

BUFFALO-RED RIVER WATERSHED DISTRICT

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MINUTES FOR MANAGERS' MEETING

May 28, 2019

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a regular meeting on Tuesday, May 28, 2019, at 7:00 PM in the Barnesville office. The meeting date was changed in observance of the Memorial Day Holiday. BRRWD Managers present were Jay A. Leitch, Mark T. Anderson, Catherine L. Affield, Peter V. Fjestad, John E. Hanson, and Gerald L. Van Amburg. Others attending included: Bruce E. Albright, BRRWD Administrator, and Kathleen K. Fenger, BRRWD Assistant Administrator, Houston Engineering, Inc. (HEI); Robert Zimmerman, Engineer, City of Moorhead; Gregg Thielman, Engineer, Houston-Moore Group, LLC (HMG); Don Nelson, Director, MNDAK Upstream Coalition; and landowners: Craig Sorenson, Barb Sorenson, Patty Floden, Jay Nord, and Jan Kleinschmidt.

BRRWD President Leitch called the meeting to order at 7:01 PM and announced that the proceedings were being video recorded to aid in the preparation of the minutes.

Agenda. President Leitch asked for comments or additions to the meeting agenda. Albright noted that the River Watch 2019 water quality monitoring budget could be added to the agenda for review and possible approval at tonight's meeting. With that addition, the agenda was adopted.

Secretary's Report. The Board reviewed draft minutes for the 5/13/19 Board meeting and the 4/23/19 Diversion permit special meeting. President Leitch noted a few corrections. **Motion** by Manager Anderson to approve both sets of minutes, subject to correction. **Seconded** by Manager Affield. **Approved.**

Treasurer's Report. The Board reviewed the BRRWD's financial status. Cash on hand is \$2,262,052.67. Total income since the 5/13/19 meeting was \$284.38 from the Red River Watershed Management Board (RRWMB) for 3rd Quarter Mediation Project Team (PT) expenses. Total income to date is \$1,191,121.39. Harold Rotunda plans to attend the 6/10/19 Board meeting to present the 2018 BRRWD financial audit.

Citizens to Be Heard.

Gruenberg Drainage Concern. Jan Kleinschmidt, Patty Floden, and Barb Sorenson discussed drainage concerns on their land in the NW1/4, Section 34, Wolverton Township, Wilkin County. Kleinschmidt provided photographs showing water backed up on their property. Floden explained that because of blockages on the waterway through Mark Sundstrom's downstream property in the E½SW¼, Section 27, Wolverton Township, their renter, Robert Nord, has had problems raising crops. Kleinschmidt requested that the Board authorize a survey of the waterway. Albright explained that the waterway is a tributary to Wolverton Creek, running north about 3 miles across Sections 22, 27, and 34. He suggested that the Board could authorize a survey and then meet with the affected landowners to decide what the next steps could be to address this problem. The landowners' options could be to clean the waterway at their expense, or they could petition for a lateral to the Wolverton Creek Restoration project. Erik Jones, BRRWD Engineer, HEI, estimated that a survey with plan and profile drawings would cost approximately \$4,000. Albright recommended that the work could be paid for from our Survey and Data Acquisition account. Anderson noted that the Gruenberg family are benefited landowners to the Wolverton Creek project. **Motion** by Anderson to authorize HEI to conduct the requested survey, as a Survey and Data Acquisition account expense. **Seconded** by Hanson. **Approved.** Albright explained that the next steps will be for Staff to notify the affected landowners along the waterway about the upcoming survey work. Once the survey has been completed, and the drainage problems identified (approximately mid-July), then the BRRWD could meet

with the landowners to determine how the Gruenberg's drainage could be restored, and who will be responsible for the costs.

Later in the meeting, landowner Jay Nord explained that there is Conservation Reserve Program (CRP) acreage downstream of the Gruenberg property that could be impacting their drainage. He thought the waterway should have been cleaned before the property was enrolled in CRP. Their property is in a low area, but the waterway used to provide much better drainage than it does currently. He said that the Gruenberg property is basically a "lake" now.

