

BUFFALO-RED RIVER WATERSHED DISTRICT

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MINUTES FOR MANAGERS' MEETING February 23, 2015

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held their regular meeting on Monday, February 23, 2015, at 7:00 PM in the Barnesville office. BRRWD Managers present were Gerald L. Van Amburg, Breanna L. Kobiela, Mark T. Anderson, John E. Hanson, and Peter V. Fjestad. BRRWD Staff attending included: Bruce E. Albright, Administrator, and Erik S. Jones, Engineer, Houston Engineering, Inc. (HEI). Others attending included: Attorney Zenas Baer, Baer Law Office; Christine Laney, Executive Director, River Keepers; and landowners: Bradley Nelson, Sherwood Peterson, Don Nelson, and John Ready.

Chairman Van Amburg called the meeting to order at 7:01 PM. He announced that the proceedings were being recorded to aid in the preparation of the minutes.

Secretary's Report. The Board reviewed draft minutes for the 01/26/15 and 02/09/15 regular meetings. **Motion** by Anderson to approve both sets of minutes. **Seconded** by Fjestad. **Approved.**

Treasurer's Report. Albright presented a brief review of the BRRWD's current financial status. Cash on hand is \$1,242,782.69. Administrative disbursements for the year total \$31,284.66. Income since the last meeting totaled \$137,866.89. We received payments from the Minnesota Department of Natural Resources (DNR) for the Hawley Buffalo River Restoration project (\$124,040.78), the Minnesota Board of Water and Soil Resources (BWSR) for the Minnesota Agricultural Water Quality Certification Program (MAWQCP) (\$12,847.86) and the Minnesota Pollution Control Agency (MPCA) for the Upper Red River Total Maximum Daily Load (TMDL) Study (\$978.25).

River Keepers Update. Christine Laney, Executive Director, River Keepers, presented a brief history of the River Keepers program, which is celebrating its 25th Anniversary. Laney highlighted some of River Keepers successful programs, including low-head dam retrofits on the Red River, public education and outreach programs, interpretive signs along the river, fishing clinics, the Red River Water Festival activities for area 4th Graders, tree planting on both sides of the river by volunteers, storm drain marking program, and water quality monitoring. The BRRWD (\$45,000) and the Southeast Cass Water Resource District (SCWRD) (\$55,000) are River Keepers main source of funding. They also receive contributions from the Fargo Park District and Clay County. Most of the other funding is from grants, sponsorships, and donations. Laney pointed out that the contributions from the BRRWD and the SCWRD make it possible for the River Keepers staff to focus on outreach and education instead of fundraising. The major funding raising activities, which incorporate educational experiences, include the Celebrate the Red event at the HoDo Restaurant in Fargo with silent auction items and the Golf Scramble. Proceeds from the sale of a book written by two former River Keepers board members also fund the organization.

Manager Anderson commented that River Keepers does a good job in promoting the Red River. Laney distributed copies of a handout advertising River Keepers events and volunteer opportunities. Van Amburg commented that River Keepers assisted the Cities of Wahpeton and Breckenridge organize their own Water Festival. Laney pointed out that River Keepers assists schools with Water Festival travel expenses by soliciting sponsorships to pay approximately 80% of the bus transportation costs. Albright mentioned that he has participated in the Water Festival as a presenter for several years. He also noted that BRRWD funds were also used for the dam retrofit projects. Van Amburg commented that the River Keepers programs and

projects helps the BRRWD satisfy the educational component of our Comprehensive Plan. Albright also noted that by contributing to River Keepers, the BRRWD can provide assistance to the City of Moorhead residents where a percentage of our tax proceeds originate.

The Board briefly discussed increasing the future BRRWD's contribution. This topic could be discussed again prior to the BRRWD's 2016 budget hearing in August.

