

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

December 15, 2021, Continuation of the December 8, 2021, RPBCWD Board of Managers Public Hearing and Monthly Meeting

PRESENT:

Managers: Jill Crafton, Treasurer

Larry Koch

Dorothy Pedersen, Vice President

David Ziegler, Secretary

Staff: Amy Bakkum, Office Administrator

Zach Dickhausen, Water Resources Technician II

Liz Forbes, Grant Program Coordinator

Terry Jeffery, Interim District Administrator and Watershed Planning Manager

Josh Maxwell, Water Resources Coordinator

Michael Welch, Attorney, Smith Partners

Scott Sobiech, Engineer, Barr Engineering Company

Other attendees: Joe Bischoff

Rod Rue

Note: this meeting was held remotely via meeting platform Zoom in abidance with the District's procedures in response to state COVID-19 actions, mandates, and guidance.

1. Continuation of the December 8, 2021, Public Hearing and Regular Meeting

1 Vice President Pedersen continued the December 8th public hearing and regular meeting at 2:00
2 p.m. on Wednesday, December 15, 2021. She announced the resignation of President Ward and
3 explained the Hennepin County Board of Commissioners will work through its process to appoint
4 a manager to fill the vacancy.
5

10. Action Items

6 **f. Consider Changes to the District's 2022 Budget and Levy**

7 Interim Administrator Jeffery proposed the District maintains the 2022 levy it adopted.
8 Manager Crafton moved to adopt the District's 2022 budge and levy. Manager Ziegler
9 seconded the motion. Interim Administrator Jeffery stated the Board could move forward
10 with the 2022 budget and levy the Board adopted earlier this year, or the Board could act
11 to reduce its levy and budget. Manager Koch said his understanding of the resolution that
12 the Board approved to adopt the budget has a situation in which the levy plus the

13 anticipated revenues would exceed the budget for the proposed expenditures by
14 \$110,000. He said his understanding is that the non-expended funds would carry over for
15 a future year's budget allocation. Attorney Welch said the Board could act tonight to
16 reduce its 2022 levy, or it seems the District is on track to have an additional \$110,000.
17 Interim Administrator Jeffery said the budget presented tonight shows that money being
18 pushed into reserves. Manager Koch said he'd prefer to continue with the budget the
19 Board previously adopted. Upon a roll call vote, the motion to reaffirm the adoption of
20 the Board's 2022 budget and levy carried 3-0 with 1 abstention as follows:

21

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Abstain
Pedersen	Aye
Ziegler	Aye

22

23

24 **i. Approve After-the-Fact Permit 2020-041 Eliassen Shoreline Stabilization**
25 **Solutions for Hennepin County Chloride Initiative Project**

26 Interim Administrator Jeffery explained the applicant, the Eliasens, installed a rip rap
27 shoreline on a shoreline that was already rip rapped. He noted that one year after the
28 Eliasen's did the installation, the Board approved that property owners could repair
29 existing rip rap without the work needing to be scored with the erosion intensity
30 worksheet. Administrator Jeffery said that the issue here is that the Eliasen's did the
31 work prior to the Board's adoption of that policy.

32 Interim Administrator Jeffery described the District's options for action, summarized
33 the inspection of the rip rap, and recommended the Board approve an after-the-fact
34 permit. Manager Koch sated he lives on Lotus Lake and thinks it is problematic for
35 people to proceed without a permit. He said it doesn't sit well with him when people are
36 belligerent when one brings to someone's attention they aren't following the rules.
37 Manager Koch said he reviewed the Barr report, which noted there are a number of
38 things that are absent, so he doesn't think the Board should do anything until it is
39 complete He said he believes the District should require payment for its expenses of
40 staff and engineer time. Manager Koch said he thinks this is the only way for people to
41 believe the District means what it says about needing a watershed permit before
42 proceeding with a project. Manager Koch said because the information submitted is
43 incomplete, it is grounds for denial of the request until the additional information is
44 provided as reflected in the Barr report. Manager Koch questioned if the rip rap was
45 installed correctly and said he is leery of certifications by the engineer on the project.

