

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

November 6, 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:

Brady Busselman* Colin Livdahl*
Jill Carsten Jess Weiss, CAC
Thomas Lindquist

**Attended the meeting virtually.*

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

1 President Dorothy Pedersen called to order the Wednesday, November 6, 2024, Board of
2 Managers Regular Meeting at 7:01 p.m. at the District Office, 18681 Lake Drive East,
3 Chanhausen, Hennepin County, Minnesota.

2. Approval of Agenda

4 President Pedersen added to the agenda item 8d – Notice for Considering the Governance
5 Manual Amendments at the Board’s December Regular Meeting. Manager Ziegler moved to
6 approve the agenda as amended. Manager Crafton seconded the motion. The motion carried
7 with no managers opposing.

8

3. Matters of General Public Interest

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

10 Tom Lindquist of 16750 Baywood Terrace, Eden Prairie said he is a member of the Eden
11 Prairie Duck Lake Association. He said he has comments on the Task Order 46 work that
12 has been recently done. Mr. Lindquist commented he, his colleagues, and neighbors are very
13 happy to see work is progressing. He thanked the Board and Barr Engineering on the work
14 accomplished so far to analyze some alternatives for modifying the Duck Lake outlet to
15 detain more water in the lake for similar conditions to before the 2014 modifications. Mr.
16 Lindquist said he looked at the draft engineering report and he sees six elevation duration
17 curves. He said that data clearly shows the approach Outlet 1.0 V-Notch would give a lake
18 elevation curve very similar to the historical elevation curve and would bring the water level
19 up about one-half of a foot compared to the 2014 existing curve. Mr. Lindquist added he
20 and the group he represents is interested in minimizing winter kill and that approach is a
21 step to get close to the conditions from 1998. He said in 1998 the DNR (Department of
22 Natural Resources) Fisheries implemented its lake management plan for Duck Lake. He said
23 at that time the DNR estimated the winterkill rate would be once in every ten to twenty
24 years, but since 2014 winterkill has become the rule rather than the exception. Mr. Lindquist
25 stated he and those he represents hope it will be implemented and it will bring us back close
26 to where we were quite some years ago.

27 Larry Koch of 471 Bighorn Drive, Chanhassen commented this meeting is being held in
28 violation of Minnesota Statute 103D.311 due to the fact that certain managers were not duly
29 appointed in compliance with 103D.311. He commented none of the actions taken at this
30 purported Board of Managers meeting are valid. Mr. Koch cautioned all to act accordingly
31 and at their own risk. Mr. Koch objected to the accounting and said there is continued
32 violation of GAAP, incorrect accounting of credit card purchases that needs to be corrected
33 because then the accounting statements do not correctly reflect the activities of the District.
34 He commented it is not up to auditors to have to go through and check the way the that is
35 being handled. Mr. Koch said he has asked for some information, particularly an
36 explanation of all expenses for staff conferences, catering etcetera. He said there are lots of
37 statements in the staff report regarding data but he has not seen that the reports have been
38 provided. He said if there are reports, he requests to see those. Mr. Koch commented the
39 public should be seeing those and should not have to wait until the annual report is
40 submitted as it is a little late to take any action. He said regarding the Upper Lotus Lake
41 project, he believes anything but controlling the rate of runoff is a waste of money. He
42 remarked we are not in the landscape business and he sees no data to show to what extent
43 that park is being used. Mr. Koch stated we should not be spending our money to make it
44 into a park and if anything, the City of Chanhassen should be spending its money to make it
45 into a park, and we should be dealing with water issues. He quoted Manager Crafton about
46 getting rid of turf grass and said it seems to him this project promotes turf grass. Mr. Koch
47 commented he thinks we should be returning the majority of that property to trees and
48 providing a long-term carbon sink. He said that property serves more trees than what is
49 projected in either of those two plans.

4. Guest Presentation: Heather Lau, P.E., Barr Engineering “Bluff Creek Flood Storage and Promiscuous Dump Site”

50 Heather Lau displayed the slide presentation “Upper Bluff Creek Ecological Restoration Project.”
51 She explained she will provide an update on the project including limitations for excavating
52 compensatory storage, which will likely be required for the project.

53 Ms. Lau reminded the Board the project includes the installation of an outlet structure, which will
54 raise the water level in the wetland, meaning reduced floodplain storage. She explained compensatory
55 storage is required to not raise the 100-year elevation in the wetland. Ms. Lau said a Phase I
56 Environmental Site Assessment (ESA) was conducted for the project site. She reported the discovery
57 of a ravine dump and potentially contaminated debris in the creek bed downstream of the wetland
58 outlet structure.

