

## MEETING MINUTES

### Riley-Purgatory-Bluff Creek Watershed District

#### May 18, 2023, Continuation of May 3, 2023, RPBCWD Board of Managers Regular Monthly Meeting

PRESENT:

Managers: Jill Crafton, Treasurer  
Tom Duevel, Vice President  
Larry Koch  
Dorothy Pedersen, Secretary  
David Ziegler, President

Staff: Amy Bakkum, Administrative Assistant  
Zach Dickhausen, Natural Resources Coordinator  
Terry Jeffery, District Administrator  
Louis Smith, Attorney, Smith Partners  
Scott Sobiech, Engineer, Barr Engineering Company

*Note: the Board meeting was held remotely via meeting platform Zoom because it was deemed not prudent to meet in person due to the COVID-19 pandemic.*

#### 1. Call to Order of Board of Managers Regular Monthly Meeting

1 President Ziegler called to order the Thursday, May 18, 2023, continuation of the May 3, 2023,  
2 Board of Managers Regular Meeting at 6:00 p.m. He stated the District is conducting this meeting  
3 via Zoom out of an abundance of caution due to the Covid pandemic. Mr. Smith called roll for the  
4 Board of Managers as follows:

5

<i>Manager</i>	<i>Action</i>
Crafton	Present
Duevel	Present
Koch	Present
Pedersen	Present
Ziegler	Present

6

## 8. Discussion Items

### a. Rule A and Resolution 2019-005: Permit Renewal and Transfer

[Discussion continued from 5/3/23 Board of Managers meeting].

Manager Koch said he has concerns about automatic renewals, particularly of expired permits. He proposed the Board direct Legal Counsel to comment on either the amendment of rules or delegation to provide notice to the managers prior to the granting of extensions, so if any managers have any issues, the managers can bring those up and bring them in front of the Board. Manager Koch said his understanding is that the Administrator has the authority to refer these renewals to the full Board.

Manager Koch summarized he would like Legal Counsel to review if the delegations are authorized and enforceable other than the delegations of administrative duties, and if they are, he would like the Board to look at amending those rules to provide some type of reasonable notice to the managers.

Mr. Smith commented regarding the Board's ability to adopt a resolution delegating the permit decision to the Administrator. Mr. Smith said the Legislature, through the Watershed Act, gave the Board of Managers authority to adopt rules and to issue permits. He said it is Legal Counsel's view that it is a well-established principle of administrative law that the authority can be delegated to the Administrator but it is important the Board prescribes the terms for that delegation. Mr. Smith said Legal Counsel carefully wrote the resolution to make it clear exactly what permits and which decisions were being delegated to the Administrator. Mr. Smith said it is within the Board's authority to revise the delegation by amending the earlier resolution.

Manager Koch said he would like the resolution to be amended to require the Board to be notified prior to extensions being granted administratively. Manager Duevel asked if there have been any issues with the process or the permits that were administratively approved. President Ziegler referenced one permit extension in which the original permit was approved but the vote was not unanimous. He said because of the split vote on the permit's approval, he thinks the renewal should have been brought in front of the Board for discussion.

President Ziegler said the Board could ask Mr. Smith to take a look at the resolution wording. President Ziegler commented the District's Governance Manual should document the authorization set by the resolution.

Administrator Jeffery reminded the Board that it adopted the resolution in 2020 to improve the District's performance and efficiency regarding permitting, particularly in light of the feedback from the member cities. He said since the resolution was adopted, 327 permits were administratively approved, and there has been one permit out of all of those administratively approved that the Board says it would have wanted the Administrator to notify the Board for Board discussion.

Manager Koch moved to have Legal Counsel come back to the Board regarding the enforceability of the resolutions, given the specific rules authority and given the fact the

46 rules do not provide for delegation, and for staff to review and consider possible  
47 recommendations to revise the approval at least of extensions. President Ziegler  
48 seconded the motion.

49 Mr. Smith said he will be happy to address the legal question about the ability to  
50 delegate authority from the Board. He said if there is a desire to consider possible  
51 changes to the delegation resolution, Legal Counsel can work with staff on that regard.

52 Manager Duevel commented that as it stands, the resolution provides a very limited  
53 delegated authority and it seems like it should prevail, unless there are other reasons it  
54 should not and that have not been brought to the managers' attention. He asked if the  
55 one permit renewal mentioned by President Ziegler had a significant consequence. Mr.  
56 Jeffery responded there are questions surrounding the development as the development  
57 would have significant impact on existing resources, but as for the permit itself, there  
58 were no modifications. President Ziegler asked if the permit was transferred.  
59 Administrator Jeffery said yes.

60 Manager Koch commented that having the restrictions in the resolution does not mean  
61 the restrictions are sufficient to adequately protect the District. He said he thinks the  
62 Administrator should have brought to the Board the topic of the extension of the permit  
63 President Ziegler referenced. Manager Koch said he does not believe there is any  
64 constitutional right to have a permit extended where the permit holder has not incurred  
65 any substantial harm, but he is willing to be shown wrong.

66 President Ziegler repeated the motion in front of the Board is to ask Attorney Smith or  
67 one of his staff to review the extension that was made and to propose language that  
68 could be put into the Governance Manual that could make it clear that if there is  
69 litigation, if there are multiple things happening at the same time, like a permit  
70 extension plus changing hands, those special cases should be brought back before the  
71 Board.

72 Upon a roll call vote, the motion carried 3-2 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	No
Duevel	Yes
Koch	Yes
Pedersen	No
Ziegler	Yes

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## 9. Manager Reports

76 Manager Koch shared his report drafted April 16, 2023, on issues he believes the Board  
77 should address regarding a review of the prior year, the 10-Year Plan, staffing, HR, IT,  
78 disaster preparedness, the District website, the Performance Review and Assistance Program  
79 (PRAP), manager interaction, the Board workshop schedule, rules and permits, tree plans,  
80 street sweeping, EW report and recommendations, local surface water management, the  
81 Citizens Advisory Committee (CAC), accounting and finance, the Wetland Conservation Act,  
82 the District's Education and Outreach plan, contract retainage, Lotus Lake rules violations,  
83 and meetings. He said he has provided this report to staff to distribute to the managers and  
84 asked everybody to read and consider his report.  
85

## 10. Administrator Report

86 No report.  
87

## 11. Legal Counsel Report

88 Mr. Smith reported the oral argument on the Friends of the Frederick Miller Spring was heard  
89 and the decision by the Minnesota Court of Appeals is pending.  
90 Manager Koch commented the Noble Hills development is listed at an upcoming Board work  
91 shop topic and noted the Board's ability to take action is limited in workshops. Mr. Smith  
92 said the update he and Mr. Jeffery are going to provide is an informational update.  
93

## 12. Upcoming Board Topics

94 [No upcoming board topics listed.]

## 13. Upcoming Events

- 95 • RPBCWD Board Work Session – May 18, 2023, at 7:00 p.m.
- 96 • University of Minnesota wakeboard study update
- 97 • RPBCWD Regular Board Meeting – June 7, 2023, 7:00 p.m.
- 98 • Minnesota Waters Summer Tour – June 20-23, 2023

99  
100 Manager Koch asked Administrator Jeffery to find out information about regulations regarding  
101 wake boats on Christmas Lake.  
102

## 14. Adjournment

103 Manager Pedersen moved to adjourn the meeting. Manager Koch seconded the motion. Upon  
104 a roll call vote, the motion carried 5-0 as follows:  
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<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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107  
108 The meeting adjourned at 6:56 p.m.

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112 Respectfully submitted,  
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115 Dorothy Pedersen, Secretary