BUFFALO-RED RIVER WATERSHED DISTRICT
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MINUTES FOR MANAGERS' MEETING
June 13, 2008

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a special meeting on June 13, 2008, at 8:00 AM in their Barnesville office. BRRWD Managers present were Roger G. Ellefson, John E. Hanson, Gerald L. VanAmburg, and E. Robert Olson. Others attending included: BRRWD Administrator Bruce E. Albright and Julie Jerger, Houston Engineering, Inc. (H.E.); Mark Carr, Elkton Township Supervisor; and landowners Thomas Friederichs and Brian Halverson.

Ellefson called the meeting to order at 8:00 AM.

Thomas Friederichs Diking Violation. Albright drew an illustration and gave a brief history of the issues surrounding an illegal dike Friederichs installed last fall (October 2007) in the NE¼, Section 28, Elkton Township, Clay County, on land he rents from the Lamb Family. The dike prevents water from Section 27, Elkton Township, from flowing northwesterly through a culvert in 150th ST S to a natural watercourse across the Lamb property. Brian Halverson, who operates the NW¼, Section 27, filed a complaint about the dike. The Board had approved a motion at their 10/22/07 meeting to direct Friederichs to make an opening in the dike on the west side of 150th ST S in line with the centerline culvert to the natural ground elevation by 11/01/07 so that water could continue to flow in its natural path. The Board based their action on Minnesota Watershed Law, Minnesota Statutes Annotated (M.S.A.) 103D, and BRRWD Rules (adopted May 21, 1979), Section 5, Subd. D, where it states, "No person or public corporation shall construct, alter, repair, or remove any dike without a permit from the Board of Managers." Friederichs requested a meeting with the Board last fall, which did not take place. Because the dike diverted the natural flow of water away from a designated wetland in Section 28, Elkton Township, Friederichs also had a United States Department of Agriculture (USDA) Swampbuster violation. He worked with the Natural Resources Conservation Service (NRCS) last winter to design a restoration plan, which included partial dike removal. NRCS's plan gave Friederichs one year (1/17/09) to complete the restorations. The BRRWD decided to allow Friederichs to complete the dike removal in conjunction with the NRCS restoration plan. However, Halverson contacted the BRRWD again last week with concerns about the dike because of heavy rainfall predictions. There were also concerns that Friederichs had added material to the dike during this spring's fieldwork. The BRRWD held a special emergency meeting on 6/05/08 to discuss the Friederichs diking violation. The Managers decided to authorize BRRWD Attorney Tami Norgard, Vogel Law Firm, to file a complaint with District Court to seek the immediate opening of the dike. Norgard advised the Board to meet with Friederichs to discuss this issue. The office mailed meeting notices to the affected parties, including Friederichs, regarding today's meeting.

Albright and Ellefson field reviewed the area on 6/06/08, following the recent heavy rainfall, and found that water was flooding the NW¼, Section 27, and overtopping the dike. Over the next few days, Albright took a series of photographs of the dike, which the Board reviewed. Friederichs reported that over the weekend, the breach in the dike had allowed Halverson's field to drain. Albright discussed the area drainage patterns and noted that neither Halverson's nor Friederichs' property should be an area holding pond.
Albright explained that the first issue the Board wanted to discuss was the Friederichs' dike, and then they would like to start a discussion regarding how the area landowners could address their larger drainage problems.

Friederichs said the recent heavy rainfall partially washed out the dike. Most of the water on Halverson's field was off within 24 hours, but it is still standing on his field. He added that Halverson always has water in Section 27 with or without the dike. Friederichs indicated that when he cleaned the ditch last fall, he deposited the spoil along the ditch because there was no other place to put it.

Ellefson questioned why Friederichs installed the dike. Friederichs pointed out that he had put the spoil along the road ditch to avoid placing it in the wetland area. He said that he was aware of at least two other dikes affecting his drainage that were installed without BRRWD permits, about which the Board has done nothing.

VanAmburg noted that the BRRWD usually tries to address dike violations. He also field reviewed the area last Friday, and Friederichs' dike is definitely holding water on Halverson's field and should be removed. VanAmburg said that a dike in that location is not a solution to the area's drainage problems.

Friederichs said that the heavy rainfall partially washed out the dike. Yesterday, Albright reviewed the conditions of Friederichs' dike, road ditches, and Halverson's field and took photographs. The Board reviewed the pictures.

Brian Halverson used Albright's drawing to show where the dike washed out. The opening is south of the culvert through 150th ST S. Halverson discussed how farming practices over the past several years, have filled in the natural waterway on Chuck Anderson's (formerly Dave Schroeder) property in the W½, Section 28. He pointed out that Friederichs has cleaned the coulee on the Lamb property and has done everything he can to get water to flow west in the coulee, but the water flow basically stops at the quarterline. Halverson felt that the coulee needs to be cleaned in Section 28. Albright added that a culvert in 140th ST S, which drains Anderson's property, has been plugged several times over the years to stop water from entering Section 29, Elkton Township. He added that to his knowledge, the culvert is currently open.

