

# ***BUFFALO-RED RIVER WATERSHED DISTRICT***

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## **MINUTES FOR MANAGERS' MEETING September 23, 2019**

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held their regular meeting on Monday, September 23, 2019, at 7:00 PM in the Barnesville office. BRRWD Managers present were Peter V. Fjestad, Mark T. Anderson, John E. Hanson, Troy E. Larson, Catherine L. Affield, and Gerald L. Van Amburg. BRRWD staff attending included: Bruce E. Albright, BRRWD Administrator, Kathleen K. Fenger, Assistant Administrator, and Erik S. Jones, Engineer, Houston Engineering, Inc. (HEI). Others attending included Frank Schindler and Chuck Anderson, Barnesville Township Supervisors; Stephen Hanson, Associate, Ohnstad Twitchell; and landowners Don Nelson and John Thompson.

BRRWD Vice President Peter Fjestad called the meeting to order at 7:02 PM and announced that the proceedings were being video recorded to aid in the preparation of the minutes.

**Agenda.** Fjestad asked for comments or additions to the meeting agenda. Albright proposed that a discussion of the Wilkin County Ditch (C.D.) No. 27 informational meeting be added, and Jones proposed adding Project No. 78, Clay/Wilkin Judicial Ditch (J.D.) No. 1 for action on a Pay Request and contract extension. **Motion** by Anderson to approve the agenda with the proposed additions. **Seconded** by Hanson. **Approved.**

**Secretary's Report.** The Board reviewed draft minutes for the 9/9/19 regular meeting. **Motion** by Affield to approve the minutes. **Seconded** by Van Amburg. **Approved.**

**Treasurer's Report.** The Board reviewed the BRRWD's financial status. Cash on hand is \$3,524,953.19. Income since the 9/9/19 meeting totals \$33,589.95, including \$33,136.50 from Wilkin County for the Buffer Initiative Aid payment and \$453.45 from landowners for the Section 27, Manston Township, waterway repair cost share payments. Total income this year is \$4,479,838.16.

Albright noted that the BRRWD is scheduled to meet with the Clay County Board of Commissioners at their October 8, 2019, meeting to present the 2020 tax petitions to use our taxing authority for two general levies in accordance with Minnesota Statutes Annotated (M.S.A.) 103D.905, Subd. 3. If Clay County is unwilling to provide the petitions, the Board agreed to contact one of the other Counties for support. Van Amburg noted that he plans to attend the Commission meeting with Albright.

### **Citizens to Be Heard.**

**Project No. 21, Wilkin C.D. No. 13-Lateral.** Landowner John Thompson discussed his concerns about the breakouts from the South Branch of the Buffalo River on the west side of Trunk Highway (T.H.) No. 9 that is causing erosion damage on Caroline Swenson's property in Section 6, Manston Township, Wilkin County, and increased flows into C.D. No. 13-Lateral. This spring water from the South Branch entered C.D. No. 13-Lateral, washed out two crossings near the Thompson property, and overtopped an area township road. He asked how the Board plans to address this problem.

Albright briefly discussed a potential South Branch of the Buffalo River Restoration project that has been talked about for many years. Problems encountered when considering the project included the need for upstream retention to reduce potential downstream flows and the need to break down the large project area into phases. At the same time as this project was under review, Caroline Swenson came to the Board with breakout/erosion problems on her property from the South Branch. Albright explained that C.D. No. 13-