46 Manager Koch recommended the District collect receipts and invoices of deliveries of
47 materials, so the District can be sure the right amount of materials was done. He said his
48 understanding is that the erosion scoresheet even as revised would require
49 bioengineering with the rip rap, and the Eliasen's rip rap doesn't have live plantings in
50 it. Manager Koch said the District's erosion scoresheet doesn't take into account the
51 wake intensity from wake boats, and he can provide a lot of videos showing the impact
52 of wake boat wake versus wake from wind on his location on Lotus Lake. Manager
53 Koch said he wouldn't have a problem with the rip rap not having vegetation, but then
54 the District would need to change the rule as to not require the vegetation, or the District
55 need to let the Eliasens know they need to apply for a variance. He said he isn't sure this
56 would quality for a variance. Manager Koch said he believes the Board should deny the
57 permit, request payment for the District's additional expenses, and take it up when the
58 Eliasens comply.

59 Manager Koch moved to deny the permit application on the basis that the application is
60 incomplete. Manager Crafton seconded the motion. Engineer Sobiech listed the
61 outstanding items. Interim Administrator Jeffery commented if the applicant came in
62 with this application under the District's current rules, he is comfortable that the project
63 is compliant. Manager Ziegler asked if the District has collected the fees for this
64 application. Interim Administrator Jeffery said the District received the \$300 application
65 fee, which doesn't account for all of the time Barr spent. He said if the application came
66 in today, the District would require the applicant to replenish the fees. Manager Koch
67 amended his motion is to deny the permit under the District's current rules because the
68 applicant hasn't provided complete information and to get counsel from Mr. Jeffery and
69 Mr. Welch to give the Board advice on how to protect the District's rule making and
70 enforcement. Manager Koch said his main point is getting the project compliant with
71 the District's rules now and in the future because there are too many people on lakes
72 who think rules don't apply to them, and he knows how word spreads, and rules are the
73 rules.

74 The Board and staff discussed the points raised by Manager Koch, Attorney Welch, and
75 Interim Administrator Jeffery. Manager Koch suggested the District request the
76 applicant apply for the permit under the District's new rules. Manager Koch amended
77 his friendly amendment to deny the permit under the District's current rules, ask the
78 applicant to apply under the District's current rules, and give Interim Administrator
79 Jeffery and Attorney Welch negotiating space to come up with how to resolve the issue.
80 Manager Crafton agreed to the friendly amendment. Attorney Welch said the Board
81 could consider amending the motion to decide not to act in light of the incomplete
82 record and to direct Interim Administrator Jeffery and District Legal Counsel with the
83 specifics in the motion on the table. Manager Koch made the friendly amendment to his
84 friendly amendment to be consistent with what Attorney Welch stated. Manager Crafton
85 agreed to Manager Koch's updated friendly amendment. Manager Pedersen noted the
86 applicant did do a lot of good work on their property, not related to the rip rap repair
87 being discussed. Interim Administrator Jeffery agreed and said he would email the
88 managers photos of the work.

89
90

Upon a roll call vote, the motion carried 4-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ziegler	Aye

91
92

j. Authorize Administrator to Enter into an Agreement with MP&G Marketing Solutions for Hennepin County Chloride Initiative Project

93
94
95
96
97
98
Interim Administrator Jeffery reported he and Attorney Welch have been working with MP&G and believes the parties have come to an agreement that is acceptable and limits the District’s liability on behalf of the larger HCCI Consortia. Interim Administrator Jeffery said the draft in the packet isn’t the final.

99
100
101
Attorney Welch went through details of the agreement and back and forth communications staff has had with MP&G. He noted MP&G didn’t agree to 60 days for invoice payment but agreed to 45 days.

102
103
104
Manager Crafton moved to accept the agreement with MP&G Solutions with the recommended changes described by Attorney Welch and to authorize Interim Administrator Jeffery to execute the agreement. Manager Ziegler seconded the motion.

105
106
107
108
Manager Koch said he doesn’t approve contracts that aren’t complete and that he hasn’t seen, and he will vote no on principle, not because he doesn’t agree with the project. He asked staff to work toward that end, to provide final agreements for the Board’s review and approval

109
Upon a roll call vote, the motion carried 3-1 as follows:

110

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	No
Pedersen	Aye
Ziegler	Aye

111

112

11. Discussion Items

113

a. Attorney Report

114

1. Update on Friends of Frederick Miller Spring Lawsuit

115

Attorney Welch reported the hearing date has been pushed out to February 13,

116

2022, and the group has legal counsel. He said he is getting notifications from the

117

court, and those are the only two new items.

