

RESOLUTION NO. 2023-050

Riley-Purgatory-Bluff Creek Watershed District
Board of Managers

Delegating authority to the administrator to
approve certain regulatory applications

Manager _____ offered the following resolution and moved its adoption, seconded by Manager _____.

Whereas Minnesota Statutes sections 103D.341 and .345 direct watershed districts to adopt rules and administer a permitting program to protect water resources and mitigate flood risk, and the Riley-Purgatory-Bluff Creek Watershed District has duly adopted rules and issues permits accordingly;

Whereas Riley-Purgatory-Bluff Creek Watershed District also serves as the Local Government Unit administering the Wetland Conservation Act in certain areas of the Riley-Purgatory-Bluff Creek watersheds, and as LGU makes determinations under WCA on applications from property owners;

Whereas certain activities requiring an RPBCWD permit, WCA approval or procedural approval are subject to defined and specific standards, and determination of compliance does not require the exercise of the discretion reserved to the RPBCWD's board of managers;

Whereas the RPBCWD Board of Managers, recognizing that the time and resources of the board, staff and permit applicants are best served by delegating to the RPBCWD administrator the authority to approve such applications and procedural requests has authorized the administrator to approve certain RPBCWD permit and WCA applications, as well as certain related requests, by:

- Resolution 2014-11, adopted November 25, 2014;
- Resolution 2015-07, adopted June 29, 2015;
- Resolution 2017-05, adopted August 2, 2017;
- Resolution 2017-10, adopted October 4, 2017;
- Resolution 2019-05, adopted January 9, 2019;
- Resolution 2022-089, adopted December 7, 2022;¹ and

¹ Please note that while staff has confirmed the substance of the resolutions cited here, past recordkeeping is such that resolution numbers are less certain.

Whereas the board of managers recognizes that the several actions delegating authority have resulted in a fragmented and complex scope of delegated authority and wishes to provide a single, updated and comprehensive statement of delegated regulatory authority to facilitate ready understanding by the managers, staff and applicants.

NOW, THEREFORE, BE IT RESOLVED THAT the RPBCWD Board of Managers rescinds all regulatory authority previously delegated to the administrator, and supersedes all such delegation with the following:

The administrator may approve applications for:

1. assignment or renewal of valid permits or approvals available pursuant to RPBCWD Rule A, so long as the application is submitted in accordance and compliance with Rule A – Procedural Requirements, section 5; the land-disturbing activities proposed or already conducted do not differ from the original proposed activities in a manner material to the determination of compliance with the RPBCWD rules;
2. permit modification for adjustment to the means and methods of compliance with RPBCWD requirements as long as the changes do not constitute or cause a shortfall from compliance with all relevant RPBCWD requirements or an exacerbation of a shortfall from compliance that was the subject of a variance or exception approved in conjunction with the permit; the land-disturbing activities proposed or already conducted do not differ from the original proposed activities in a manner material to the determination of compliance with the RPBCWD rules;
3. An application for approval of land-disturbing activities triggering only Rule B – Floodplain Management and Drainage Alterations, provided that the proposed work amounts to less than 50 cubic yards of excavation and 5,000 square feet of disturbance;
4. a permit under only Rule C – Erosion and Sediment Control;
5. a permit for a single-family home development or redevelopment project requiring a permit under only Rule C – Erosion and Sediment Control, Rule D – Wetland and Creek Buffers, and/or Rule J – Stormwater Management;
6. a permit under only Rule H – Appropriation of Public Surface Waters;

and to sign letters certifying and communicating regulatory actions by RPBCWD, whether taken pursuant to the authority delegated to the administrator or by separate action of the RPBCWD Board of Managers, and extend permit-review times in compliance with Minnesota Statutes section 15.99 and otherwise administer the RPBCWD regulatory program in accordance with applicable law.

Except that the administrator may not issue a permit or approval if:

- a. land-disturbing activities have commenced without a required RPBCWD permit;
- b. the applicant or underlying work is not proceeding in compliance with the terms or conditions of approval of an issued permit;
- c. approval of a variance or exception is requested by the applicant;
- d. the proposed activity requires a permit that the administrator is not authorized to issue;
- e. anyone requests, prior to the administrator's issuance of written approval, that the board of managers make the determination on the application;
- f. the land-disturbing activities proposed or already conducted differ from the original proposed activities in a manner material to the determination of compliance with the RPBCWD rules;
- g. the administrator determines that the application involves a technical, policy or legal issue or raises public comment that warrants review of the application by the board of managers; or
- h. anyone requests consideration of the application by the board of managers.

