

BUFFALO-RED RIVER WATERSHED DISTRICT

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Revised Watershed Management Plan Hearing Minutes Community Center, Hawley, MN March 30, 2010

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a hearing regarding their Revised Watershed Management Plan (RWMP) on Tuesday, March 30, 2010, at 7:00 PM in the Community Center, Hawley, MN. BRRWD Managers present were Roger G. Ellefson, John E. Hanson, Gerald L. VanAmburg, Breanna Paradeis Kobiela, and Curtis M. Nelson. Others attending included: Bruce E. Albright, BRRWD Administrator, and Erik S. Jones, Engineer, Houston Engineering, Inc. (H.E.); Pete Waller and Brian Dwight, Minnesota Board of Water and Soil Resources (BWSR); Jack Frederick, Minnesota Pollution Control Agency (MPCA); Jerry Waller, Clay County Commissioner; Bob Zimmerman, Engineer, City of Moorhead; Gary E. Johnson, Mayor, John Young, Jr. and Stacey Riedberger, City Council, Lisa Jetvig, Clerk/Treasurer, Zenas Baer, Attorney, and Allan Fenske, Moore Engineering, City of Hawley; Ken Parke, Administrator, and Dan Hanson, Engineer, Ulteig Engineers, Inc. (UEI), City of Dilworth; David Pederson, Clerk/Treasurer, City of Glyndon; Everett Nelson, Supervisor, Hawley Township; George H. Peters, Supervisor, and Carol Schoff, Clerk, Cromwell Township; Wayne Lepper, Supervisor, Highland Grove Township; Dennis Carlblom, Supervisor, Scambler Township; Loren R. Ingebretson, Clerk, Morken Township; Richard Ellsworth, Supervisor, Audubon Township; Gary Bergan, Supervisor, Skree Township; Marc Ness, Hawley Herald; and landowners: Terry Thomason, Arden Pearson, Ken Schellack, Margie Erickson, Pete Keller, Stan Thurlow, Shirley Peterson, Dave Meissner, C. J. Holl, Duane Janssen, James Giedt, Gary Leach, Gary Leach, Jr., James Schreiner, Paul Rustad, George Read, and Tom Thomas.

Chairman Ellefson called the hearing to order at 7:05 PM and explained that the purpose of tonight's hearing was to take testimony on the BRRWD's proposed RWMP. He introduced the BRRWD Board and staff. He announced that the proceedings were being recorded to aid in preparation of the minutes, and asked that the audience state their name and address when giving testimony or comments.

Albright noted that the BRRWD held a similar hearing on 3/18/10 in Barnesville. He gave an overview of the meeting agenda, and urged the attendees to state their name, title, and address when making comments or giving testimony. Albright introduced the agency representatives. He gave a brief history of the BRRWD and the RWMP process. He noted that the BRRWD is celebrating their 50th Anniversary this year. The first Comprehensive Plan was adopted in 1979, after the BRRWD was enlarged. The current Plan was adopted in 1998. In conjunction with the Plan, the BRRWD adopted Rules in May 1979. Albright explained that any Rules revision process is separate from the Comprehensive Plan update. He discussed the state guidelines/statutes (Minnesota Statutes Annotated (M.S.A.) 103D.405) regarding the Plan and its provisions and adoption. According to Statutes, Watershed Management Plans should be revised every ten years. BWSR will be holding a hearing on the BRRWD's RWMP in the near future. The next presentation is before the Northern Planning Committee, who is appointed by BWSR. The final hearing is before BWSR in St. Paul. He discussed the State mandate regarding the Mediation Agreement and the inclusion of a requirement for a comprehensive Watershed planning process within that Agreement. BWSR also has guidelines regarding the planning process.

