

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

August 12 Continuation of August 4, 2021, RPBCWD Board of Managers Workshop and Monthly Meeting

PRESENT:

Managers: Jill Crafton, Treasurer

Larry Koch

Dorothy Pedersen, Vice President

Dick Ward, President

David Ziegler, Secretary

Staff: Amy Bakkum, Administrative Assistant

Zach Dickhausen, Water Resources Technician II

Liz Forbes, Grant Coordinator

Terry Jeffery, Interim District Administrator and Watershed Planning Manager

Eleanor Mahon, Education and Outreach Coordinator

Josh Maxwell, Water Resources Coordinator

Scott Sobiech, Engineer, Barr Engineering Company

Michael Welch, Attorney, Smith Partners

Other attendees: Jeff Abrahamson Kim Hyatt Rebecca Prochaska

Sue Bennett Susu Jeffrey Rana

Brinkley Terry Jorgenson Mark Rausch

Dianna Seth Loken Kate Rohlfen

Robert Ellis Dean Lotter Otto Strack

Chesney Engquist Chad Lukkarila Joel Swenson

Naomi Fine Madhura Patil Willow Teri

Heidi Groven Aspira Maison Brent Theroux

Mark Harding Jesse Mercado Marilyn Torkelson

Paul Heuer Felicia O.

Note: this meeting was held remotely via meeting platform Zoom in abidance with state mandates in response to Covid-19.

8. Action Items

1

d. Permit 2021-012 Noble Hill

2 **2. Consider approval of Permit 2021-012 Noble Hill as Presented in the**
3 **Proposed Board Action Section of the Permit Review Report**

4 Mr. Jeffery summarized the Board's direction at its August 4th Board meeting to continue
5 this item until this meeting based on the permit applicant granting the District an
6 extension of time to allow the District Engineer time to resolve conditions and to allow
7 the managers time to review the analytics material submitted by the applicant's
8 consultant and the District Engineer's review of the same. Mr. Jeffery said the Board
9 needs to make a decision tonight about the permit.

10 Mr. Jeffery said in his opinion the District Engineer has completed a thorough and well-
11 documented and supported review of the application. Mr. Jeffery encouraged the Board
12 to adopt the District Engineer's recommendation.

13 Attorney Welch stated the options the Board could take are to approve the permit,
14 approve the permit with conditions, or to deny the permit. He said the District Engineer's
15 recommendation to the Board is to approve with conditions.

16 Engineer Sobiech described the additional information provided by the applicant over the
17 last week to help resolve and complete comments provided in an earlier review. He said
18 with the additional information, all of the District's comments have been addressed and
19 several conditions have been removed from the permit report. Engineer Sobiech said the
20 District Engineer recommends approval contingent on receiving the financial assurance
21 recommended in the staff report, the applicant provide demonstration that they have the
22 property rights to work within the right of way, and the review and approval of a
23 maintenance declaration for the stormwater management facilities and buffers.

24 Manager Ziegler moved to approve Permit 2021-012 based on staff recommendations
25 including staff stipulations and conditions. Manager Pedersen seconded the motion.

26 Manager Koch objected to approving this permit at this point. He said receiving a revised
27 opinion a couple of hours before the meeting is bad management and it's inappropriate to
28 make a decision based upon that. Manager Koch noted a discussion he had with staff
29 about issues he sees with the plat, such as the basis upon which determinations were
30 being made. He said at minimum there should be another discussion between Barr
31 Engineering's geotechnical staff and Professor Strack to understand the professor's
32 position about another methodology for determining slopes. Manager Koch stated he is
33 not an engineer, but he is a physicist by education and training, so he understands a lot of
34 this. He pointed out his issues with the analysis and conclusions. He said he is not going
35 to agree to something he receives three hours prior to a meeting, he listed items he hasn't
36 yet seen, and said he thinks it's in the best interest to do this in the best possible practices.

37 Manager Pedersen asked about Professor Strack's recommended methodology. Engineer
38 Sobiech said Professor Strack provided a memo that detailed a different type of model.
39 Mr. Theroux described the software recommended by Professor Strack and noted that
40 Barr's review was of the Braun analysis. Engineer Sobiech said Braun used the industry
41 standard that geotechnical engineers to analyze these types of slopes..

42 President Ward reminded the managers that the applicant agreed to an extension of time
43 based on a specific group of questions to be answered, and the Board didn't commission
44 Professor Strack to introduce another methodology, meaning with this discussion, the
45 Board isn't acting to what it agreed to with the applicant, which was to answer the
46 comments on those specific questions, so as far as he is concerned, the Board should
47 move ahead to a vote.

48 Manager Koch said that is the lamest reason to move forward on a vote, and he doesn't
49 remember any specific conditions on the extension of time. He stated if the slope fails,
50 there is a good chance there will be soils down in either wetlands or Riley Creek.