BE IT FURTHER RESOLVED THAT with regard to administration of the Wetland Conservation Act, the RPBCWD Board of Managers delegates to the administrator the authority to issue wetland boundary and type, exemption and no-loss determinations, sequencing and replacement-plan approvals, and the authority to request the assistance of the technical evaluation panel, as defined by Minnesota Rules 8420.0240, and otherwise administer WCA. The administrator may elect to have the Board of Managers decide a WCA application if, in the administrator's judgment, the proposed activity or requested determination involves a technical, policy or legal issue or raises public interest such that review by the board is warranted. The administrator may not make a determination or issue an approval founded on finding substantially contrary to the findings or recommendation of the technical evaluation panel.

Further the administrator may exercise authority to make a WCA decision where the RPBCWD permitting decision for the same or a directly related matter is before the board, except when the matter is before the board because a variance or exception from the RPBCWD wetlands rule is requested.

BE IT FURTHER RESOLVED THAT the RPBCWD Board of Managers establishes the following procedure for appeal of a WCA decision made by the administrator:

1. A final decision made by the administrator may be appealed to the RPBCWD Board of Managers by a party to whom notice of the decision must be sent,

including the landowner, or by 100 residents of the county in which a majority of the wetland that is the subject of the decision is located.

2. Appeal of a decision made by the administrator may be made by sending notice of the appeal and payment of an appeal fee of \$750 to RPBCWD within 30 days of the date the administrator's decision was issued, except that no fee will be charged for an appeal made by a local, state or federal governmental body or by a member or members of the Technical Evaluation Panel.
3. On receipt of an appeal, the administrator will schedule a public hearing on the matter before the RPBCWD Board of Managers at a time that ensures compliance with applicable timeliness requirements and provide at least five days' written notice of the hearing to the parties required to receive notice of the administrator's determination and, if applicable, the representative(s) of the 100 residents making the appeal.
4. The RPBCWD Board of Managers will review and decide the matter on the basis of the record compiled before the administrator and the testimony and submissions of all persons, including RPBCWD staff, engineer and wetland specialists, appearing at the public hearing, and the board is not bound to give any particular weight to the findings, conclusions or decision of the administrator in rendering a decision on the appeal.
5. The board will decide an appeal within 30 days of receipt, except that the time for the board's decision may be extended by mutual agreement of RPBCWD and the appellant, in writing, specifying the duration of the extension.
6. RPBCWD may provide all required notices by electronic mail, unless a party requests in writing to receive notice by U.S. Mail.

Absent timely filing of an appeal and fee, if applicable, a WCA decision made by the administrator is final 30 days from the date it was sent to the parties required to receive notice of the decision.

A request by a party for determination of a permitting decision implementing the RPBCWD rules will not be deemed an appeal of an associated WCA decision or decisions by the administrator, which can only be appealed according to the procedures provided here. Conversely, a determination under the RPBCWD rules is not necessarily appealed to the RPBCWD Board of Managers when the WCA determination on the same or a directly related matter is appealed;

BE IT FURTHER RESOLVED that the administrator is directed to include information on the RPBCWD appeals process in all WCA notices of decision issued by the administrator on behalf of RPBCWD; and

BE IT FINALLY RESOLVED that the authority delegated here will be stated in the RPBCWD Governance Manual, and the administrator will maintain a log of permit applications, WCA approvals and other requests approved pursuant to this resolution and will present the log of permitting activity conducted pursuant to this resolution to the board at the January and August regular meetings of the managers each year.

The question was on the adoption of the resolution and there were _____ yeas and _____ nays as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
CRAFTON				
DUEVEL				
KOCH				
PEDERSEN				
ZIEGLER				

Upon vote, the president declared the resolution _____.

August XX, 2023

* * * * *

I, Dorothy Pedersen, secretary of the Riley-Purgatory-Bluff Creek Watershed District, do hereby certify that I have compared the above resolution with the original thereof as the same appears of record and on file with RPBCWD and find the same to be a true and correct transcription thereof.

IN TESTIMONY WHEREOF, I set my hand this _____ day of _____, 2023.

Dorothy Pedersen, Secretary