

BUFFALO-RED RIVER WATERSHED DISTRICT

BARNESVILLE, MINNESOTA 56514

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MINUTES FOR SPECIAL MANAGERS' MEETING

April 4, 2011

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a special meeting on Monday, April 4, 2011, at 1:30 PM in the Barnesville office. BRRWD Managers present were Gerald L. VanAmburg, Roger G. Ellefson, John E. Hanson, Curtis M. Nelson, and Breanna Paradeis Kobiela. Others attending included: Bruce E. Albright, BRRWD Administrator, Erik Jones, Engineer, Mark Aanenson, Engineer, and Julie Jerger, Administrative Assistant, Houston Engineering, Inc. (H.E.); and Scott Kahan, District Manager, Detroit Lakes Wetland Management District (WMD), United States Fish and Wildlife Service (USFWS).

Chairman VanAmburg called the meeting to order at 1:40 PM. He announced that the proceedings were being recorded to aid in preparation of the minutes.

Business brought before the Board included:

Project No. 50, Cromwell Township Highwater Investigation. Albright gave a brief history of the project development/construction and the issues surrounding the USFWS wetland easements. Phase 1 of the project has been completed. The second Phase will include the installation of tile lines to connect the area wetlands to lower water off the township road. The Township will then pump the rest of the water, and the Federal Emergency Management Agency (FEMA) will assist the Township with their road raising/repair. The Board reviewed a letter from Scott Kahan, USFWS, summarizing the USFWS' position regarding the final elevations for the easement wetlands. The Board reviewed a map showing the wetland basins on the Wouters' property and a copy of the original 1985 easement. The USFWS has easements on two wetlands (A & B) that are involved with the BRRWD's outlet project alignment in this area. Their easement protects the wetlands from burning, draining, leveling, or filling. Because of the human health concerns and safety issues associated with the high wetland elevations in this area, the USFWS agreed to issue a 30-day temporary pumping permit to lower the wetlands to elevation 1162.26 (bottom of project outlet structure). Once the project has been completed, and the township road ("cemetery road") has been raised, the water control structure on the south end of Wetland A would be set at the permanent elevation of 1165.61, which is approximately 9" higher than the June 2010 recorded elevation, to ensure that the USFWS easement protected basins are not drained without USFWS permission. The USFWS also wants the Operation and Maintenance (O&M) Plan to state that the BRRWD cannot lower the wetlands below 1165.61 without authorization from the USFWS, and the BRRWD would provide an annual report regarding project water levels to the USFWS.

Albright noted that the BRRWD has still not acquired an easement from Kenny Wouters to access his property for Phase 2. We had expected a response from Wouters on 4/01/11, but to date, there has been no reply. Because the BRRWD initiated this project by an emergency declaration, we still have to hold the final hearing and complete the assessment of benefits.

Kahan discussed USFWS easement criteria for the emergency temporary pumping. He noted that typically with wetland expansions, the USFWS allows pumping on a case-by-case basis. Jones discussed how the BRRWD would operate the project. Because of topographical and feasibility issues, the project will not be able to totally dewater the township road.

Kahan felt that the USFWS and the BRRWD had worked well together regarding temporarily lowering the wetlands. He has concerns regarding the O&M plan and the long-term management of the wetland elevations. He feels that the 1165.61 permanent wetland elevation will facilitate the USFWS's easement obligation to protect the wetland from burning, draining, or filling.

Albright discussed the BRRWD's other projects we have constructed to lower high water problems. He pointed out that there are no Minnesota Department of Natural Resources (DNR) protected waters associated with the project. Sometimes, if the DNR has establish an Ordinary High Water (OHW) that is higher than the BRRWD's goal elevation for a project, we can apply for an amended permit to lower the project up to 1.5' below the OHW. He asked Kahan to explain what the trigger point would be for us to get another 30-day pumping permit, should it become necessary to lower the wetlands again. Kahan said that the USFWS looks at this issue in terms of human health and safety concerns. They wouldn't allow emergency pumping for preventative measures, for example for fall drawdown. Albright noted that it has taken 17 years to get to the current elevation, so it might take a long time for the wetlands to rise to the point where homes/roads are threatened again, once the project is finished.