Lateral can't handle the increased water/sediment from the South Branch breakouts, and the South Branch water is not assessed to the ditch. He noted that the BRRWD did authorize a survey of the erosion sites on Swenson's land again this year, and the survey showed that the erosion hasn't increased. Albright explained that Thompson wanted the Board to be aware of the urgency of this issue and expected the Board to make a commitment to addressing this serious problem. The BRRWD has some funding from the Lessard-Sams Outdoor Heritage Council (LSOHC) for channel restoration work on the east side of T.H. No. 9 (Phase 1), but this grant does not include funding for a retention component. Easement negotiations with the Roggelstad family have temporarily stalled because of private family issues. Albright explained that the Swenson/C.D. No. 13-Lateral problem could be addressed in Phase 2 of the South Branch project, which currently has not been funded. He suggested that an off-channel retention site in the Phase 2 area would need to be identified. Jones has met with John Voz, Minnesota Board of Water and Soil Resources (BWSR), and the Minnesota Prairie Chicken Society, who has funding available that could be used to acquire the Roggelstad property for the Phase 1 work. We could potentially close on the needed property east of T.H. No. 9 by the end of the year, contingent on the Roggelstad family's interest in the sale proposal.

Albright thought that a solution to Thompson's question about the Swenson/C.D. No. 13-Lateral concerns won't be addressed for at least another two years. Thompson asked if the Board should consider redetermining the benefits for C.D. No. 13-Lateral to include the unassessed lands along the South Branch that are draining to the ditch. The Board discussed this possibility and agreed that as a short-term fix, it could be expensive, time consuming, and controversial. Albright thought that the Phase 1 work could be ready for construction next year. He added that Thompson could contact the BRRWD office or attend a meeting whenever he wanted an update regarding his concerns.

**Barnesville Township Drainage Concern.** Barnesville Township Supervisors Frank Schindler and Chuck Anderson asked for an update regarding their request for BRRWD assistance to develop a flood mitigation project involving repair of the east 170<sup>th</sup> ST S road ditch in Sections 1 and 2 and the installation of an additional culvert through 170<sup>th</sup> ST S. The project would include cleaning about 0.7 miles of a natural waterway between 170<sup>th</sup> ST S and Stony Creek. At the 9/9/19 meeting, the Board authorized Jones to conduct a more detailed elevation survey of 170<sup>th</sup> ST S and the natural waterway from T.H. No. 9 to C.D. No. 31 (Stony Creek) to provide data for a possible flood mitigation project grant application. Jones reported on the current area drainage conditions/culvert sizes and the results of HEI's recent survey investigation. There was an extended discussion regarding area drainage patterns and culvert sizes.

Schindler explained that the Township would like to apply for a Federal Emergency Management Agency (FEMA) Hazard Mitigation Assistance (HMA) program funding this year to get the drainage problems in this area fixed this fall prior to potential flooding next spring. The deadline to file a "Notice of Interest" form to FEMA is September 30, and the Supervisors were hoping to have Jones assist them with this application. **Motion** by Anderson to authorize Jones to work with Barnesville Township to file their "Notice of Interest" FEMA form by 9/30/19. **Seconded** by Van Amburg. In response to a question about the landowners adjacent to the proposed project area, Schindler said that the Johnson family farms on both the east and west sides of the roadway. They are in favor of the proposed ditch repairs and are willing to work with the Township. Their only concern was the status and timeline of the BRRWD's proposed Stony Creek Water Resource Management Project (WRMP), which is the outlet for the area drainage. Historically, this waterway is prone to breakouts causing overland flooding and erosion damage. Schindler noted that the scope of their proposed project is more extensive than the Township can develop alone, and they hoped for BRRWD assistance to move forward with their project yet this fall. **Approved.**

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

**F-M Diversion Authority (DA) Revised Project.** Albright reported that a new Judge has been appointed to preside over the DA's lawsuit regarding the BRRWD's denial of the DA's permit (Permit No. 19-003). The previous Judge, Jay Carlson, had a possible conflict of interest since he has done legal work for the BRRWD

in the past. A hearing has been scheduled in October at the Becker County Courthouse in Detroit Lakes to review the Richland/Wilkin Upstream Coalition's request to enjoin in the lawsuit. The BRRWD's insurance company is handling the permit appeal costs after the BRRWD's \$7,500 deductible has been met.