Project No. 77, Clay County Ditch No. 51-Lateral No. 3. Zenas Baer, Attorney, representing Robert Norby, complained that he was not getting all available information regarding the Board's actions. He wanted to know if the Board planned to act on the Engineer's Detailed Survey Report at tonight's meeting. Albright explained that the Detailed Survey Report has not yet been prepared. The Board approved a motion to continue project development in accordance with Minnesota Statutes Annotated (M.S.A.) 103E.215 at their 02/09/15 meeting by authorizing Jones to prepare the Detailed Survey Report and to direct Albright to work with BRRWD Attorney Tami Norgard to prepare the Findings and Order for the Board's signature at a future meeting.

Attorney Baer made a statement regarding the history of the dike system on Robert Norby's property and the report Jones prepared regarding the existing drainage conditions and the adequacy of the existing drainage and alternative drainage routes to the east in Section 28, Kragnes Township. He distributed copies of a synopsis of Jones' report to the Managers and attendees. Baer questioned Jones' findings in the report. Jones explained the options presented in his report. He added that he hasn't been able to reproduce the survey results that Moore Engineering submitted in a report prepared for Robert Norby. He has attempted to contact Moore Engineering to discuss their report, but has not been successful. Baer questioned why the Board wanted to proceed with the project when he thought the survey showed a clean out of the existing ditches would be sufficient to drain the Minch property in Section 28. Baer suggested that the BRRWD is attempting to settle an ongoing lawsuit with the Minch Family by pushing through their petition for a lateral across Norby's property. Van Amburg pointed out that Baer's statements would best be made at the Final Hearing, which won't be scheduled until the Detailed Survey Report is completed and the Viewers' Report is prepared. Baer continued to criticize Jones' drainage report, pointing out that he should have included project costs for each alternative. Albright pointed out that according to Drainage Law, Jones' responsibility doesn't include analyzing alternate projects when preparing the Preliminary Survey Report. His job is to evaluate the work as petitioned. Baer reiterated that the information regarding existing conditions is incomplete because it doesn't include the costs for the alternatives. Albright said that the Drainage Law process allows for review of the project identified in the petition. It does not authorize Jones to spend the petitioner's money analyzing any option that non-petitioners may want.

Attorney Baer also distributed a copy of a letter he sent to the BRRWD on 01/07/15 with comments regarding the Preliminary Hearing. He complained that he had not been notified about the pending action regarding the Order to move the project forward. Albright observed that the 02/09/15 agenda, which was emailed to Attorney Baer, does note that the Board was going to make a decision regarding an Order to continue with the project development.

The Board discussed the need for the Minch Family to increase the bond for their petition by another \$10,000. **Motion** by Kobiela to authorize Albright to contact Roger Minch in this regard. **Seconded** by Anderson. **Approved.**

Wolverton Creek/Comstock Coulee. Bradley Nelson commented that he received the notice too late to attend the 02/17/15 meeting. Albright noted that the notices were sent out too late, and the office didn't allow for the Presidents' Day holiday for mail delivery.

Albright summarized the meeting discussions and noted that another meeting will be scheduled in the near future before field work starts this spring. He explained the DNR has issued a permit for the

BRRWD to restore 26 miles of the waterway channel, which clears the way for further project development. This is the largest channel restoration project that the local DNR has permitted, so the BRRWD will be under scrutiny to be sure we do things right. Phase 1 of the project will start at County Road (C.R.) No. 30 and proceed downstream to the west of Donald Hoppe's farm to get a gradeline. Albright added that the Natural Resources Conservation Service (NRCS) has funding available through their Environmental Quality Incentives Program (EQIP) (\$50 million) for the Red River Basin, but landowners must submit applications for the funding. Nelson has property along the Wolverton Creek that would be affected by the Phase 1 work, and has concerns that there might be unforeseen regulations involved with a federally funded project. Albright stated that according to the NRCS, landowners are under no obligation when they apply for the EQIP funding. The Board had a brief discussion about how the EQIP money could be allocated. The current cost estimate for the entire project is approximately \$7 million. Albright thought that a meeting with the affected landowners associated with the Phase 1 work should be scheduled to discuss the application process. He added that he would be available to meet with Nelson individually about how the proposed project could affect his property.