Lisa Jetvig asked if the BWSR guidance document is included in the draft plan. Jones said the document itself is not in the Plan, but the Plan is based on it. Albright will make copies of the document available for review. Albright asked that the audience fill out the one-page questionnaire before they leave the meeting. Jones gave a PowerPoint presentation of the draft RWMP, summarizing the contents of the Plan. A copy of his presentation and the draft plan are on file in the BRRWD office in Barnesville. He discussed the seven planning regions the BRRWD established to be able to clarify issues and problems on a regional basis. A Technical Advisory Committee (TAC) and a Citizen Advisory Committee (CAC) was established for each region. Public input meetings were held within each planning region. Jones developed a hydrologic model of the BRRWD, and we worked with the Minnesota Center for Environmental Advocacy (MCEA) to complete a Natural Resource Assessment. This information was used to establish natural resource enhancement (nre) goals for each region. Issues the Plan will address on a region-wide basis include data collection and management, education, erosion and sediment control, flood damage reduction, long range work planning and financing, and water quality. Issues that are taking the forefront for future action includes: impaired waters, National Pollutant Discharge Elimination System (NPDES) permitting, wetland regulations, groundwater planning, tile drainage, drought planning, irrigation, ethanol production, increased water use, possible changes to Drainage Law regarding bufferstrips, land use changes, floodplain management, and shoreland management. He pointed out that the BRRWD doesn't necessarily plan to take the lead on each of these items, but could also function as a facilitator/coordinator. He discussed the BRRWD's mission statement and goals, policies, and programs that will be designed to support the statement.

Jones discussed the Regional Assessment Locations (RALs) feature of the RWMP. There are 25 RALs within the BRRWD, which can be assessed for single or multiple parameters, can be broken into primary and secondary areas with at least one RAL per planning region. RALs can be used to measure/sample various water features within the region so that the results will be useful to a variety of agencies. RALs will be used to determine the success of the RWMP over time, and the monitoring plan will allow long-term tracking of trends regarding hydrology, water quality, stream health, and geomorphology. Jones also discussed the modeling that has been completed to establish runoff reduction goals (120,000 to 135,000 acre-feet of additional water storage capacity), flood damage reduction (fdr) goals by reducing peak discharge rates, determining timing zones, and 10-year nre goals by adding grassland, wetlands, and bufferstrips based on planning regions.

Jones explained the watershed management district (WMD) feature of the new Plan, which includes a supplemental/alternative funding based on stormwater contribution for stormwater/runoff related projects. There are four funding criteria for a WMD: runoff, sediment contribution, a combination of runoff and sediment contribution, and drainage area. At this time, it has been proposed that WMDs would be set up based on planning regions and could provide a source of matching funds for grant opportunities. To implement a WMD, public hearings are required before BWSR would approve the action. To add the option of establishing a WMD in the future, the BRRWD would have to amend their RWMP. If this option is included in the current plan, the time and expense needed to amend the plan could be avoided.

Jones pointed out that the seven appendices to the Plan are detailed "mini-plans" for each of the Planning Regions. He noted that the plan includes the development and refinement of the project implementation process to meet the requirements of the Red River Watershed Management Board (RRWMB), the Red River Basin Flood Damage Reduction Work Group (RRBFDRWG) Mediation Agreement, and the Army Corps of Engineers (COE) Concurrence Points. He also discussed the plan approval process.

George Read from Holmesville Township, Becker County, asked who would administer the WMDs. Albright explained the WMD process, according to M.S.A. 103D.729. He discussed ways that Drainage Law allows Watershed Districts to raise money for projects. He explained that from 1982 to 2002, the BRRWD was a member of the RRWMB, which was a major source of funding for the BRRWD. As a

RRWMB member, the BRRWD was able to levy a 2 mil tax on all lands in the District. One-half of the tax revenue was kept in the BRRWD and the other half was sent to the RRWMB to be used for projects that benefit the Red River of the North. In 2002, the BRRWD decided that we were not getting back an acceptable percentage of our RRWMB contribution for local projects, and the Board opted out of the RRWMB. There has been some pressure from various sources for the BRRWD to rejoin the RRWMB. Currently, a 2 mil tax across the BRRWD would raise about \$2 million, which would be split between the RRWMB and the BRRWD. Albright explained that the WMDs would be a tool the BRRWD could use to raise money for specific projects/programs from the people who benefit from them. Projects developed under Sections 103B.231, 103D.601, 103D.605, 103D.611, and 103D.730, can be funded by the creation of WMDs. The step to establish a WMD can only be done by amendment to the Comprehensive Plan. Since the BRRWD is already in the process of updating their plan, the Board felt it would make sense to include the provision in their new plan so that we wouldn't have to go back through this process in the future if they wanted to make use of this statute. BWSR provides guidelines for Watershed Districts who wish to set up WMDs, which includes a Plan amendment to create the WMDs and BWSR approval of the plan amendment. The next six steps would only come after the District identified what the funding would be used for, the means to collect the revenue, a public hearing, establishment of a separate fund for the proceeds from the stormwater utility charges, and finally, any disputes regarding this process would be referred to BWSR for review. Albright explained that the answer to Read's question is that the Watershed District would hold the funds in a separate account to be used specifically for the identified project. Read asked if the Board would be answerable for all the funds. Albright said yes, as he understands the statutes.