Jones' pointed out that the 1165.61 elevation is 1.5' higher than he documented last year on Wetland A when we started working on the project. Mark Aanenson, H.E., stated that at elevation 1165.61, water would be on "cemetery road" in two locations. VanAmburg observed that at this elevation there would be approximately 1.5' of water in Muriel Grefsrud's basement.

Albright noted that for the County Line project southeast of Barnesville, the USFWS wants to lower their wetland easement nearly 6' below the BRRWD's target elevation, and in Cromwell, they want to keep the wetland 6' higher. He wanted to know what criteria the USFWS is using to make these determinations. Kahan said that he was just following through with what the BRRWD asked for last fall at the 10/01/10 meeting by granting a 30-day temporary pumping permit. If the project plans have changed since last year regarding a permanent wetland elevation, he would be willing to discuss it. He advised that if the BRRWD wants the USFWS to do an OHW determination, he could, but it might be even higher than elevation 1165.61, as the USFWS uses different wetland criteria than the DNR. Kahan added that his options are limited regarding the wetland elevation because of the 1985 easement language that does not allow draining of the wetland.

Aanenson pointed out that the Technical Evaluation Panel (TEP), comprised of staff from the DNR, Minnesota Board of Water and Soil Resources (BWSR), and Soil and Water Conservation District (SWCD), in conjunction with the Wetlands Conservation Act (WCA), found that there would be zero wetland loss/impact, even at the project outlet structure elevation (1162.26). Aanenson said that since there wasn't an OHW established for the wetlands, they took into account USFWS data from the National Wetland Inventory (NWI) that previously categorized the wetlands, and determined a normal highwater surface elevation. At elevation 1162.26, the wetlands are still well above the original elevation, and lowering them to that elevation would cause no negative impacts. Aanenson added that the issue before the group today is not a question of the BRRWD not being able to obtain permits from other agencies for the desired 1162.26 elevation, or that we are impacting wetlands at that level, but strictly a matter of Kahan's interpretation of USFWS wetland easement criteria.

Kahan explained that he has to make decisions regarding the wetland based on the 1985 easement document. He maintained that the current wetland basin acreage is not significantly different from the original easement. He thought that if he conducted a wetland delineation based on USFWS criteria, which takes into account hydric soils, the wetland elevation could be at about elevation 1165.61, or even higher. Aanenson pointed out that USFWS wetland delineation criteria differs from other agencies. Kahan thought that the current easement acreage is not very different from the original 1985 easement. He reiterated that if he were to establish an OHW for the wetland basin, it probably would be about the same as he has

already indicated or higher. He stressed that the easement language limits what he can do regarding wetland management. USFWS can grant 30-day temporary pumping permits to lower water in the short term based on human health and safety concerns, but the easement doesn't give him the right to manage the wetland by lowering the elevation permanently.

Aanenson maintained that the elevation Kahan has set for the wetland is far above that the 1985 elevation. He said the BRRWD is just asking for a reasonable elevation. Albright pointed out that the landmarks show us that water is significantly above what a reasonable elevation would be for this wetland.

VanAmburg felt that if the 1985 wetland easement agreement doesn't allow for elevation management, it appears to have been a poorly worded document. Kahan said that he recognizes that the USFWS needs to work with citizens to deal with wetlands causing high water problems, but he has to follow the language of the easement agreement. He was willing to issue temporary pumping permits based on health and safety criteria.

Ellefson commented that if we do nothing more in this area, the wetland will continue to rise, and it is only a matter of time before it breaks out and flows to Hawley. He felt that it doesn't make sense to allow the wetland to bounce back up to elevation 1165.61, which is nearly as high as when we started operating the project. Ellefson pointed out that this sort of decision makes both the BRRWD and USFWS look bad to area landowners. He hoped we could come to a compromise regarding a final elevation.

Kahan explained that the elevation he picked for the wetland (1165.61) is lower than it was this year when he reviewed the site. He allowed the BRRWD to lower the wetland temporarily to elevation 1162.26. In terms of a permanent elevation, Jones commented that if the choice had been arbitrary, why not choose 1162.26 instead of 1165.61. Jones pointed out that if we had developed the project 5 years ago, all the elevations would have been lower.