Other business brought before the Board included:

Permit No. 15-006, Don Dittus. Applicant proposes to install 102 acres of pattern tiling east of County State Aid Highway (CSAH) No. 52 in the SE¼, Section 1, Prairie View Township, Wilkin County, south of Barnesville. The project will outlet via a lift station to the west road ditch, and flow south to Wilkin C.D. No. 42 to which it is assessed. **Motion** by Anderson to approve Permit No. 15-006, subject to our standard tiling disclaimer, Wilkin County approval to work in their road right-of-way (r-o-w), and with the understanding that water from this project must drain south to the Wilkin C.D. No. 42 system, as assessed. **Seconded** by Hanson. **Approved.**

Robert Faulkner Tiling Complaint. A landowner filed a complaint regarding the outlet of a tiling project that his neighbor apparently installed last fall without a BRRWD permit in the SE¼, Section 23, Manston Township, Wilkin County. The landowner was concerned that the project does not have an adequate outlet. A field review will be conducted, and if it is determined that there is a better outlet for the work, a letter will be sent to Frederick Hanson, directing him to file an after-the-fact permit application with plans and to secure a better outlet on the south side of the road.

Project No. 75, Wilkin C.D. No. 31-Lateral. Bruce Poppel, Wilkin County Environmental Office has scheduled the Conditional Use Permit (CUP) hearing for Wednesday, March 4, 2015, at 8:30 AM. The affected landowners have been notified. Albright plans to attend. Jones and Albright are working on temporary and permanent easement for cropland, non-cropland, and farmsteads using the values the Board approved at their 02/09/15 meeting: temporary cropland-\$500/acre, permanent cropland-\$3,500/acre, non-crop-\$500/acre, farmsteads-\$5,000/acre.

Project No. 49, Oakport Flood Mitigation. Albright reported that Ron Harnack, Red River Watershed Management Board (RRWMB) Project Coordinator, contacted him to testify at a House Sub-Committee hearing regarding Flood Damage Reduction funding on 02/26/14 at 12:45 PM. Because of time constraints, the Sub-Committee plans to hold a continuation hearing on 03/03/15 or 03/05/15 where Oakport funding could also be considered. Albright plans to attend the March hearing. Bills were submitted by Representative Ben Lien in the House and by Senator Kent Eken in the Senate that include funding for Oakport (\$5.6 million). BRRWD Lobbyist Joel Carlson has also been in contact with Albright regarding the pending legislation.

Albright noted that the Fischer Family has still not responded to the BRRWD's offer on their 2015 stockpile storage lease.

Project No. 39, Georgetown Levee. The Board reviewed a letter from BRRWD Attorney Corey Elmer, Vogel Law Firm, regarding the Greywind property acquisition. US Bank holds the mortgage on Greywind's old house, and they are unable to allow modifications to Greywind's loan. In light of the problems Greywind has for obtaining a new mortgage from a local lender, Attorney Elmer suggested one option might be that the BRRWD obtain the easement to the property by paying Greywind the amount necessary for him to pay off his US Bank mortgage and his outstanding judgments and liens (approximately \$102,000). This arrangement would result in the BRRWD acting as Greywind's lender with the BRWRD holding a mortgage for his new house, until Greywind would become eligible for a mortgage from a local bank. Albright suggested that the Board take this suggestion under advisement and discuss the issue again at a future meeting. Our contractor is ready to complete the dike construction this spring as soon as the old Greywind house can be demolished.

Project No. 30, Clay/Wilkin Judicial Ditch (J.D.) No. 1. Albright will work with Attorney Norgard on the petition requirements, as the petitioners have had some trouble getting signatures to create a diversion on the County line.

Mediation PT. The next PT meeting has been scheduled for Thursday, March 19, 2015, at 1:30 PM in the BRRWD office

South Branch of the Buffalo River Erosion Concerns. A meeting with Carolyn Swenson regarding a smaller project on her property in the NE¹/₄, Section 6, Manston Township, Wilkin County, is scheduled for February 24, 2015, at 1:00 PM in the Barnesville office, including Jones and NRCS representatives. It appears that the project might not be eligible for the EQIP funding.