- The trial regarding our Minnesota Department of Natural Resources (DNR) permit contested case is scheduled for June 2020. Our insurance company will not cover the costs of this action, so the BRRWD's legal expenses could have the potential to be much greater than the DA's lawsuit defense.
- The Minnesota Land Committee will meet 9/26/19. BRRWD President Leitch is a voting member of this committee. Jones will attend the meeting in Leitch's absence. The easement process for a parcel of land involved with the Wolverton Creek Restoration project south of County Road (C.R.) No. 2 has been delayed because the Cass County Joint Water Resource District holds the title for this tract. They plan to transfer the parcel over to the Minnesota Land Committee. Anderson noted that the contractor is nearly finished with the outlet work, except for the stretch of the channel associated with the referenced easement issue.

**Permit No. 19-118, Steve Neppl, Wilkin County Highway Department.** Applicant proposes to replace the existing pipes on a natural waterway through C.R. No. 169 in the NW¼, between Sections 17 and 18, Akron Township, with two lines of 58" dia. reinforced concrete arch pipe (RCP-A). Jones noted that the pipes are shaped differently, but the capacity is about the same. He recommended permit approval.

**Permit No. 19-119, Wendell (Phillip) Rogers.** Applicant proposes to install 80 acres of pattern tile, outletting via a 6" dia. tile gravity outlet to a low spot in his pasture in the SE¼, Section 32, Humboldt Township, Clay County. All work will take place on his own property. Albright discussed the drainage route for the outlet water. There are two homes along County State Aid Highway (CSAH) No. 52 where the water has overtopped the road on the County line in the past. Instead of outletting the tile water to the highway ditch, the water will be routed to a low spot on Rogers' pastureland and will eventually drain west to land owned by the United States Fish and Wildlife Service (USFWS). Albright explained that the project won't change the historic path or volume of the drainage water and recommended permit approval, subject to our standard tiling disclaimer.

**Permit No. 19-120, Marita Palya.** Applicant proposes to add a driveway and a 24" dia. x 10' long culvert to access their pasture north of their main residential driveway off 160<sup>th</sup> ST S in the NW¼, Section 11, Elkton Township, Clay County. Albright recommended permit approval, subject to a field review to determine an adequate culvert sizing and township approval to work within their right-of-way (R/W).

Palya has also asked that Elkton Township consider the installation of a centerline pipe in their road to drain blocked water on the east side of the road to the west. Albright noted Palya will need to work with the Township on this issue and that her proposal will need further investigation.

**Motion** by Van Amburg to approve Permit Nos. 19-118 through 19-120, subject to the referenced disclaimers and conditions. **Seconded** by Affield. **Approved.**

**Miscellaneous Investigations/Complaints/Violations.** Albright discussed a report he prepared for the Board's review dealing with ongoing District concerns he feels the Board should be aware of, but that don't fall into the "action item" category. He plans to keep this report updated and to distribute it to the Managers with the draft minutes prior to our meetings.

**Moorhead Township Debris Complaint.** Moorhead Township Supervisor Kevin Martin contacted the BRRWD office regarding a complaint he received regarding an individual dumping grass clippings and tree branches in the county road R/W in front of two large culverts in the west ditch of CSAH No. 52 in Section 26. When Martin asked him to remove the debris, the landowner refused to comply and ordered Martin off

his property. The Board reviewed photographs Albright took of the site. Albright will work with the Clay County Highway Department on this issue and will inform the landowner by letter to remove the debris.

**Galaxie Driveway Culvert Complaint.** Alan Lenz, who owns the property on the north side of T.H. No. 34, across the road from the Galaxie Supper Club, has been complaining about water standing in the ditch along his property for several years. The Galaxie's driveway culvert on 200<sup>th</sup> ST S is set too high. Water flowing south through the T.H. No. 34 culverts is blocked by the driveway culvert, and the low flows on the north side of the highway never drain out completely, causing standing water in the ditch along Lenz's property. Albright has been working with the landowners, the Minnesota Department of Transportation (MNDOT), and Humboldt Township to get the culvert lowered. Jeff Nichol provided an estimate of \$6,156 to lower the culvert, assuming it can be salvaged. Albright proposed that MNDOT, Lenz, Ace Greg (who now owns the Galaxie), Humboldt Township, and BRRWD split the repair costs equally. He will prepare a draft cost share agreement and forward it to them for their review and signatures.

