

## MEETING MINUTES

### Riley-Purgatory-Bluff Creek Watershed District

December 6, 2023, RPBCWD Board of Managers Special Meeting

**PRESENT:**

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

**Staff:** Amy Bakkum, Office Administrator  
Terry Jeffery, District Administrator  
Louis Smith, Legal Counsel, Smith Partners

**Other Attendees:** Jeff Borowiak iPhone (6127436467)  
Ben Bullard Morgan Jacobs  
George Eilertson John  
Chesney Engquist Natalie  
Michelle Frost Marilynn Torkelson  
Andrew Hartmann Mark Weber  
Rachel Whittington

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

### 1. Call to Order

1 President Ziegler called the Board work session to order at 7:00 p.m. Mr. Smith called roll as  
2 follows:  
3

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

4 \*Prior to responding to the roll call, Manager Koch asked if a notice of this meeting was mailed out  
5 eight days in advance. Administrator Jeffery responded no. Manager Koch said on that basis he has to  
6 object to holding this meeting as we are not in compliance with the statutes. He said you can record  
7 him as you deem fit. Manager Koch said reserving his objection, he will say he is present.  
8

## 2. Approval of Agenda

9 Manager Pedersen moved to approve the agenda as written. Manager Crafton seconded the  
10 motion.

11 Manager Koch stated he has an issue with the agenda and has a couple of questions. He said  
12 it seems to him that as the question is in order to have this, we have to have a valid Plan  
13 amendment in order to borrow money.

14 Administrator Jeffery stated the Board has already ordered the project and approved the plan  
15 amendment at previous meetings.

16 Manager Koch asked if the plan amendment review period was 30 days and not 60 days.

17 Administrator Jeffery said yes, 30 days as required for a minor plan amendment. Manager  
18 Koch said the written comments included an email from Administrator Jeffery and asked if  
19 that email contained the notice of the review period. Administrator Jeffery said that is correct.

20 Manager Koch said his understanding is that the plan amendment is basically that the District  
21 intends to certify the cost of the project entered into a cooperative financing agreement with  
22 Hennepin County, whereby the cost of the project will be paid over 20 years through the  
23 District's ad valorem tax levy on all the properties in the District in Hennepin County and  
24 Carver County.

25 Manager Koch asked if tonight the Board is looking at approving a temporary financing on a  
26 temporary basis.

27 Administrator Jeffery said yes, we are looking at issuing a one-year temporary general  
28 obligation to carry us through to when Hennepin County can issue long-term bond in fall of  
29 2024.

30 Manager Koch asked if his understanding is correct that the District is not borrowing money  
31 from Hennepin County at this time. Administrator Jeffery said that is correct. Manager Koch  
32 asked if his understanding is correct that the District is proposing to borrow the entire  
33 \$5,800,000. Administrator Jeffery said that is correct. Manager Koch said this exceeds  
34 \$2,000,000. He said he believes there are provisions in Statute 103D that limit borrowings by  
35 counties and financial institutions to \$2,000,000. He asked if that statute applies.

36 Mr. Smith stated the \$2,000,000 loan limit does not apply. He said the District has separate  
37 authority to issue bonded debt. He said the opinion of bond counsel and his opinion that the  
38 \$2,000,000 loan limit from counties and other financial institutions is not applicable.

39 Manager Koch said the two statutes do not nil each other .He said is it not possible to have  
40 bonding and still have a limit and asked if the two are irreconcilable. Manager Koch asked if  
41 the ability to bond and borrow, both, could be limited to \$2,000,000

42 Mr. Smith said they are two independent authorities. He said one provides for the District to  
43 issue bonded debt and the other provides for the District to obtain loans and imposes a limit  
44 on loans from counties and financial institutions. He said it is the opinion of bond counsel and  
45 his opinion that those are two separate authorities.

46 Manager Koch asked if this is all being conveyed to the purchaser of the bonds or the bond  
47 debt. Mr. Smith said that is his understanding.

48 Manager Koch said he has a hard time reconciling the two when he looks at the state statutes,  
49 especially 103B and 103D. He said he does not see any provision in there that one does not  
50 apply to the other. Manager Koch said he has concerns that by agreeing to this the bond the  
51 District will be exceeding the \$2,000,000 loan limit. He said he looked up the lender and it is  
52 listed as a financial institution per the West Virginia Secretary of State's Office. Manager  
53 Koch said he has issues, even if this were a legitimate meeting, about whether or not we  
54 could authorize borrowing more than the cap set forth. He said he respectfully disagrees that  
55 one trumps the other.

56 Manager Koch asked if he is correct that we never addressed short-term financing in the plan  
57 amendment.

58 Mr. Smith said the motion before the Board is the approval of the agenda and Mr. Koch's  
59 comments seem to be suited for the next agenda item.