Permit No. 19-003, Fargo-Moorhead Diversion Authority (FM DA). Albright reported that the DA granted the BRRWD's request for a time extension until our 6/24/19 meeting to allow the Board time to make a decision regarding their permit application. A meeting with the DA, Minnesota Department of Natural Resources (DNR), and City of Moorhead has been scheduled for Wednesday, June 5, 2019, from 1:00-3:00 PM in St. Paul, to discuss the DNR permit conditions related to the use of the term "maximum flood pool elevation", which determines the 500-year floodplain boundary or the Probable Maximum Flood (PMF) and the potential impacts to the Minnesota properties under the BRRWD's jurisdiction regarding the DA easements. Gregg Thielman, HMG/HEI, has done additional modeling (Phase 9.1) for the Conditional Letter Of Map Revision (CLOMR) Federal Emergency Management Agency (FEMA) application. The modeling results yielded new eastern tie-back maps, which show a significant reduction of impacts for the Wilkin County properties.

Lyle Hovland, Wilkin County Commissioner/Richland-Wilkin Joint Powers Authority (JPA), contacted Albright to request that a member of the JPA be allowed to attend the 6/5/19 DNR meeting in St. Paul. The Board agreed that the JPA was welcome to send a representative, but that they should not send legal counsel. The request has to be reviewed with the DNR.

Following the DNR meeting on 6/5/19, staff and Managers will fine tune our potential permit conditions and forward them to the DA staff for their review and comment. The goal is to have the conditions in place by the 6/24/19 meeting when the Board plans to make a decision about the DA's permit application.

The Board also plans to meet with our attorney to discuss the DNR permit contested case, which isn't subject to any deadlines. The DNR had indicated that they would be willing to consider participating in a mediation process, if the JPA would agree to discuss some specific issues. The JPA hasn't shown any interest in narrowing the scope of the contest. Albright noted that the Cities of Wolverton and Comstock have asked the BRRWD to represent them in the contested case proceedings. The Board will have to decide if they want to mediate with the DNR or join with the JPA to move forward with the Administrative hearing process.

The Board briefly discussed the written comments from the 4/23/19 special meeting. Albright said that most of the comments were about issues the Managers have heard before.

Albright noted that the DA has not yet forwarded the most recent draft of the Minnesota-Clay County Joint Powers Agreement (MCCJPA) for the Board's review. Zimmerman said he will get us a copy.

Other Business brought before the Board included:

Permit No. 19-004, Pheasants Forever, Inc (PF). Applicant proposes a series of United States Fish and Wildlife Service (USFWS) designed wetland restorations in Section 7, Parke Township, Clay County. Erik Jones, BRRWD Engineer, has talked with the neighboring landowner regarding PF's proposed work. He said that the landowner doesn't agree with the project but understood that we had a process to follow. Jones recommended permit approval.

Permit No. 19-056, Moorhead Public Service. Applicant proposes to install a new 12" dia. water main for the southeast corner of the City of Moorhead by horizontal directional boring to improve watermain pressure and flow capacity in the SW¹/₄, Section 23, Clay County, crossing County Ditch (C.D.) No. 47. The watermain will be replaced from 12th AVE S to 20th AVE S and on 18th AVE S. The plans show that the proposed C.D. No. 47 crossing is 7.5' below the bottom of the legal ditch system. Jones reviewed the plans and recommended permit approval, subject to our standard utility disclaimer.

Permit No. 19-057, Century Link. Applicant proposes the installation of a 4" PVC conduit with three 1.25" innerducts and fiber optic cable via directional boring under C.D. No. 47 north of 30th AVE on 34th ST in the SE¹/₄NE¹/₄, Section 22, Moorhead Township, Clay County. Jones reviewed the plans and recommended permit approval, subject to our standard utility disclaimer.

