

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

October 2, 2024, RPBCWD Board of Managers Regular Monthly Meeting

PRESENT:

Managers:

Jill Crafton, Treasurer

Tom Duevel, Secretary

Bonnie Nelson

Dorothy Pedersen, President

David Ziegler, Vice President

Staff:

Zach Dickhausen*, Natural Resources Coordinator

Liz Forbes, Communication Manager

Terry Jeffery, District Administrator

Josh Maxwell, Water Resources & Fisheries Manager

Dylan Monahan, Office Administrator

Alaina Portoghese*, Communications Specialist

Louis Smith, Attorney, Smith Partners

Scott Sobiech, Barr Engineering Company

Other Attendees:

Andrew Aller, CAC

Morgan Jacobs

Joe Bischoff, Barr Engineering

Larry Koch*

Jennifer Dullum, BWSR

**Attended the meeting virtually.*

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

1 President Dorothy Pedersen called to order the Wednesday, October 2, 2024, Board of
2 Managers Regular Meeting at 7:00 p.m. at the District Office, 18681 Lake Drive East,
3 Chanhassen, Hennepin County, Minnesota.

2. Approval of Agenda

4 Manager Ziegler moved to approve the agenda as written. Manager Bonnie Nelson
5 seconded the motion with the modification of pulling off the Consent Agenda item
6 “Approve Permit 2023-059 Three Oaks Development as Presented in the Recommended
7 Board Action Section of the Permit.” The motion carried with no managers opposing.

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3. Matters of General Public Interest

9 President Pedersen called for public comment on matters of general public interest.

10 Larry Koch of 471 Bighorn Drive, Chanhassen, commented he does not think three minutes
11 is enough time for people to comment. He said he objects to this meeting and the workshop
12 and he believes any action taken is invalid as there are insufficient numbers of members
13 legally appointed to take action. Mr. Koch said this Board is not duly constituted and he is
14 here to put all people on notice that actions taken at this meeting may not be authorized or
15 valid and that they would proceed at their own risk. Mr. Koch mentioned, in regard to the
16 Governance Manual, he was surprised he did not see any redline comparisons and he
17 thought there was no need for a slide presentation with so few comparisons. Mr. Koch said
18 he is concerned about Manager Crafton's comments about everybody getting on the same
19 page. He said if that is what it takes, then you only need one person and the law should be
20 changed so there is only one person to deal with if you are looking for everybody to be on
21 the same page. Mr. Koch said apparently people were not happy that what they wanted was
22 not happening all the time. Mr. Koch said he is concerned about the budget process and
23 attempt to slide the date for the budget presentation. He said it takes longer and Manager
24 Nelson raised a good point about having sufficient time to be able to go over the budget
25 items. Mr. Koch said in his experience in the past couple of years there has not been
26 sufficient time because the budget was either incomplete or not enough time for people to
27 deal with it. Mr. Koch commented it sounds like you want to do away with Roberts Rules of
28 Orders, but it was created over 100 years ago and there is a reason for it to keep order and to
29 allow everybody to have an opportunity to speak and he is concerned this will devolve into
30 a Board such as was chaired by Perry Forrester. Mr. Koch said it appears to him that several
31 violations of the Open Meeting Law with respect to this meeting concerning improper
32 notice and designation. He said as you know my lawsuits address some of these and it looks
33 like there may be more. Mr. Koch commented he is concerned about the 10-year plan
34 amendment as there was a lot of good discussion but there was no action plan. He said you
35 can have strategy about what we should do but somebody has to come up with an action
36 plan and it did not seem like anybody was appointing anybody to come up with an actual
37 action plan. Mr. Koch said he is concerned that the workshops and now soliciting comments
38 is basically carrying out a meeting, which is ostensibly designated as a non-voting portion of
39 a meeting. He said he thought Manager Pedersen had good ideas for soliciting info for
40 people who have interest in the process of being able to click on portions of the plan dealing
41 with one's interests. He said that would be a great process to have. Mr. Koch mentioned he
42 spent part of his day looking out the window at the alum treatment being done on Lotus
43 Lake. He said a wake boat went through it not 30 minutes after the application, which he
44 cannot believe would be good for any application of alum. He said his understanding of the
45 purpose of the application is to reduce phosphorous, and that would not be allowing
46 sufficient time to allow the alum to settle out. Mr. Koch said hopefully there will be testing
47 done to determine what, if any, effects it would have on the alum treatment. Mr. Koch's
48 comment time period ended.

