

BUFFALO-RED RIVER WATERSHED DISTRICT

BARNESVILLE, MINNESOTA 56514

123 FRONT STREET SOUTH – PO BOX 341

PHONE 218-354-7710

MINUTES FOR MANAGERS' MEETING April 27, 2009

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a regular meeting on Monday, April 27, 2009, at 8:00 PM in the Barnesville office. BRRWD Managers present were Roger G. Ellefson, Curtis M. Nelson, John E. Hanson, Gerald L. VanAmburg, and E. Robert Olson. Others attending included: Bruce E. Albright, BRRWD Administrator, Erik S. Jones, Engineer, and Julie Jerger, Houston Engineering, Inc. (H.E.); Robert A. Zimmerman, Engineer, City of Moorhead; Harold J. Rotunda, Certified Public Accountant (CPA); and landowners: Sheri Kaiser, Ellen Bergman, LeRoy Bergman, Doug Larson, Judy Larson, Kyle Schiefert, Dave Mittet, Tori Erickson, and John Leseth.

Manager Ellefson called the meeting to order at 8:00 PM. He announced that the proceedings were being taped to aid in preparation of the minutes.

Secretary's Report. The Board reviewed draft minutes for the 4/13/09 regular meeting. **Motion** by Nelson to approve the minutes. **Seconded** by Hanson. **Approved.**

Treasurer's Report. The Board reviewed the BRRWD's financial status. Albright reported that we currently have \$819,141.19 on hand.

Other business brought before the Board included:

LaBelle/Duck Lakes Outlet. Ellen and LeRoy Bergman, and other residents near LaBelle Lake, discussed their concerns about the flooding conditions that took place over the weekend when a culvert under the Burlington Northern/Sante Fe (BNSF) Railroad tracks washed out, causing water in a nearby wetland (Little Boyer Lake) to breakout and inundate the Bergman driveway and surrounding area with 6"-12" of water. Bergman distributed photographs he took of the flooding on his property in the NE¼, Section 2, Lake Park Township, Becker County. Bergman protected his driveway with sandbags this spring, but the ends are currently underwater, as is the township road. The landowners wanted to know if the Board had made any progress with Loren Jetvig regarding the LaBelle Lake outlet on his property. On 4/16/09, Albright and Manager Hanson met with Chad and Loren Jetvig to discuss the rising water levels on LaBelle Lake and a possible LaBelle Lake outlet channel/pipe. Jetvig indicated that he would support a project to construct a tiled outlet for LaBelle Lake. Based on a 1/22/09 letter report from H.E., a 15" dia. or 18" dia. tile to lower LaBelle Lake could be installed to below the Minnesota Department of Natural Resources' (DNR) Ordinary High Water (OHW) elevation. Albright and Hanson also conducted a field review of the outlet. Albright explained that it appeared that the outlet has probably been running all winter. Jetvig reported last week that there is major erosion on the outlet of LaBelle Lake through their field. Last winter, Ellingson Company provided estimates for two different sized tiling projects. A 15" dia. tile would cost approximately \$37,000, and an 18" dia. tile would be \$44,000. The Board discussed declaring an emergency in light of the recent flooding conditions to expedite project development. If they declare an emergency, the Board's next step would be to appoint Appraisers to determine benefits. Following the Appraisers' work, the Board would hold a project hearing. Albright noted that there could be a large benefit area, including landowners, BNSF, Lake Park and Cuba Townships, and Becker County, and possibly the Minnesota Department of Transportation (MNDOT).

The Board discussed funding alternatives. Usually, the BRRWD would contribute approximately 25%-37.5% to the project costs. Albright recommended that the Board reserve making a specific funding commitment until we know what the other entities might contribute. Becker Natural Resources Conservation Service (NRCS) indicated that they might have funding available from their Emergency Watershed Protection (EWP) program. The Minnesota Pollution Control Agency (MPCA) doesn't have money for this type of project.

Doug Larson asked why the lake couldn't be drained naturally without constructing an expensive project. The lake outlet has been working well for many years until it was allegedly blocked. The BRRWD should have Jetvig restore the outlet. Albright explained that even if the outlet were restored, the lake elevation is still too high. Larson also asked if Federal Emergency Management Agency (FEMA) would have flood assistance to restore the outlet. The group discussed the Governor's Disaster Declaration for Clay and Wilkin Counties. Albright noted that Becker County wasn't specifically named in the Declaration, but usually adjoining counties can be added. FEMA could pay to help restore the outlet, but individual property, such as driveways would not be eligible, unless FEMA includes individual assistance in the Declaration. Larson pointed out that Becker County has spent a fair amount of money to build up their road (County Road (C.R.) No. 9) in this area.

Ellen Bergman noted that the trees around the lake are dying due to the high water. Albright reiterated the steps necessary to address the Lake outlet problem: 1.) Coordinate outlet with downstream landowner(s), including United States Fish and Wildlife Service (USFWS); 2.) Investigate adequacy of the downstream outlet; 3.) Appoint Appraisers; 4.) Funding search; and 5.) Jones should contact the DNR regarding lowering the lake below the OHW. Jones noted that by permit, the DNR can allow lowering the lake 1.5' below the OHW. Albright mentioned that the Legislature is currently considering the Minnesota Recovers bill to fund flood damage restoration in northwestern Minnesota. This funding could be used in the Disaster Declaration area.

VanAmburg commented that the water level problems have gotten worse since the water breakout last night. Albright noted that there would also be a water quality issue if we consider how much sediment has left Jetvig's field and traveled downstream to the USFWS Waterfowl Production Area (WPA) and the Buffalo River. He added that if we just restored the outlet, Jetvig would probably have to install a grassed waterway that would divide his field, which he would prefer to avoid. Ellefson asked what the current lake elevation is. Albright said that when the survey work was completed in early December 2008, the lake was about 1.2' above the OHW. He didn't know what the current elevation was.