60 Manager Koch said he thinks this issue is whether this should be on the agenda at all given  
61 the questions he has raised. He said it is a matter of whether it is rightfully on the agenda  
62 given that he thinks a fair reading of the plan amendment is that it talks about long-term  
63 financing, not short-term financing.

64 Manager Koch said he thinks the District needs to do another plan amendment to allow for  
65 short-term financing. He said he thinks it is pretty clear there is a big difference between  
66 short-term financing and 20-year bond financing.

67 Manager Koch said he thinks that because short-term financing is not covered by the plan  
68 amendment, it should not be on the agenda and we should not be addressing it, even if this  
69 was a properly called meeting. He said he thinks we should terminate this and get an opinion  
70 on if they are materially different. Manager Koch said there are two different plan  
71 amendment provisions. He said this was obviously not contemplated when that plan  
72 amendment was drafted, so we should not be addressing this borrowing. Manager Koch said  
73 the Board should not be addressing this borrowing.

74 Manager Koch said his understanding is we do not have this covered by the District's budget.  
75 He said we have some number in there for payments but we do not have a budget line item  
76 for this acquisition in either 2023 or 2024. Administrator Jeffery responded that with the plan  
77 amendment we have a line item. He said when that plan amendment was released, the capital  
78 schedule was updated to show this as a line item in capital projects. Administrator Jeffery  
79 agreed the District's 2023 budget is unchanged and 2024 budget, with the plan amendment,  
80 will include that line item and will move funds from the District' Opportunity Project budget  
81 into that line item to cover that debt service.

82 Manager Koch said he does not think that is how it works. He said he thinks there is a  
83 problem with buying this in either 2023 or 2024 and making those purchases because adding  
84 it to the budgets we have will clearly exceed those budgets.

85 President Ziegler said he would like to call the question as we have talked about the agenda  
86 long enough.

87 Manager Koch said President Ziegler is interrupting him and that is not correct, but if  
88 President Ziegler wants to make those statements on the record in a recording then go right  
89 ahead. Manager Koch said his last comment is he wants to incorporate all his prior comments  
90 regarding this plan and the amendments for the record.

91 President Ziegler asked Mr. Smith if the Board can proceed with a roll call vote on calling the  
92 question.

93 Mr. Smith said the order would be for a motion to close debate.

94 President Ziegler moved to close debate on the agenda. Manager Crafton seconded the  
95 motion.

96 Manger Koch said while someone has the floor, you cannot close the debate. He said you  
97 have to wait until the person has surrendered the floor.

98 President Ziegler asked Mr. Smith if it is appropriate to now call the vote on closing debate.

99 Mr. Smith said it sounded like Manager Koch was near the end of his comments on the  
100 agenda.

101 President Ziegler said all of Manager Koch's comments were on other items on the agenda.  
102 President Ziegler said he does not understand jumping ahead and discussing everything on  
103 the agenda before approving the agenda. He said it seems to be out of order.

104 Manager Koch said he is questioning whether these items should be on the agenda because  
105 we are talking about a material change in the financing from what was stated in the plan  
106 amendment. He said his understanding is if it is not in the plan, you cannot do it. Manager  
107 Koch said temporary financing is not in the plan and that is the reason he wanted to address it  
108 at this point.

109 Mr. Smith said it is opinion of counsel that temporary financing is included in and authorized  
110 by the plan amendment.

111 Mr. Koch asked if Mr. Smith's firm is willing to put that in a legal opinion. Mr. Smith said in  
112 fact, he believes his firm has, and yes that it part of the process.

113 President Ziegler asked Manager Koch how much longer he wants to debate the agenda.

114 Manager Koch said he has not seen a written opinion and if there is no written opinion he  
115 cannot put much weight in it. He said his whole point is why are we addressing something  
116 that he thinks is likely to require a plan amendment. Manager Koch said this is a wholesale  
117 change in the financing process. He said the statutes are the statutes and they provide for plan  
118 amendments and you cannot just willy-nilly wish something into the plan no matter how hard  
119 you wish that was the case.

120 Manager Koch asked if we will see an opinion before voting on these issues.

121 Mr. Smith said he does not think there will be a written opinion other than the opinions that  
 122 have been provided all the way through this process for the last six months He said as part of  
 123 the bond issuance, there will be an opinion from bond counsel as well as an opinion from the  
 124 District’s legal counsel, Smith Partners, that the project is duly authorized pursuant to an  
 125 adopted plan amendment.

126 Manager Koch asked under what circumstances the limit of borrowing under 103D would  
 127 ever apply. He asked for an example. Mr. Smith said the example would be the District goes  
 128 to a financial institution or the county and enters into a loan agreement, then that \$2,000,000  
 129 loan limit would apply, but it is the opinion of bond counsel and is our opinion that is  
 130 different than issuing bonded debt.