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4. Reading and Approval of Meeting Minutes

50 **a. Approve Minutes of the September 11, 2024, Regular Meeting of the**
51 **RPBCWD Board of Managers**

52 Manager Ziegler moved to approve the minutes of the September 11, 2024, Regular
53 Meeting of the RPBCWD Board of Managers as written. Manager Duevel seconded the
54 motion. The motion carried with no managers opposing.

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5. Presentation by Joe Bischoff on Refinements to Task Orders 047,048, 049, and 050

56 Joe Bischoff displayed the slide presentation titled, “RPBCWD Lake and Watershed
57 Management Plans.” He reported on the follow up to the Board’s discussion last month.
58 He said the decision matrix that was used to determine the lakes to include in the follow
59 up is in the cover memo in the Board meeting packet. Mr. Bischoff noted big factors
60 included which water bodies are under chloride stress, which ones discharge to waters that
61 had significant District investment in water quality management for protecting
62 downstream waters, and which ones are very close to the state standard.

63 Mr. Bischoff addressed the question on whether District staff could take on more of the
64 work so all these lakes could be done in the same timeframe. He shared staff and
65 engineer’s recommendations for refining the task orders to decrease cost and increase
66 District staff participation in the task areas of lake management plans, aquatic vegetation
67 and shoreline plan, and the fisheries management plan. Mr. Bischoff summarized that
68 with these proposed project refinements, the revised budget estimate is \$319,765
69 compared to the original estimate of \$355,485.

70 Manager Ziegler asked if the District would need to bring on some interns to help with
71 this work. Administrator Jeffery said not immediately but likely next summer.

72 Manager Nelson asked about accounting for the chloride load from private applicators.
73 Mr. Bischoff said there are studies that have tried to account for private application and
74 would be included in the modeling as well as data from the cities about their application
75 rates and timing. He said the goal is to calculate for a given year the mass load on the
76 watershed and the timing and then look at how that mass load moves through the lake
77 system. Mr. Bischoff said the District is taking a big step forward and looking at nitrogen
78 and chloride in a way most Districts are not. He said the question of should the District be
79 managing nitrogen as part of lake management plans is an important question and the
80 outcome of these studies could start to answer that question.

81 President Pedersen commented she thinks this work will change how other watershed
82 organizations look at their lakes.

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6. Reports

84 **a. Adopt Resolution 24-061 Receiving the Following Committee Reports.**

85 **• Receive Citizen Advisory Committee's Report**

86 Andrew Aller reported on the "Bird Ecology in our Watershed" presentation by
87 Andy Forbes of the U.S. Fish and Wildlife Service at the September 16th CAC
88 meeting. He said the presentation was recorded and is on the District's YouTube
89 channel.

90 Mr. Aller announced that he, Andrew Peterson, and Dave Paulson are the
91 members of the CAC who plan to attend the Minnesota Waters Conference.

92 Mr. Aller said the CAC has continued its discussions on water conservation and
93 programs. He noted the next CAC meeting will be held October 21. Mr. Aller
94 shared that at the October meeting Terry Jeffery will present on District programs
95 and projects and the CAC will continue discussing various cities' water
96 conservation programs and how those programs can be incorporated into the
97 Districts' programs and can be shared across the cities.

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99 **• Receive September Staff Report**

100 **• Receive September Administrator's Report**

101 **• Receive September Engineer's Report**

102 **• Receive September Regulatory Report**

103 Manager Ziegler moved to adopt Resolution 24-061 Receiving Committee Reports.

104 Manager Nelson seconded the motion. The motion carried with no managers opposing.

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106 **b. Confirm Board Representative for CAC Meeting**

107 Manager Duevel volunteered to be the Board representative at the October 21st CAC
108 meeting.

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7. Consent Agenda

110 **a. Adopt Resolution 24-062 to Approve Consent Agenda**

111 Manager Ziegler moved to adopt Resolution 24-062 to Approve the Consent Agenda.

112 Manager Duevel seconded the motion. The motion carried with no managers opposing.

113 The Consent Agenda included:

- 114 • Approve Permit 2024-064 CenterPoint Energy-Xcel Service Center as Presented
115 in the Recommended Board Action Section of the Permit Report.

