BUFFALO-RED RIVER WATERSHED DISTRICT

BARNESVILLE, MINNESOTA 56514

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MINUTES FOR MANAGERS’ MEETING
February 13, 2017

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held their regular meeting on Monday, February 13, 2017, at 7:00 PM in the Barnesville office. BRRWD Managers present were Jay A. Leitch, John E. Hanson, Catherine L. Affield, Troy E. Larson, and Peter V. Fjestad. Others attending included: Bruce E. Albright, BRRWD Administrator, Erik S. Jones, Engineer, Thomas Eskro, Houston Engineering, Inc. (HEI); Jenny Mongeau, Clay County Commissioner; and landowner Thomas Paulson.

In Chair Van Amburg’s absence, Vice Chair Fjestad called the meeting to order at 7:01 PM and announced that the proceedings were being recorded to aid in the preparation of the minutes. Manager Larson arrived at 8:00 PM and Manager Affield arrived at 8:15 PM. Until then, a quorum was not present, and no action was taken on BRRWD issues.

Secretary's Report. The Board reviewed draft minutes for the 01/23/17 regular meeting. Motion by Leitch to approve the minutes. Seconded by Hanson. Approved.

Treasurer's Report. The Board reviewed the BRRWD's financial status. Cash on hand is $2,299,403.72. Income since the 01/09/17 meeting is $246,664.77. All four Counties sent 2016 delinquent property and ditch/project collections, totaling $56,748.54; the Minnesota Department of Natural Resources (DNR) paid $46,532.38 for Project No. 49, Oakport Flood Mitigation; the Minnesota Pollution Control Agency (MPCA) forwarded a 319 Grant payment for Otter Tail River Planning ($13,253.49); the Wilkin County Environmental Office sent a reimbursement for the Whiskey Creek Enhancement Study ($45,208.98); and the Minnesota Board of Water and Soil Resources (BWSR) sent a 50% payment ($84,000) for our 2017 Clean Water Fund (CWF) Grant for Prioritize, Target, and Measure Application (PTMApp) and Geomorphic Assessment, which is associated with the BWSR's One Watershed One Plan (1W1P) effort. To date, 2017 income is $246,889.77, administrative expenses are $33,259.02, and Accounts Receivable totals $5,952,429.80. Motion by Leitch to approve the Treasurer’s Report. Seconded by Affield. Approved. Albright noted that Harold J. Rotunda, CPA, should be starting on the 2016 Audit in the near future.

Robert Yaggie Tiling Complaint. Thomas Paulson, who farms with Tom Arnhalt, discussed Robert Yaggie's tiling project in Section 28, Mitchell Township, Wilkin County. Paulson is concerned about the adequacy of the possible northern route outlet along their property in the SW¼, Section 21, Mitchell Township. Lowell Picotte and Joe Wulfekuhle, who own land downstream of the project, have voiced concerns about the current southern outlet route. According to the original permit application to tile 240 acres in Section 28 (Permit No. 12-165), the outlet was to be located in the northwest corner of the Yaggie project. Yaggie and his neighbors, Lorin and David Abel, installed the lift station outlet in the southwest corner of the Abel property so Abel also could tie into the main tile line along the south line of his property and share the lift station for his own future tiling project in the NW¼, Section 28. The original outlet location did not have electrical service, but the new site does, which also influenced the outlet change. Using the overhead monitors, Albright described the two alternate routes. The south route is much longer and affects more property than the north route, but there are also drainage concerns with the northern route. Jones noted that the Wilkin County Highway Department plans an improvement project for two miles of County Road (C.R.) No. 3 ditch between C.R. Nos. 24 and 26. Paulson thought that this work could help address concerns regarding the southern route. HEI started the Board authorized survey last fall to determine what it would take to drain the tile outlet to the north, but only part of the survey was completed due to the winter weather
conditions. Albright explained that once we have the survey, we will identify the landowners along both routes and invite them to a meeting to discuss these issues further.

