

BUFFALO-RED RIVER WATERSHED DISTRICT

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MINUTES FOR MANAGERS' MEETING

January 28, 2019

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a regular meeting on Monday, January 28, 2019, at 7:00 PM in the Barnesville office. BRRWD Managers present were Jay A. Leitch, Mark T. Anderson, John E. Hanson, Gerald L. Van Amburg, Catherine L. Affield, Peter V. Fjestad, and Troy E. Larson. Others attending included: Bruce E. Albright, BRRWD Administrator, Kathleen K. Fenger, Assistant Administrator, and Erik S. Jones, Engineer, Houston Engineering, Inc. (HEI); Johnathan Judd, Mayor, and Bob Zimmerman, Engineer, City of Moorhead; Joel Paulsen and Chuck Hendrickson, Moorhead City Council Members and Fargo-Moorhead Diversion Authority (FM DA); Kevin Campbell, Clay County Commissioner and FM DA; Stephen Larson, Clay County Administrator; Rodger Olson, Cass County Joint Water Resource District (CCJWRD) and FM DA; Gregg Thielman, Engineer, HEI; and landowners: Don Nelson, Mark Askegaard, Chuck Anderson, Michael Brandt, and Darin Brandt.

BRRWD President Leitch 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. President Leitch asked for comments or additions to the meeting agenda. BRRWD Administrator Bruce E. Albright had one permit issue to add regarding some work in Meadows Township, Wilkin County. With that addition, the agenda was adopted.

Secretary's Report. The Board reviewed draft minutes for the 1/14/19 annual Board meeting. Managers Affield and Van Amburg noted minor corrections. **Motion** by Manager Larson to approve the 1/14/19 minutes, subject to correction. **Seconded** by Manager Fjestad. **Approved.**

Treasurer's Report. The Board reviewed the BRRWD's financial status. Cash on hand is \$2,822,600.81. Total income since the 1/14/19 meeting was \$416,545.92. Albright reported that we received Clay County's 2nd half ditch/project payment (\$413,515.51). The County deducted the Project No. 56, Manston Slough bond payment from the check (\$188,764.45). We also received 2018 tax settlement payments from Becker County (\$5,972.71) and Wilkin County (\$12,440.34), a Buffer Aid Initiative payment (\$41,603.50) from Wilkin County, and the final grant payment for Project No. 49, Oakport Flood Mitigation (\$131,770.86) from the Minnesota Department of Natural Resources (DNR). Total 2018 income to date is \$416,770.92.

Treasurer Anderson, Albright, and Assistant Administrator Kathy Fenger met with a representative from Bremer Bank to review a financial proposal for our bank accounts. The Midwest Bank interest rate on our Money Market Savings account is 1.54%, and Bremer is paying 2.31%. Albright will contact Midwest Bank to discuss their rates and a possible BRRWD credit card. Albright sent e-mail messages to Clay and Becker Counties regarding the payment of their 2018 Buffer Initiative contributions.

Other Business brought before the Board included:

Permit No. 19-001, Tim Thompson/Tri-T Farms, Inc. Applicant proposes to install an approach with a culvert on grade along County Road (C.R.) No. 55 (150th AVE S) just east of C.R. No. 56 (160th ST S) to provide a second field access in the SW¼, Section 14, Barnesville Township, Clay County. Thompson submitted an access permit application to the Clay County Highway Department. They will determine the culvert size, elevation, and exact location, according to their access guidelines. Albright recommended

permit approval, subject to County approval to work within their road right-of-way (R/W) and their culvert installation recommendations.

Permit No. 19-002, City of Barnesville. Applicant proposes to provide roadways and utilities to service a 15 lot condo unit within the existing Barnesville Commercial Park. Albright explained that lots in the Commercial Park will be divided into smaller parcels to attract more interest from people who want smaller storage buildings. The City plans to provide sewer, water, and a street for the new lots. This development would not trigger the need for a second area stormwater pond at this point, but further development could prompt the construction of a second pond, which would drain into the existing stormwater pond. Albright recommended permit approval.

Motion by Anderson to approve Permit Nos. 19-001 and 19-002, subject to the referenced disclaimers and conditions. **Seconded** by Fjestad. **Approved.**

Permit No. 19-003, Metro Flood Diversion Authority. Albright explained that the City of Moorhead's Mayor and a few Council members are planning to attend tonight's meeting, but they are delayed because their Council meeting was at the same time as our meeting. The Board agreed to wait to discuss the Diversion permit application until after they arrive.