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8. New Business

117 a. Items Removed from Consent Agenda

118 i. Approve Permit 2023-059 Three Oaks Development as Presented in the 119 Recommended Board Action Section of the Permit Report.

120 Manager Nelson had a question about plan sheet C7 regarding the note about the
121 soil between the filtration shelf and the wet pond. She asked who would make the
122 assessment during construction that the soils are actually impermeable. She asked
123 how impermeable soil is defined and should there be a stipulation in the permit.

124 Mr. Sobiech said right now the builder is responsible for the assessment. He said
125 he thinks it is a good idea for the District to include in the permit that some type
126 of verification be provided. Mr. Sobiech said the District could include a
127 stipulation to the permit that the District needs to be informed three days prior to
128 constructing and identifying the soil so that the District can be onsite to inspect
129 the soil. Manager Nelson moved to add a stipulation to the permit conditions to
130 notify the District three days in advance for the District to inspect the soil.

131 Manager Crafton seconded the motion. The motion to add the stipulation to the
132 permit conditions carried with no managers opposing.

133 Manager Crafton asked if all of the trees proposed to be removed need to be
134 removed. Mr. Sobiech and Mr. Smith said the District has no legal basis to
135 comment about it. Administrator Jeffery said this topic is an example of why the
136 District needs to build partnerships with the cities. He said the District's
137 regulatory program might not always be the answer, so instead the District needs
138 to find other ways to incentivize behavior such as, for example, the cities could
139 bring the District to the table during projects' concept phases.

140 Manager Ziegler mentioned abstraction volume on a restricted site. He raised the
141 idea of extended detention and considering adding it to the District's rules.
142 Administrator Jeffery said this is the type of thing for the managers to think about
143 as it moves through its watershed management plan update and considers rules
144 updates in conjunction to the plan update.

145 Manager Ziegler moved approve Permit 2023-059 Three Oaks Development as
146 Presented in the recommended Board action section of the permit report plus the
147 stipulation as described by Mr. Sobiech. Manager Crafton seconded the motion.
148 The motion carried with no managers objecting.

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150 b. Accept September Treasurer's Report

151 The managers unanimously consented to accepting the September Treasurer's Report.

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c. Approve Payment of the Bills

Manager Crafton moved to approve payment of the bills. Manager Duevel seconded the motion. The motion carried with no managers objecting.

d. Adopt Resolution 24-063 Approving Barr Task Orders for Lake Lucy, Ann, and Susan Watershed and Lake Diagnostic Study and Management Plans (TO 047), Shoreline and Vegetation Management (TO 048), and Fisheries Management (TO 049), and Red Rock and Mitchell Lakes Watershed and Lake Diagnostic Study and Management Plans (TO 050)

Manager Ziegler moved to adopt Resolution 24-063 approving Barr for the task orders for Lake Lucy, Ann, and Susan Watershed and Lake Diagnostic Study and Management Plans (TO 047), Shoreline and Vegetation Management (TO 048), and Fisheries Management (TO 049), and Red Rock and Mitchell Lakes Watershed and Lake Diagnostic Study and Management Plans (TO 050). Manager Duevel seconded the motion. Administrator Jeffery noted the statutes listed in the resolution was incorrect and the correct statute to reference is 103B.231. Manager Ziegler and Manager Duevel consented to the correction. The motion carried with no managers objecting.

9. Discussion Items

a. Discuss Terms of Cooperative Agreement with the City of Chanhassen for the Replacement of the Culvert at Galpin Road with a Box Culvert with Naturalized Bottom.