51 Manager Koch said he doesn't agree with President's Ward characterization of the basis
52 of the extension, and the Board has adequate basis on which to deny the permit.

53 Manager Pedersen said she is an environmentalist at heart and understands the viewpoints
54 that people have shared about this project. She commented she can't vote against the
55 rules on the books, and this is a very difficult vote.

56 Manager Koch said the District has Rule C, and he isn't sure the Board has an adequate
57 plan. He said he hasn't received information he believes is necessary and the analysis is
58 incomplete in his opinion, and the Board has a basis to deny the permit, because the
59 applicant hasn't provided the information for the Board to make an informed decision.

60 Manager Crafton said this is a vulnerable area and the climate has become so volatile.
61 She said because she can't make a better-informed decision, she is going to have to vote
62 no.

63 Upon a roll call vote, the motion carried 3-2.

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<i>Manager</i>	<i>Action</i>
Crafton	No
Koch	No
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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66 **h. Consider Approval of Award for Information Technology Consulting**
67 **Services and Authorize Smith Partners to Draft Contract and Interim**
68 **Administrator Jeffery to Sign the Contract**

69 Interim Administrator Jeffery listed where the District advertised for IT services and said
70 the District received eight proposals. He recommended Imagine IT, noting the company

71 does IT consulting for the Nine Mile Creek Watershed District. There was discussion
72 about the length and timing of the contract.

73 Manager Ziegler move to approve Imagine IT with the stipulation that staff can get a
74 contract for less than two years to allow the District to get back on its schedule for
75 professional services.

76 Attorney Welch recommended amending on advice with legal counsel to enter into that
77 agreement with Imagine IT for one year and four months for IT services. Manager Ziegler
78 agreed to changes recommended made by Legal Counsel. Manager Pedersen seconded the
79 motion.

80 Manager Koch recommended the District hire a consultant to analyze the District's
81 systems and processes and make recommendations, and in his experience that is best done
82 by someone who will not be doing the actual work.

83 He moved to amend the motion to direct staff to find out if the District's accounting firm
84 could do some analysis and for staff to report back to the Board. The motion died for lack
85 of second.

86 Upon a roll call vote, the motion carried 4-1.

87

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	No
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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89 **i. Consider Approval of Award for Banking Services.**

90 Interim Administrator Jeffery noted the District's dissemination of the request for
91 proposals for banking services. He said the District received one proposal from 4M.
92 Manager Crafton said she would be in favor of it.

93 Manager Ziegler moved to approve staff to work with legal counsel to develop a contract
94 with 4M that meets the District's time requirement. Manager Pedersen seconded the
95 motion. President Ward made the friendly amendment to have staff develop a contract that
96 aligns with the same timeframe the Board approved for IT services.

97 Manager Koch moved to amend the motion so the contract is effective January 1, 2022,
98 and would terminate December 31, 2023, unless extended. Managers Ziegler and
99 Pedersen agreed to the friendly amendment. Manager Koch moved to amend the motion
100 to make it clear that staff Jeffery and Legal Counsel negotiate contracts with 4M and US

101 Bank for the provision of investment management , fund management, and banking
102 services for the period of time from January 1, 2022, through the end of 2023, and the
103 contracts be provided to the managers prior to their execution. Manager Crafton seconded
104 the motion.

105 Upon a roll call vote, the motion to amend carried 5-0.

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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108 Upon a roll call vote, the amended motion carried 5-0.

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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111 **j. Consider Approval of Award for Accounting Services and Authorize Smith**
112 **Partners to Draft Contract and Interim Administrator Jeffery to Sign the**
113 **Contract**

114 Interim Administrator Jeffery recommended retaining Redpath for accounting services
115 due to their price for services being competitive with the other proposals received and for
116 continuity of service.

117 Manager Crafton moved to approve awarding accounting services to Redpath for 2021
118 and through the end of 2022. Manager Pedersen seconded the motion.

119 Manager Koch raised his concern about the level of cost expended with the audits. He
120 proposed the District utilize another resource for data entry and the accountants for

121 quarterly statements. He said the District needs to sit down and talk about monthly
122 accounting expenditures and audit costs.

123 Attorney Welch recommended the friendly amendment to the motion to authorize the
124 Interim Administrator to execute the agreement on advice of Legal Counsel. Managers
125 Pedersen and Crafton accepted the friendly amendment.

126 Upon a roll call vote, the motion carried 5-0.

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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129 **k. Consider Approval of Award for Audit Services and Authorize Smith**
130 **Partners to Draft Contract and Interim Administrator Jeffery to Sign the**
131 **Contract**

132 Interim Administrator Jeffery recommended the District remain with Abdo, Eick, and
133 Meyers for audit services.

134 Manager Pedersen moved to approve awarding audit services to Abdo, Eick, and Meyers.
135 Manager Ziegler seconded the motion.