David Pederson, City of Glyndon, asked if the BRRWD has used the other referenced means to raise funds for projects. Albright said yes they had, but not the WMDs.

Someone noted that the Pelican River Watershed District uses WMDs to raise funding for projects.

Jim Schreiner commented that he feels we have failed to identify problems/goals in the upstream reaches of the Red River Valley, and now Fargo-Moorhead is going to spend \$1.4 billion dollars to take care of their water problems. If we had spent money to enforce our drainage Rules, they wouldn't have to spend all that money now to deal with our water. Ellefson explained that the Buffalo River is the outlet for about 85% of the water in the BRRWD, and this water bypasses Fargo-Moorhead and enters the Red River at Georgetown. The only water that reaches the Red River is from the Comstock/Wolverton area. He noted that the flooding we experience in the spring doesn't come from drainage ditches, which are usually still full of ice/snow, but from overland runoff. Ellefson referenced the new retention site in Riverton Township, which has significant local benefits, but really does not affect the Red River. Schreiner did agree that the site worked well this spring.

Hawley Attorney Zenas Baer offered comments regarding the RWMP on behalf of the City of Hawley. He said that Hawley and the other local municipalities are concerned about the power that the BRRWD seeks to impose by increasing the ability of the BRRWD to levy taxes with the establishment of WMDs. According to his calculations, the BRRWD could raise an additional \$2 million per year, if we were to impose the maximum levy across the entire district. For Hawley, the BRRWD could ostensibly impose a \$43,000 tax per year. The City of Hawley leaders are concerned by this because they have no control over this taxation. This is the only opportunity Hawley has to tell the BRRWD not to create another taxing authority to impose unrepresented taxation on the citizens of Hawley and the entire Watershed District. The Board of Managers, BRRWD, is not an elected body. The Managers are appointed by the respective County Board of Commissioners. Baer said that the BRRWD is expanding its "scope of vision" into areas that MPCA, Minnesota Department of Natural Resources (DNR), and other agencies already oversee. He suggested that if the BRRWD is given the authority over issues they know nothing about, they will exercise that authority inappropriately without the limits that elected officials are subject to. He said that according to how he read the Plan, WMD projects would be financed by unrepresented taxation/special assessment

that doesn't require public hearings/oversight and the funding could be used anywhere in the District. He said if he could read the Plan language to draw that conclusion, someone else, for example, a Manager, or engineer, could also misinterpret the Plan. Baer also commented on the issue of conflict of interest. He noted that BRRWD Chairman Roger Ellefson has been on the Board for 35-40 years. He referenced the 2008 audit and noted that approximately \$700,000 of the general budget went to Houston Engineering, Inc. He felt that it appears to outsiders that the BRRWD staff has a conflict of interest because Albright and Julie Jerger, the administrative assistant, are H.E. employees. He suggested that there is not enough checks and balances in place to control the power that the BRRWD has and for the new powers that the BRRWD is seeking in their new Plan. He felt that the BRRWD should consider how their expanded powers in the revised Plan will affect the taxpayers and how much their role as drainage authority has changed since 1979. He urged the Board to eliminate the inclusion of WMDs in their revised Plan.

Baer explained that the City of Hawley has recently imposed a stormwater utility on all their residents to help pay for stormwater projects for the city. If the BRRWD implements the proposed WMDs, that will be another stormwater tax. The City residents can't complain to the City Council about the BRRWD's actions because citizens have no control over the BRRWD. He implied that once the BRRWD has the use of the WMDs, they would use the taxation authority without restraint.