Administrator Jeffery provided history on the culvert crossing at Galpin Boulevard for Bluff Creek, summarizing the City of Chanhassen agreed to pay for the sanitary sewer and for the water main. He explained the City agrees to pay for the pipe but not the valve for each end, which costs \$35,000 each. He said as the difference between the cost of replacing the culvert in kind and replacing it with a box culvert has increased to about \$460,000, he is less sure this is an expenditure the District should undertake right now. He said it is up to the managers to decide if the cost justifies the benefit. Administrator Jeffery said the structure has been ordered, so there is a cost incurred, such as a reshelving fee. Administrator Jeffery said there is a chance the District could use the pipe somewhere else, and he could inquire with the City about storing it.

Manager Ziegler moved to scrap this project as long as the District’s cost for restocking is less than 50% of the cost of the structure. President Pedersen seconded the motion. Manager Nelson suggested amending the motion to include maintaining the District’s right to use the structure in the future or restock it.

Administrator Jeffery said he could come back to the Board at its November meeting with what it would cost to restock and if City would store it or if the City would come

190 back with more money toward the District’s portion of the cost. The managers
191 consented to Terry going to the City for that discussion.

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193 **b. Discuss Terms of Cooperative Agreement with the City of Chanhassen for**
194 **the Upper Riley Creek Restoration and Ecological Enhancement Project**
195 **including the Proposed Decant Facility.**

196 Administrator Jeffery asked the managers if they would support terms stating if the City
197 of Chanhassen does not move forward with the decant facility, within a sunset of seven
198 years, the City would be responsible for 100% of the engineering costs. He said the City
199 is amenable to those terms and asked if the managers are. The managers said they are.

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201 **c. Update on Discussion of Larry Koch vs. Riley Purgatory Bluff Creek**
202 **Watershed District and Terry Jeffery (The Board may go into Closed**
203 **Session)**

204 Mr. Smith said there is no need to go into closed session regarding either lawsuit unless
205 the Board has any questions. No managers indicated they had questions.

206 **d. Update on Discussion of Larry Koch vs. Riley Purgatory Bluff Creek**
207 **Watershed District, Carver County, Hennepin County, Bonnie Nelson, and**
208 **Jill Crafton**

209 [See item 8c.]

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10. Manager Reports

211 Manager Ziegler shared that on the November election ballot in there will be a vote to extend the
212 amendment to the Minnesota Constitution regarding the Environment and Natural Resources
213 Trust Fund renewal. He said the language is “Should the Minnesota Constitution be amended to
214 protect drinking water sources and water quality of lakes, rivers, and streams, conserve wildlife
215 habitat and natural areas, improve air quality, and expand the access to parks and trails by
216 extending the transfer of the proceeds from the state-operated lottery to the Environment and
217 Natural Resources Trust Fund and to dedicate the proceeds for these purposes”. He added that if
218 one does not vote yes, it effectively is a no vote. Administrator Jeffery asked the managers if they
219 want this information posted on the District website. The manager unanimously said yes.

220 Manager Crafton said she thinks the District should send into BWSR information about The
221 Preserve project, for the District to get some visibility for its projects.

222 Manager Nelson reported she and Manager Crafton attended Waconia Regional Stormwater
223 Reuse tour. Manager Nelson said Waconia uses water reuse to irrigate 30 acres of ball fields,
224 which reduces the city’s use of potable water by 2.5 million gallons per year. She said the
225 Waconia Director of Public Services said he thinks money is best spent on partnerships that

226 incentivize good behavior. Manager Nelson noted that Atlas 15 is out for comment. She said the
227 Spring Road property is in an important migratory bird area. She said the District could consider
228 offering it as a location as a partnership regarding bird migration, such as for education.
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11. Upcoming Board Topics

230 a. Board and Staff Retreat for Strategic Planning Purposes

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12. Upcoming Events

232 a. Spring Road Tour

233 b. December 4th-6th Minnesota Waters Annual Conference

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13. Adjourn

235 Manager Ziegler moved to adjourn the meeting. Manager Duevel seconded the motion. The
236 motion carried with no managers opposing.

237 The meeting adjourned at 8:34 p.m.

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Respectfully submitted,

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Tom Duevel, Secretary