

RESOLUTION NO. 2019-021

**RILEY-PURGATORY-BLUFF CREEK WATERSHED DISTRICT
BOARD OF MANAGERS**

**Adopting amendments to the
Riley-Purgatory-Bluff Creek Watershed District Rules**

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

WHEREAS Riley-Purgatory-Bluff Creek Watershed District, a governmental subdivision with powers set forth in Minnesota Statutes chapters 103B and 103D, is authorized to act to achieve the purposes set forth in those chapters for the protection, conservation and beneficial use of the waters and resources of the Riley-Purgatory-Bluff Creek watershed;

WHEREAS Minnesota Statutes section 103D.341 states that the RPBCWD Board of Managers must adopt rules to accomplish the purposes of chapter 103D and implement the powers of the managers as specified on Minnesota Statutes section 103D.335;

WHEREAS RPBCWD has a comprehensive set of rules, which were adopted as amended August 8, 2018, and operates a permitting program in accordance with Minnesota Statutes section 103D.345;

WHEREAS, in response to specific permit applications that presented challenging regulatory questions, along with expressions of concern from cities and developers about difficulties in complying with the rules, RPBCWD conducted a listening session with constituents in April 2019 to gain a firm understanding of permittees' concerns. RPBCWD also engaged its Technical Advisory Committee to discuss potential amendments to the rules to improve efficiency and effectiveness of the regulatory program while maintaining a high level of resource protection and flood-risk mitigation;

WHEREAS RPBCWD developed set of changes and a memo explaining the changes and describing trouble areas that could be addressed through development of additional guidance materials for presentation to the RPBCWD Board of Managers;

WHEREAS on September 4, 2019, the RPBCWD Board of Managers authorized the issuance of draft rules amendments for comment, and RPBCWD issued the proposed amendments, along with a supporting and explanatory memorandum, and sent a copy of the proposed amendments to state review agencies, public transportation authorities that have jurisdiction within the watershed, and all cities and townships within the watershed, and posted the proposed amendments on the RPBCWD web site, and RPBCWD provided 45 days for comment in accordance with section 103D.341;

WHEREAS period several parties provided RPBCWD with written comments on the proposed amendments, and on November 6, 2019, the managers held a duly noticed public hearing on the proposed amendments, at which RPBCWD received comments only from staff from the City of Eden Prairie that effectively reiterated written comments the city had submitted;

WHEREAS the board has reviewed and given due consideration to all comments in preparing the final draft of the amendments, and RPBCWD has prepared responses to the comments and revisions to the amendments, and has updated the memorandum supporting the amendments; and

WHEREAS the RPBCWD Board of Managers finds the rules as revised to be sound, reasonable and fair; to serve to protect, conserve and manage the beneficial uses of the waters and resources of the watershed, and generally to promote the public welfare.

NOW, THEREFORE, BE IT RESOLVED that the board of managers hereby approves the attached Memorandum Supporting and Providing Explanation of the Revisions of the Riley-Purgatory-Bluff Creek Watershed District Rules and responses to comments, and adopts the attached amended rules of the Riley-Purgatory-Bluff Creek Watershed District with such nonsubstantive revisions as the administrator, on advice of counsel, deems necessary to properly finalize amendment of the rules;

BE IT FURTHER RESOLVED that the rules so amended will be effective for all permit applications received complete on or after January 1, 2020, except that an applicant who has filed an application prior to the effective date may elect, in writing, to have the application analyzed and permit decision rendered under the amended rules, so long as RPBCWD has not issued a decision on the application as of December 11, 2019;

BE IT FURTHER RESOLVED that the board directs the administrator to post the amendments, along with the final supporting memo and the responses to the comments received on the RPBCWD web site, and send the responses to commenters;

BE IT FURTHER RESOLVED that the board directs the administrator to integrate the rules as amended hereby into the watershed management plan, consistent with the state Board of Water and Soil Resources staff determination that such amendments are administrative, consistent with Minnesota Rules 8410.0140, subpart 1a;

BE IT FURTHER RESOLVED that the board directs the administrator to prepare guidance materials as described in the memo supporting the rules for presentation to the managers as soon as reasonably feasible; and

BE IT FINALLY RESOLVED, that the RPBCWD administrator is directed to publish notice of the adoption of the amendments, send a copy of the amended rules to the governing body of each city affected by the rules and public transportation authorities

with jurisdiction in the watershed, and file a copy of the amended rules in the offices of the Hennepin County Recorder and the Carver County Recorder, and otherwise to publish the amended rules in accordance with Minnesota Statutes section 103D.345.