Albright explained that the wetland breakout affects the Bergman property first and will then have to work its way downstream through the entire system, eventually to the Buffalo River. VanAmburg observed that by installing a tiled outlet, Jetvig would still be able to farm in the outlet area, which could be a significant project benefit.

Ellen Bergman felt that Jetvig disturbed the natural flow of the outlet/lake water for two years, and now the homeowners are paying the price for his actions in terms of flooding/tree loss/shore damage/erosion. She wondered why the other landowners should have to pay to correct a problem that Jetvig created. Albright noted that Jetvig would probably have the most benefits (assessments) for the proposed tiling project. He added that Jetvig has never actually admitted responsibility for the block on the lake outlet. The BRRWD only has aerial photographs, showing the outlet was altered, not how it occurred.

Hanson promised the Jetvigs that he would recommend that the BRRWD fund 50% of the project cost. He noted that a controlled (tiled) outlet would provide water quality/erosion control benefits for the entire area, in addition to the agricultural benefits for the Jetvig property. He added that the Appraisers will make the final benefits/damages determinations.

The Board discussed an emergency declaration for LaBelle Lake in response to the wetland breakout that occurred last night. Albright thought that if the Board takes this action, we could get a project started by June or July 2009. Ellen Bergman asked if the area landowners would be assessed for a tiling project. Albright said that the Appraisers will determine the benefitting parties/rates. It is obvious that the Jetvigs will have the most benefits from the project. Albright added that the BRRWD will investigate possible outside (State/agency) funding for the project. Funding will be in place by the time the Final Hearing is held, so that landowners will know what their share of the project costs will be. Jones pointed out that if Boyer Lake is lowered via LaBelle Lake, it might be necessary to increase the tile size, which would add to the project costs.

The Board felt an emergency declaration was necessary so that we could expedite a project to address the flooding/outlet problem. **Motion** by Hanson to make an emergency declaration for LaBelle Lake, and to appoint Eddie Bernhardson, Lauren Peterson, and Arvid Thompson as Appraisers. **Seconded** by Olson. **Approved.** The Board briefly discussed the bidding process for an emergency project. Nelson explained that if the project cost estimate is under \$100,000, the BRRWD isn't required to advertise for construction bids. The office would just mail bid documents to a number of local contractors.

Doug Larson commented that since Jetvig created the problem by blocking the outlet and will benefit most from a tile project, he felt Jetvig should have to pay for the project. Ellefson noted that at this point, Jetvig denies that he placed any fill in the lake outlet on his property, and the BRRWD has no solid proof that he did the work. The Board has only seen aerial photographs showing that sometime between 2006 and 2008, something was done to alter the lake outlet on Jetvig's property. Jetvig claims the photographs differ because they did cattail mowing in the area. Ellen Bergman felt that the aerial evidence should be enough to prove that the outlet was altered on Jetvig's property. Ellefson agreed, but explained that the photographs don't prove who did the work, and it wouldn't be enough evidence to get a Court Order to force Jetvig to restore the outlet to the OHW elevation surveyed by the DNR in 2000. Larson commented that if Jetvig isn't allowed to block the outlet again, a tiling project isn't necessary because the outlet will restore itself over time. If Jetvig wants the outlet tiled, he should pay for it. Albright noted that if Jetvig maintained the outlet to the OHW, the lake would still be higher than most of the surrounding landowners would want. The group briefly discussed past and current lake elevations. Albright will contact the Appraisers so they can get started on their work.

Boyer Lake Outlet. Sheri Kaiser had concerns about Boyer Lake, which is also at an all-time high elevation. She has water encroaching on her property on the south side of the Lake. The closest outlet for Boyer Lake is LaBelle Lake. LaBelle Lake flows to a USFWS WPA and eventually outlets to the Buffalo River. If we were to try to lower Boyer Lake at the same time as LaBelle, we would need to coordinate any project with the USFWS in regards to fish passage concerns.

The Labelle Lake residents felt that a project to lower Boyer Lake via LaBelle Lake would have to have a control structure to meter flows. The group reviewed an area lake map and had an extended discussion about area drainage patterns and possible drainage routes for Boyer Lake. Albright noted that the proposed tiled outlet for LaBelle Lake would probably have to be larger if there was going to be a project to lower Boyer Lake via LaBelle Lake. MNDOT is investigating an outlet or a road raise on Trunk Highway (T.H.) No. 10 for Boyer Lake. Albright suggested that the Board have H.E. investigate an outlet for Boyer and work with MNDOT regarding this problem. VanAmburg agreed. Jones noted that H.E. has LiDAR data of this area that could be used to identify the best drainage route for Boyer Lake. **Motion** by Hanson to authorize H.E. to work with MNDOT to investigate an outlet for Boyer Lake. **Seconded** by VanAmburg. **Approved.** Dave Mittet had photographs, showing water problems on Boyer Lake.