131 Manager Koch said bond is nothing more than a and a borrowing and you can go look up any  
 132 number of definitions and he does not think that you will find that distinction. He said it is  
 133 just a different means of borrowing as opposed to not being borrowed. Manager Koch said he  
 134 yields.

135 Upon a roll call vote, the motion carried 4-1 as follows:

136

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

137 \*Prior to voting Manager Koch stated, “Without waiving my prior objections.”

138

**3. Update of Spring Road Conservation Project**

139 Administrator Jeffery reported the feasibility period ended Monday, which starts the 30-day  
 140 clock to close on the property or to put forward and pay \$50,000 to extend that period. He  
 141 said we have title work in place, the phase 1 ESA in place, and now remaining to get done is  
 142 the financing.

143 Mr. Smith asked if the two letters from Hennepin County are in the meeting packet.  
 144 Administrator Jeffery said yes, including the copy of the letter of support from Commissioner  
 145 Goettel.

146 Mr. Smith said the letter from Hennepin County Commissioner Goettel expresses support for  
147 the project and the letter from the Hennepin County Finance Office expresses its willingness  
148 to provide long-term financing for the project.

149 Mr. Eilertson of Northland Securities summarized the bids received on financing, one short-  
150 term from Huntington Public Capital Corp. and two long-term bids from Capital One Public  
151 Funding, LLC, one for a 20-year term and one for a 25-year term. He reminded the Board  
152 Northland Securities focused on the short-term bid per the District's agreement with  
153 Northland Securities and the knowledge of the District's arrangement with Hennepin County  
154 for the County to issue debt next fall.

155 Mr. Eilertson explained the financing itself is a one-year financing term and the date of the  
156 financing is December 27, 2023. He said that is the date funds will be available to the  
157 District. Mr. Eilertson said the bonds mature one year later, or December 27, 2024.

158 Mr. Eilertson said the bonds have the ability to be refinanced or paid off early beginning six  
159 months after the date of the bond, so effective June 27, 2024, and any date thereafter the  
160 District can retire this short-term financing with the proceeds of long-term debt. Mr. Eilertson  
161 said the expectation is that the issuance of long-term debt issued by Hennepin County would  
162 be the takeout financing for this short-term financing.

163 Mr. Eilertson said Huntington Bank provided a bid of 5.17% and is the only institution that  
164 provided a bid on the short-term bonds. He explained it is a time of year due to liquidity  
165 issues with banks, and between this and Federal Reserve actions and the tightening of the  
166 money supply is the reason why there were not more bids on the short-term financing. Mr.  
167 Eilertson said Northland Securities is pleased with the bid from Huntington Bank. Mr.  
168 Eilertson pointed out the short-term rates are higher than long-term rates and he explained the  
169 current and unique market condition of the inverted yield curve.

170 Mr. Eilertson summarized the short-term financing with Huntington Bank is at a rate 5.17%  
171 with the ability to exit this financing without penalty after six months.

172 Mr. Koch asked if there is a summary table to view. Administrator Jeffery said yes, and it  
173 was sent to the managers last Friday. He displayed the following tabulation of bids:



**EXHIBIT A - BID TAB**

TABULATION OF BIDS  
 RILEY PURGATORY BLUFF CREEK WATERSHED DISTRICT, MINNESOTA  
 \$5,804,000  
 GENERAL OBLIGATION TEMPORARY WATERSHED BOND, SERIES 2023A

AWARD: HUNTINGTON PUBLIC CAPITAL CORP.

DATE OF BIDS: WEDNESDAY, NOVEMBER 29, 2023

BIDDER	PURCHASE PRICE	NET INTEREST COST	AVERAGE COUPON
HUNTINGTON PUBLIC CAPITAL CORP. Minnetonka, MN	\$5,804,000	\$300,066.80	5.17%
CAPITAL ONE PUBLIC FUNDING, LLC St. Cloud, MN (20 Year Term Proposal)	\$5,802,000	\$3,407,100.70	4.87%
CAPITAL ONE PUBLIC FUNDING, LLC St. Cloud, MN (25 Year Term Proposal)	\$5,802,000	\$4,387,215.00	4.90%

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177

Manger Koch asked if the District received term sheets with more details on the bids and if they are posted to the website. Administrator Jeffery said they are not posted at this time.

178

Mr. Eilertson described the term sheet sent out to the various financial institutions.

179

180

181

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183

Manager Koch asked if, for the long-term bids received, there is the ability to pay them off early. Mr. Eilertson said yes. He said all three of the bids received have a call provision, meaning you call exit or call the bonds early. Mr. Eilertson said typically on a longer-term it is about halfway through the financing term. He said he thinks the District will be in a good position next year to convert short-term bond to long-term debt.

184

185

Mr. Koch said we have no guarantee we will be able to refinance these bonds with Hennepin County.

