.

## 12. Upcoming Events

- **Beyond Raingarden: Creating a Water-Wise Home Landscape**, Wednesday, September 10, 1-5 pm,

Minnesota Landscape Arboretum

- **Clean Water Summit**, Green Infrastructure for Clean Water: Costs & Benefits to Our Communities, Thursday, September 11, 8 a.m. ó 5 p.m., Minnesota Landscape Arboretum
- **NEMO, Lessons Across the Landscape Workshop**, 4:00 p.m., Meet at Eden Prairie Water Treatment Plant
- **Special Board Meeting**, Monday, September 22, 5:30 p.m.
- **Board Meeting**, Wednesday, October 1, 2014, Heritage Room, 7:00 p.m.

### 13. Adjournment

Manager Crafton moved to adjourn the meeting. Manager Yetka seconded the motion. Upon a vote, the motion carried 4-0 [Manager Wencil absent from the vote]. The meeting adjourned at 9:53 p.m.

Respectfully submitted,

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Leslie Yetka, Secretary Pro Tem