Permit No. 09-06, Kyle Schiefert. Applicant proposes to grade the ditch along the south side of C.R. No. 55 in the northwest corner of the SE¼, Section 18, Humboldt Township, Clay County, to drain west from his driveway. He also wants to resize the downstream (west) culvert in his neighbor's approach to match his 24" dia. driveway pipe. The approach culvert is smaller, and he feels it is restricting drainage from his building site. The next downstream culvert is at the intersection of T.H. No. 9 and C.R. No. 55 and is larger than Schiefert's culvert, and outlets north to Stony Creek. The work is necessary because the inadequate downstream culvert and the lack of proper ditch maintenance causes water to backup in the road ditch and flood Schiefert's building site, which is also the location of his dog kennel business. Schiefert distributed photographs showing the water problems on his property. Manager Nelson and Wade Opsahl, Technician, H.E., conducted a field review on 4/24/09. They found that the downstream culvert on his neighbor's property is the same size as Schiefert's driveway pipe (24" dia.). There is also a 24" dia. equalizer culvert through C.R. No. 55 at the upstream end of the field approach. Ellefson commented that the entire area is low and water will run to the lowest spot. Albright pointed out that under normal conditions, the existing culverts might be sufficient, but under heavy runoff conditions, the 24" pipe in Schiefert's driveway is probably not big enough, and he may even need more culverts in this location. His driveway acts as a dike for the water coming from the east, and the more it is raised, the worse his building flooding becomes. Nelson noted that Schiefert should have a complete drainage plan for his location. **Motion** by Nelson to authorize H.E. to investigate a possible outlet for Schiefert's property. **Seconded** by Hanson. **Approved.** The office will notify Schiefert when the survey is completed. Jones will have a report for the Board's review in two weeks. Schiefert said this spring, the water along T.H. No. 9 drained south towards Interstate 94 (I-94).

City of Moorhead. Robert Zimmerman, Engineer, City of Moorhead, made a presentation regarding the Army Corps of Engineers' (COE) Fargo-Moorhead Metropolitan Area Feasibility Study to determine if Federal participation in a metro-wide flood risk management project is justifiable. The Board reviewed a handout from the City of Moorhead regarding the 2009 Spring Flood. It is apparent that the areas most in jeopardy from flooding within the City of Moorhead lie south of I-94. The City Council feels that it is necessary to continue to investigate possible flood control projects that could be completed for Moorhead, including a more comprehensive project for the metro-wide area. Currently, the COE is nearing the completion of Phase 1 of their investigation and will be holding public meetings in May to announce their determinations. It appears that the COE has found sufficient data to initiate Phase 2 of their study, estimated to cost a total of \$2.4 million. Costs through September 2009 will be approximately \$1.4 million, of which the local share will be \$700,000. Last fall, the BRRWD agreed to contribute 50% of the City of Moorhead's local share (25%) of the Phase 1 costs, or approximately \$110,000. Preliminary estimates indicate that approximately 80% of the benefits for a metro-wide flood control project will be allocated to the City of Fargo and the remaining 20% to the City of Moorhead. The City of Fargo has agreed to split the Phase 2 costs according to this allocation; therefore, the City of Moorhead's share for Phase 2 will be \$140,000. Zimmerman asked the BRRWD to consider splitting Moorhead's share of the Phase 2 costs at the same rate as we did for Phase 1, or 50% (\$70,000). There is a possibility that the City might be able to satisfy part of their share of these costs with an in-kind match. **Motion** by VanAmburg for the BRRWD to contribute \$70,000 to the City of Moorhead for their share of the COE Phase 2 Study. **Seconded** by Olson. **Approved.**

There was a brief conversation regarding the BRRWD increased taxing authority in accordance with Minnesota Statutes Annotated (M.S.A.) 103D.905, Subd. 3. The City of Moorhead has been a supporter of the BRRWD's use of this authority.

Project No. 61, Clay County Ditch No. 11-North. John Leseth expressed his disappointment regarding the Board's Order to construct this project, which will be built in conjunction with Clay County's project to move County State Aid Highway (CSAH) No. 8 north from its current alignment to address ongoing slumping problems. The Final Hearing was held on 3/30/09 and continued on 4/15/09. At the 4/15/09

Continuation Hearing, the Board made the Order to build the project. In 2006, ditch system landowners petitioned the BRRWD for a ditch improvement project. Since then, the BRRWD agreed to cooperate with Clay County's road project. The ditch improvement plans weren't changed much from the original design because of the County's new alignment for CSAH No. 8. Leseth claims that the new ditch alignment includes sharp "bends", making future ditch maintenance more difficult. He also claims that new alignment will require additional excavation and cause him to lose more cropland to increased ditch right-of-way (r-o-w) (permanent and temporary). He'll also lose crop productivity because of additional spoil placement. Leseth showed the Board photographs of reoccurring slumping problems on a stretch of CSAH No. 8 that Clay County moved and rebuilt a few years ago on the east side of T.H. No. 75. Leseth doesn't feel that the County's solution to the slumping problems on the west side of T.H. No. 75 is adequate. He thinks that the road slides occur where there is standing water in the road ditch on the north side of CSAH No. 8. If the ditch has adequate drainage to remove the standing water, the ditch bank wouldn't slump. He doesn't think that moving the road to flatten the ditch slope is the solution to the problem. The Board and Leseth had an extended discussion regarding excavation quantities and the ditch design.

Albright pointed out that the Board has already made an Order to proceed with the project on 4/15/09, and the 30-day appeal period will expire on 5/15/09. He added that the Board is willing to work with Leseth regarding his concerns; however, they might not have authority to change design features on the County road project. At the 3/30/09 hearing, Jones pointed out that the total ditch excavation quantities hasn't changed much from his preliminary design calculations, meaning that combining the road and ditch projects really didn't change the ditch project. Jones noted that his design includes no angles greater than 6° to move the ditch around Leseth's farmstead. Before Leseth files a formal appeal, Albright would like to see the cross-sections from the original H.E. plans and the County's plans to compare the ditch alignment to see how far it is actually going to be moved from the current alignment.