**Other Business brought before the Board included:**

**Permit No. 16-098, Deal Brothers.** Jones forwarded the HEI plans to the Wilkin County Highway Department for the Deal Brothers project to fill in a natural waterway through the center of Section 10, Andrea Township, Wilkin County, and to install a ditch along the east (Wilkin C.R. No. 19) and south lines of the NE1/4, outletting to Wilkin County Ditch (C.D.) No. 31, as assessed. The County will review the plans before making a decision regarding the project. **Tabled.**

**Permit No. 16-126, Eugene Kaiser.** The Board is waiting for John Steffl to submit an after-the-fact permit application for the tiling project he installed a few years ago without BRRWD permits that outlets via existing ditches to NRCS designated wetlands on Harlan Wentz's property in the SE1/4, Section 3, Callaway Township, Becker County. The Board would like to resolve this issue with all the parties at the same time. Albright will contact Steffl again regarding his application. **Tabled.**

**Permit No. 17-001, Wilkin County Highway Department.** Applicant proposes the bituminous resurfacing of County State Aid Highway (CSAH) No. 52, including some approach culverts with aprons. The work will include road shoulder aggregate from the Clay County line in Section 4, Prairie View Township, south 12.5 miles to the City of Rothsay in the NE1/4, Section 25, Tanberg Township. Jones recommended permit approval. The Board briefly discussed a couple of places where water overtops CSAH No. 52 during heavy rains. **Motion** by Larson to approve Permit No. 17-001. **Seconded** by Leitch. **Approved.**

**Permit No. 17-002, Moorhead Park Department.** Applicant proposes to install a bike bridge across Clay C.D. No. 41 to provide access to M.B. Johnson Park in the SE1/4, Section 29, Oakport Township. To date, no plans have been submitted for this project. **Tabled.**

**Haugrud Drainage Complaint.** Albright noted when he visited with Jimmie Lindholm recently, Lindholm indicated that he may be willing to clean the waterway on their Conservation Reserve Program (CRP) acreage in Section 22, Prairie View Township, Wilkin County, in accordance with the recent HEI elevation survey, but asked if the Haugruds plan to do anything to prevent future channel sedimentation caused by their upstream farming practices in Section 23. The Board briefly discussed possible erosion control options for the Haugrud property.

**Al Korinek Tile Complaint.** Albright sent letters to Korinek and Matt Hasbargen regarding a tiling project that Hasbargen constructed in 2013 (BRRWD Permit No. 13-002) in Section 21, Sunnyside Township, Wilkin County. He advised Hasbargen that both the Bois de Sioux Watershed District (BDSWD) and the BRRWD include disclaimers with their permits requiring that landowners must not operate their tile systems during downstream flooding. Because of the watershed district boundary changes between the BDSWD and the BRRWD, future drainage issues for the Hasbargen and Korinek properties will be under the jurisdiction of the BDSWD.

**Project No. 77, Clay C.D. No. 51-Lateral-Norby Lawsuit.** Albright reported that BRRWD Attorney Charlotte Rusch, Vogel Law Firm, filed a motion for Summary Judgement with the Court last Friday. Robert Norby has until 02/28/17 to respond to this motion. Any reply from the BRRWD would need to be filed by 03/07/17. The trial is scheduled for Friday, March 10, 2017, 1:30 PM, at the Clay County Courthouse in Moorhead.

**Project No. 71, City of Moorhead 50th AVE S.** Albright is working with Mike Love, Engineer, HEI, regarding the Operation and Maintenance (O&M) agreement with the City of Moorhead and the levee certification process.
**Project No. 56, Manston Slough Restoration.** Albright noted that the current warm weather is probably beneficial for the Natural Resources Conservation Service (NRCS) tree clearing work.

**Project No. 49, Oakport Flood Mitigation-Phase 4.** Albright noted that Attorney Norgard plans to submit a request for a Summary Judgement regarding the Kopperud lawsuit.

Albright reported that he has not had a response from the Fischer family regarding their spoil pile lease. Ulteig Engineers, Inc. (UEI) provided soil boring results to Albright for the spoil site on the Fischer property, which showed top soil depths ranged anywhere from 6" to 1.5'. He suggested that the Board should wait until the Fischers decide to respond, or proceed with condemnation.