Drainage Complaint. Bob Westfall contacted Albright with a complaint about a shallow berm a neighbor constructed just east of 260th ST on a field ditch that drains across Section 24, Meadows Township, Wilkin County, near Westfall's farmstead several years ago. The office sent a letter to the neighbor last June regarding the dike, suggesting that the neighbors could work together to clean the ditch along the north side of 260th ST. Westfall reported that the work hasn't been done. Albright will follow up with the neighboring landowner.

Project No. 79, Wolverton Creek Restoration. Last week, Albright reviewed a purchase agreement and contract for deed for the Todd Blilie property in Section 10, Wolverton Township, Wilkin County. Corey Elmer, Vogel Law Firm, examined Blilie's abstract and found no problems with the title. Albright expects that the BRRWD will be able to close with Blilie to purchase his 19.2 acres in the next few weeks for the agreed upon price of \$150,000. When the BRRWD acquires the property, we will work with the Minnesota Board of Water and Soil Resources (BWSR) and the Wilkin Soil and Water Conservation District (SWCD) to enroll the 3 small fields and land along the Creek into the Conservation Reserve Enhancement Program (CREP)/Reinvest In Minnesota (RIM). Once that process is completed, the BRRWD will enter into a sale for the 2.2-acre parcel and a contract for deed for the 17-acre parcel with Kristi Bixby.

Albright noted that we are still waiting for one Phase 1 easement. Phase 2 easements have been mailed, and a few landowners have signed and returned their options. Jones explained that an owner on Phase 2 recently passed away, and the property is being divided among the family members, so a few exhibits will have to be revised to reflect the new ownership. The staff will follow up with the remaining Phase 2 landowners. Jones noted that HEI has also started work on the Phase 3 easements in Clay County. Most of the survey work has been completed, and the exhibits need to be created. Albright thought the Phase 2 bid opening could be scheduled sometime in March/April 2019.

Whiskey Creek Restoration. The Board discussed scheduling the Preliminary Resolution Hearing. Since a number of Managers are planning to be gone in February, the second February Board meeting has been cancelled. The Board authorized Albright to schedule the Preliminary Resolution Hearing sometime in early March.

Project No. 78, Clay/Wilkin Judicial Ditch (J.D.) No. 1-Improvement. At their 1/14/19 meeting, the Board approved the Final Order for Project No. 78, Clay/Wilkin J.D. No. 1-Partial Improvement, which started the 30-day appeal period. Jones is working on the project plans and specifications according to the

Final Order alternative to excavate on both sides of the ditch. He is planning a bid opening on 3/8/19, so that the Board can review the bid results and the Engineer's recommendations for awarding the contract at their 3/11/19 meeting.

Albright noted that Clint Crowe, Crowe Farm Properties Partnership, filed an appeal with District Court for the benefits on the SE¼, Section 13, Wolverton Township, Wilkin County, managed by Erik Skolness, Farmers National Company, and operated by Todd Blilie. A couple of years ago, the BRRWD authorized some culverts to be installed in 130th ST for Crowe to drain part of the property back into Wilkin County Ditch (C.D.) No. 5A for which it is assessed. The Viewers found \$200/acre drainage benefits on their quarter but given the fact that part of the water is drained to C.D. No. 5A, Albright suggested that the benefit rate could be adjusted down to \$120/acre on the S½SE¼. When the Viewers meet in early February, they will review Crowe's appeal and bring back their recommendations to the Board. If the Board agrees with the Viewers' changes, Albright would contact the Crowe family with our proposed benefit rate change and provide them with a form to withdraw their appeal, which they can sign and return to the office.

Stony Creek Restoration. The Board agreed to hold the Preliminary Resolution Hearing for Stony Creek the first week in March. Albright met last week to discuss easements with the two primary landowners, Phillip Rogers and Chuck Anderson. Rogers is considering a 1031 Exchange, depending on how quickly the Board can move forward with project development/easement payments. Staff will begin the easement option process, which the Board authorized last fall.

