

BUFFALO-RED RIVER WATERSHED DISTRICT

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PROJECT NO. 56, MANSTON SLOUGH RESTORATION MINUTES FOR FINAL HEARING CONTINUATION April 16, 2013

In accordance with Minnesota Statutes Annotated (M.S.A.) 103E.335, and other applicable statutes, the Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a continuation of the 5/22/12 Final Hearing for Project No. 56, Manston Slough Restoration, on April 16, 2013, at 7:00 PM in the BRRWD office at 1303 4th AVE NE, Barnesville, MN. BRRWD Managers present were: Gerald L. VanAmburg, Roger G. Ellefson, Curtis M. Nelson, Breanna L. Paradeis Kobiela, Peter V. Fjestad, Troy E. Larson, and John E. Hanson. Others attending included: Bruce E. Albright, BRRWD Administrator, and Houston Engineering, Inc. (H.E.); Rick St. Germain, Engineer, H.E.; Wade Opsahl, Technician, H.E., Arvid Thompson, Appraiser; Pete Waller, Board Conservationist, Minnesota Board of Water and Soil Resources (BWSR), Don Schultz, Area Wildlife Manager, Minnesota Department of Natural Resources (DNR); Doug Wells, United States Fish and Wildlife Service (USFWS) and Fergus Falls Wetland Management District (WMD); Brian Winter, Program Director, The Nature Conservancy (TNC); and landowners: Thomas L. Thomas, Jay Nord, Andy Maier, Rick Maier, Loren Woolson, Ron Hoeck, Paul Anderson, John Thompson, Louis Krueger, Kurt Krueger, Lowell Picotte, Wesley Christensen, Avis Wiese, Ardean Haugrud, Terry Czichotzki, Sandi Czichotzki, John Hulne, Steven Ouse, Dennis VanWechel, Joel Simmer, Robert Faulkner, Lyle Barringer, Emily Norman, Charlie Westfall, James Miranowski, Jeff Nord, Duane Stuehrenberg, Steve Thompson, Shawn Norman, Fred H. Hansen, Jr., and LeRoy Turner.

BRRWD Chairman Van Amburg called the hearing to order at 7:00 PM. He explained that this hearing was a continuation of the 5/22/12 Final Hearing, which was recessed to allow the Appraisers time to review and evaluate the testimony relating to the proposed project benefits. He introduced the BRRWD Managers, Staff, and Appraisers, and noted that the hearing was being recorded to facilitate the preparation of minutes. Albright passed an attendance sign-up sheet, and asked the audience to state their names for the record when giving testimony. He introduced the agency personnel involved with development of the project's natural resource enhancement (nre) features, the Operation and Maintenance (O&M) Plan, and the Memorandum of Understanding (MOU).

Albright discussed the project history/timeline and outlined the legal process required to develop a project of this nature. He encouraged the audience to offer their comments/concerns at tonight's hearing, as the Board plans to make a decision about the Final Order for the project at their 4/22/13 meeting. Albright referenced the benefit area maps displayed around the room, and summarized the 5/22/12 Appraisers' statement, which is documented in the 5/22/12 Final Hearing minutes. The Appraisers removed all the building assessments in the downstream \$50/acre benefit area and five of the building sites in the downstream \$100/acre benefit area that were not prone to flooding. Portions of Sections 15, 16, 22, 23, and 24, Manston Township, were also removed from the benefiting area, as water flows north to the South Branch of the Buffalo River in this area. Portions of Sections 20, 29, and 32, Manston Township, and Section 5, Meadows Township, along Trunk Highway (T.H.) No. 9, were added to the benefit area because water flows into the project from this property, but it is not affected by the project. Added road benefits from improvements, cleaning, raising, etc., include: 220th AVE between Section 6, Meadows Township, and Section 1, Nordick Township; the roads along the new rerouted ditch on Tower Road (230th ST) between Sections 6 and 7, and 5 and 8, Meadows Township;