Leseth said that the original petitioners for the ditch improvement just wanted to have the ditch cleaned and the outlet culvert lowered. According to Leseth, because of our collaboration with the County's road project, the project has grown to an unacceptable scope. It is too expensive and the amount of spoil is unacceptable. Leseth also has concerns about the ditch r-o-w acreages. He feels that the BRRWD will need to purchase more r-o-w from him, as he doesn't think the ditch system owns as much r-o-w as we need for the expanded project.

Albright noted that the final project plans have been adjusted to reflect concerns that were raised at the Final Hearing regarding r-o-w. Jones agreed that his design has not really changed since the original petition. He explained that the preliminary design did not take into account that the road would be moved. More discussion followed regarding Leseth's design concerns and other alternatives that were not available in the preliminary plan. He doesn't think that flattening the road slope to a 12:1 ratio will address the road slumping problems. He reiterated his opinion that standing water on the opposite side of the road is the reason the road is sliding. Albright said there is a designated wetland area on the north side of the road adjacent to Leseth's property where the road is sliding, which can't be drained, according to the Wetland Conservation Act (WCA)/Swampbuster rules. Albright noted that the Board was willing to work with Leseth to attempt to address his concerns to avoid the need for an appeal. He plans to prepare a comparison of the existing and proposed ditch alignments to determine how much the ditch will actually move. Albright added that most local engineering firms in our area would recommend the same remedy for the road slumping problems that the County is proposing with their road project. He added that the BRRWD and the County should field review the area near Rustad where the road is sliding.

2008 Audit. Harold J. Rotunda, CPA, submitted the 2008 BRRWD financial audit. He reported that the financial records are in order. The Board reviewed Rotunda's findings. He noted that the BRRWD is in better financial shape this year because of the revenue we received from the M.S.A. 103D.905, Subd. 3, taxing authority. Albright noted that our financial status was also improved by increasing the assessments

on ditch systems, especially those with negative balances. He acknowledged that some landowners have contacted the office with concerns about their ditch taxes. If a ditch system has money in its account, the account earns interest on the balance instead of paying interest on a negative balance. It also makes it more feasible to schedule ditch maintenance/repairs. The Board briefly discussed a recent complaint from a landowner on Project No. 42, Clay County Ditch No. 67, who contacted the office regarding her ditch tax. When she bought the property, she didn't know about the ditch assessment and is now questioning her assessment.

Because of the poor construction conditions last fall, there was minimal construction activity and most of the M.S.A. 103D.905, Subd. 3 reserves remained in the account. It was noted that it was helpful to have the cash on hand to continue with the Oakport Flood Mitigation project buyouts without relying on short-term bank loans. The BRRWD hopes to be able to make use of the funding on hand during the 2009 construction season. The group discussed our attempts to extend our increased taxing authority for another three years. If our Legislators don't support this proposal, the Board may apply the taxing authority according to the Minnesota Board of Water and Soil Resources' (BWSR) interpretation of the statute, which is that the tax can be applied by petition on a per project basis. **Motion** by VanAmburg to accept the 2008 Audit. **Seconded** by Hanson. **Approved.** The office will file the 2008 audit with the State Auditor in the next few weeks.

Edwin Haick Flapgate Concern. The Board discussed our response to Haick's concerns about the installation of a flapgate on a culvert in C.R. No. 182 in Manston Township, Wilkin County (Permit No. 06-10, Walter (Ronald) Jerger). At the last meeting, the Board reviewed a letter from Haick's attorney. Albright will draft a response and include photographs taken on 8/13/08 that show flooding on Jerger's property in relationship to Haick's property across the road. There are a number of issues that should be brought to the Attorney's attention, including the fact that in 2006, the BRRWD spent approximately \$25,000 to clean the outlet for Wilkin County Ditch No. 44, which is the South Branch of the Buffalo River, on Haick's property. In addition, Haick's renter, Ross Aigner, installed three gated field inlets in this same area. Aigner also plans to tile a portion of Haick's property across the road from Jerger. While the area has drainage and flooding problems primarily because of the wet cycle we are in, the Board considers this more a neighborhood feud than issues pertaining to the gate Jerger installed. **Tabled.**

Permit No. 08-91, Alan Malingen. Applicant proposes to enlarge his driveway culvert on the north side of C.R. 30 from a 24" dia. corrugated metal pipe (CMP) to a 42" x 29" (36" dia. equivalent) corrugated metal pipe-arch (CMP-A). Malingen reports that too much water drains from the east at a high velocity. The water backs up to the north, filling in a low area near his buildings and flooding his field. The area is assessed to Wilkin County Ditch No. 43, which is less than 0.5 miles away on the north side of C.R. 30. The natural waterway on the south side of C.R. 30 is plugged with brush, cattails, etc. Malingen plans to work with the Wilkin County Highway Department regarding his project. On 4/24/09, Manager Nelson and Opsahl conducted a field review of this application. Nelson thought that the driveway should have a larger culvert, and it would help if the ditch could be cleaned. He noted that there is water currently standing in Malingen trees. **Motion** by Nelson to approve Permit No. 08-91, subject to Wilkin County Highway Department to work within their road r-o-w, and noting that the ditch should be cleaned and a downstream approach should be monitored for erosion. **Seconded** by VanAmburg. **Approved.**

Permit No. 08-88, John Kava. Applicant proposes to install approximately 300' of berm along the north edge of his field in the N½, Section 11, Atherton Township, Wilkin County, to prevent CSAH No. 32 water from draining south through his field. Kava also proposes to install 3 to 4 shallow field inlets into the CSAH No. 32 ditch on the east side of his field and to clean/regrade the ditch along the west side of his field along 260th AVE to drain north. The 260th AVE township ditch is full of trees and needs cleaning. On 4/24/09, Nelson and Opsahl conducted a field review. Nelson thought the proposed berm would be acceptable, but the proposed field inlets might allow water to back up into the field. Albright suggested

that Kava could install gated culverts to prevent water backup. Ellefson questioned if there were wetlands in the area. The Board had other questions regarding this proposal. **Tabled** pending contact with Kava for additional information regarding his plans, and field review by Albright and Ellefson.