Albright reported that the DNR received a Lessard-Sams Outdoor Heritage Council (LSOHC) Grant in 2018, and we submitted an application for \$1.9 million to be used for the channel/stream restoration portion of the project. Because of the number of other funding applications, our grant amount could be reduced slightly to about \$1.5-\$1.6 million. BRRWD Lobbyist Joel Carlson sent information regarding potential 2019 Legislative bonding bill opportunities for the project. There is also a potential \$1.7 million available from the City of Fargo, associated with the FM DA's Phase 2 and 3 upstream retention funding, which the DA appropriated a few years ago to assist with the development of storage sites upstream of the FM area. Albright will also work with some of our local Legislators to put together a 2019 bill for possible Stony Creek bonding.

Later in the meeting, Van Amburg asked Jones how much of the project funding will come from CREP. Jones explained that we have been working with BWSR to draft a Memorandum of Understanding (MOU) for the use of CREP to acquire most of the property easements. Albright added that we should be able to use CREP to acquire all of the easements along the channel restoration alignment to install permanent grassed bufferstrips and any other project features related to habitat. The LSOHC grant will be used for channel restoration costs. Once the costs estimates are finalized, staff will work with the agencies on the remaining funding.

BRRWD Bylaws. Van Amburg noted possible revisions for the Bylaws. The Board discussed his proposed changes.

- Under Article V, add new Section 5, Contracting for Professional/Technical Services: BRRWD shall, at least every two years (each even year, i.e. 2020, 2022), solicit interest proposals for legal, professional, or technical consultant services before retaining the services of an attorney or consultant, or extending an annual services agreement.
- Under Article VII, amend Section 2: Advisory Committee member may not serve more than 15 consecutive years. At least five members of the Advisory Committee should be Watershed District residents without any direct connection to a unit of government.
- Under Article II, add a new Section 5, Position Objective: Protects and enhances the resources of the watershed by providing guidance for overall planning, direction, coordination and operation in

accordance with the mission of the watershed district. Receives and considers public input and makes appropriate decisions utilizing scientific principles, cost benefits, and protection of natural resources, public health, safety, and welfare. Exercises the authorities bestowed to a watershed district through Minnesota Statutes 103B, 103D, and 103E. Fosters working relationships with partners and stakeholders to implement watershed district comprehensive plan goals and objectives. Serve the watershed district as a whole rather than any special interest group or constituency. Represents a sector, location, or interest which is needed on the Board but will not act only on behalf of that interest. Places purposes of the watershed district ahead of his or her own needs and behaviors.

- Add Article XI: Respectful Workplace Policy, Section 1, Objective: The District seeks to build and maintain a workplace that is respectful and professional toward all employees, volunteers, contractors, and other persons visiting the workplace and public service environment. The District is committed to providing a positive environment in which all staff, members of the public, and others doing business with the District, are treated with professionalism and respect.

It is the District's intent to provide a work environment free of verbal or physical harassment based on race, color, creed, religion, national origin, sex, sexual orientation, disability, age, marital status, status with regard to public assistance, veteran status, or any belief or attitude unrelated to job performance.

President Leitch suggested that the Board review these proposed changes and act on them at the next meeting. **Motion** by Fjestad to table the Bylaw discussion until all the Board members can review a written copy with the changes before the next meeting. **Seconded** by Van Amburg. Van Amburg encouraged the Managers to contact him with suggestions. **Approved.** Van Amburg noted that he has a copy of an analysis of the Minnesota Open Meeting Law provisions that he will also provide to the Managers for their review.

2019 Engineering Contract. Manager Anderson reported that Fjestad, Leitch, and he met to review the HEI proposed 2019 contract for engineering services and Barnesville office staff. They decided to recommend to the Board that they accept HEI's 2019 contract as presented. **Motion** by Anderson to accept HEI's 2019 contract. **Seconded** by Fjestad. **Approved.**

The following bills were presented for approval:

| Accounts Payable | Description | Account | Amount |
|-------------------------|----------------------------------|-----------------|---------------------|
| Bruce E. Albright | RRBC Conference-Reservations (2) | Admin. | \$ 411.04 |
| Bruce E. Albright | RRBC Meals | Admin. | \$ 21.00 |
| Catherine Affield | #18-37, 11/01/18-12/31/18 | Varies | \$ 360.44 |
| City of Barnesville | #10027214, 1/25/19 Billing | Admin. | \$ 1,050.57 |
| Clay County Union | Public Open House Notice | 1W1P | \$ 160.00 |
| IWI | 2018 WQ Monitoring | M.S.A. 103D.905 | \$ 20,517.21 |
| Jill Wilkey | 1W1P Advisory Committee Mileage | 1W1P | \$ 137.33 |
| Jim Grier | 1W1P Advisory Committee Mileage | 1W1P | \$ 136.96 |
| Joel Carlson, Inc. | February Lobbyist Fees | Admin. | \$ 850.00 |
| Marco | #INV5958459, 3/22/19-3/21/20 | Admin. | \$ 2,780.42 |
| NetWork Center Comm. | #167645, Update software | Admin. | \$ 242.50 |
| NetWork Center Comm. | #167700, reset camera | Admin. | \$ 85.00 |
| Pitney Bowes | 2/20-5/19/19 Postage Meter Rent | Admin. | \$ 129.00 |
| The Hawley Herald, Inc. | Public Open House Notice | 1W1P | \$ 240.00 |
| | | | \$ 27,121.47 |

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

At 7:49 PM, the Board recessed the meeting to wait for the City of Moorhead officials to arrive.

At 8:16 PM, President Leitch reconvened the meeting. Kevin Campbell, Clay County Commissioner, addressed the Board regarding the DA's recent Diversion permit application (Permit No. 19-003) and to invite two BRRWD representatives to serve on the DA's Minnesota land acquisition oversight committee and the Moorhead-Clay County Joint Powers Agreement (MCCJPA). He also urged the Board to review the DA's application and cover letter and to work with the DA to discuss any questions they may have.

Bob Zimmerman, Engineer, City of Moorhead, presented information regarding the DA's permit application. He encouraged the Board to review Attachment 7, submitted as part of the DNR's permit application, which deals with the acquisition of property rights process and their mitigation plan, including organic farms and cemeteries. There is also an outreach plan to begin contacting impacted landowners involved with the diversion channel, the dam footprint, and the upstream properties. The DA plans to begin work with the Federal Emergency Management Agency (FEMA) to obtain a Conditional Letter of Map Revision (CLOMR), which will finalize the 100-year floodplain impacts and could change the easement acquisition for some properties. He noted that he and the other DA engineers will be attending the next few BRRWD meetings to answer questions or discuss specific topics regarding their permit application.

Anderson commented that the 60-day permit processing rule and the one-year term limit for BRRWD permits will probably be suspended because of the complexity of the application and size of the proposed project. Leitch noted that the BRRWD Rules do state that "permits are good for one year, unless otherwise specified."

Jones asked the Board if they would like more information about any specific aspects of the design. Anderson asked about impacts to Wolverton Creek and Clay C.R. No. 50 on the Clay/Wilkin County line. Zimmerman said that the DA's preference is that the road will be the tie-back levee, but the Army Corps of Engineers (COE) requires that the County have the property rights, which they currently do not have, but can acquire if necessary. The DA will need to get a COE decision on this issue.

Zimmerman noted that some of the 54 conditions that the DNR placed on the Diversion project permit are just typical language that can be found in all DNR permits for dams, and some of the conditions actually provide direction for moving forward with project design.

Albright advised the City and County officials that the BRRWD's request for a hearing to contest the DNR permit was filed Friday afternoon. He noted that he copied some of them on the e-mail message. Albright discussed his review of the DNR permit and conditions, noting that the language is sometimes confusing. Zimmerman agreed that it has been a challenge for the engineers to determine specifically what the conditions/requirements are. They are attempting to plot out the conditions in map form, so they can see what and where mitigation needs to be done.

Albright mentioned that the BRRWD also has concerns about impacts to the Cities of Georgetown and Wolverton. Zimmerman commented that the DA wants to work with the BRRWD and the City of Wolverton to address possible mitigation efforts for the City. In addition, the DA is interested in working with the BRRWD on Otter Tail River mitigation, which is a condition of the DNR permit by supporting the BRRWD's current Otter Tail River channel restoration to fulfill the DNR permit requirements. Campbell commented that he, Albright, and Minnesota Department of Transportation (MNDOT) representatives met with a City of Georgetown council member to discuss certification of their levee project last year. At this point, the levee has openings at several road crossings. Trunk Highway (T.H.) No. 75 would have to be raised on both sides of town to contain the flood waters, which would be an expensive project for Georgetown. Campbell has encouraged the DA on several occasions that they will need to consider assisting Georgetown with this issue since that is the end point of the Diversion project. He added that if the BRRWD includes the Georgetown levee completion in the permit requirements, the DA is prepared to address this issue.