R. J. Zavoral & Sons, Inc., have revised their claim for liquidated damages to $145,000, based on alleged delays outside of their control. The project engineer, Kris Carlson, UEI, has suggested that he meet with the Board to discuss how they wish to respond, but to date, no meeting has been scheduled.

**Project No. 39, Georgetown Levee.** The Board discussed the Greywind house condemnation. US Bank has been working with Greywind to revise his old home loan by amending the legal description to add his new house. Albright reported that the bank is nearing a settlement.

Albright forwarded a project summary and update for the new Georgetown City Council. He explained that Wade Opsahl, Technician, HEI, is working with the Federal Emergency Management Agency (FEMA) on disaster payments to the City for the 2011 Spring Flood. Some of this money will be applied to the project account balance (-$115,450.06).

Albright reported that there has been no response regarding the F-M Diversion Authority providing some funding for the permanent road levees. Jones will contact the DNR regarding the Jason Wambach Letter of Map Revision (LOMR) application.

**2015 Buffer Law.** Commissioner Mongeau requested that the Board schedule a meeting with Clay County and the BRRWD to discuss the enforcement of the new Buffer Law before the March 31, 2017, deadline. HEI is preparing a map showing a breakdown of the waterways within the BRRWD by length and category: legal ditch systems, protected waters, and wetlands. Albright will make the contacts to set up the requested meeting.

**Project No. 30, Clay/Wilkin Judicial Ditch No. 1 (J.D. No. 1).** Albright reported that Bryan Kritzberger picked up the revised outlet petition and is currently circulating it for new signatures.

**Project No. 21, Wilkin C.D. No. 13-Lateral.** Albright reported that a landowner contacted him questioning why the Board hadn't held a landowner informational meeting regarding the proposed repairs. Because of the winter weather, no clean out work was started for this project last fall, so Albright recommended that the Board schedule a meeting in March with either the entire benefit area or just the landowners along the ditch alignment from whom we'll need permission to enter their property for the repair. The office will compile a mailing list and schedule the meeting.

**Flood Damage Reduction (FDR): Mediation Project Team (PT).** The next PT meeting is scheduled for Thursday, February 16, 2017, in the Barnesville office at 1:30 PM. Meeting notices have been sent.

**FDR Project Easement Values.** The group reviewed several options for determining easement values for FDR impoundment projects, as prepared by Albright. The alternatives range from direct BRRWD ownership of the property to easement agreements where the land can continue to be farmed. Albright said that most landowners will probably want to continue to farm the land under easement, which could be acceptable under several of the options with the understanding that they farm the land at their own
risk without crop flood insurance. The Board reviewed a map and worksheet showing easement values based on the County Crop Equivalency Rating (CER) formula. Albright noted that while this formula generates values very close to the County assessed values, these values are usually at least two years behind. In order to account for current land values, the multiplier could be adjusted, if necessary. The group discussed limiting factors when choosing a retention site and the need for landowners to feel they are being treated fairly regarding their property values. One of the options the Board discussed was the NRCS Agricultural Land Easement (ALE) program where NRCS provides federal funding to cover 50% of the easement funding and the land continues to be farmed. Manager Leitch asked if the proposed BRRWD projects met the Red River Basin Commission's (RRBC) 20% flood reduction goals, as identified in our Comprehensive Plan. He questioned the accuracy of this goal given the changing conditions in the Red River Basin since the RRBC Long Term Flood Solution Study (LTFS) was completed, which used the 1997 spring flood as their benchmark. Leitch suggested that the 20% goal is just an arbitrary number, and he is concerned that time and money are being spent in the Basin on projects to meet this goal. **Motion** by Leitch to ask the RRBC to revisit the hydrologic efficacy and the economic efficiency of the LTFS and their 20% goal given the changes that have taken place since 1997. **Seconded** by Hanson. **Approved.** Albright will invite Jeff Lewis, Executive Director, RRBC, to an upcoming Board meeting to continue this discussion about the LTFS goals.

**Upper South Branch of the Buffalo River.** BWSR has closed on the Deutsch Reinvest In Minnesota (RIM) contract and would like to meet with the BRRWD regarding our proposed project. Albright and Manager Fjestead will also meet with the Rogelstad family regarding the project. Jones noted that he will contact the DNR to get the project on their stream restoration project funding prioritization list.