There was also discussion about a possible retention site in Section 11, Manston Township. The landowner has enrolled his property in the Reinvest in Minnesota (RIM) program. Because the RIM funding is from the Lessard-Sams Outdoor Heritage Council (LOHC), RIM can only do traditional wetland restorations and native grass establishment, and the BRRWD can't use the RIM easement for a larger scale impoundment project. This could impact the easement value of the Deutsch property in Section 11. There are still a number of other funding sources that the BRRWD could investigate. Jones could revisit his project design to create a multi-purpose flood damage reduction (fdr) and natural resource enhancement (nre) project. The Board discussed a general problem about coordinating environmental agencies' easement acquisitions with the BRRWD's project development efforts. Albright has had several telephone calls with BWSR, who administers the program. The BRRWD will need to make a decision in the near future if we want to explore a larger project, or let BWSR proceed with their RIM easement.

The Red River Retention Authority (RRRA) has scheduled meetings with the NRCS Program and Technical Team for February 26, 2015, to discuss the purpose and requirements of entering into a Regional Conservation Partnership Program (RCPP) partnership agreement with local watershed districts and water resource district board members throughout the Red River Basin.

Barnesville Township Area Drainage. Albright noted that landowners have been contacting him regarding the status of a project in this area. Jones is working on alternative designs and will share information as it is completed.

WRP Sites. In regards to the Haick\Peppel site, Albright visited with Raymond Peppel last week, who is anxious to move forward with a project. HEI is currently working on an area survey for this site, and Jones thought it would be completed this week. For the Reep Lake site, Albright participated in a conference call with BWSR representatives last week. According to BWSR, there is an existing wetland on the site, and it might not be possible to add more water to the site because they view adding water to an existing wetland the same as adding fill. A meeting is scheduled on

March 10, 2015, at 9:00 AM in Detroit Lakes with the Technical Evaluation Panel (TEP) at the Becker Soil and Water Conservation District (SWCD) office to discuss this issue with DNR, COE, and Steve Hofstad, Wetland Specialist, BWSR. The Board was concerned that BWSR did not bring up these concerns when the project was first discussed with the landowners two years ago.

Stony Creek Detention. The BRRWD's Acceleration Grant application for this project was submitted in time to be considered at the 02/18/15 Red River Basin Flood Damage Reduction Work Group (RRBFDRWG) meeting, and was approved for \$12,598.87. This will cover some of the cost of preliminary work including soil borings. A funding application was also submitted to the City of Fargo, who won't be meeting until March 23, 2015, so this funding is currently pending.

Sherwood Peterson owns land within the project footprint, located 3 miles east of Sabin in the SE¼, Section 32, Elkton Township, Clay County. Stony Creek enters his property from the southeast, Hay Creek enters from the north, and the two flow together south of his property. He asked the Board about the actual purpose of the detention project: flood reduction or retention. His land in Section 32, which has never flooded in the 40 years he has owned it, will be the "first in" and the "last out" associated with Pool A in the proposed retention design. He noted that the SE¼ has a crop production index of approximately 90, with lower production near the creek. His concern is that the project would impact his productive agricultural land (approximately 139 acres tillable), which has never been flooded, and he doesn't understand why this quarter was included in the project boundaries. If the project has to be built, he would prefer a land exchange over an easement or buyout because it is rental property, which would be worthless if it were subject to flooding on a regular basis. Albright noted that it was a good idea for Peterson to express his concerns to the Board for the record. Van Amburg commented that engineers look for certain characteristics that dictate where a project can be built. Sometimes a project might impact productive land, and it's the Board's responsibility to find a way to work with landowners to be sure they are treated fairly. The group spent some time discussing area drainage patterns.