118

2. MAWD Annual Meeting

119

Attorney Welch stated one resolution adopted at the MAWD meeting was

120

opposing the use of Clean Water Legacy funds for capacity funding. He noted a

121

petition is in front of the Minnesota Board of Water and Soil Resources to ask it

122

to make a formal rule making on the idea that Soil and Water Conservation

123

Districts would prepare plans that would qualify them for Clean Water Legacy

124

money for their projects. Attorney Welch described the hybrid resolution adopted

125

about electronic participation by managers in their watershed Board meetings. He

126

said the adopted resolution capped the number of times to three that a manager

127

could participate remotely during non-pandemic conditions.

128

129

b. Engineer Report

130

1. Duck Lake Outlet Review

131

Engineer Sobiech noted that included in the meeting packet is a memo of review

132

of available information about Duck Lake. Interim Administrator Jeffery

133

commented that Mr. Joe Bischoff is attending the meeting and available to

134

address questions and comments about the lake ecology. Engineer Sobiech shared

135

a PowerPoint presentation “The Duck Lake Outlet Discussion.” He summarized

136

Duck Lake’s location in the watershed and the outlet structure history. Engineer

137

Sobiech talked about the observed lake level data collected since 1970. He

138

provided a hydrology summary for the pre-2014 elevation and the post-2014

139

elevation. Engineer Sobiech summarized the lake ecology between 1970 and

140

2020. He shared recommendations of possible future District actions, including:

141

142

- Dialogue with DNR and the City of Eden Prairie and the DNR about concerns and improvement opportunities

143

144

- Work with the City and DNR to hold an informational meeting to further document and understand the riparian owners’ desire for a lake level

145

146

- Conduct a fisheries survey of Duck Lake in 2022

147

- Conduct a detailed bathymetric survey of the lake

148

- Collect a dissolved oxygen measurement in the water during the winter

149

- Conduct a survey of shoreline conditions and vegetation community

150

- Compile low floor elevation data for riparian structure

151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184

Manager Ziegler pointed out updates that need to be made to the data and the presentation. He asked Engineer Sobiech to double-check the data based on the information Manager Ziegler shared.

Mr. Bischoff commented on the displayed graphs from a lake ecology perspective, noting nothing in the data jumped out to indicate a major shift in Duck Lake as a result of a change in elevations.

There was discussion about the lake as flood storage, climate change and future rain events and flood risk to homes around Duck Lake, and the Duck Lake Road project. Manager Ziegler read aloud from minutes from a 1979 meeting of the Riley Purgatory Watershed District. He stated there needs to be a lot of study before changing the lake level, and there was no permit approved to change the elevation of Duck Lake.

Manager Ziegler moved to prepare a letter basically stating that the water outlet was changed without doing the required investigation and the District would like the City to put it back to the elevation officially approved and for staff to send the letter to the DNR. He moved to have Barr staff basically take all the things that the Engineer’s Report has requested like the fish study and the environmental study and see what the cost of all that is. Manager Ziegler said it seems the District is getting costs of studies being pushed onto the District because of an illegal action by parties unknown at some point in the past. Manager Ziegler clarified his first motion is to authorize staff to prepare a letter to the DNR supporting the 914.4 outlet elevation and recommending the City be required to restore that elevation. The first motion died due to a lack of a second.

Manager Ziegler reiterated his second motion is to get an estimate of the cost of fish study, oxygen study, and other items Barr Engineering has listed. Manager Koch seconded the motion for Barr to provide the Board an estimate of the cost of the studies listed by Engineer Sobiech.

Manager Crafton asked if the District is currently doing some of these studies. Interim Administrator Jeffery said the District is not doing any vegetative surveys at this time. Mr. Maxwell said the lake is on a rotation schedule for a point intercept survey every three years, and the District is tracking water levels and water quality. He said there is some limited fish data from the University of Minnesota, but there isn’t much fish information from the DNR on the lake finder site.