230th AVE between Sections 19, 20, 29, and 30; and 190th ST in Section 13, Mitchell Township. The total benefits due to the project's flood control and wetland restoration features are expected to be well in excess of \$15 million, and the estimated project costs are \$4,084,667. Albright discussed state funding sources that will provide 75% of the total project costs. Two-thirds of the remaining local costs will be provided by the BRRWD (\$680,771) through a general District-wide levy, and the remaining one-third (\$340,396) will be assessed to the benefitting areas. The multiplier for all 'local' benefits is 0.180. This multiplier can be used to estimate an individual's costs based on their benefits, as shown on the property owners' statements. Albright noted that the BRRWD is considering a bond sale, which will spread the landowners' payments over a seven year period. Landowners have the option of paying their assessment in one payment or over the term of the bond sale.

Chairman Van Amburg opened the floor to audience questions.

John Hulne questioned the benefits on the road through the slough between Sections 13 and 24, Mitchell Township (190th ST). Albright explained that the project plans call for abandoning this road, which is currently impassable, and rebuilding it on higher ground in a different location across Section 13. Hulne also asked about the project benefits to wildlife populations. Albright commented that the project allows the DNR/USFWS to manage the elevations of the water site to improve waterfowl habitat. Doug Wells, USFWS, explained that the MOU will allow the participating agencies and the BRRWD to manage the project water elevations. He stated that the project includes both the nre and flood damage reduction (fdr) features. Hulne asked if there were any plans to address crop predation if the waterfowl populations increase. Don Schultz commented that the focus will be to provide habitat for waterfowl breeding populations in the spring. Hulne pointed out that the project will bring in more geese to the area and asked if there were any plans to address waterfowl crop damages. Schultz said that the DNR does have an abatement program, which includes funding for fences, and if necessary, shooting permits.

Jeff Nord asked the Board to explain the water management plan. Engineer Rick St. Germain, H.E., explained the scope of the O&M plan. The system is designed to work automatically above the 972 elevation. The stop log structures on both the County State Aid Highway (CSAH) No. 26 structures and on the north dam embankment will allow the USFWS and DNR to manage the water levels, sometimes drying out the site for tillage or to mow cattails. Albright commented that the O&M plan was signed by DNR, BWSR, NRCS, USFWS, and the BRRWD in 2009. He offered to provide Nord with a copy. Albright also noted that that the O&M plan can be modified by agreement of the participants if needed. Project ownership resides with the BRRWD.

Nord said that it appeared that the project was not being operated, but engineered. Albright observed that the project will be able to be operated because of the engineering. The O&M was developed and signed prior to the engineering design. St. Germain's task was to make the O&M workable. Nord said that he had to tile his field 3.5 miles away because the slough was expanding through seepage and surface water. He asked why he was being assessed for the project. He said there is no longer a culvert in County Road (C.R.) No. 30 to drain water from Section 35, Deerhorn Township, Wilkin County, into Project No. 2, Wilkin County Ditch No. 13. Albright agreed that since the culvert had been removed several years ago, water from this property can't get to County Ditch No. 13. He said he would inform the Appraisers about this concern, and recommend that this land be removed from the benefit area.

Shawn Norman, Manston Township Supervisor, questioned the Township's benefits for 230th AVE and 190th ST (\$9,579). Norman stated that the Township is happy with the current condition of their roads, and if the BRRWD needs to build them up for the project, the cost should be a project expense, not a Township assessment. Norman said the only people who use the area roads are hunters.

Kurt Krueger, operator of Dale Dinger's property, asked what the BRRWD plans to do if we can't obtain the remaining easement options. Van Amburg said that if the BRRWD decides to move forward with the project, the BRRWD does have the right of eminent domain, or condemnation, if necessary. Albright explained the easement acquisition process. He said there were 5 parties the BRRWD is still negotiating with to obtain their option.