**Barnesville Township.** Albright observed that in light of Leitch's motion, we might need to reevaluate this type of retention project. He also noted that the Army Corps of Engineers (COE) notified the BRRWD that our Concurrency Point (CP) No. 1 was received and was found to be acceptable. The COE commented that HEI's work on the proposal was exceptional. HEI is also in the process of preparing a CP submission for Stony Creek. BRRWD Lobbyist Joel Carlson is working with our local Legislators to draft a bill requesting $16.19 million for BRRWD's FDR projects.

**One Watershed One Plan (1W1P).** Pete Waller, BWSR, notified Albright that the BWSR North Region Committee meets on April 12, 2017, so if we want to start the process for the BRRWD's 1W1P, we need to schedule a kickoff meeting soon. Albright plans to get a meeting scheduled in the near future with BWSR, the Soil and Water Conservation Districts (SWCD), Local Water Planning Action Committees (LWPAC), and the County Commissioners because we will need resolutions from each entity to commit to a 1W1P process. Sample resolutions are available online for review.

**F-M Diversion Project.** Albright reported that the BRRWD met with the COE on 01/31/17 to discuss possible Diversion project mitigation regarding the Otter Tail River and Wolverton Creek Restorations. The COE might be interested in assisting with restorations on the Otter Tail River as mitigation for the Diversion project, but would prefer to find more mitigation in North Dakota. COE Colonel Sam Calkins has indicated that he would be interested in meeting with the BRRWD. The COE and the Minnesota DNR have opposing views regarding possible project construction this spring. The DNR maintains that they cannot issue a permit for the project, as it is currently proposed, because it is illegal, citing a number of environmental impacts, and the COE maintains that they do not need a DNR permit because it is a federal project. The DNR has now joined the Upstream Coalition's lawsuit.

**Otter Tail/Buffalo/Upper Red Rivers Total Maximum Daily Load (TMDL)/Watershed Restoration and Protection Strategies (WRAPS).** Albright noted there has been no new developments regarding the status of these projects. When Albright and Jones met with Reed Larson, Watershed Unit Coordinator, Brainerd, and Jim Courneya, Detroit Lakes, MPCA, on 01/19/17 regarding the TMDL process, they discussed the status of the BRRWD's studies and possible improvements MPCA could implement to make the process more streamlined and effective in the future. Albright explained that out of the four MPCA work
products, they have completed one, which is the Buffalo River WRAPS. Jones met with Peter Mead and Ed Musielewicz, Becker SWCD, about a possible 319 Grant project application the BRRWD would submit that could provide up to $500,000 for water sediment control structures, buffers, and grade stabilization projects in Becker County and work on the Buffalo River. The deadline for application submission is 03/06/17. **Motion** by Hanson to authorized Jones to submit the referenced grant application. **Seconded** by Leitch. Approved.

**Data Management System.** Albright will provide a recommendation regarding which company he feels would be the best fit for the BRRWD's data retention needs by the 02/27/17 Board meeting. Yellow Medicine Watershed District is looking into a grant from the Minnesota Historical Society for the preservation of historical documents.

**Performance Review and Assistance Program (PRAP).** The office sent a list of all of the BRRWD goals found in our Revised Watershed Management Plan (RWMP) with accomplishments added for each goal. Once all the Managers fill out the BWSR survey regarding their opinion of the BRRWD's effectiveness and level of cooperation with other agencies, we will have completed all the items we needed to submit for the Level II PRAP Review.

**Wilkin C.D. No. 7 Repairs.** This project is on hold until spring. Albright noted that as construction season nears this spring, we will mail notices to the landowners to let them know that we will need the temporary construction easements areas along their properties this growing season to complete the project.

**Wilkin C.D. No. 40 Partial Abandonment.** Dave Yaggie is interested in the partial abandonment of C.D. No. 40. Albright contacted Luther Aadland, DNR, who designed the Trout Stream Restoration project, to get his input about the capacity of the restored stream channel. DNR would like to acquire the land on the north and east sides of the C.D. No. 40 from Yaggie, but Albright didn't think Yaggie would be interested. Albright noted that in the event of high water, it is not certain that the trout stream could handle the high flows, and the upstream landowners could have concerns about abandoning the ditch. A ditch system landowner hearing would be required before the ditch could be abandoned.