Permit No. 08-98, Ronald Jerger. Applicant wants to install a berm/dry approach along the east side of the section line ditch, which flows north along the west side of his property in Section 9, Manston Township, Wilkin County. The dry approach would prevent upstream water (south) from breaking out and flowing into his field. The purpose of the approach is to try to keep the water in the ditch. His other option is to build a dike along the south end of his field up to T.H. No. 9. The dry approach is easier than installing a berm. In the application, he asked to install an 18" dia. culvert with a flapgate on the west end in the proposed approach. Just this week, he told Albright that he probably doesn't need a culvert, as his water along 180th ST will drain east and north along T.H. No. 9, eliminating the need for the pipe. This area has had a long history of problems. Ron Conzemius owns the property on the south side of the road in Section 16, and he might have a problem with the request. **Tabled**, pending Manager field review.

Permit No. 09-03, Parke Township. Applicant proposes to lower Dewey Lake in Sections 34/35 to the DNR determined OHW elevation to prevent township road damage. The Township plans to install 1,500' of tile on grade to drain water to the northwest. The Township has also applied for a DNR permit for the work. Nelson and Opsahl conducted a field review on 4/24/09 and found no problems with the proposal. Albright noted that the Township will need to work with the DNR and USFWS in terms of the lake elevation and easement issues. **Motion** by Nelson to approve Permit No. 09-03, subject approval from the DNR and USFWS. **Seconded** by VanAmburg. **Approved.**

Permit No. 09-04, Clay County Highway Department. Applicant proposes to reconstruct 1.2 miles of CSAH No. 8 from the Red River east to T.H. No. 75. The road presents a safety hazard as the shoulder and part of the roadway are sliding into the south ditch. This work will be done in conjunction with the BRRWD's Project No. 61, Clay County Ditch No. 11-North Improvement. The County plans to bid both projects under one contract. The BRRWD made the Order to construct the project at the Final Hearing on 4/15/09. **Motion** by VanAmburg to approve Permit No. 09-04, subject to the 30-day appeal period for Project No. 61. **Seconded** by Hanson. **Approved.**

Permit No. 09-09, Aaron Wetterlin. Applicant proposes to install 80 acres of tiling in the N $\frac{1}{2}$ SW $\frac{1}{4}$, Section 10, Spring Prairie Township, Clay County, to improve drainage for his agricultural land. The landowner is working with Sharon Lean, District Conservationist, NRCS, regarding wetland impacts. **Tabled** pending Manager field review

Permit No. 09-10, Jerry Wetterlin. Applicant proposes 145 acres of patterned tiling in the SE $\frac{1}{4}$, Section 8, Spring Prairie Township, Clay County. The property has two wetland areas that Wetterlin is working on with Sharon Lean, NRCS. The tile outlet will be pumped via a lift station through 70th AVE N to County Ditch No. 3 for which the property is assessed. **Tabled** pending Manager field review.

Permit No. 09-15, Highland Grove Township. Applicant proposes to add a 24" dia. culvert to a crossing (43rd AVE N) on Clay County Ditch No. 16 between Sections 20/29, which currently has one line of 42" dia. CMP. This road has a history of washing out and is currently damaged. Both upstream and downstream culverts in T.H. No. 32 and 28th AVE N are 48" dia. pipes. The Township also wants Clay County to consider installing a larger culvert (30" dia.) in C.R. No. 115 (15th AVE N). **Tabled**, pending the County's decision regarding the C.R. No. 115 culvert request.

Permit No. 09-19, Skree Township. Applicant proposes to replace the 18" dia. CMP in the township road intersection (220th ST S) and a 12" dia. CMP, located 300' south of the intersection between Sections 34/35, with one line of 24" dia. CMP in the intersection. Both culverts are damaged and should be replaced. One culvert will be easier to maintain, and the intersection alignment will allow water to flow in the road ditch, instead of going through the field. The landowner, Barb Ronsberg, agrees with the Township's proposal. **Motion** by Hanson to approve Permit No. 09-19. **Seconded** by Olson. **Approved.**

Permit No. 09-22, Barbara Ronsberg. Applicant owns the N $\frac{1}{2}$ NW $\frac{1}{4}$, Section 35, Skree Township, Clay County. There's a dry approach 700' east of the section along 110th AVE S into this property. This spring, water washed around the south end of the approach, causing erosion in her field. Ronsberg would like to install an 18" dia. pipe in the approach to address this problem. Nelson and Opsahl conducted a field review on 4/24/09 and found no problems with the proposal. **Motion** by Nelson to approve Permit No. 09-22, subject to Township approval to work within their road r-o-w. **Seconded** by Hanson. **Approved.**

Permit No. 09-23, Barbara Ronsberg. Applicant and her renter, Tom Friederichs, would like to change the 12" dia. pipe in a field approach to a 24" dia. culvert (see Permit No. 03-61) in the N $\frac{1}{2}$ NE $\frac{1}{4}$ and the E $\frac{1}{2}$ NW $\frac{1}{4}$, Section 24, Skree Township, Clay County. In 2003, Friederichs removed the entire approach, which at that time had no apparent culvert. Friederichs had applied for a permit to install an 18" dia. culvert in the approach, but Sharon Lean, District Conservationist, NRCS, denied the culvert installation request based on area wetland concerns. When Friederichs removed the approach, he was cited with a NRCS violation. Ronsberg and Friederichs worked with NRCS regarding the violation and finally signed an agreement with the NRCS for the 12" dia. pipe. Albright recommended that until NRCS approves the requested culvert upgrade, the Board and Township should take no action on this request. In addition, the downstream landowner, Herb Nelson, Jr., is opposed to a larger culvert at this location. **Tabled,** pending NRCS approval to change the culvert sizing.