John Hulne asked about the capital gains tax ramifications of condemnation versus voluntarily signing an easement. Albright thought that the Internal Revenue Service (IRS) might look at condemnation differently. Albright gave a brief explanation of the efforts to obtain the Kent Rod and Gun Club easement option for water storage. Their property is not involved with construction. This is one tract that will probably go to "friendly" condemnation because of the difficulty of contacting the large number of owners. Albright explained the condemnation process. Van Amburg pointed out that the BRRWD increased the value for all the permanent easements to \$5,000/acre, including easements contracts that have already been signed. He said that we are facing a 6/30/13 deadline to use the \$350,000 grant from the Lessard-Sams Outdoor Heritage Council (LOHC) Conservation Partners Legacy Grants (CPLG) Program, so we need to make a decision regarding the project's fate soon.

Steve Thompson commented that a man-made ditch first drained the Manston Slough many years ago. Albright said it was State Ditch No. 15. Thompson asked how deep the ditch had to be to properly drain the slough. Albright guessed that it might have been at least 8'-9' deep, but the State didn't allow for any means to pay for ditch maintenance once it was built. He explained that the proposed project will not recreate water depths in the slough any deeper than 3'-5'. The higher levels would be temporary during spring runoff and other high water events as detention.

Loren Woolson asked if the BRRWD needs to have all the options signed before we can start the project. Albright said that according to our attorney, Tami Norgard, we need to have the construction easements in place before we can start. The water storage easements could come later.

Shawn Norman stated that the BRRWD is gambling that we will be able to acquire all the construction easements. He added that the Manston Slough already provides significant flood control without the project. Van Amburg said the project is designed to enhance flood control while providing other benefits including water quality, ground water recharge, etc. Albright pointed out that the Appraisers found \$1,822,442 in local benefits, in addition to the 10/07/04 H.E. analysis, which the Board adopted in excess of \$15 million. Norman asked if the BRRWD had calculated what the benefits would be if the land were left in agricultural production. Van Amburg said that we usually don't calculate production loss when we develop a project. He added that he felt this was a good project that will provide an array of ndr and nre benefits. Albright pointed out that we have already obtained nearly 98% of the land included in the various pools through the easement process. The BRRWD is working with the engineer to see if we could leave certain properties out of the project, as the elevations are only slightly lower than the engineer's target elevation of 974.0.

Kurt Krueger asked if water quality doesn't meet standards after the project is built, who will pay to improve it. Van Amburg speculated that all the citizens within the BRRWD will share in the costs to improve water quality throughout the District, as this is an ongoing statewide issue. The Minnesota Pollution Control Agency (MPCA) is conducting a Total Maximum Daily Load (TMDL) study on the Upper Red River and the Buffalo River, according to the Clean Water Act. He expected that the project should actually help improve water quality.

Ellefson pointed out that most of the streams in the District don't meet water quality standards because of sediment. He explained that one of the BRRWD's responsibilities is to address water quality issues.

Van Amburg commented that landowners are encouraged to install best management practices to reduce erosion and runoff, which affects the waterways in the BRRWD.

Terry Czichotzki commented on building assessments, as he has never had water in his buildings. He felt that the slough is doing a good job right now to retain water. He thought we should be spending our money on preventing the Buffalo River from breaking out and flowing to Wilkin County Ditch No. 13-Lateral. Van Amburg pointed out that flood levels are hard to predict. Albright commented that we are actually studying the Buffalo River flooding problems, but decisions regarding the installation of retention/detention sites are always controversial, as no one wants water storage on their land, nor do they want to pay for retention. He added that 60% of the land needed for the Manston Slough project is already publically owned by the DNR and USFWS. He explained the process we have to follow to select retention sites, and added that the BRRWD's focus moving forward will be retention. Sites on the South Branch of the Buffalo River have already been identified. Some landowners in attendance tonight will be affected. When the time arrives, the BRRWD hopes landowners will be receptive given Czichotzki's comments.

Duane Stuehrenberg commented that it appears that there isn't landowner support for the project. He complained that he is being assessed on land under easement for the project. Albright said that didn't sound correct and would check into his concern. Van Amburg observed that in his experience, people who support projects don't typically attend or speak up at the hearings.