59 Ms. Lau described the two location options for the compensatory storage of 2.8-acre feet, with
60 location one including removal of the debris and potentially contaminated material. She explained the
61 steps required with moving ahead with location one, such as conducting a Phase II ESA and if
62 contamination is discovered, coordination with the Minnesota Pollution Control Agency’s
63 Brownfield program, which could take up to six months, among other steps. Ms. Lau said this option
64 could require a \$30,000-\$40,000 project change order and a change in the schedule.

65 Ms. Lau said location two would be upstream of the dumpsite and would avoid impacting it. She said
66 this location option would avoid the potential contaminants, unless some are discovered during
67 construction, and would not require a project change order or other permitting considerations nor
68 would the wetland be impacted.

69 Ms. Lau asked for the Board’s direction on how it wants to proceed with the project.

70 Manager Ziegler said there may be an opportunity for the District to partner with the City or County
71 because it seems the dumpsite would be a problem for them. Administrator Jeffery said he can reach
72 out to the City to see if they are willing to expand the project scope regarding the compensatory
73 storage or at least share the costs.

74 Administrator Jeffery noted that once the District touches the soil in those locations, it is the
75 District’s responsibility, meaning the District would need to address contamination if it is there. He
76 said it is up to the Board to decide if the potential benefit of removing the debris and potentially
77 finding contamination warrants the cost. Scott Sobiech reiterated once the District touches it, the
78 District is responsible for it. He said in terms of water quality, the debris should be removed, but the
79 managers need to make the decision on risk versus reward.

80 Administrator Jeffery recommended doing a Phase II ESA, after which the Board would make its
81 decision. The Board consented to the suggestion.

82

5. Reading and Approval of Meeting Minutes

83 a. **Approve Minutes of the October 2, 2024, Regular Meeting of the RPBCWD**
84 **Board of Managers and October 17, 2024, Board of Managers Workshop**

85 Manager Duevel moved to approve the minutes of the October 2, 2024, Regular Meeting
86 of the RPBCWD Board of Managers and the October 17, 2024, Board of Managers

87 Workshop. Manager Ziegler seconded the motion. Manager Crafton noted an edit to the
 88 October 2nd minutes on line 167 to replaces “statutes” with “statute” and an edit to the
 89 October 17th minutes on line 21 to place “and need” with “that need.” Manager Ziegler
 90 and Manager Duevel agreed to Manager Crafton’s changes. The motion carried with no
 91 managers opposing.

92

6. Reports

93 a. Receive Citizen Advisory Committee Report

94 Jeff Weiss reported the CAC at its October 21st meeting had an informational presentation
 95 by Administrator Jeffery followed by a great conversation on a number of topics. Mr.
 96 Weiss described the topics, such as how the CAC could help with partnering with the
 97 cities, District rules, steep slopes, and the idea of learning about rules of other watersheds
 98 to consider if, and how, the District could compare rules and have some rules the same
 99 across watershed organizations. He said the CAC did not take any action at the meeting.

100 President Pedersen said the Freshwater Society had their primary scientist do a report on
 101 the steep slopes in Hennepin County. President Pedersen said the report identified the
 102 steep slopes in the County and some were in the NMCWD. Administrator Jeffery said the
 103 District has that report and the Lower Minnesota River Watershed District has done a
 104 fairly extensive review.

105 b. Receive October Staff Report

106 Manager Nelson asked about the City of Chaska’s Local Surface Water Management Plan
 107 and if the Plan could specify instead of Atlas 14, specify Atlas 14 or most current, because
 108 Atlas 15 is under public notice. Administrator Jeffery said the District and the
 109 Metropolitan Council both commented the City needs to update the LSWMP according to
 110 Atlas 15.

111 c. Receive October Administrator’s Report

112 Manager Nelson asked about the update on the culvert and information from the City of
 113 Chanhassen. Administrator Jeffery responded he met with the City and it does not have
 114 room to store the culvert nor does it have additional funding to put toward offsetting those
 115 costs. He said the City’s design engineer is reaching out to the manufacturer to see if
 116 fabrication has or has not been started, and if it has, the cost of reshelving. Administrator
 117 Jeffery said he will bring that update and cost information back to the Board.

118 d. Receive October Engineer’s Report

119 Manager Nelson asked about the BIOLYPH parking lot expansion project and how the
 120 performance monitoring is done and what is delivered. Administrator Jeffery said
 121 typically an email is sent to him with the meter reading of the volume of water used for
 122 the year.