**Project No. 23, Becker C.D. No. 15-Branch 7 Repairs.** At their 7/8/19 meeting, the Board approved repairs for Branch 7 to replace washed out structures in 220<sup>th</sup> ST on the Audubon/Hamden Township line and agreed to work with Audubon Township on a cost share agreement to pay for the work. At that meeting, it was proposed that the project should be done as a ditch system expense with a possible 50/50 split with the Township. The estimated cost for the work is \$12,000 to \$15,000. Recently, Audubon Township Supervisor Sean Felker contacted Albright to propose that the ditch system should pick up the entire cost of the repairs. Albright noted that the ditch system does have sufficient funds in their account to pay for the work. The Board discussed an equitable way to share the repair costs. **Motion** by Hanson for Audubon Township to pay \$5,000 of the final repair costs, and the ditch system will be responsible for the remainder. **Seconded** by Anderson. **Approved.** Albright will contact Felker to advise him of the Board's decision.

**Project No. 39, Georgetown Levees.** At the 9/9/19 meeting, representatives from the City of Georgetown addressed the Board regarding four issues: T.H. No. 75 city signage, transferal of BRRWD buyout properties to the City, concerns about the 2019 project expenses/2020 tax levy, and flood debris disposal. Jones reported that according to the BRRWD's attorney, who contacted the DNR, Georgetown can legally put up their sign. Upon contacting FEMA, Jones also found that the City, as floodplain administrator, has to amend their floodplain ordinance regarding the basement exemption for the Wambach house to be in compliance with the National Flood Insurance Program (NFIP). A DNR floodplain representative, Ceil Strauss, will be in Moorhead in October, and she would be able to meet with Georgetown officials to provide guidance regarding their role as the City's floodplain administrator. Several years ago, the opportunity arose for the smaller area cities to have Clay County act as their floodplain administrator, but Georgetown did not take advantage of this option. Regarding the buyout property transfers, the Board is waiting for more information from the City regarding the potential uses they have planned for these properties. Since it was State grant money that was used to purchase the buyout properties for the levee project, it appears the proceeds from any potential land sale for non-public uses would have to be turned back to the DNR. Albright noted that the Ziegler property has the potential for a housing subdivision. Georgetown wouldn't be able to keep the proceeds from a land sale for this purpose, but at least there would be property within City limits to develop once the State was fully reimbursed.

**Project No. 49, Oakport Flood Mitigation.** The Audubon Society has submitted a Phase II LSOHC Conservation Partners Legacy (CPL) Grants Program Urban Wood and Prairies (UWP) Initiative grant. The BRRWD has a five acre parcel just north of Wall ST in Oakport Township associated with the project that is ready for native grass seeding. The total grant application is \$60,776 with a 10% local match. If approved, the actual grant amount is \$52,945. As partners, the Audubon Society, the City of Moorhead, North Dakota State University (NDSU), and the BRRWD would each contribute approximately \$2,000 in either cash or in-kind match. Albright explained that since the grant application was due today, he contacted the Managers, and President Leitch and Manager Van Amburg both responded with verbal approval, so Albright submitted the Partner Commitment letter. The Board agreed with the decision to contribute the referenced amount if

the grant is approved. **Motion** by Anderson to sponsor the Audubon Society for their CPL grant application and to contribute a \$2,000 match. **Seconded** by Hanson. **Approved.**