VanAmburg questioned if the wetland's function would change at elevation 1162.26. He pointed out that the value of the wetland is probably less than it was previously because the water is so high. Kahan felt that it was difficult to determine the value of the wetland basin, because USFWS uses different criteria. He didn't feel he had the authority to divest the wetland top water permanently. He has the duty to protect the wetland basins and cannot manage it.

Ellefson didn't think we were asking Kahan to drain the original wetland area, as the water has far exceeded the original easement boundaries. In general, Ellefson felt that when allowed to expand unchecked, area wetlands are actually a detriment to the surrounding landowners and are currently contributing to area flooding. Kahan disagreed with Ellefson's statement regarding flood contribution, but he did agree that there could be a point of diminishing benefits from rising wetland elevations.

Albright asked if Kahan knew the number of wetland acres protected in the original easement in 1985. Kahan wasn't sure, but he guessed about 18 acres. VanAmburg pointed out that the Grefsrud property, which was not part of the original wetland easement agreement, is also inundated. The group discussed surrounding landowners' rights regarding the expansion of USFWS wetland easements. Albright noted that the NWI maps (1980s) show a much smaller wetland area.

VanAmburg commented that he supports wetland acquisition/preservation, but he questioned why the wetland should be allowed to impact neighboring landowners' property rights. He hoped that we could use a common sense approach to solve this issue.

Kahan was under the impression that when they met regarding this issue in October 2010, the final elevation of 1165.61 for Wetland A would work for everyone. He thought that this was a reasonable plan

for a temporary drawdown project. He asked the group what they felt were the problems regarding his final elevation proposal.

Jones pointed out that at elevation 1165.61, the Grefsrud basin has very little cushion before the water is back to causing problems on the property. Nelson commented that FEMA has indicated that the road has to have less than 1' of water on it before they will assist the Township with repairs. Kahan noted that if the two wetlands were not connected by tile, the Wouters' wetland might not affect the Township road. Albright explained that our project connects the wetlands, which allows water to flow down to the Township road. He suggested that the BRRWD might want to consider some type of block to keep water in Wetland A (Wouters). Kahan pointed out that he picked 1165.61 as the final elevation (1' lower than the starting elevation) because he thought that this was acceptable to the BRRWD. If he conducted an official elevation determination, he suspected that it would be higher than 1165.61.

The group discussed the use of temporary pumping permits to address seepage/high water problems on the Grefsrud property/basement. Albright asked if USFWS would allow us to lower the wetlands when Grefsrud starts to have problems with basement seepage. Kahan said that he couldn't speak for future USFWS actions, but he thought that he would allow us to lower the wetlands back to elevation 1162.26. He noted that Wetland A might not be the cause of the water in Grefsrud's basement. He asked if anyone had checked to find out if the wet basement problems had abated since we completed Phase 1. Albright noted that Mrs. Grefsrud had not contacted the BRRWD regarding this issue since we lowered the wetland to elevation 1162.26. Kahan pointed out that this is the type of problem (health and human safety) that their policy for the use of temporary permits is designed to address. Albright noted that Jones has a gate on Wetland B by "cemetery road" to reduce the amount of pumping the Township will need to do. He suggested that we add a gate on the Wetland B outlet to prevent water from backing water into the area west of cemetery road. VanAmburg asked if we would be able to apply for a permit to operate the project when the elevation reaches a point where the road is threatened. Kahan explained that their policy is to allow wetland lowering when human health and safety is an issue, not just to protect a road. He added that sometimes basement problems could be caused by ground water issues, not wetland elevations.

Albright suggested that language should be added to the O&M to clarify how human health and safety concerns would trigger project operation by stating that the USFWS has recommended that Wetland A be maintained at elevation 1165.61, and that the BRRWD could apply to the USFWS for future permits as needed based on human health and safety issues. Kahan explained that if the highwater is a reoccurring threat and causing problems at a particular elevation, the USFWS might need to reevaluate the 1165.61 elevation and conduct a formal wetland delineation in terms of wetland impacts on human health and safety.