**Wilkin C.D. No. 6A Repairs.** Albright reported he and the Viewers plan to meet in the next few days to continue their work on the redetermination of benefits. The riprap material has been hauled onsite, and is now ready for installation this spring.

**Clay C.D. No. 3 Slope Repair.** Jones noted that there are some slope problems along about 0.25 miles of C.D. No. 3 outlet east of C.R. No. 11 in Section 8, Moland Township, near Glyndon. He presented three repair alternatives including the regrading of the ditch with a 4H:1V vertical sideslopes with two rock riprap drop structures and filing in the ditch bottom to the proposed grade at all three sloughing locations. The ditch will transition back to the existing 3:1 sideslopes for the remaining portion. Two rock riprap drop structures will be installed for all three alternatives to fix downcutting and other damages to the ditch that started during the 2006 spring flood.

The first alternative will require 1.59 acres of additional right-of-way (R/W) to provide for the one-rod (16.5') grassed bufferstrip. The estimated cost for Alternative 1 is $85,000-$95,000. The second alternative is to repair the sloughing locations by rebuilding the slopes with granular borrow with an opinion of probable cost at $115,000-$125,000. The third alternative is to repair the sloughing slopes with cellular concrete material. The opinion of probable cost for this option is greater than $200,000. Jones recommended that the Board consider Alternative 1; however, once a geotechnical review is completed, the costs could increase. He will bring this item back to the Board at their first meeting in March for further discussion/review.

**MPCA MS4.** The MPCA Small Municipal Separate Storm Sewer Systems (MS4) permit application was submitted, and now Part 2 of the application is due. The Board discussed the requirements for this phase. They also discussed the redundancy worked into the program because all the other partners involved with the
same MS4 areas are also required to submit the same information/applications. Jones noted that he is working with the City of Moorhead so that much of the application material will not have to be reproduced. The next deadline is April 19, 2017, and Jones thought we would be able to submit everything on time. Ted Rud, Civil Engineer, HEI, who is handling this work for the BRRWD, has suggested that it would be helpful if the BRRWD adopted their new Rules by then.

**Wilkin C.D. Nos. 40/43 Drainage Petitions.** Albright noted that the Board will hold hearings to add and remove land from Wilkin C.D. Nos. 40 and 43 for Troy Goltz (Permit No. 16-052) later this winter. The Board will hold hearings in the near future regarding the acquisition of land for bufferstrip establishment. Jones noted that HEI has assembled an inventory for the required inlet structures, etc., and the damages report for the additional bufferstrips.

**2015 Buffer Law.** A meeting will be scheduled with to discuss jurisdictional and Administrative Penalty Order (APO) authority with the counties.

**Elkton Township Wetland Restoration.** A meeting has been scheduled on 02/15/17 at the Clay SWCD office, with Lynn Foss and Steve Hofstad, BWSR, to sign the paperwork to allow the Jerome Briks Family LP to purchase the 2.6-acre banking credits they need to resolve a wetland mitigation issue in Section 28, Deerhorn Township, Wilkin County, as part of their Project No. 56, Manston Slough Restoration, easement agreement. Mark Aanenson, Engineer, HEI, is handling this process for the BRRWD. It appears that BWSR changed the percentage of credits we can bank over the next five years. Annual monitoring reports will need to be submitted, which HEI has completed for 2016. UEI filed the annual monitoring report for the wetland sites associated with the Oakport project. The COE banking credit certification process is ongoing, which is required to be able to use our banked credits for projects requiring a Clean Water Act (CWA) Section 404 permit to place fill into federally protected waters.