Permit No. 09-24, William Richter. Applicant proposes that Elkton Township should install a 15" dia. culvert with a flapgate on the south end through 80th AVE S on the west side of T.H. No. 9 between Sections 9 and 16, Elkton Township, Clay County. The culvert will eventually drain water to County Ditch No. 58, to which it is assessed. The work will alleviate standing water problems on the east side of his yard. Over the past several wet years, he has had a standing water problem in his trees and yard. Albright conducted a field review and used a metal detector to look for a culvert, but couldn't find one in the road. Tom Friederichs, who farms the land on the south side of the road, has no problem with the request. Albright recommended permit approval. **Motion** by VanAmburg to approve Permit No. 09-24, subject to Township approval to work within their road r-o-w. **Seconded** by Olson. **Approved.**

Permit No. 09-25, Jeff Ehrichs. Applicant lives in Bouton's Addition in the NW $\frac{1}{4}$, Section 21, Riverton Township, Clay County, along T.H. No. 9 and the frontage road. The 18" dia. culvert in his driveway is damaged, and he wants to replace it with a 24" dia. pipe. A previous BRRWD study of drainage in Bouton's Addition recommended a 24" dia. pipe in this location. **Motion** by Hanson to approve Permit No. 09-25, subject to Township approval to work within their road r-o-w and verification of the culvert location. **Seconded** by VanAmburg. **Approved.**

Minch/Johnson Lawsuits. Based on attorney/client privilege, and in accordance with Open Meeting Law, the Board went into closed session at 10:22 PM to discuss the status of these issues. At 10:30 PM, the Board reopened the meeting.

Project No. 63, Grove Lake Outlet. According to the Operation and Maintenance (O&M) Plan, the Grove Lake Outlet was closed on 3/16/09 because of downstream flood conditions. The office has been receiving calls from the Grove Lake residents about when we plan to reopen the pipe. Jerger noted that Grove Lake residents Mike and Dan Haugrud were in the office on 4/21/09 to ask when the outlet could be opened. Last week, the office received a report that someone removed the plywood blocking the inlet, so the pipe is currently flowing. Since the outlet was damaged this winter, with only about a 6" opening, not much water is flowing downstream. At this point, the site is too wet for the contractor to attempt repairs to the pipe. The Board decided to leave it as is for now. The O&M Plan is an integral feature of the project, and the project must be stopped when there is downstream flooding. The Board expressed their disappointment about the block removal and discussed various options to keep people from tampering with the pipe. Once the project is completed, a locking device on the stoplogs will probably have to be installed. Currently, the site is too wet for the contractor, Steven Johnson Excavation, to continue with project construction, he also cannot move equipment into site because of road restrictions.

Project No. 56, Manston Slough Restoration. A meeting is scheduled for 4/30/09 with Mike Martinez, DNR, and Tom and Susan Arnhalt. The Arnhalts plan to sign their BRRWD easement option, and discuss the DNR purchase of their property. Martinez will also have the DNR's offer for the Holubok (BRRWD) property in the SE¼, Section 30, Manston Township, Wilkin County. Ellefson will try to attend the meeting.

Albright reported that the Environmental Assessment Worksheet (EAW) comment period expired on 4/22/09. We received comment letters from the MPCA and DNR. MPCA just noted that we will need a Stormwater Permit for construction, and the DNR commented on the benefits of the project. According to the Environmental Quality Board (EQB) Rules, the Board must file a Findings of Fact and Order regarding the comments we received. The Board felt that based on the comments we received, there is no need to conduct an Environmental Impact Statement (EIS). The Order will be filed with all the affected agencies and the EQB. **Motion** by VanAmburg to enter into the referenced Findings of Fact and Order. **Seconded** by Olson. **Approved.**

Albright noted that the easement process has been on hold during the flooding emergency. He hopes to be able to get back to it soon. Albright met last week with Joe Wulfekuhle regarding how the project will impact his property. Albright provided him with some project information, including the BWSR seepage analysis. Shawn Norman was also in the office last week regarding the project. He still has concerns about his property flooding. Loren and Rita Woolson also visited the office last week regarding their easement option. Tom Thomas has a question about his easement, which Rick St. Germain, H.E., will need to address in the project design. Albright noted that it appears that the renter of the Gordhammer property in the SW¼, Section 16, Manston Township, west of T.H. No. 9, may have drained unassessed land into the Wilkin County Ditch No. 13 system. The Board will have to investigate this issue further.

Project No. 54, Whisky Creek Tributaries. Albright reported that the Texas crossing on the Greg Settlemeyer property in the NE¼, Section 20, Humboldt Township, Clay County, washed out during the 2009 spring flood. Currently, there are two small culverts in the crossing. Albright met with Settlemeyer and suggested that it might be necessary to install larger culverts in the crossing to match the sizing of his driveway culvert and prevent future erosion damage. Settlemeyer has also been raising the height of the road over the culverts, which might be making his situation worse.

Project No. 49, Oakport Flood Mitigation. The Technical Committee will meet tomorrow at 1:30 PM at the Moorhead Court House. Albright noted that because project development will be accelerating in the next several months, it might be a good idea for as many Managers as possible to attend the Committee meetings.

