

RESOLUTION NO. 22-89

**Riley-Purgatory-Bluff Creek Watershed District
Board of Managers**

**Delegating authority to approve certain Wetland Conservation Act
applications to the administrator**

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

WHEREAS Riley-Purgatory-Bluff Creek Watershed District serves as the Local Government Unit administering the Wetland Conservation Act in certain areas of the Riley-Purgatory-Bluff Creek watersheds, and as LGU makes determinations as provided in WCA in response to applications from property owners;

WHEREAS the WCA rules (Minnesota Rules chapter 8420) generally and Minnesota Rules 8420.0200, subpart 2C, specifically authorize the RPBCWD Board of Managers to delegate to staff WCA decisionmaking authority, provided that the board establishes an appeal process that includes an evidentiary hearing before the board;

WHEREAS by resolution the RPBCWD Board of Managers has previously delegated to the administrator the authority to approve certain permit applications and requests for modification under the RPBCWD rules;¹

WHEREAS RPBCWD staff, with the technical support and assistance of RPBCWD legal counsel and the RPBCWD engineer's wetland specialists, has the knowledge and experience necessary to make WCA determinations and effectively administer WCA, and the time and resources of the board, staff and applicants are best served by delegating to the administrator the authority to approve certain WCA applications; and

WHEREAS WCA does not provide for the issuance of variances by LGUs from compliance with its requirements.

NOW, THEREFORE, BE IT RESOLVED THAT the RPBCWD Board of Managers delegates to the administrator the authority to issue WCA wetland boundary and type, exemption and no-loss determinations, sequencing and replacement-plan approvals, as well as the authority to request the assistance of the technical evaluation panel, as defined by Minnesota Rules 8420.0240, and otherwise administer WCA. The administrator may

¹ See RPBCWD resolution 2014-11 (adopted Nov. 25, 2014); resolution 15-07 (adopted June 29, 2015); resolution 2017-01 (adopted March 15, 2017); resolution 17-10 (adopted Oct. 4, 2017); resolution 2019-03 (adopted Jan. 9, 2019).

elect to have the Board of Managers decide a WCA application if, in the administrator's judgment, the proposed activity or requested determination involves a technical, policy or legal issue or raises public interest such that review by the board is warranted. The administrator may not make a determination or issue an approval founded on finding substantially contrary to the findings or recommendation of the technical evaluation panel.

BE IT FURTHER RESOLVED that the RPBCWD Board of Managers directs the administrator to maintain a log of WCA decisions made pursuant to this resolution and to advise the board monthly as to WCA decisionmaking activity conducted pursuant to this resolution.

BE IT FURTHER RESOLVED that the authority delegated hereby is in addition to any authority previously delegated to the administrator by the board, and that the administrator may exercise this authority to make a WCA decision where the RPBCWD permitting decision for the same or a directly related matter is before the board, except when the matter is before the board because a variance or exception from the RPBCWD wetlands rule is requested.

BE IT FINALLY RESOLVED that the RPBCWD Board of Managers establishes the following procedure for appeal of a WCA decision made by the administrator:

1. A final decision made by the administrator may be appealed to the RPBCWD Board of Managers by a party to whom notice of the decision must be sent, including the landowner, or by 100 residents of the county in which a majority of the wetland that is the subject of the decision is located.
2. Appeal of a decision made by the administrator may be made by sending notice of the appeal and payment of an appeal fee of \$750.00 to RPBCWD within 30 days of the date the administrator's decision was issued, except that no fee will be charged for an appeal made by a local, state or federal governmental body or by a member or members of the Technical Evaluation Panel..
3. On receipt of an appeal, the administrator will schedule a public hearing on the matter before the RPBCWD Board of Managers at a time that ensures compliance with applicable timeliness requirements and provide at least five days' written notice of the hearing to the parties required to receive notice of the administrator's determination and, if applicable, the representative(s) of the 100 residents making the appeal.
4. The RPBCWD Board of Managers will review and decide the matter on the basis of the record compiled before the administrator and the testimony and submissions of all persons, including RPBCWD staff, engineer and wetland specialists, appearing at the public hearing, and the board is not bound to give any particular weight to the

findings, conclusions or decision of the administrator in rendering a decision on the appeal.

5. The board will decide an appeal within 30 days of receipt, except that the time for the board's decision may be extended by mutual agreement of RPBCWD and the appellant, in writing, specifying the duration of the extension.
6. RPBCWD may provide all required notices by electronic mail, unless a party requests in writing to receive notice by U.S. Mail.

Absent timely filing of an appeal and fee, if applicable, a WCA decision made by the administrator is final 30 days from the date it was sent to the parties required to receive notice of the decision.

A request by a party for determination of a permitting decision implementing the RPBCWD rules will not be deemed an appeal of an associated WCA decision or decisions by the administrator, which can only be appealed according to the procedures provided here. Conversely, a determination under the RPBCWD rules is not necessarily appealed to the RPBCWD Board of Managers when the WCA determination on the same or a directly related matter is appealed.

THEREFORE BE IT FINALLY RESOLVED that the administrator is directed to include information on the RPBCWD appeals process in all WCA notices of decision issued by the administrator on behalf of RPBCWD.

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 | | | |
| DUEVEL | X | | | |
| KOCH | X | | | |
| PEDERSEN | X | | | |
| ZIEGLER | X | | | |

Upon vote, the president declared the resolution adopted.

December 7, 2022

* * * * *

I, Dorothy Pedersen, 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 11th day of Aug, 2023.


Dorothy Pedersen, Secretary