**Wolverton Creek Restoration.** HEI has completed the work on tabulating all of the parcels (approximately 400) within the proposed water management district (wmd), and the fees have been determined for all the landowners. Using the overhead monitors, Jones discussed the various land use fee rates per acre: production agricultural land ($1.40 to $1.60), farmsteads ($1.20-$1.40), natural areas (less than $1.00), and developed areas ($1.00-$1.20). The project easement areas were not included in the determination of the fees. The Clay and Wilkin County Auditors indicated that they do not charge a fee for levying this type of tax. The Board will need to hold a hearing to establish the wmd/fee. They will also need to establish Wolverine Creek Restoration as an official project and adopt the Engineer's Report. Jones will present the Engineer's Report for the Board's review at the 02/27/17 meeting. The office will work on assembling a landowner mailing list for the hearing notice. It appears Minnesota Statutes Annotated (M.S.A.) 103D.605, Project Construction with Government Aid or as Part of Plan, will govern the proceedings. The Engineer's Report must be furnished to the DNR and BWSR for review and reports.

**Otter Tail River Restoration.** Jones noted that the COE's proposed cost share for the BRRWD has been reduced as they work with HEI to refine their Section 1135 project work plan/budget. The costs for a number of items HEI has already completed could be eliminated, or at least reduced, in the COE's cost estimate. Another Webinar conference call has been scheduled for 03/01/17 at 9:30 AM, including Albright and Thomas Eskro, HEI. A draft proposal should be ready for the Board's review on 02/27/17.

**BRRWD Rules Update.** Albright plans to have the draft Revised Rules ready of the Board's review at their 02/27/17 meeting. Once a final draft is approved, the next step is for the BRRWD to forward it to BWSR, Counties, Cities, and other agencies for a 45-day review and comment period. At the end of the comment period, the BRRWD will schedule a public hearing to adopt the new Rules.

**Whiskey Creek Restoration.** Eskro noted that plans and modeling are nearing completion, and the information should be ready to share with the Mediation Project Team on 02/16/17.
**GARC Rates.** Albright provided a handout for the Board's review regarding the NRCS program 2017 Geographical Area Rate Caps (GARC) rates for land acquisition for Minnesota.

**Clay LWPAC.** Retired Manager Kobiela was the BRRWD representative to the Clay LWPAC. Since she is no longer a BRRWD Manager, Clay County has asked that we name a new representative. Manager Leitch volunteered to take Kobiela's place. Albright will notify Clay County about Leitch's appointment.

**MAWD By-Laws.** The Minnesota Association of Watershed Districts (MAWD) Board of Directors has requested that Watershed District Boards approve a resolution to request a special meeting during the summer tour to address the MAWD By-Laws changes. At least 15 Districts have to approve resolutions before MAWD can hold the meeting. Motion by Hanson to approve a resolution to request a special meeting as referenced. Seconded by Larson. Approved.

**Becker SWCD CWF Grant.** Albright distributed an article regarding Becker SWCD's recent CWF grant award for $330,000 from BWSR to implement conservation practices on the Buffalo River within the BRRWD. Jones noted that the 319 Grant application the Board authorized earlier in the meeting could be used as matching funds for this grant.

**Red River Basin Flood Damage Reduction Work Group (RRBFDRWG)/Red River Watershed Management Board (RRWMB) March Conference.** The March Conference will be held at the Courtyard by Marriott in Moorhead on March 22-23, 2017.

**BRRWD Contribution.** At their 01/23/17 meeting, the Board approved a contribution to cover the landowners' additional costs for a change order on the Etten erosion site repair in conjunction with the Otter Tail River Restoration. Albright shared a thank you note from the landowners for the Board's help with their expenses.

**Public Official Recertification.** The Managers must submit their recertification information to the State Campaign Finance and Public Disclosure Board. Manager Anderson will complete his form when he returns from Texas at the end of the month.

**MAWD Day at the Capitol.** MAWD will hold their annual Day at the Capitol on March 29-30, 2017.

**The following bills were presented for approval:**

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Motion by Hanson to approve payment of the bills. Seconded by Larson. Approved.

Next Meeting. The Board will hold their next regular meeting on Monday, February 27, 2017, at 7:00 PM in our Barnesville office.

Adjournment. Motion by Leitch to adjourn the meeting. Seconded by Larson. Approved. Vice Chair Fjestad adjourned the meeting at 9:30 PM.

Respectfully submitted,

John E. Hanson, Secretary