Revised Watershed Management Plan (RWMP)/Watershed District Enlargement. Albright plans to schedule a Technical Advisory Committee (TAC) meeting in the near future. The goal is to have the meetings completed and a draft plan completed in the near future, so BWSR can begin their 60-day review period.

BRRWD/Bois de Sioux Watershed District (BDSWD) Boundary. Manager Fjestad mentioned that the landowners who had concerns about the BRRWD boundary in Section 9, Western Township, Otter Tail County, have reviewed the proposed new map and are satisfied with the proposed boundary. Albright will contact the BDSWD with that information.

Army Corps of Engineers (COE) F-M Diversion. Albright contacted Tom Athens, an Attorney from Fergus Falls, to obtain a second opinion regarding the issue of Manager Anderson's conflict of interest. Albright distributed an e-mail message from Athens with an unofficial reply to Board's question. In his message, he states that he doesn't think that Manager Anderson has a conflict of interest regarding a vote to approve the F-M Diversion Authority FY15 budget. Albright also distributed a map from BRRWD Attorney Norgard showing a small piece of property owned by Anderson that is just within the project footprint. Norgard had based her opinion regarding Anderson's conflict of interest on the fact that Anderson owned land within the project. Anderson commented that the boundaries of the Diversion project have changed so many times, it's been hard keep up with it. Anderson commented that it appears to be up to him if he feels he would have a conflict in voting on a Diversion budget. He thought that if there was a vote where he would benefit financially, he would abstain, but as far as the project process, he didn't feel he had a conflict.

Albright suggested that given scheduled Manager absences for the next two meetings, the Board could take up the issue again of approving the Diversion Authority's 2015 Budget at their 03/23/15 meeting. There were a number of letters from County and City officials included in tonight's Manager meeting materials for their review.

Later in the meeting, the Board had a brief discussion regarding the Diversion and Anderson's conflict of interest. Anderson would like to meet with Attorney Norgard regarding this issue.

MAWQCP. A Farm Forum will be held at the Nordick Farm on 02/26/15, from 9:00 AM to 1:00 PM. Warren Formo, Minnesota Agricultural Water Resource Center (MAWRC), will be the keynote speaker. Larry Gunderson, Minnesota Department of Agriculture (MDA), will also speak on the topic of fertilizer application.

Buffalo River/Upper Red River TMDL. The February 12, 2015, Watershed Restoration and Protection Strategy (WRAPS) meeting was cancelled by the MPCA, and there has been no response from MPCA as to their plans to finish this project. The Upper Red River study should be completed at the end of 2015.

Project No. 56, Manston Slough Restoration. HEI has prepared specifications for the native grass seeding (73 acres), which are now ready to distribute for bids. The bid packets will be sent to a list of Wilkin County vendors that the Wilkin SWCD provided, and the bid notice will also be advertised. **Motion** by Hanson to start the bidding process as referenced with bids to be opened at the 03/23/15 BRRWD meeting. **Seconded** by Kobiela. **Approved.**

Project No. 23, Becker C.D. No. 15 Repair. Landowner Kraig Nelson requested that the BRRWD consider repair of the ditch channel starting at the beginning of the project in the SW¼SE¼, Section 11, Audubon Township. Nelson states that there are full grown trees and lesser vegetation and sediment blocking and/or slowing down the flow of water in the channel. Albright explained that last year the United States Fish and Wildlife Service (USFWS) received funding to repair C.D. No. 15 through the Hamden Slough National Wildlife Refuge (NWR). The contractor they hired to do the work would have finished the NWR repair up to the private lands on C.D. No. 15, and then we could have continued on to complete the ditch repairs. However, the contractor never started the USFWS repairs last year, and the USFWS contacted the BRRWD to ask us to take over the project. Following that request, they contacted Albright again to report that the contractor they hired has appealed their decision to cancel his contract. So at this time, the repair project is on hold until the legal issues regarding the USFWS and their contractor can be resolved. **Tabled,** pending the completion of the Hamden NWR repairs.

