

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 The meeting continued with item 10f on the agenda.

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 budget 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

anticipated revenues would exceed the budget for the proposed expenditures by \$110,000. He said his understanding is that the non-expended funds would carry over for a future year's budget allocation. Interim Administrator Jeffery said the budget presented tonight shows that money being pushed into reserves. Manager Koch said he'd prefer to continue with the budget the Board previously adopted. Upon a roll call vote, the motion to reaffirm the adoption of the Board's 2022 budget and levy carried 3-0 with 1 abstention as follows:

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

i. Approve After-the-Fact Permit 2020-041 Eliasen Shoreline Stabilization Solutions for Hennepin County Chloride Initiative Project

Interim Administrator Jeffery explained the applicant, the Eliasens, installed riprap on a shoreline that was already riprapped. He noted that one year after the Eliasens did the installation, the Board approved adopted a revision to the rules that allows property owners to maintain existing riprap with a fast-track permit that does not require submission of an erosion intensity worksheet and other detailed documentation. Administrator Jeffery said that the issue here is that the Eliasens did the work prior to the Board's adoption of that rule change, and that their application is incomplete, in part, because they did not submit an erosion intensity worksheet.

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

correctly and said he is leery of certifications by the engineer on the project. Manager Koch recommended the District collect receipts and invoices of deliveries of materials. He said his understanding is that the rules even as revised would require bioengineering with the riprap, and the Eliasens riprap doesn't have live plantings in it. Manager Koch said the District's erosion scoresheet doesn't take into account the wave intensity from wake boats, and he can provide a lot of videos showing the impact of wake boat waves versus waves from wind on his location on Lotus Lake. Manager Koch said he wouldn't have a problem with the riprap not having vegetation, but then the District would need to change the rule as to not require the vegetation, or the District need to let the Eliasens know they need to apply for a variance. He said he isn't sure this would qualify for a variance. Manager Koch said he believes the Board should deny the permit, request payment for the District's additional expenses, and take it up when the Eliasens comply.

Manager Koch moved to deny the permit application on the basis that the application is incomplete. Manager Crafton seconded the motion. Interim Administrator Jeffery stated that by his understanding the project is compliant with the current rule. Manager Ziegler asked if the District has collected the fees for this application. Interim Administrator Jeffery said the District received the \$300 application fee, which doesn't account for all of the time Barr spent. He said if the application came in today, the District would require the applicant to replenish the fees.

Manager Koch said his main point is getting the project compliant with the District's rules now and in the future because there are too many people on lakes who think rules don't apply to them, and he knows how word spreads, and rules are the rules.

Michael Welch stated that the record before the managers does not show compliance, but rather an incomplete application, and the managers could deny on that basis. But he said the managers may wish to defer action today to give the applicant a chance to withdraw the application, then reapply under the new rule, and that the administrator and legal counsel could be so directed.

Manager Koch amended his motion to direct the administrator and legal counsel to advise the applicant to withdraw the incomplete application and discuss submission of an application under the new rule showing compliance. Manager Crafton agreed to Manager Koch's friendly amendment. Manager Pedersen noted the applicant did do a lot of good work on their property, not related to the riprap repair being discussed. Interim Administrator Jeffery agreed and said he would email the managers photos of the work.

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

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

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 draft of the agreement.

Attorney Welch noted MP&G didn't agree to 60 days for invoice payment but agreed to 45 days.

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.

Manager Koch said he doesn't approve contacts 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

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

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

11. Discussion Items

a. Attorney Report

1. Update on Friends of Frederick Miller Spring Lawsuit

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

2022, and the group has legal counsel. He said he is getting notifications from the court, and those are the only two new items.

2. Minnesota Association of Watershed Districts Annual Meeting

Attorney Welch stated one resolution adopted at the Minnesota Association of Watershed Districts meeting was opposing the use of Clean Water Legacy funds for capacity funding. He noted a petition is in front of the Minnesota Board of Water and Soil Resources to ask it to undertake a formal rulemaking to provide structure and process for soil and water conservation districts plans that would qualify SWCD projects for Clean Water Legacy funds. Attorney Welch described the hybrid resolution adopted supporting electronic participation in public meetings. He said the adopted resolution capped the number of times to three that a manager could participate remotely during non-pandemic conditions.

b. Engineer Report

1. Duck Lake Outlet Review

Engineer Sobiech noted that included in the meeting packet is a memo of review of available information about Duck Lake. Interim Administrator Jeffery commented that Mr. Joe Bischoff is attending the meeting and available to address questions and comments about the lake ecology. Engineer Sobiech shared a PowerPoint presentation “The Duck Lake Outlet Discussion.” He summarized Duck Lake’s location in the watershed and the outlet structure history. Engineer Sobiech talked about the observed lake level data collected since 1970. He provided a hydrology summary for the pre-2014 elevation and the post-2014 elevation. Engineer Sobiech summarized the lake ecology between 1970 and 2020. He recommended several possible future District actions, including:

- Dialogue with the Department of Natural Resources and the City of Eden Prairie about concerns and improvement opportunities
- Work with the city and DNR to hold an informational meeting to further document and understand the riparian owners’ desire for a lake level
- Conduct a fisheries survey of Duck Lake in 2022
- Conduct a detailed bathymetric survey of the lake
- Collect a dissolved oxygen measurement in the water during the winter
- Conduct a survey of shoreline conditions and vegetation community
- Compile low-floor elevation data for riparian structures

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 water-level 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-foot 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. Josh 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

c. Administrator Report

1. Grant Application for Climate Action Plan

Interim Administrator Jeffery said he recommends the District move forward with the application for the Minnesota Pollution Control Agency grant. 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.

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 noted that for a resolution to be adopted by the board, the managers should make or have the full text of the resolution. He confirmed with Mr. Jeffery that indication of support from the board and authorization to apply for the grant would be sufficient, and noted that staff could be directed to develop a letter to that effect for a manager's signature. Manager Koch made the friendly amendment to authorize Interim Administrator Jeffery in consultation with District Legal Counsel Welch to draft a letter stating the Board's authorization. Manager Crafton accepted the friendly amendment.

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

d. Manager Report

Vice President Pedersen summarized the employment benefits.

Manager Koch moved to approve the 2022 benefits plan. Manager Crafton seconded the motion.

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

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

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

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12. Upcoming Board Topics

a. Regulatory Program

b. Feasibility Report Scope

13. Upcoming Events

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

14. Adjournment

Manager Crafton moved to adjourn the meeting. Manager Koch seconded the motion. 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

The meeting adjourned at 4:15 p.m.

Respectfully submitted,

David Ziegler, Secretary