The question was on the adoption of the resolution and there were 5 yeas and 0 nays as follows:


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

Upon vote, the chair declared the resolution adopted.

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I, David Ziegler 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 19 day of DEC, 2019.



David Ziegler, Secretary

RESOLUTION NO. 2014-08

**RILEY PURGATORY BLUFF CREEK WATERSHED DISTRICT
BOARD OF MANAGERS**

ADOPTING RULES AND SETTING EFFECTIVE SCHEDULE

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

WHEREAS the Riley Purgatory Bluff Creek Watershed District, a governmental subdivision with powers set forth in Minnesota Statutes chapters 103B and 103D, is authorized to act to achieve the purposes set forth in those chapters for the protection, conservation and beneficial use of the waters and resources of the Riley Purgatory Bluff Creek watershed;

WHEREAS Minnesota Statutes section 103D.341 states that the District Board of Managers must adopt rules to accomplish the purposes of chapter 103D and implement the powers of the managers as specified by Minnesota Statutes section 103D.335;

WHEREAS the Board of Managers adopted an amendment to the District watershed management plan on December 3, 2013, to reinstate the District regulatory program to contribute to its efforts to achieve the goals of the plan;

WHEREAS the District has developed rules to implement the plan amendment in a collaborative process that began in April 2013 and engaged its Technical Advisory Committee, consisting of knowledgeable and experienced representatives of government agencies and municipalities, as well as interested and dedicated citizens, and the committee has provided review and comment on the proposed rules amendments throughout the development process;

WHEREAS on February 22, 2014, the board issued its proposed rules and a statement of need and reasonableness and sent a copy of the proposed rules to state review agencies, public transportation authorities that have jurisdiction within the watershed, and all cities and townships within the watershed, and other interested parties for a 45-day comment period that closed April 7, 2014;

WHEREAS during the comment period parties provided the board with written comments on the proposed rules, and on March 19, 2014, the District held a duly noticed public hearing on the proposed rules, at which time the board received further comment on the proposed rules;

WHEREAS after the legally required public-comment process, the District received considerable input on the rules from watershed residents and cities, and the District convened additional opportunities for stakeholder input – a meeting July 2 and workshops July 28 and August 27 – allowing the public and city staff to get answers to questions they had on the rules and the District managers and staff to explain the operation and purposes of various rule provisions;

WHEREAS the board has reviewed and given due consideration to all comments in preparing the final draft of the rules, as explained in the Final Statement of Need and Reasonableness;

WHEREAS the District is committed to working with each city in the watershed to confirm whether the city will amend its local water management plan and ordinances to meet District rule standards and criteria,

and assume regulatory authority over some or all of the subjects of the District rules or defer to the District's regulatory program; and

WHEREAS the District finds the rules to be sound, reasonable and fair; to serve to protect, conserve, and manage the beneficial use of the waters and resources of the watershed, and generally to promote the public welfare.

THEREFORE, BE IT RESOLVED that the Board of Managers hereby approves the attached Final Statement of Need and Reasonableness and adopts the attached rules of the Riley Purgatory Bluff Creek Watershed District, effective January 1, 2015;

BE IT FURTHER RESOLVED that that all permit applications and site plans and designs filed before February 1, 2015, will be subject to the rules, except that the board directs the District engineer to review site and grading plans, designs, architectural drawings and other project-development materials submitted by or on behalf of a watershed property owner on or before February 1, 2015, and make a recommendation for disposition based on the extent to which the applicant progressed with development of designs and plans prior to the adoption of the District rules and the degree to which revision of the designs and plans to achieve strict compliance with all applicable District regulatory requirements will present practical difficulties – namely, unreasonable expense and delay – for the applicant or property owner;

BE IT FURTHER RESOLVED that all permit applications filed after February 1, 2015, will be analyzed and decisions by the District to approve, approve with conditions or deny will be made in accordance with the adopted District rules; and

BE IT FINALLY RESOLVED, that District administrator is directed to publish notice of the adoption of the rules, mail a copy of the rules to the governing body of each city affected by the rules and public transportation authorities with jurisdiction in the watershed; and file a copy of the rules in the offices of the Hennepin County Recorder and the Carver County Recorder.