Project No. 46, Turtle Lake Outlet. Opsahl has reported that Turtle Lake is up 1.5', and the office has received phone calls from homeowners regarding project startup. This siphon was stopped on 3/16/09 due to downstream flooding. The Board discussed when we could restart the project, and thought it could be started this week. Albright will send Opsahl an e-mail to let him know about the Board's decision.

Project No. 39, Georgetown Levee. Albright reported that the City of Georgetown has spent about \$231,000 for Sellins Brothers to build the COE temporary dike. Jones walked the levee last weekend and found that the 2009 water elevation lower than the 1997 spring flood. In hindsight, it appears that the temporary diking probably wasn't needed, but the Board agreed that the City was obligated to trust the flood crest predictions and prepare for the worst scenario. According to COE rules, in order to be paid for their work, a contractor will have to remove the temporary diking material and restore the site and borrow pits. Albright commented that the first step will probably be for the contractor to clean up and restore the site in accordance with the COE guidelines so Sellins Brothers can be paid for their work. The next step will be for the BRRWD, City of Georgetown, and the other agencies to continue the discussions from the 4/22/09 informational meeting regarding possibly raising the levee, buyouts, erosion repairs, etc. Three properties within the city limits are not protected by the dike, and would be candidates for possible ringdikes, and a couple of homeowners want a buyout. A few areas along the dike have the potential to fail because of slides, etc., and should be repaired. These repairs and possible ringdikes could be funded by the Minnesota Recovers bill. The cleanup costs (clay removal and borrow pit restoration) will be split 75% FEMA and 25% local. The City will also be responsible for the top soil restoration and grass seeding. Jones' preliminary estimate of the total costs is about \$600,000. A meeting with FEMA is scheduled for 4/30/09. Jones hopes to finalize his report by mid-week. As soon as it is available, Albright will forward the information to Traci Goble, Mayor, City of Georgetown.

Project No. 38, Farmstead Ringdikes. The Board reviewed a list of 14 potential ringdike candidates that Albright has forwarded to BRRWD Lobbyist Joel Carlson and Ron Harnack, Red River Watershed Management Board (RRWMB). Funding for ringdikes will be included in the Minnesota Recovers bill. VanAmburg suggested that we prioritize the candidates. Albright felt that those landowners who have been waiting the longest for a project should be at the top of the list. Opsahl will meet with the landowners to evaluate their sites.

Project No. 31, Deerhorn Creek Levees. A crossing along CSAH No. 52 on the upper end of the project was washed out and needs repairs. In addition, an area east of Bruce Nelson's farmstead is not draining to the levee. Ivan Nelson would like to see a culvert installed. Opsahl will investigate and report to the Board on his findings.

Project No. 29, Buffalo River Logjams. David Friedl, DNR, has indicated that there could be about \$5,000 in funding to do an aerial reconnaissance survey of all of the major waterways in the BRRWD as part of the Total Maximum Daily Load (tmdl) project. High Resolution Low Level Photography provides valuable data, such as the location of logjams.

The NRCS may have funding available through the EWP program, and they are willing to submit funding applications for individuals, townships, watershed districts, etc., to address erosion/flood damage repairs.

Project No. 1, Wilkin County Ditch No. 22, Lateral No. 2. The structure hearing for County Ditch No. 22, Lateral No. 2, was held on 4/23/09 to add structures to four sites. Albright noted that no one spoke against the changes at the hearing. A provision could be included in the Order for the project not to change the last two structures at this time, but to monitor these sites, and still allow for future replacement.

Motion by Hanson to approve the Findings of Fact and Order for the construction of the referenced project. **Seconded** by Nelson. **Approved.**

The Board discussed forming a ditch committee, consisting of Sherrie Bucholz, Jeff Nord, Dennis VanWechel, and Ed Askegaard. **Motion** by Nelson to appoint the referenced landowners to the Wilkin County Ditch No. 22 Ditch Committee. **Seconded** by VanAmburg. **Approved.** Albright will contact the appointees by letter.

Mediation Project Team (PT). The next PT meeting is scheduled for 5/28/09. The Board discussed possible itinerary for the Fall Tour.

Revised Watershed Management Plan (RWMP). Mark Deutschman, H.E., and Brian Dwight, BWSR, will meet with the COE to discuss how the plan can address their Points of Concurrence. We filed a request with BWSR to extend our RWMP completion deadline until 12/31/09. Jones is working on the Regional Assessment Locators section of the RWMP. Due to the spring flood, the RWMP work has been on hold for the last few weeks.

Clay County Ditch No. 49. The Viewers met on 4/17/09 to finish their field reviews regarding concerns noted at the 3/17/09 Final Hearing. Once the Viewers' Report is updated, the Board can schedule the continuation hearing to finish the redetermination of benefits. The Board plans to hold an informational meeting regarding the structure changes following the Redetermination hearing. The Order to make the structure changes was made in 2001.

Wolverton Creek/Comstock Coulee CWL Project. A landowner informational regarding the Wolverton Creek/Comstock Coulee Clean Water Legacy (CWL) project was held on 4/23/09. Jones will contact Peter Livdahl, who was unable to come to the meeting and had some questions regarding the project. The grant expires on 6/30/09, and at this time, it appears that it will not be possible to extend the deadline. The SWCDs plan to make use of as much of the funding as possible before that date. Albright is working with Representative Lanning on the Minnesota Recovers Disaster Relief bill to add language for BWSR to grant time extensions to disaster designated counties with CWL grants.