Hawley Mayor Gary Johnson discussed his concerns about the 60" dia. reinforced concrete pipe (RCP) that is deteriorating on Project No. 32, Hawley EDA Diversion. The City has been working with the BRRWD for several years regarding this pipe, and to date, nothing has been done to correct the problem. The City Council understands the BRRWD would like to address a water problem northwest of Hawley by draining into their diversion ditch. Until the RCP is fixed, they refuse to allow any more water directed into their project. Ellefson noted that tonight's meeting is not meant to discuss individual projects, such as Project No. 32, Hawley Diversion. The BRRWD applied for an Economic Development Administration (EDA) Grant to build the Diversion project for Hawley, and the BRRWD provided funding for the project. Ellefson agreed that the RCP needs to be repaired, and the Board plans to get the "players" together to discuss how best to address this issue, so that we can get this issue off our agenda.

Ellefson commented on Attorney Baer's remarks about the WMD issue. He referred to an example of how a WMD could be used. Wolverton Creek/Comstock Coulee is an "orphan" waterway because there are no benefiting areas to assess for work on the channel. Ellefson agreed that the Board doesn't like additional taxes any more than the City of Hawley, but he explained that the WMD is a fair way for the people who benefit from a local project to pay for that project. He pointed out that Hawley residents wouldn't pay for a project on Wolverton Creek/Comstock Coulee if a WMD were created for that area. The purpose of creating a WMD is to keep taxation focused within a separate unit or project area. The residents within a WMD must agree what work they want to pay for through public hearings.

Baer disagreed with Ellefson's characterization of the WMDs. He pointed out that Albright identified uses for funds raised by WMDs, as authorized by certain statutes, and M.S.A. 103D. 605 states that the Board can use funds from the WMD for projects they initiate. Ellefson pointed out that the Board would be the facilitator in the process, but the citizens within the WMD would be the ones that move the project forward, not the Board. Assessments for a project would be levied specifically on the area where the work is done.

Jim Schreiner thought that no Viewers would be used for a WMD project. He commented on the Federal government involvement in projects.

George Read explained that he is involved with the Wild Rice Watershed District's Upper Becker Dams project, and commented that the flood in 1897 was higher than the flood of 1997. He discussed the dam project and inequalities in WMD taxation based on surface area for that project. Jones pointed out that the WMDs should be calculated based on criteria other than property value, such as runoff values, erosion

potential, or a combination of the two, or strictly on drainage area. Read pointed out that assessments can be unfair. Jones suggested that the taxation methods should be determined by what fits the area best. Everett Nelson, Hawley Township, asked if there was a way to address the issue of the permitting agencies involvement with the WMD projects. He pointed out that there is a considerable amount of public lands already taken off the tax rolls by the DNR, The Nature Conservancy (TNC), and the United States Fish and Wildlife Service (USFWS) which impacts the Township tax base. He hoped that the Townships would be notified regarding the implementation of a WMD. Albright explained that the BRRWD would need to go through a public hearing process regarding the creation of a WMD, in the same way we notice all the other projects we develop in accordance with Minnesota Statutes.

George Read commented that the County Commissioners appoint Watershed Managers. The Clay County Commissioners voted against the Wild Rice Watershed District use of WMDs. Albright said that we have talked to various County Commissioners, but we haven't met individually with each County. They did all receive copies of the Plan. Read suggested that the BRRWD get their input/approval before implementing the Plan. The Board noted Read's concern.

Mayor Johnson asked how many pages the Comprehensive Plan contained. Jones said the main body of the Plan was about 200 pages. With all the Regional appendices, the page count would be about 600. Johnson pointed out that the Plan affects the BRRWD citizens. As Attorney Baer noted, how the Plan is interpreted will bring about "their money flying out the door" without even having to hold a hearing.

Baer quoted from Page 6.4.2.5 in the Plan, that the establishment of a WMD would eliminate lengthy challenges regarding benefits, and again on Page 6.4.3.3 where he says the Plan leaves open for the support staff to determine the option for assessing benefits. He felt that the Plan was so complicated that even the Managers don't understand what's in it. He stressed that the WMDs would be taxation without representation.

Chairman Ellefson asked if there were any more comments to come before the Board.

Ken Parke, City of Dilworth, asked how many other Watershed Districts in the State have adopted WMDs. Albright wasn't sure of the exact number, but he would try to get the answer from the Minnesota Association of Watershed Districts (MAWD).

Chairman Ellefson asked again if there were any more testimony or comments to come before the Board. There being none, Ellefson adjourned the hearing at 8:42 PM.

Respectfully, prepared and submitted by

Bruce E. Albright, BRRWD Administrator