123

- 124 **e. Confirm Board Representative for November 18, 2024, CAC Meeting**
125 President Pedersen volunteered to be the Board representative for the November 18th CAC
126 meeting.
127

7. Consent Agenda

- 128 **a. Adopt Resolution 24-064 to Approve Consent Agenda**
129 Manager Ziegler moved to adopt Resolution 24-064 to Approve the Consent Agenda as
130 listed. Manager Nelson seconded the motion. The motion carried with no managers
131 opposing.
132 The Consent Agenda included:
133
 - Approve Permit 2024-072 CenterPoint Energy-Stodola Rd Waterbody Crossing
134 as Presented in the Recommended Board Action Section of the Permit Report.
 - Approve Permit 2024-077 BIOLYPH Parking Expansion as Presented in the
135 Recommended Board Action Section of Permit Report.
136
137

8. New Business

- 138 **a. Items Removed from Consent Agenda**
139 No items were removed from the Consent Agenda.
140
141 **b. Accept October Treasurer’s Report and Payment of the Bills**
142 Manager Crafton moved to accept the October Treasurer’s Report and pay the bills.
143 Manager Duevel seconded the motion. The motion carried with no managers objecting.
144 Manager Duevel asked about the increase in the insurance fees. Administrator Jeffery
145 explained the increase is for the property and casualty insurance and the workers
146 compensation insurance through the League of Minnesota Cities Insurance Trust. He said
147 it was less than a 3% increase over previous years. Manager Duevel said it might not have
148 been recorded correctly in the report-. Administrator Jeffery said he will look into it.
149 Manager Nelson commented the reimbursement to her is for the registration for the
150 Minnesota Waters Conference.
151
152 **c. Approve Reinstatement of Permit 2022-068 Kiwatchi Development as**
153 **Presented in the Recommended Board Action Section of the Permit Report**
154 Mr. Sobiech said the request is for the District to reinstate a permit that expired earlier this
155 year. He said the permit holder is asking to modify the infiltration basin and convert it to a

156 biofiltration and continue the permit. Mr. Sobiech said the site now qualifies as a
157 restricted site.

158 Administrator Jeffery said a few after-the-fact permits have expired, so staff has set up the
159 MS-4 database to automatically send out a notice to the applicant 30 days prior to the
160 permit expiration.

161 Manager Ziegler asked if District would recoup its costs involved in reinstating the
162 permit. Mr. Sobiech explained when the Board approved the permit originally, the
163 applicant was required to replenish the permit fee deposit. He said since then, any work
164 that has been done has been charged against that and there is still money in that deposit to
165 cover the additional work for this review.

166 Manager Ziegler moved to approve the reinstatement of Permit 2022-068 with the
167 modifications as recommended by the District Engineer. Manager Duevel seconded the
168 motion. The motion carried with no managers objecting.

169

170 **d. Governance Manual Notice for Considering Amendments at December**
171 **Meeting**

172 Manager Ziegler moved to direct staff to notice the Governance Manual proposed
173 amendments for the Board’s December 11th meeting. Manager Nelson seconded the
174 motion. The motion carried with no managers objecting.

175

9. Discussion Items

176 **a. Duck Lake Outlet Modification – Draft Technical Memorandum**

177 Mr. Sobiech said Barr Engineering was tasked with trying to figure out a way to change
178 the outlet such that it would mimic what had happened before the most recent outlet
179 replacement.

180 Manager Ziegler stated he does not live on Duck Lake and he is a member of the Duck
181 Lake Homeowners Association (HOA). He said the HOA owns a small piece of land
182 that has about 90 feet of lakeshore. Manager Ziegler said he is a member of the Eden
183 Prairie Duck Lake Association

184 Mr. Sobiech said it is a tough decision about how to move forward. Administrator
185 Jeffery said he thinks a conversation with the DNR Fisheries is needed. Administrator
186 Jeffery said the biggest obstacle is the railroad owns the land. He said he has spoken
187 with Robert Ellis with the City of Eden Prairie, who reported the railroad has said it will
188 give access if the City forgives the railroad all of its stormwater management fees,
189 which the City is unwilling to do.

190 Administrator Jeffery said another obstacle is the City of Eden Prairie is very concerned
191 about a one-inch weir and the maintenance of it.

192 Manager Nelson asked if there is a benefit to the Watershed District by doing this outlet
193 modification. Administrator Jeffery said we do not know.

194 Manager Ziegler said he thinks there is definitely a benefit to the fish habitat. He said
195 when the DNR talked to the HOA, the DNR indicated Duck Lake gets winter kill and
196 put it in writing that it happens on average every 10 to 20 years. Manager Ziegler said
197 after the outlet change, the winter kill happens every year. He said the Engineer's
198 Report says the next step would be to evaluate what would be the benefits to the
199 watershed. Manager Ziegler said the District's priorities include flooding issues and
200 environmental habitat issues, and he thinks both would be improved dramatically by
201 making the changes proposed. He said his rough calculations are the proposed changes
202 would result in about 20-acre feet of flood storage.