Albright pointed out to Friederichs that he will have to remove the dike sooner or later, if he plans to abide by the NRCS restoration plan, which states in part, that "the earthen berm/dike shall be removed to the natural ground level, for a minimum of 100-foot length, on center with the existing culvert under 150th ST." Friederichs stated that he plans to remove the dike this fall according to the referenced specifications. He denied adding more material to the dike this spring. While working the field, he smoothed out the top (v-shape) of the dike and subsequently, the berm became lower and wider. The group briefly discussed how the dike impacted the wetland in the W½, Section 28. Albright explained that by cutting off the natural flow of water to the downstream area, Friederichs altered the natural wetland hydrology.

VanAmburg questioned how the BRRWD could address the area drainage problems. Albright explained that the Board could invite the area landowners to a meeting to discuss a variety of area drainage issues. Halverson noted that the operator in Section 29 has cleaned the coulee several times. The bottleneck seems to be on the Anderson property in the W½, Section 28.

Friederichs questioned if the Township should be responsible for cleaning the road ditches. Ellefson explained that the County and Townships don't clean ditches. Albright agreed with Ellefson and noted that Oakport Township has cleaned a few of their ditches, but then assessed benefited landowners for the work. More discussion followed regarding township road maintenance. Friederichs felt that if the road ditches were cleaned along 150th ST, less water would break out into the neighboring fields. Friederichs
questioned how the water standing in the ditch will get to the wetlands in Section 28. Albright noted that water will inevitably flow northwest to the wetlands by either surface drainage or seepage. He pointed out that whatever work takes place to improve area drainage, BRRWD permits are needed if there are any changes from original culverts sizing/ditch grades, etc. Friederichs is willing to clean neighborhood road ditches free-of-charge just to improve area drainage.

Albright refocused the discussion back to Friederichs' dike. He questioned how the Board wanted to handle the dike removal. The group briefly discussed if a survey was needed to determine how much the dike should be lowered and where the opening should be made. Halverson would like to have the dike opened on center with the culvert. Friederichs said that since the dike washed out south of the culvert, he felt that part of the dike should be removed. Ellefson thought that the water overtopped the lowest part of the dike. Friederichs argued that he would rather lower the dike further south where it washed out, as the field ditch bottom is lower there. Ellefson felt that the culvert would have been placed in the lowest area in the field. More discussion followed regarding the various structure elevations. Ellefson felt that Friederichs should open the dike in front of the culvert, as designed. **Motion** by VanAmburg to direct Friederichs to open the dike by 6:00 PM on 6/23/08, on center with the referenced culvert, with a minimum width of 10' to the natural ground elevation. **Seconded** by Olson. ** Approved.**

Halverson thanked Friederichs for agreeing to open the dike. He added that the BRRWD should consider a larger project for the natural coulee, as neither he nor Friederichs should have to hold water on their property without compensation. Currently, Halverson feels that the natural waterway is unintentionally blocked on Anderson's property. More discussion took place regarding area drainage and the process by which the landowners could work together to address their common drainage problems, or petition for a legal lateral to Clay County Ditch No. 55.

Friederichs made a formal complaint about a dike that was installed several years ago in the NE¼, Section 18, Elkton Township, Clay County. He wanted the Board to follow through with an investigation. The Board briefly discussed the location of the complaint and other area diking activity that the Board is monitoring. To date, there have not been any complaints about the other work, located in the N½NE¼, Section 22, Barnesville Township, Clay County.

**Acting Treasurer.** Jerger informed the Board that Manager Curtis Nelson is ill. He has suggested that the Board appoint an acting Treasurer to sign the 6/09/08 checks during his absence. **Motion** by Hanson to appoint Manager Olson as acting Treasurer. **Seconded** by VanAmburg. **Approved.**

**Permit No. 06-10, Walter Jerger.** The Board discussed the ongoing controversy surrounding Jerger's request for a flapgate on the north end of a 30" dia. corrugated metal pipe (CMP) through County Road (C.R.) No. 182 (170th ST) in the west r-o-w of Trunk Highway (T.H.) No. 9. The flapgate would prevent the South Branch of the Buffalo River from backing up onto Jerger's property in the NW¼, Section 9, Manston Township, Wilkin County. The river backs out to the south through C.R. 182 via the referenced culvert, then travels west across Jerger's field, where it reenters the South Branch through two culverts in C.R. 182 in the northwest corner of Section 9. The flapgate would keep the water in the river on the north side of C.R. 182. In 2006, Jim Haick, Jerger's neighbor in Section 4, Manston Township, had the BRRWD do a cleanout project on the South Branch of the Buffalo River east of T. H. 9. The work started at the outlet of Wilkin County Ditch No. 44 and ended at T. H. 9. The Board wanted to evaluate the effects of this project on area drainage before approving Jerger's request for reinstalling the flapgate, which Haick opposes.
Ellefson conducted a field review of Jerger's property last week after the recent heavy rainfall. Jerger told him that Haick's channel cleanout project has caused water to enter his property south of C.R. 182 faster than it did before the project was completed.