The question was on the adoption of the resolution and there were 5 yeas and 0 nays as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
BISEK	X			
CRAFTON	X			
FORSTER	X			
WENCL	X			
YETKA	X			

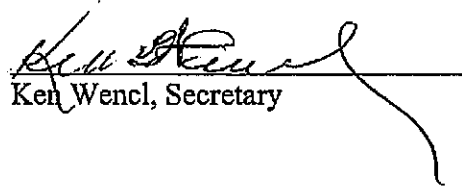
Upon vote, the chair declared the resolution adopted.

Dated: November 5, 2014

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I, Ken Wencil, 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 the District and find the same to be a true and correct transcription thereof.

IN TESTIMONY WHEREOF, I set my hand this 25 day of November, 2014.


Ken Wencil, Secretary

RESOLUTION NO. 2014-09

**RILEY PURGATORY BLUFF CREEK WATERSHED DISTRICT
BOARD OF MANAGERS**

PERMIT FEE POLICY

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

WHEREAS the Riley Purgatory Bluff Creek Watershed District (District) has permitting requirements duly adopted pursuant to Minnesota Statutes sections 103D.335 and 103D.341;

WHEREAS the District expects to incur substantial costs to administer its permitting program, including costs of services by consultants, analysis of proposed activities, inspection of permitted projects and compliance assurance;

WHEREAS Minnesota Statutes section 103D.345, subdivision 2, authorizes the District to apply a permit fee to cover actual costs related to the permitting of work conducted within its jurisdiction, including costs of services of staff and consultants;

WHEREAS the District wishes to maintain written policies to ensure that permit-processing costs are borne by parties obtaining permits rather than the taxpayers of the watershed generally, and to ensure consistency and clarity in permit processing for the benefit of those subject to the District's permit requirements;

WHEREAS the District adopted rules on November 5, 2014, that establish District policy and procedures to recover its costs of permitting, inspection and analysis through the collection of permit fees from project applicants other than other governmental agencies and subdivisions, in accordance with Minnesota Statutes section 103D.345, subdivision 3; and

WHEREAS District Rule L – Permit Fees requires applicants to pay permit fees in accordance with a written schedule maintained and revised from time to time by resolution of the Board of Managers to ensure that the District's actual costs of administering and enforcing permits are recovered from permittees.

NOW THEREFORE BE IT RESOLVED that the Board of Managers:

1. Adopts the attached Permit Fee Schedule;
2. Determines that an application for a permit from the District will not be complete until the applicant has submitted the required fee, as calculated in accordance with the District rules and the Permit Fee Schedule;

3. Will periodically review and revise, if necessary and warranted, the Permit Fee Schedule based on a review and analysis of cost of services of consultants, analysis of activities, field inspection of permitted projects and compliance assurance; and
4. Directs the District administrator to ensure that the District's permit application instructions and associated materials advise applicants of the permit fee requirement, to maintain the schedule of permit fees on the District web site, and to make this resolution and the attached schedule available on request of any party at the District's principal place of business.

The question was on the adoption of the resolution and there were 5 yeas and 0 nays as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
BISEK	X			
CRAFTON	X			
FORSTER	X			
WENCL	X			
YETKA	X			

Upon vote, the chair declared the resolution adopted.

Dated: November 5, 2014.

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I, Ken Wencil, 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 the District and find the same to be a true and correct transcription thereof.

IN TESTIMONY WHEREOF, I set my hand this 25 day of November, 2014.