Project No. 49, Oakport Flood Mitigation. Albright distributed a proposal from Pat Lynch, CFM, Flood Hazard Mitigation Grant Assistance Program Manager, DNR, regarding a change with how DNR reimburses the grant recipients. In the past, the DNR could pay for old bills with new grant money, but that practice has now changed. Lynch suggested that the DNR could write a new grant for the outstanding Oakport eligible expenditures, which would be for \$134,032 out of a total of \$147,205.86 of current unreimbursed expenses, leaving a balance of \$13,173.46 that could not be reimbursed by grant funds. When the Legislature finally approves bonding for Phase 4, the DNR would provide a new grant agreement for that funding with the understanding that we wouldn't be reimbursed for new interim expenses. Albright recommended that the Board accept Lynch's offer. **Motion** by Fjestad to accept the DNR's funding offer, as referenced. **Seconded** by Kobiela. **Approved.** The remaining amount would be assessed to the benefited parties within the project area.

Upper Red River Watershed Biotic Stressor Identification Report. Bruce Paakh, MPCA, submitted a draft copy of his Biotic Stressor Report for the Board's review. This report will be part of the WRAPS work for the Upper Red River TMDL.

Special Meeting Topics. The Board special meeting topic tonight was to review our short, immediate, and long term goals. He distributed a copy of the goals set at our 07/22/14 meeting for the Board's review. Albright reported on discussions at today's Region 1 Association of Watershed District Administrators (ADA) meeting regarding updating Rules and Bylaws. He provided copies of the revised Rules from Red Lake and Roseau River Watershed Districts. He suggested that we consider basing our revisions on their work, which is based on guidelines provided by the RRWMB and the International Water Institute (IWI). Albright distributed a copy of Roseau River Watershed District's revised Bylaws. The Managers felt that it would be better to wait for an extended discussion on the Rules and Bylaws revision process until the full Board is present. The noted examples were furnished to all Board members for review.

The following bills were presented for approval:

Accounts Payable	Description	Account	Amount
Arvid Thompson	#15-17, Viewing 03/25/14-02/10/15	Varies	\$ 300.00
Barnesville Record Review	RWMP notice	RWMP	\$ 45.00
Bruce E. Albright	Viewers' dinner-Eagle Café	Clay C.D. No. 9, 32, 33	\$ 52.99
Eddie Bernhardson	#15-15, Viewing 03/25/14-02/10/15	Varies	\$ 1,077.60
Joel Carlson, Inc.	March Lobbyist fees	Admin.	\$ 850.00
Lauren Peterson	#15-16, Viewing 03/25/14-02/10/15	Varies	\$ 253.75
MAWD	Legislative Breakfast (3)	Admin.	\$ 300.00
River Keepers	2015 contribution	M.S.A. 103D.905, Subd. 3	\$ 45,000.00
RRVCPA	01/10/15-02/09/15 service (3)	Pj. 49, Oakport	\$ 244.18
SECAP Finance	#2481200-JA15, 02/20/15-05/20/15 postage meter	Admin.	\$ 112.22
Thompson Greenery	#18759, Elsie Thompson flowers	Admin.	\$ 53.44
Vogel Law Firm	#147903, January billing	Pj. 39, Georgetown	\$ 391.00
Vogel Law Firm	#147994, January billing	Admin.	\$ 115.00
Vogel Law Firm	#147995, January billing	Pj. 56, Manston	\$ 138.00
Vogel Law Firm	#147996, January billing	COE Diversion	\$ 1,679.00
Vogel Law Firm	#147997, January billing	Pj. 77, Clay 51-Lateral	\$ 1,380.00
			\$ 51,992.18

Motion by Fjestad to approve payment of the bills. **Seconded** by Anderson. **Approved.**

Next Meeting. The next regular meeting will be held on Monday, March 09, 2015, at 7:00 PM in our Barnesville office.

Adjournment. **Motion** by Anderson to adjourn the meeting. **Seconded** by Fjestad. **Approved.** Chairman Van Amburg adjourned the meeting at 9:50 PM.

Respectfully submitted,

John E. Hanson, Secretary