203 Manager Ziegler said obviously there are some environmental advantages of a revised
204 outlet, but what they are and to what extent is for the experts to tell the District. He said
205 where would the benefits place this project on the District's prioritizing scale. He said
206 Barr has done a great job so far, but it was not free. Manager Ziegler said the Board will
207 have to make a decision.

208 Administrator Jeffery said staff could do that metric, score the project, to quantify the
209 benefit.

210 Administrator Jeffery added that if the District owns storm sewer infrastructure, the
211 District will become an MS-4 permittee, which will significantly increase the District's
212 expenses and staff costs.

213 Administrator Jeffery said the goal of this agenda item tonight was to present the
214 technical memorandum. He said he can reach out to the DNR to see if there is any
215 potential to partner. Manager Ziegler said he will look for the contact information for
216 the DNR staff member that presented to the Duck Lake HOA.

217 The Board agreed that staff should score the project.

218

219 **b. Minnesota Watersheds Resolutions Discussion**

220 Administrator Jeffery said Smith Partners is putting forward a chloride resolution. He
221 said the resolution intentionally does not include specific language as to what the rule
222 would be and instead focuses on the fact chloride needs a regulatory approach as well as
223 an educational approach.

224 Administrator Jeffery listed the two resolutions the District put forward and mentioned
225 the resolutions put forward by other watershed organizations.

226

227 **c. Update on Larry Koch vs. Riley Purgatory Bluff Creek Watershed District**
228 **and Terry Jeffery (the Board may go into Closed Session)**

229 Mr. Smith recommended the Board go into closed session for the purpose of receiving
230 confidential legal advice concerning litigation strategy in two lawsuits, including Larry

231 Koch versus Riley Purgatory Bluff Creek Watershed District and Terry Jeffery, which
232 concerns the Spring Road Conservation Project, and the second lawsuit Larry Koch
233 versus Carver County, Hennepin County, the Riley Purgatory Bluff Creek Watershed
234 District, Bonnie Nelson, Jill Crafton as well as other parties, which concerns the
235 appointment process for the most recent appointments to the Board of Managers.

236 Manager Ziegler moved to go into closed session to receive confidential legal advice on
237 these two lawsuits. Manager Duevel seconded the motion. The motion carried with no
238 managers objecting.

239 The Board went into closed session at 8:38 p.m.

240 The Board reconvened the meeting at 8:53 p.m.

241

242 **d. Update on Larry Koch vs. Riley Purgatory Bluff Creek Watershed District,**
243 **Carver County, Hennepin County, Bonnie Nelson, and Jill Crafton (the**
244 **Board may go into Closed Session)**

245 [See item 8c.]

246

10. Manager Reports

247 Manager Duvel reported he attended the Minnesota Water Resources Conference in
248 October, which had record attendance. He said the central theme was climate change and
249 resiliency. He said he got links to all the abstracts and he shared them with **Administrator**
250 **Jeffery.**

251 Manager Nelson reported on one of the conference sessions on salinity and what happens to
252 lakes when they stop turning over. Manager Nelson said the speaker would be willing to
253 come talk to the District's CAC. Manager Nelson said she will get the speaker's contact
254 information as she was really good.

255 **Manager Crafton shared about a Minnesota Board of Water and Soil Resources meeting she**
256 **attended, noting Steve Robinson heard about the presentation Fred Rozumalski and**
257 **Administrator Jeffery did and is very interested in what the District is trying to do.**

258

11. Upcoming Board Topics

- 259 **a. December 4th – Set Final Levy**
260 **b. December 4th – Adopt Meeting Schedule for 2025 Calendar Year**
261 **c. December 12th, 2 – 3 p.m. – Strategic Planning Workshop**
262 **d. Notice of Intent to Modify 10-Year Plan**

263

12. Upcoming Events

264

a. November 28th – 29th Office Closed for Thanksgiving

265

b. December 3rd- Government Affairs Conversation at Annual Conference (6:30 p.m.)

266

c. December 4th – 6th Minnesota Waters Annual Conference

267

d. December 11th – Regular Meeting of RPBCWD Board of Managers

268

e. December 19th – Mission, Vision, and Values Workshop

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13. Adjourn

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

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The meeting adjourned at 8:57 p.m.

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Respectfully submitted,

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281

Tom Duevel, Secretary