Permit No. 19-058, PF. Applicant proposes to complete two wetland scrapes and ditch fill in the E¹/₂NW¹/₄, Section 28, Tansem Township, Clay County. The USFWS will be doing the work. Jones reviewed the plans, noting no seepage potential on neighboring lands, and he recommended permit approval.

Motion by Van Amburg to approve Permit Nos. 19-004, 19-056 through 19-058, subject to the referenced disclaimers and conditions. **Seconded** by Affield. **Approved.**

Hawley Township Road Relocation. The Township plans to move the intersection at 12th AVE S and 200th ST S about 20' west. Raymond Reading contacted the BRRWD for a culvert sizing recommendation for the north side of the intersection. Wade Opsahl, Technician, HEI, conducted a field review on 5/22/19 and recommended the same sized pipe (18" dia.) for the new site. The work should not require a BRRWD permit.

Diking Complaint. Last fall, a neighboring landowner notified the office that Shawn Kologi completed a tiling project in Section 27, Callaway Township, Becker County. Albright and Manager Hanson conducted a field review on 10/19/18. They found that Kologi also had added a berm on the west side of Becker County Road (C.R.) No. 21 to prevent the water draining from the east through the 24" dia. culvert in C.R. No. 21 from overtopping the berm and draining naturally west in the waterway across his field. All this work was completed without a BRRWD permit. Both the upstream landowners and the Becker County Highway Department object to water potentially being held on their property/road. The staff sent a letter to Kologi, advising him that he should submit a BRRWD permit for his project. To date, Kologi has not responded.

Boat Access. Bradley Rutter contacted the office regarding a boat access installation on his property on Lake Eleven. The DNR suggested that Rutter should contact the BRRWD regarding a permit for his work. Albright noted that Rutter was working with Clay County Planning and Zoning and the DNR, and a boat access would not fall under the BRRWD's jurisdiction.

Project No. 79, Wolverton Creek Restoration. Albright submitted Pay Request No. 5 in the amount of \$145,264.50 for Sellin Brothers, Inc. The contractor started this year's construction on 5/13/19. They will not finish construction by the 6/30/19 deadline because of the wet weather in May and will come back to the Board for another extension until 7/30/19. **Motion** by Fjestad to approve Pay Request No. 5 for \$145,264.50. **Seconded** by Anderson. **Approved.**

Crop damage payments for 2019 are on tonight's bill list for landowners in the areas where work was not finished last fall because of inclement weather. Albright noted that staff is working on the Phase 3 easement options. Jones has been working with Phase 2 landowners Robert Nord and the Freitag family on easements and project impacts on their property. Robert Nord has asked for a possible low water crossing to allow his cattle access to his pastureland and an access easement across his neighbor's property to get to his pasture on the other side of the project. Jones is also working with him to set up a conservation easement on the channel corridor and a permanent vegetation easement for his pasture. Greg and Patricia Freitag have a farmstead within the project area, and Jones is working with them to adjust the channel alignment to minimize the project

footprint on their yard. Albright hoped that the Phase 2 easements could be in place within 3 weeks so that we can advertise for bids. Phase 2 is the upstream reach of Wolverton Creek south of C.R. No. 30 in Wilkin County. Construction on this phase should go faster than the other two phases since there is only one ditch system outletting into the Creek in this area, so there will be less water to contend with in the channel.

Albright reported that the Blilie/Bixby buyout transactions have been completed. He contacted our insurance agent to get coverage for the Tract 2 buildings, valued at approximately \$11,000, and the electric service has been switched to the BRRWD. He has also contacted the agencies to start work on the Blilie Reinvest In Minnesota (RIM) paperwork. As soon as the RIM easement is in place, we will enter into a Contract for Deed with Kristi Bixby on the remaining 17 acres involved with the Blilie buyout. According to reports, the Conservation Reserve Enhancement Program (CREP) funding should be available soon.