The Board discussed Jim Haick's claim that he had a BRRWD permit to install three culverts with flapgates in Section 4, Manston Township, along the South Branch of the Buffalo River. The office has been unable to find evidence of an approved permit for this work. Albright suggested that Ross Aigner, who rents this tract from Haick, could have installed the culverts. Ellefson commented that Jerger feels that if Haick can have culverts with flapgates to protect his property, he should be able to do the same and gate the culvert in C.R. 182.

Albright pointed out that there are numerous flapgates installed throughout the BRRWD to protect farmland from flooding. Ellefson felt that the channel cleanout helped Haick, and Jerger should be allowed to protect his land from the South Branch backing through C.R. 182. He suggested that if Jerger couldn't have his gated culvert, maybe the culvert through C.R. 182 should be removed. VanAmburg felt it would be hard to justify denying Jerger's flapgate in light of Haick's gated culverts in Section 4. Albright noted that when the flapgate on the C.R. 182 culvert was removed in 2005, the entire flapgate was ruined when a torch was used to cut off part of the gate band. The Board reviewed recent photographs of the area flooding and Haick's gated culverts in Section 4. They discussed the history of Jerger's attempts to get a permit for a flapgate in this location. Albright pointed out that according to Erik Jones, Engineer, H.E., who investigated this issue, a flapgate on the C.R. 182 culvert would have no significant effect on Haick's drainage in Section 4. Motion by VanAmburg to make a final decision regarding Jerger's permit application at the upcoming 6/23/08 regular meeting. The office will notify Jerger and Haick that the Board intends to act on this issue at that meeting. Seconded by Hanson. Approved.

Project No. 31, Deerhorn Creek Levees. Landowners/operators contacted the office recently regarding flapgates on two inlet culverts into the Deerhorn Creek project on the east side of 240th AVE near Edward Hirsch's farmstead in Section 20, Atherton Township, Wilkin County. Wes Anderson has water standing in the ditch in front of his farmstead and water in his basement in Section 28, Atherton Township, located about one mile south (upstream) of the noted culverts/flapgates. He feels that the flapgates prevent the low water in his ditch from draining completely. According to the project design, the flapgates prevent the Creek from backing up into the Hirsch's farmland and farmstead during high water events.

In May 2007, Erik Jones, Engineer, H.E., conducted a quad map investigation of the culvert elevations from Anderson's driveway to the project culverts/flapgates. The elevation of the culverts at the Anderson driveway is 970.00 or above, while the inlet elevations for the project structures is 966.60. The office sent a letter to Terry Czichotzki, Wes Anderson, Greg Anderson, and Edward Hirsh, with this information. The letter advised the landowners that the gates should remain closed to prevent flooding in nearby areas (Hirsch's farmyard). Tampering with the gates is violation of BRRWD Rules, which could carry civil and criminal penalties.

Albright related that during their phone conversation yesterday, Anderson indicated that something needed to be done because of the hard feelings surrounding the flapgate dispute. The Board discussed alternate routes that could take a portion of the water west along 140th ST to the South Branch of the Buffalo River. Albright will call Czichotzki, who operates the land on the south side of 140th ST in Section 29, Atherton Township, to see if he would object to the proposed alternative drainage route. He will also inspect the condition of the ditches going west.
**Kragnes Ringdike.** The Board discussed the issue of the Burlington Northern/Sante Fe (BNSF) Railroad liability insurance. BNSF requires two different types of liability insurance: the railroad protective insurance for the contractor that is in effect during project construction and the railroad r-o-w insurance that needs to be in effect for life of the project. BNSF offers protective contractor coverage for a flat rate of $625.00. The Board thought that this was probably a good rate. In regards to the long term insurance, we currently have $1 million per incident and $2 million aggregate coverage. BNSF requires $2 million per incident and $4 million aggregate. Albright plans to contact our insurance agent, John Hoffman, ICS Agency, Inc., to discuss the cost of increasing our liability coverage to satisfy BNSF requirements. Since the State of Minnesota only requires governmental units carry a set liability amount, the BRRWD is complying with the State regulations. The Board discussed alternatives to increasing our liability insurance. It may be necessary to ask Jones to revise the project plans to leave the BNSF r-o-w out of the project. Albright will follow up with Hoffman and report to the Board regarding this issue at the 6/23/08 meeting.

**Adjournment.** Chairman Ellefson adjourned the meeting at 10:15 AM.

Respectfully submitted,

John E. Hanson, Secretary