Terry Czichotzki felt that the BRRWD found a way to get a lot of money from the State to build the project, so we are determined to build it even though the local landowners are opposed and will have to pay a part of the costs. Van Amburg felt this was an unfair portrayal of the project development. He explained that the proposed project has gone through a stringent approval process by the BRRWD's Mediation Project Team, who recommended that the BRRWD move forward with the project. Albright discussed the costs spent for flood damage repairs over the past several years on the area ditch systems. He pointed out that the landowners in the benefit areas for these ditch systems pay for the repairs, which could be reduced partially by the proposed project. Czichotzki commented again that the BRRWD should spend our money to control breakouts on the Buffalo River.

Ellefson asked the Manston Township Supervisors about their road benefits. Norman didn't see any advantage to improving 230th AVE for the Township, and questioned why the Township should have to pay for fixing a road that the project needs. The Township would be assessed \$1,870 per mile to improve their road. Norman pointed out that no one but USFWS and hunters use it. Albright explained that during preliminary discussions, the BRRWD understood that the Township was only interested in making the road passable during high water events, so the scope of the road repair was only to build up the road to prevent overtopping. Albright noted that if no one uses the road and the Township isn't interested in repairing it, we could just leave it out of the project, and the proposed benefits to this section of road would be removed.

John Hulne asked about the effect of tiling in the project area. Van Amburg said that we have conducted a seepage analysis, which showed that there should be no seepage problems caused by the project for the adjacent land.

Czichotzki questioned if the project won't hold water any higher than the current elevations, why are we spending \$4 million to build it. Van Amburg stated that water will be released and controlled at a slower rate than current conditions and project features will control downstream flows during highwater events.

Rick Maier questioned the benefits for the downstream watershed area, and pointed out that most of the comments tonight have been negative.

Stuehrenberg asked who was pushing for this project, since none of the landowners at the hearing support it. Van Amburg didn't feel that anyone was "pushing" the project, but in the BRRWD's opinion, the project will provide significant fdr and nre benefits. He felt that the project will not take up a significant amount of the productive farm land for the pool easements. Van Amburg added that at the hearings, the project proponents aren't typically as vocal as the opponents.

The group had an extended discussion regarding the Holubok Farm purchase. Stuehrenberg questioned why Holuboks received such a high price for their property in comparison to other landowners. Ellefson explained that Holubok land was purchased with funding from the Reinvest In Minnesota (RIM) program, and was finally sold to the DNR, so the actual cost to the project was minimized. He agreed that Holubok got a high price for his land, but since it was in the center of the project, it was vital for project development. Stuehrenberg pointed out that if he were paid five times more than his land was worth, he might be more interested in signing his easement.

The group also discussed eligibility for federal crop insurance. Shawn Norman said if the BRRWD has an easement on 14 acres of his property, that he wouldn't be able to insure any of the land in that parcel. Albright said that there are concerns regarding this issue in conjunction with the Army Corps of Engineers (COE) Fargo-Moorhead Diversion Project. He has a copy of a recently published fact sheet that he will provide to anyone who would like a copy regarding this issue.

John Hulne said that his father has property in Section 13, Manston Township, where the project will need a 3-acre permanent easement. He asked if he would be able to insure his rest of his property. Albright noted that there isn't a permanent flood easement on this property, so this should not be an issue.

Norman reiterated that he has been told he would not be able to insure his property if he grants the BRRWD an easement.

Joel Simmer questioned how the project could be a benefit if landowners have to install drainage tile to reduce subsoil seepage. Van Amburg said the dike embankment is clay based, and the seepage analysis showed there would be no impacts to downstream properties.

Chairman Van Amburg asked if there were any more questions or comments.

Albright stated that landowner concerns and comments would be documented in the hearing minutes, and taken under consideration at the 4/22/13 BRRWD meeting.

There being no further testimony, Chairman Van Amburg thanked the audience for their participation and adjourned the hearing at 9:00 PM.

Respectfully submitted,

John E. Hanson, Secretary