186

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188

Administrator Jeffery said Hennepin County has provided a letter stating they are in support of it and that they intend to provide the financing. He said is not a guarantee but the County has provided a letter of intent.

189 Manager Koch said he is concerned about doing short-term financing. He said he thinks if  
 190 this [property] is going to be purchased, which he is not advocating, it would be better to  
 191 amend the purchase agreement to delay the purchase until Hennepin County issues the bonds  
 192 because it would save the District some money and remove this uncertainty. He said he does  
 193 not think the sellers would not be at a disadvantage. Manager Koch said he is not in favor of  
 194 doing short-term financing.

195 Manager Duevel said regarding the short-term we can call it anytime after June 27, 2024. He  
 196 asked what happens if in March we are able to close early on long-term – are the penalties  
 197 severe for closing the short-term bond early before the date of the call provision.

198 Mr. Eilertson said the call provision on the short-term bid relates to when you can pay these  
 199 off. He said you could do your long-term financing earlier if conditions are favorable, but you  
 200 cannot pay these bonds off until the call date is reached.

201 Manager Crafton said she supports the District doing this financing. Manager Pedersen  
 202 concurred and said she is ready to move forward. President Ziegler concurred with Manager  
 203 Crafton.

204

#### **4. Adopt Resolution 23-076 Providing for Issuance of a \$5,804,000 General Obligation Temporary Watershed Bond**

205 Manager Duevel moved to adopt Resolution 23-076 Providing for Issuance of a \$5,804,000  
 206 General Obligation Temporary Watershed Bond. Manager Pedersen seconded the motion.

207 Manager Koch commented he objects to this financing for a number of reasons, including: he  
 208 does not believe the plan amendment was properly noticed or properly reviewed or approved  
 209 and therefore the plan does not provide for such an acquisition; the plan does not provide for  
 210 temporary financing – it only refers to 20-year bonds with Hennepin County and he believes  
 211 that requires at least a minor plan amendment; using a minor plan amendment was contrary to  
 212 the District’s Appendix E, which deals with ordering projects, particularly capital  
 213 improvement projects, and if applicable that schematic specifically provides for a 60-day  
 214 review period, so this did not follow our own requirements; he does not believe this is set  
 215 forth in the proposed plan amendment that this constitutes an opportunity project – if you  
 216 look at the definition, it does not involve an improvement, it is not a capital improvement,  
 217 and acquisition of land/property is not included in a capital improvement project nor is such  
 218 including the definition of project under 103D; in his view it is not a capital improvement  
 219 project; going forward with the project required a unanimous vote because the amount  
 220 involved exceeds \$750,000; in his view we are subject to a borrowing cap of \$2,000,000 for  
 221 borrowing from financial institutions and/or counties and this would exceed that; this  
 222 borrowing is not necessary – this amount of money, if the plan is correct, would certify  
 223 directly to the counties under the applicable statutes; this acquisition would cause the budgets  
 224 for 2023 and 2024 to be exceeded, which he believes violates provisions of Chapter 103D; to  
 225 his knowledge this District has not adopted any rules regarding the acquisition of real  
 226 property or the incurrence of debt – rules required under Chapter 103B and therefore it is



227 inappropriate and illegal to borrow this money and it is illegal to acquire this property; this  
 228 project has failed to follow the implementation process set forth in 103D and even if 103B  
 229 applied, it did not follow that implementation process.

230 Upon a roll call vote, the motion carried 4-1 as follows:

231

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

232 \*Before voting Manager Koch stated, “Without waiving any of my prior objections.”

233

**5. Adopt Resolution 23-077 Approving Trust Services Agreement with Northland Trust**

234 Manager Pedersen moved to adopt Resolution 23-077 Approving Trust Services Agreement  
 235 with Northland Trust. Manager Duevel seconded the motion.

236 Manager Koch stated that in light of the fact that he believes the plan amendment is flawed  
 237 and not effective, the ordering of the project was ineffective, and the fact that the proposed  
 238 borrowing exceeds the limits and requirements of 103D, this resolution is unnecessary and at  
 239 a minimum should be tabled.

240 Upon a roll call vote, the motion carried 4-1 as follows:

241

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

242 \*Before voting Manager Koch stated, “Without waiving any of my prior objections.”

243

**6. Adjournment**

244 Manager Pedersen moved to adjourn the Board of Managers special meeting. Manager  
245 Crafton seconded the motion.

246 Upon a roll call vote, the motion carried 5-0 as follows:

247

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch*	Yes
Pedersen	Yes
Ziegler	Yes

248 \*Before voting Manager Koch stated, “Without waiving any of my prior objections.”

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250 The work session adjourned at 8:52 p.m.

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Respectfully submitted,

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Dorothy Pedersen, Secretary

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