**Project No. 79, Wolverton Creek Restoration.** BWSR forwarded an amendment to our original Memorandum of Understanding (MOU) with BWSR to include the Reinvest In Minnesota (RIM) acreage on the Donald Hoppe/Todd Blilie property. **Motion** by Anderson to authorize Vice President Fjestad to sign the MOU amendment on behalf of the BRRWD. **Seconded** by Van Amburg. **Approved.**

**Project No. 78, Clay/Wilkin J.D. No. 1-Improvement.** Jones reported that the contractor has completed approximately half the excavation work. He submitted Pay Request No. 2 in the amount of \$253,923.60 for Dennis Drewes, Inc. **Motion** by Anderson to approve the referenced pay request. **Seconded** by Hanson. **Approved.** The contractor also requested a time extension until 11/15/19 to finish the dirt work with seeding to be completed next spring. Excavation has been hampered by the wet weather and they won't meet the 10/1/19 completion deadline. **Motion** by Anderson to approve the construction/seeding completion deadlines, as referenced. **Seconded** by Affield. **Approved.** Anderson commented that Drewes is doing an excellent job on the project.

**Wilkin C.D. No. 27 Retrofit.** Albright noted that he, Fjestad, and Anderson attended a landowner informational meeting on 9/20/19 in Breckenridge to discuss the proposed ditch retrofit project with the affected landowners. The landowners indicated that they wanted the Board to move forward with the project, including the installation of the mandatory buffers. The project is estimated to cost approximately \$591,000. About half those costs could be covered by Otter Tail and Wilkin Soil and Water Conservation Districts (SWCD) from their buffer aid funding (approximately \$275,000). The retrofit will be one of the Wilkin County Highway Department's 2020 projects. **Motion** by Larson to approve the proposed project. **Seconded** by Affield. **Approved.** Jones will contact the SWCDs to let them know that their funds have been earmarked for this project.

**Wilkin/Otter Tail J.D. No. 2.** Jones provided repair recommendations for two damaged inlet culverts on J.D. No. 2 in Sections 7 and 18, Orwell Township, Otter Tail County. Jeff Yaggie reported the damaged structures, and HEI conducted an inspection. Jones recommended replacing the existing culverts with a 24" dia. x 50' long corrugated metal pipe (CMP) with a flapgate and a 24" dia. x 60' long CMP/flapgate for a probable cost of \$5,000-\$5,500. **Motion** by Anderson to approve the referenced culvert replacements, as a ditch system expense. **Seconded** by Hanson. **Approved.**

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

Accounts Payable	Description	Account	Amount
Barnesville Record-Review	Budget Hearing Notice	Admin.	\$ 480.00
Becker County Auditor	2019 Special Assessments Maint.	Varies	\$ 1,745.00
Cardmember Service	September Statement	Varies	\$ 1,271.54
Dennis Drewes, Inc.	Pay Request No. 2	Pj. 78, Clay-Wilkin J. D. No. 1	\$ 253,923.60
Eagle Café	Fall Tour Supper (30)	Mediation PT	\$ 322.13
HEI	#0045036/0045035, closeout Pjs.	LOTR/Whiskey Crk	\$ 18,359.50
Joel Carlson, Inc.	October Lobbyist Fees	Admin.	\$ 850.00
John E. Hanson	Voucher #19-25, 07/01/19-08/31/19	Varies	\$ 772.18
Key Contracting, Inc.	#6272, Culvert Repair	Clay C.D. No. 41-Lateral	\$ 3,500.00
Liberty Business Systems	#389773, 06/27/19-09/26/19	Admin.	\$ 260.07
LREC	08/01/19-09/01/19 Service	Pj. 79, Wolverton Crk.	\$ 26.56
MPS	08/02/19-09/04/19 Service (4)	Pj. 49, Oakport	\$ 150.52
Northern States Excavating	2019 Flood Repairs	Varies	\$ 9,179.00
Northern States Excavating	Repairs	Varies	\$ 4,162.30
RMB Environmental Labs	#467138, WQ Monitoring	M.S.A. 103D.905, Sub. 3	\$ 522.00
RMB Environmental Labs	#466728, WQ Monitoring	M.S.A. 103D.905, Sub. 3	\$ 278.00
RMB Environmental Labs	#470758, WQ Monitoring	M.S.A. 103D.905, Sub. 3	\$ 114.00
RMB Environmental Labs	#470431, WQ Monitoring	M.S.A. 103D.905, Sub. 3	\$ 180.00
Robert Bowers	September Beaver Control	Varies	\$ 1,100.00