 Ken Wencil, secretary

RESOLUTION NO. 2014-10

**RILEY PURGATORY BLUFF CREEK WATERSHED DISTRICT
BOARD OF MANAGERS**

FINANCIAL ASSURANCE POLICY

Manager Crafton offered the following resolution and moved its adoption, seconded by Manager Yetka:

WHEREAS the Riley Purgatory Bluff Creek Watershed District (District) has permitting requirements duly adopted pursuant to Minnesota Statutes sections 103D.335 and 103D.341;

WHEREAS under Minnesota Statutes section 103D.345, subdivision 4, the District may require an applicant to provide a financial assurance in an amount set by the Board of Managers to ensure conformance with the terms of a permit;

WHEREAS the District adopted rules on November 5, 2014, that establish District policy and procedures to ensure the protection and conservation of the water resources of the watershed by allowing the District to require a bond or other surety as part of its permitting requirements, excepting governmental agencies and subdivisions, to ensure adequate performance of the authorized activities and compliance with District rules; and

WHEREAS District Rule M – Financial Assurances allows the District to require a performance bond, letter of credit or other financial assurance in a form approved by the District and at rate in accordance with a written schedule maintained and revised from time to time by resolution of the Board of Managers for activity regulated under the District rules;

THEREFORE BE IT RESOLVED that the Board of Managers:

1. Adopts the Financial Assurance Rate Schedule, attached; and
2. Directs the District administrator to ensure that the District's permit application instructions and associated materials advise applicants of the financial assurance requirement, to maintain the Financial Assurance Rate Schedule on the District web site, and to make this resolution and the Financial Assurance Rate Schedule available upon request of any party at the District's principal place of business; and
3. Will periodically review and, if necessary and warranted, revise the Financial Assurance Rate Schedule based on a review and analysis of cost of services of consultants, analysis of activities, field inspection of permitted projects, current constructions costs and compliance assurance.

The question was on the adoption of the resolution and there were 5 yeas and 0 nays as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
BISEK	X			
CRAFTON	X			
FORSTER	X			
WENCL	X			
YETKA	X			


Upon vote, the chair declared the resolution adopted.

Dated: November 5, 2014.

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I, Ken Wencil, 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 the District and find the same to be a true and correct transcription thereof.

IN TESTIMONY WHEREOF, I set my hand this 25 day of November, 2014.



Ken Wencil, secretary

RESOLUTION NO. 2014- 11

**RILEY PURGATORY BLUFF CREEK WATERSHED DISTRICT
BOARD OF MANAGERS**

**RESOLUTION DELEGATING CERTAIN
PERMIT APPROVAL AUTHORITY to the ADMINISTRATOR**

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

WHEREAS pursuant to Minnesota Statutes section 103D.341, the Riley Purgatory Bluff Creek Watershed District (District) reviews and issues permits for activity within the watershed that may affect water resources; and

WHEREAS permit applications may be approved by the District Board of Managers at a regular or special meeting; and

WHEREAS certain applications for a District permit are subject to defined and specific standards, and determination of compliance does not require the exercise of substantial discretion; and

WHEREAS the time and resources of the Board of Managers, staff and permit applicants are best served by delegating to the District administrator the authority to approve such applications;

THEREFORE BE IT RESOLVED that:

1. The administrator may approve permit applications for single-family home development or redevelopment projects requiring a permit under only District Rule C – Erosion and Sediment Control.
2. The administrator may not issue a permit if:
 - a. A variance is required;
 - b. An exception is requested by the applicant;
 - c. The proposed activity requires a permit that the administrator is not authorized to issue;
 - d. The administrator determines that the application involves a technical, policy or legal issue or raises public comment that warrants review by the Board of Managers; or
 - e. Anyone requests, prior to the administrator's issuance of written approval, that the Board of Managers make the determination on the application.

3. If the administrator finds that the criteria for permit issuance under this resolution are not met, the application will be presented to the Board of Managers for consideration at its next scheduled meeting, unless the applicant withdraws the application.
4. The administrator will maintain a log of permit applications approved pursuant to this resolution and will advise the Board of Managers regularly as to permitting activity conducted pursuant to this resolution.

The question was on the adoption of the resolution and there were 5 yeas and 0 nays as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>
BISEK	X		
CRAFTON	X		
FORSTER	X		
WENCL	X		
YETKA	X		

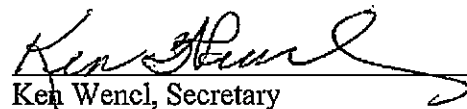
Upon vote, the president declared the resolution adopted.

Dated: November 5, 2014.

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I, Ken Wencil, 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 the District and find the same to be a true and correct transcription thereof.

IN TESTIMONY WHEREOF, I set my hand this 25 day of November, 2014.


Ken Wencil, Secretary