136 Manager Koch moved to table this item for at least another month until he and Manager
137 Crafton and Mr. Jeffery have the opportunity to have a discussion with the audit partner
138 regarding exactly what the District's policies are and the process moving forward.
139 Manager Koch's motion died due to lack of a second.

140 Manager Koch stated he believes that Abdo, or at least the junior people they have
141 involved, are incompetent. He said if he has to go point out errors and then get attitude
142 back as if the errors weren't made or what do you know, he thinks the District shouldn't
143 be working with someone like that. He said he has great respect for the audit partner, but
144 the District doesn't need someone like Justin on the audit team as he doesn't have the
145 skills or demeanor, and the Board shouldn't be voting to have Abdo as the auditor at least
146 until after the discussion with the audit he has recommended.

147 Attorney Welch recommended that the Board's motion includes authorizing the Interim
148 Administrator to execute the agreement. Manager Pedersen and Zeigler accepted the
149 friendly amendment.

150 Upon a roll call vote, the motion carried 4-1.

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	No
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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153

1. Consider Approval of Award for Legal Services and Authorize Smith Partners to Draft Contract and Interim Administrator Jeffery to Sign the Contract

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Interim Administrator Jeffery reported the District received one proposal for legal services and it was from Smith Partners. He recommended the Board award legal services to Smith Partners. There was discussion about the development and review of the contract. Administrator Jeffery recommended the contract come back to the Board for its review.

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Manager Pedersen moved to approve retaining Smith Partners for legal services commencing January 1, 2022, through December 31, 2023, and for staff to bring the contract back to the Board for review. Manager Zeigler seconded the motion.

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Manager Koch said he doesn't believe the methodology used to solicit proposals was sufficient and it is important to have a better solicitation. He moved to table the hiring of Smith Partners until the District has done a more thorough and widespread solicitation. The motion died due to lack of a second.

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Manager Pedersen said Smith Partners is the pre-eminent watershed attorney in the state of Minnesota, and she doesn't think the District could get anyone more knowledgeable than Mr. Smith. Manager Koch commented Manager Pedersen has her opinions, and he doesn't share her opinions. Upon a roll call vote, the motion carried 4-1.

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	No
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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m. COVID-19 Resolution Proposed by Manager Koch

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Manager Koch discussed his resolution, included in the August 4th Board packet, pertaining to COVID. He stated that because the District is a science-based organization, the Board should require its personnel to have the COVID vaccination unless the member has a medical reason not to receive the vaccination. Manager Koch stated he believes the Board should continue meeting virtually until there is better direction from the Center for Disease Control and the District should require people who are not vaccinated to wear masks. He moved the adoption of his resolution. Manager Ziegler seconded the motion to open the floor for discussion.

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Manager Ziegler commented he doesn't think the District's actions should precede the state's actions. President Ward said the District has a COVID policy in place, which should be updated, and he thinks staff should set these types of staff policies. There was discussion about the authority to mandate vaccinations. Manager Koch shared his opinion about the vaccination and requiring District staff to be vaccinated and said he doesn't see why the Board wouldn't go forward to require District staff to be vaccinated.

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Upon a roll call vote, the motion failed 1-4.

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<i>Manager</i>	<i>Action</i>
Crafton	No
Koch	Ay
Pedersen	No
Ward	No
Ziegler	No

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n. Slope Collapse in Eden Prairie

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Interim Administrator Jeffery summarized information about the collapse and his discussions with the City of Eden Prairie Public Works Director. Manager Koch said he thinks the District needs to look into this, which is a bad situation in terms of pollution and is an emergency situation because of the amount of dirt that could end up in the Creek. He asked staff to give an update on this situation at the Board's next meeting. The Board directed Interim Administrator Jeffery, Engineer Sobiech, and staff member Maxwell staff to get more information and bring it back to the Board at the next Board meeting.

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9. Discussion Items

201 a. **Attorney Report**

202 No items raised.

203 b. **Administrator Report**

204 No items raised.

205 c. **Managers' Report**

206 No items raised.

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10. Upcoming Board Topics

208 Upcoming Board topics listed on the meeting agenda included: Preliminary 2022

209 Budget.

11. Upcoming Events

210 • August 13, 2021, Personnel Committee Meeting, 10 a.m., virtual

211 • August 16, 2021, CAC Meeting, 6 p.m., virtual

212 • September 1, 2021, Board Work Session, 5 p.m. and Regular Monthly Meeting, 7 p.m.

12. Adjournment

213 Manager Pedersen moved to adjourn the meeting. Manager Crafton seconded the motion. Upon a

214 roll call vote, the motion carried 5-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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217 The meeting adjourned at 4:18 p.m.

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Respectfully submitted,



David Ziegler, Secretary