Ellefson asked what the highest elevation had been for Wetland A. Jones said that it was 1166.61. Kahan said he was comfortable with elevation 1165.61 (1' lower) without conducting a wetland delineation. Albright discussed Kahan's comments regarding the O&M plan. Kahan suggested that the O&M should document triggers for project operation. Albright agreed that the O&M should contain specific language regarding triggers for project operation because the Board was concerned that different USFWS officials might not cooperate. Albright pointed out that the BRRWD will always need a permit from the USFWS to operate the project because of their wetland easement. Ellefson felt that 1165.61 was not a reasonable final elevation for the project, and he pointed out that if we can't maintain the project at a lower elevation (1162.26) according to the project's original objective, we should just stop any further work on it. Kahan pointed out that the USFWS provided permits to allow the BRRWD to operate the project to achieve their goals, and they are willing to work with the BRRWD via their permitting system to continue to address human health and safety issues in this area. Albright explained that the USFWS must work within the restrictions placed on them by their 1985 wetland easement agreement based on human health and safety issues. Kahan noted that if the wetland elevation continues to cause problems at a particular elevation, the

BRRWD and USFWS should document those occurrences, and it might be that they will have to reconsider the final project elevation.

Albright suggested that we will revise the O&M to reflect today's discussion, and to be sure that future Managers and USFWS staff can work together to operate the project to maintain human health and safety. He added that there is a provision in the O&M that the agreement can be modified by mutual consent.

Aanenson pointed out that the County's septic system ordinance might be an issue for the Grefsrud property. He noted that the ordinance requires 3'-4' of unsaturated soil below the bottom of the drain field, or approximately 6' below the surface. Albright noted that Grefsrud has never mentioned any septic system problems. Aanenson thought that this might be a good trigger elevation for project operation. Kahan felt that this is something that could be considered.

The group discussed the Kenny Wouters' easement and his reasons for opposing the project. Kahan pointed out that the USFWS doesn't have the right to negotiate the easement on Wouters' behalf. Kahan said that the easement language was devised in the 1950s. Ellefson thought it might be better for the USFWS to add language to future agreements to allow for easement maintenance. Ellefson discussed the problems associated with the current area wetland elevations. He feels they are no longer useful for storage. VanAmburg agreed that the USFWS should consider revising their wetland easements.

The Board briefly discussed the County Line Outlet project. Ellefson noted that the project will be more expensive if the BRRWD lowers the wetland further than our original target elevation, as requested by the USFWS. The BRRWD would like to get this work done this summer, but the USFWS doesn't think they will have funding available until 2012. Ellefson pointed out that the landowners are expecting the BRRWD to do something about the highwater problems this summer.

Pertaining to Project No. 50 and according to the agreement, Albright mentioned that the BRRWD could operate the project any time wetland elevations exceed 1165.61 without USFWS permit. If there is documented evidence that human health and safety issues are reoccurring, it might be possible to reconsider the final elevation. Kahan thought it would be a good idea for the BRRWD to add a structure on the Wouters' Wetland B. Ellefson still felt that elevation 1165.61 is too high, but the BRRWD will have to live with the decision and work with the USFWS.

During the meeting, Ellefson suggested that Albright make a telephone call to Wouters to find out if he has made a decision regarding his easement. Albright was not able to reach Wouters and had to leave a message on his answering machine.

Kahan noted that the Hamden Slough spillway logs would be going in today in anticipation of the spring flood. The Board discussed the status of our various lake outlet projects and the spring flood.

Army Corps of Engineers (COE) Metro Flood Study. The Board reviewed four resolutions, prepared by the Fargo-Moorhead Metro Task Force, regarding the Locally Preferred Plan (LPP) (North Dakota 35 K diversion alignment) for the F-M COE Diversion, including upstream staging and storage. Public meetings were held in the area to discuss this latest proposal. Manager VanAmburg and Paradeis Kobiela (alternate) serve on the Task Force along with representatives from the Cities of Fargo and Moorhead, Cass and Clay Counties, and the Southeast Cass Water Resource District (SCWRD). The Task Force voted to approve the resolutions. The COE requested that the Task Force representatives bring the resolutions to the sponsoring entities for official endorsement of the LPP and the upstream staging and storage proposal. The Board reviewed a map of the proposed upstream staging and had an extended discussion regarding possible local impacts. The resolutions and Board actions are as follows:

1. I move to reaffirm the decision identifying the North Dakota diversion as the Locally Preferred Plan. **Motion** by Nelson to approve Motion No. 1. **Seconded** by Ellefson. **Approved unanimously.**
2. I move to approve the request from the U.S. Army Corps of Engineers and the non-Federal sponsors that the cost share for the Preconstruction Engineering and Design Agreement be changed from the standard cost share of 75 percent Federal and 25 percent non-Federal to a cost share of 50 percent Federal and 50 percent non-Federal. **Motion** by Hanson to approve Motion No. 2. **Seconded** by Ellefson to allow for discussion. VanAmburg explained that there is a specific amount of funding in the Federal budget for the project. There are concerns that if they adhere to the 75/25 cost share, we will run out of funding, which will delay project development. If we go to a 50/50 cost share, it is expected that there will be enough money to complete the preconstruction work. The Board discussed the Minnesota/North Dakota split of the local costs. The current proposed split of the local costs is 80/20. The Board thought it should be closer to 90/10. Ellefson felt that there wasn't enough specific information about where the \$1.5 million in funding will come from. Albright thought that the Minnesota State Legislature would be asked to help with the costs. **Voting to approve:** Managers Hanson and Paradeis Kobiela. **Voting not to approve:** Managers Ellefson and Nelson. Chairman VanAmburg broke the tie by voting to approve. **Approved.**
3. I move to support and endorse the development of upstream staging and storage in the Locally Preferred Plan, which is the North Dakota East diversion, recognizing that mitigation efforts will be borne as a local cost and the incremental cost is currently estimated at \$546,000,000.00.

After considerable discussion regarding local upstream impacts, local project costs, and concerns about human health and safety issues, **motion** by Ellefson not to approve Motion No. 3. **Seconded** by Nelson. **Voting not to approve:** Managers Hanson, Ellefson, and Nelson. **Voting to approve:** Manager Paradeis Kobiela. **Not Approved.**

The Board listed some reasons for their action, including: too many unanswered questions regarding how mitigation would work in the staging area for the Minnesota side of the Red River of the North; questions about where the local funding is going to come from for this portion of the project; and concerns about safety issues for people living downstream of a dike and staging area.

4. I move to support the study and consideration during the design phase of the Metro Flood Project of alternate routing for Oxbow and West Fargo. **Motion** by Hanson to approve Motion No. 4. **Seconded** by Paradeis Kobiela. **Approved** unanimously.

Albright will file the resolutions with Pat Zavoral, City of Fargo Administrator.

Clay County Ditch No. 36, 40, 60 Redetermination of Benefits. The redetermination of benefits hearings continuation will be held on 4/05/11 at the Comstock Community Center at 8:00 PM. Notices have been sent. The Board discussed the Viewers' Report and agreed that because of the size of the systems, there may be some inequities, but overall, the redetermination reflects current project benefits.

New Office. Margaret Follingstad, Architect, YHR Partners, is working on floor plans for the new office. She would like to meet with the Building Committee to discuss interior design. She expects to have plans ready for the Building Committee's review on Thursday, April 7, 2011, at 7:00 PM.

Joint Senate/House Bond Committee Hearing. The State Senate and House Bond Committee will hold a hearing in the Moorhead City Hall at 2:30 PM, on Friday, April 8, 2011. The Committee will hear testimony regarding funding requests for Project No. 39, Georgetown Levee Improvement, and Project No. 49, Oakport Flood Mitigation.

Project No. 49, Oakport Flood Mitigation. Albright will meet tomorrow with Randy Rick, Property Manager, to identify any salvageable materials that could be removed from the basements prior to the flood. Nelson suggested that we could donate items to Habitat for Humanity. Albright noted that we might not have time to wait for them to pick up the items, as this work should be done in the next few days. The Board will schedule an auction for the buyout houses after the spring flood is over.

Next Meeting. The Board of Managers, BRRWD, will hold their next regular meeting on Monday, April 11, 2011, at 8:00 PM.

Adjournment. Chairman VanAmburg adjourned the meeting at 5:20 PM.

Respectfully submitted,

John E. Hanson, Secretary