Campbell repeated his invitation for the Board to appoint members to serve on the DA's the MCCJPA. The CCJWRD handles all of the property purchasing for the DA in North Dakota. Campbell explained the acquisition process. In North Dakota, the CCJWRD works with the landowners to obtain appraisals and negotiate purchase agreements, which they bring to the DA for approval. The MCCJPA would handle land acquisition oversight for Minnesota properties to make sure the landowners are treated fairly. Campbell stressed that the DA's goal is to work with the landowners to reach mutual acquisition agreements and to move forward in a timely fashion with landowners who are concerned about the status of their property/acquisition. The MCCJPA is made up of three City Council members and two County Commissioners, who are also on the DA, and they would like to have one or two more members from the BRRWD. The DA is in the process of drafting a JPA for the Committee, and they want the BRRWD to participate in the development of the JPA. The BRRWD must decide if we wish to be a member of the JPA or to just have voting privileges on the Committee. In response to Leitch's question regarding the function of the Committee, Campbell explained that the Committee would act as an oversight group regarding the land acquisition process.

Moorhead Mayor Johnathan Judd addressed the Board about the importance of the BRRWD participation on the MCCJPA to make the land acquisition process fair, transparent, and equitable.

Leitch asked about the time commitment and time line in regard to the Committee membership. Campbell thought that the time commitment will depend on how many landowners have appraisal/acquisition concerns that will move up to the MCCJPA level. The Committee would be convened as necessary.

There was a discussion regarding the Committee membership. Campbell explained that the Board could appoint two members, and then those two members could participate in the creation of a JPA or just have voting privileges on the Committee. Campbell explained that the DA would like the BRRWD to make the decision about participating in the Committee as soon as possible, so our members can still have input. The other members are already reviewing draft copies of the JPA.

Albright gave a brief history of the BRRWD's involvement the DA's JPA, which we decided not to rejoin in 2016. The group discussed the land acquisition process, including mandatory buyouts, future land use, and optional ringdikes. Campbell stressed that the MCCJPA's purview is only to arbitrate the price paid for a flowage easement or buyout. Rodger Olson clarified that landowners involved with land acquisition or easements are protected by Federal Law, and the members of the MCCJPA must observe neutrality/impartiality in the evaluation process. They can't allow friendships or neighborhood connections to influence their judgements. The acquisition process involves land agents, appraisers, and finally the MCCJPA makes a determination about the appraised land value. Landowners have the option to seek a second appraisal if they are dissatisfied with the first appraisal.

Anderson asked if the MCCJPA will have the right of eminent domain. Campbell explained that the City of Moorhead would have jurisdiction regarding the use of eminent domain for land acquisition within City limits, and Clay County would have the right of eminent domain for property outside the City limits. He noted that the BRRWD could be added as a third party, but he assumed that the BRRWD wouldn't be interested in exercising their right of eminent domain. Leitch agreed that the BRRWD would not. Campbell emphasized that the DA hopes that the land acquisition process they created will make it possible to avoid the use of eminent domain in most cases. He noted that the BRRWD should consider appointing members to the Committee if they want to be sure their constituents are treated fairly. Campbell stressed that the DA is anxious to move forward with the land acquisition process, so the BRRWD should make a decision as soon as possible. Leitch assured Campbell that the Board will make their decision by their next meeting in February.

Leitch asked if Jones could prepare a synopsis of the DA's permit application to make it more accessible to the Managers. Jones suggested that the Board let him know if they have any specific questions/concerns to

narrow down the scope of his summary. He acknowledged that there are details/issues that haven't yet been addressed because the project is still evolving.

Campbell thanked the Board for their time. He reiterated that Zimmerman and the other project engineers will attend the next several Board meetings and will be available anytime to answer questions to keep the process moving forward.

Next Meeting. The next regular BRRWD meeting will be held on Monday, February 11, 2019, at 7:00 PM in our Barnesville office. The second monthly meeting (February 25) will not be held because several Board members plan to be out of the area on vacation.

Adjournment. **Motion** by Larson to adjourn the meeting. **Seconded** by Affield. **Approved.** President Leitch adjourned the meeting at 9:10 PM.

Respectfully submitted,

John E. Hanson, Secretary