Hay Creek/Stinking Lake CWL Grant. Albright will meet with Ed Musielewicz, District Conservationist, NRCS, to review the sediment basin work. Harlan Hendrickson, CRO's Custom Services in Detroit Lakes, has submitted bids for bufferstrip seeding. Albright commented that the prices were very good, and recommended that the Board accept Hendrickson's bids. **Motion** by Hanson to award the seeding contracts to CRO's Custom Services. **Seconded** by Olson. **Approved.** Albright will send a letter to Hendrickson authorizing him to start.

Clay County Ditch No. 5. Ryan Nelson, who is the new owner of the Gjerdingen property, contacted Jerger at the office regarding the proposed ditch repairs. Albright has not had time to call him back. **Tabled.**

M.S.A. 103D.905, Subd. 3. Albright reported that State Senator Keith Langseth has indicated that he will not support extending our increased taxing authority via M.S.A. 103D.905, Subd. 3. It appears that Senator Langseth feels the BRRWD should rejoin the RRWMB, based on information he received from the RRWMB. The Board is reluctant to rejoin the RRWMB and be required to levy a 2-mil tax, which we would have to split with them. Currently, the BRRWD levies approximately 1-mil for local projects via our special taxing authority, which is only one-half what the RRWMB tax would be. Joel Carlson, BRRWD Lobbyist, discussed this issue with Governor Pawlenty, who indicated that he would support the BRRWD's use of the increased taxing authority if it were needed as a direct project match/cost sharing. The Board

discussed the possibility of applying the taxing authority according to BWSR's interpretation, which is that the tax can be assessed on a per project basis by petition from a local governing unit.

319 SWAG Grant. Roger Fisher, MPCA, forwarded the Quality Assurance Project Plan (QAPP) for the Board's review and signature. This plan is to implement MPCA's Surface Water Assessment Grant (SWAG) to monitor water quality in the BRRWD. The Board briefly reviewed the document. **Motion** by VanAmburg to authorize Albright to sign the work plan on behalf of the BRRWD. **Seconded** by Nelson. **Approved.** The QAPP will be sent back to MPCA for their signature.

Fargo South Side Flood Control (FSSFC). Albright noted that he gave Vijay Sethi, Clay County Commissioner, an update regarding the FSSFC project. Due to the flood fight in Fargo/Moorhead, project development has been on hold. Because of the severity of the 2009 Spring Flood, proponents of the FSSFC feel the project should move forward. Jones commented that construction would probably not start this year. The Board briefly discussed the COE proposed metro-wide flood control plan.

WCA Banking. Both landowners who have indicated interest in banking wetland credits have contacted Albright to let him know that they continue to be interested in working with the BRRWD. Mark Aanenson, H.E., will contact the landowners in the near future for the initial site visit. The site near Rollag still has standing corn that needs to be harvested before the site review can be completed. Dwight Mickelson will contact the office when the crop is off.

PRAP Review. Don Buckhout, BWSR, forwarded the Performance Review and Assistance Program (PRAP) scoring form for the Board's review. BWSR conducts an annual review of each watershed district's compliance with routine reporting and communication standards, which include submitting annual reports, completing an annual audit, submitting an annual bufferstrip report, having an updated watershed management plan.

River Keepers. River Keepers is holding their annual meeting on 4/30/09 from 5:30 to 6:30 PM, James Carlson House and Library, Fargo.

Clay County Ditch No. 58. A field approach in the northeast corner of Section 11, Elmwood Township, washed out during the spring flood. Jones prepared a report and recommendation for repairs. FEMA funding will repair this location to its pre-disaster condition, which will require fill to rebuild the approach. Jones recommends that we reset and extend the culvert 20' to fit the slope better and prevent future erosion, as a ditch system expense. FEMA will probably not pay the extra cost of for this work, which Jones estimates will be about \$1,500-\$2,000. H.E. plans to extend and reset the culvert immediately to create a temporary crossing. Once road restrictions are lifted, they will have additional fill hauled to the site and complete the approach repair. **Motion** by Hanson to approve the referenced repairs. **Seconded** by VanAmburg. **Approved.**

Thank You. Jerger thanked the Board for the floral bouquet they gave her for Administrative Assistant Day (4/22/09).

The following bills were presented for approval:

Accounts Payable	Description	Account	Amount
Barnesville Phone Co.	4/25/09 billings (2)	Admin	\$ 164.19
Braton Excavating & Pumping	#898, T.H. 34 snow removal	Pj. 54, Whisky Creek	\$ 200.00
Bruce E. Albright	Viewers' meal	Clay 49	\$ 44.03
ICS Agency, Inc.	#38100, D& O renewal	Admin	\$ 3,740.00
J&J Braton Properties	May office rent	Admin	\$ 540.00

Joel Carlson	May Lobbyist fees	Admin	\$ 850.00
Northern States Excavating, Inc.	#71, snow removal	Clay 2, 3, Kragnes	\$ 3,600.00
Red River Valley Coop	4/03/09-4/10/09 (Ries)	Pj. 49, Oakport	\$ 34.72
Red River Valley Coop	3/10-4/11/09 (Skalicky)	Pj. 49, Oakport	\$ 219.11
RMB Laboratories, Inc.	#42709, management/equip.	MPCA SWAG Grant	\$ 525.00
UEI	March #5041, 5034, 5035	Pj. 49, Oakport	\$ 79,222.63
Vogel Law Firm	April billing	Varies	\$ 13,774.27
			\$ 102,913.95

Motion by Nelson to approve payment of the bills. **Seconded** by VanAmburg. **Approved.**

Next Meeting. The Board of Managers, BRRWD, will hold their next meeting on Monday, May 11, 2009, in the Barnesville office at 8:00 PM.

Adjournment. Chairman Ellefson adjourned the meeting at 11:35 PM.

Respectfully submitted,

John E. Hanson, Secretary