Ryan Beattie	#600, Beaver Control	Pj. 54, Whisky Crk. Trib.	\$ 190.00
The Hawley Herald	Budget Hearing Notice (2)	Admin.	\$ 1,107.20
TrueNorth Steel	#FP0000015742, Culverts	Pj. 54, Whisky Crk. Trib.	\$ 36.48
Vogel Law Firm	#241550, August Billing	Pj. 79, Wolverton Crk.	\$ 1,891.50
Western National Insurance	Commercial Package Renewal	Insurance	\$ 15,060.00
Wilkin Co. Hwy. Dept.	Gravel, 2019 Flood Relief	Varies	\$ 506.00
Wm. Nichol Excavating	#303, Repairs	Pj. 21, Wilkin C.D. No. 13, Lat.	\$ 1,381.25
Wm. Nichol Excavating	#304, Level Spoil	Pj. 30, Clay-Wilkin J. D. No. 1	\$ 520.00
Wm. Nichol Excavating	#305, Beaver Dam Removal	Pj. 24, Wilkin C.D. No. 44	\$ 520.00
			<b>\$ 318,408.83</b>

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

**Minnesota Association of Watershed Districts (MAWD).** MAWD has scheduled their annual meeting and trade show for December 4-7, 2019. Project No. 49, Oakport Flood Mitigation, has been selected as a finalist for their Project of the Year award. Staff is working on the Finalist Nomination form that has to be submitted by 10/4/19. Albright suggested that when MAWD forwards the 2019 policy resolutions, the Board should take some time at an upcoming meeting to review and discuss them. Meeting registration is now open. Albright, Fenger, Anderson, Fjestad, Hanson, and Van Amburg, all plan to attend. The office will handle the room reservations and meeting registrations.

**Minnesota Water Resources Conference.** The University of Minnesota Water Resources Center is hosting their annual Water Resource Conference on October 15-16, 2019, at the St. Paul RiverCentre. Van Amburg plans to attend. Jones will participate in a panel discussion regarding river restoration, specifically his experiences with our Wolverton Creek Restoration project.

**Norby Lawsuit.** Albright gave the Board a brief status report of Robert Norby's Appellate Court appeal.

**Soil Health Workshop.** Albright gave a brief report regarding BWSR's Sustainable Farming Association (SFA) Soil Health Workshop held on 9/5/19 with visits to the Grommesh and Hough farms.

**Comments and Announcements.** The Board discussed the BRRWD's Fall Tour held on 9/19/19.

**One Watershed, One Plan (1W1P).** The Board discussed the status of the 1W1P process. A Planning Team meeting is scheduled for 9/25/19. The BRRWD might need a grant extension from BWSR. The grant agreement will expire on 12/31/19. The Planning Team expects that the draft Plan should be finished by the deadline, but the review period, comments response, hearing, etc., could push Plan completion into 2020.

Albright noted that Andrew Graham, who is the new Red River Basin Flood Damage Reduction Work Group (RRBFDRWG) Coordinator, visited the office last week to familiarize himself with the BRRWD in regard to our projects, issues, and the need to update the current Mediation Agreement.

**Next Meeting.** The next regular BRRWD meeting will be held on Tuesday, October 15, 2019, at 7:00 PM in our Barnesville office. The meeting date was moved in observance of the Columbus Day Holiday.

**Adjournment.** Vice President Fjestad adjourned the meeting at 8:45 PM.

Respectfully submitted,

John E. Hanson, Secretary