Upon a roll call vote, the motion carried 4-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye

Ziegler	Aye
---------	-----

185

186

c. Administrator Report

187

1. Grant Application for Climate Action Plan

188

Interim Administrator Jeffery said he recommends the District move forward with the application for the MPCA grant. He said to look at it as on overall climate action plan. Interim Administrator Jeffery explained the Board needs to pass a resolution approving applying for this grant. He asked the Board to direct staff to develop a resolution to that effect. Manager Crafton moved to approve authorizing staff to develop the resolution as described with the change to the plan title to Climate Resiliency Action Plan. Manager Pedersen seconded the motion.

195

Manager Koch asked if there is a deadline to for the application submission. Interim Administrator Jeffery said yes, December 21 at 4:00 p.m. Attorney Welch clarified with Interim Administrator Jeffery what the MPCA needs in the Board resolution. Manager Koch made the friendly amendment to authorize Interim Administrator Jeffery in consultation with District Legal Counsel Welch to draft a letter embodying the Board’s resolution and authorizing Interim Administrator Jeffery to sign it on behalf of the District and forward it to the MPCA for its consideration. Manager Crafton accepted the friendly amendment.

196

197

198

199

200

201

202

203

Upon a roll call vote, the motion carried 4-0 as follows:

204

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ziegler	Aye

205

206

207

d. Manager Report

208

Vice President Pedersen reported the benefits information arrived, and she went through information in the benefits summary included in the meeting packet. She spoke in detail about the recommended 2022 benefits plan the Personnel Committee and Interim District Administrator Jeffery recommend.

209

210

211

212 Manager Koch moved to approve the 2022 benefits plan proposed by Interim
213 Administrator Jeffery and the Personnel Committee. Manager Crafton seconded the
214 motion.

215 Upon a roll call vote, the motion carried 4-0 as follows:

216

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ziegler	Aye

217

218 Manager Koch mentioned he attended the presentation of MAWD regarding the use of
219 lidar. He said his view is the District should seriously look into using lidar. He reported
220 he has quite a number of requests in to the District for information under the Minnesota
221 Data Practices Act, and he would like those requests to be filled. Manager Koch reported
222 he, Interim Administrator Jeffery, and Manager Crafton had a meeting with the auditor
223 about fiscal policies going forward, and he provided comments to the auditor but hasn't
224 heard if the accountant or auditor have reviewed his comments. Manager Koch stated,
225 regarding the Molnau issue, since the District isn't in litigation and as the District's Legal
226 Counsel didn't see basis for meeting in closed session, Manager Koch doesn't see basis
227 for attorney-client privilege on that issue. He said his point is about making the memo on
228 the Molnau issue available, so the District isn't violating the Open Meeting Law.
229 Manager Koch said he is concerned because the benefits information just discussed
230 wasn't posted as required by the applicable statutes, and he is reporting this for
231 consideration going forward.

232 Manager Ziegler said he did research online, and for residents there is liquid pre-
233 treatment available and one liquid ice melt, and the liquid ice-melt is chloride free. He
234 said he sent the information to Interim Administrator Jeffery. Manager Ziegler asked if
235 the Board would agree to District staff investigating the total environmental impact of the
236 pre-treatment and liquid ice melt. He said if they turn out to seem to be good options, the
237 District could consider adding it to the District's salt program. Interim Administrator
238 Jeffery said staff could do an initial evaluation, and if further study is needed, staff will
239 come to the Board with a proposal about further study. The Board agreed by consensus
240 for staff to move forward with the evaluation steps Interim Administrator Jeffery
241 described.

242

12. Upcoming Board Topics

- 243 a. **Regulatory Program**
244 b. **Feasibility Report Scope**

245

13. Upcoming Events

- 246 • January 5, 2022, Board of Managers Regular Monthly Meeting
247 • January Workshop Marketing Firm/Administrator Search

14. Adjournment

248 Manager Crafton moved to adjourn the meeting. Manager Koch seconded the motion. Upon a roll
249 call vote, the motion carried 4-0 as follows:

250

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ziegler	Aye

251

252 The meeting adjourned at 4:15 p.m.

253

254

255

256

Respectfully submitted,

257

258

259

David Ziegler, Secretary

260