Wilkin-Otter Tail Judicial Ditch (J.D.) No. 2. The contractor, States Borders Construction, Inc., plans to start the project in late July/early August. Another meeting of the J.D. No. 2 Ditch Committee could be held in June to go through the Viewers work on the redetermination of benefits and receive an update on the outlet construction. Albright will contact Kevin Fellbaum, Otter Tail County Drainage Ditches Inspector, to setup a meeting

One Watershed, One Plan (1W1P). The Policy Committee will meet tomorrow (5/29/19) from 10:30 AM to Noon in the BRRWD office. The next Advisory Committee meeting is scheduled for June 19, 2019, 1:00-3:00 PM. Matt Jacobson, Water Planner, HEI/Planning Team, has taken a new position as the Clay County Planning and Zoning Administrator. Rachel Olm, Water Planner, HEI/Planning Team, is on maternity leave until mid-July. In the interim, Moriya Rufer, Water Planner/Scientist, HEI, will be working with the BRRWD on our 1W1P effort.

The Board briefly discussed email correspondence we received from a landowner regarding the 1W1P effort and our Rules update.

2018 Annual Report. Leitch asked about the status of the Annual Report. He had a suggestion about changing the format of the Report.

Project Development Timeline. At the last meeting, Jones distributed a draft timeline worksheet for the Board's review and comments with action items and deadline dates for eight current projects. Leitch had a suggestion to revise the format of the timeline.

Project No. 27, Clay C.D. No. 55. A landowner informational meeting has been scheduled for Tuesday, June 4, 2019, at 7:00 PM in the BRRWD office to discuss possible repairs for C.D. No. 55. Notices were sent to the affected ditch system landowners.

Stony Creek Restoration. The Preliminary Resolution hearing is scheduled for Tuesday, June 25, 2019, at 7:00 PM in the BRRWD office. The easement option forms are prepared. Albright expects that those documents will be sent to the landowners this week. Leitch brought up his ongoing issues with the project and the benefit/cost ratio (BCR) analysis HEI prepared for the project. He maintains that the benefits are much less than Jones found, and that the project is not a wise investment of public funds. The Board discussed the merits of the project and the historic problems the proposed restoration project could address. Leitch offered to meet with Jones again to review HEI's BCR analysis. The Board had no objections to Leitch meeting with Jones. Albright pointed out that there are still a number of steps left in the project development process.

River Watch 2019/2020 Budget. Nathan Strand, Barnesville River Watch Coordinator, submitted the River Watch budget for this summer and the upcoming school year (2019-2020) totaling \$5,537.68, which is similar to past years. Albright mentioned that Lowell Deedee is also continuing his sampling work this year in

Becker County. Last year, the BRRWD allocated \$1,500 to pay for the chemical analysis of Deedee's water samples at RMB Laboratories. Leitch pointed out that there was a math error on the River Watch Budget worksheet. **Motion** by Anderson to approve the proposed 2019-2020 River Watch budget and the allocation for Lowell Deedee's water sample analysis costs. **Seconded** by Van Amburg. **Approved.**

BRRWD Rules Update. Albright reported that the draft Rules have been distributed for the mandatory 45-day comment period. The office has received a few comments. BRRWD Attorney Tami Norgard, Vogel Law Firm, also provided comments, which were incorporated into the draft document. The public hearing is scheduled for 7/2/19 with final Rules adoption to take place at the 7/8/19 Board meeting.

The following bills were presented for approval:

Accounts Payable	Description	Account	Amount
Bradley J. & Veronica Nelson	2019 Crop Damages	Pj. 79, Wolverton Creek	\$ 2,477.50
Buffalo River Excavating, LLC	#536, Repairs-Field Approach	Pj. 50, Cromwell Twp.	\$ 285.00
City of Barnesville	05/25/19 Utility Billing	Admin.	\$ 653.27
Evie's Kitchen	Advisory Committee Meal	Admin.	\$ 150.00
Greg L. Johnson	2019 Crop Damages	Pj. 79, Wolverton Creek	\$ 305.62
J. Scott Johnson	2019 Crop Damages	Pj. 79, Wolverton Creek	\$ 305.63
JB Construction Services	#328, Repair Shingles	Admin.	\$ 400.00
Jim Hanson Cleaning Service	#822775, Washed Windows	Admin.	\$ 214.75
Joel Carlson, Inc.	June 2019 Lobbyist Fees	Admin.	\$ 850.00
Kathleen Lucas	2019 Crop Damages	Pj. 79, Wolverton Creek	\$ 1,050.25
Mark T. Anderson	Voucher #19-09, 03/01-04/30/19	Varies	\$ 866.62
Michael W. & Sara B. Aigner	2019 Crop Damages	Pj. 79, Wolverton Creek	\$ 826.00
MN DNR	#229962, Stream Gauges Contract (11th)	M.S.A. 103D.905, Sub. 3	\$ 10,150.00
MPS	04/02/19-05/02/19 Service (4)	Pj. 49, Oakport	\$ 1,037.17
Neil R. Kippen LTD Ptnshp	2019 Crop Damages	Pj. 79, Wolverton Creek	\$ 3,387.00
Nord Real Est. Holding, LLLP	2019 Crop Damages	Pj. 79, Wolverton Creek	\$ 1,292.00
Paul Klein	2019 Crop Damages	Pj. 79, Wolverton Creek	\$ 162.00
Premium Waters, Inc.	#366590-04-19, May billing	Admin.	\$ 42.69
Randall's Excavating	#2851, Clear Ditches	Varies	\$ 28,327.50
Randall's Excavating	#2856, Clear Ditches	Clay C.D. No. 12	\$ 1,112.50
RMB Laboratories	#443661, WQ Analysis	M.S.A. 103D.905, Sub. 3	\$ 603.00
Robert Klein	2019 Crop Damages	Pj. 79, Wolverton Creek	\$ 1,884.25
Sellin Brothers, Inc.	Pay Request No. 5	Pj. 79, Wolverton Creek	\$ 145,264.50
Video Arts Studio	#10797, DA Meeting Video Shoot	COE	\$ 1,156.00
Vogel Law Firm	#235440, May Billing	Admin.	\$ 73.50
Vogel Law Firm	#235441, May Billing	COE	\$ 7,137.50
Wm. Nichol Ex.	#286, Reset Culverts, 2019 Flood	Pj. 21, Wilkin CD 13, Lat.	\$ 3,939.75
			\$ 213,954.00

Motion by Affield to approve payment of the bills. **Seconded** by Van Amburg. **Approved.**

Manager Comments. The Managers briefly discussed the results of the 2019 Legislative Session.

Fjestad mentioned there is a new group of landowners and developers, called Minnesota Association of Watershed Responsibility (MAWR), that is advocating for better protections from excessive, unreasonable watershed regulation and to protect the existing water rights of landowners.

The group discussed the North Dakota Water Education Foundation's 2019 Water Tours. There will be six tours in all, starting in the Devils Lake area on June 19. Leitch encouraged the Managers to consider attending.

Fenger asked the Managers to contact her if they plan to attend the Minnesota Association of Watershed Districts (MAWD) Summer Tour on June 26-29, 2019, in Moorhead. She will handle their reservations/registrations.

Performance Review and Assistance Program (PRAP). The Board watched two short Minnesota Board of Water and Soil Resources (BWSR) training videos on soil health. These videos provide training to meet the Level II PRAP performance standards.

Next Meeting Agenda. Leitch noted that he would like to have the Oakport project listed on the agenda for discussion regarding potentially turning the project over to the City of Moorhead.

Next Meeting. The next regular BRRWD meeting will be held on Monday, June 10, 2019, at 7:00 PM in our Barnesville office.

Adjournment. **Motion** by Fjestad to adjourn the meeting. **Seconded** by Anderson. **Approved.** President Leitch adjourned the meeting at 8:25 PM.

Respectfully submitted,

John E. Hanson, Secretary