

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

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## MINUTES FOR MANAGERS' MEETING

July 8, 2019

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a regular meeting on Monday, July 8, 2019, at 7:00 PM in the Barnesville office. BRRWD Managers present were Jay A. Leitch, Mark T. Anderson, John E. Hanson, Peter V. Fjestad, Troy E. Larson, and Gerald L. Van Amburg. BRRWD staff attending included: Kathleen K. Fenger, Assistant Administrator, and Erik S. Jones, Engineer, Houston Engineering, Inc. (HEI), and Brent Edison, Attorney, Vogel Law Firm; Lyle Hovland, Wilkin County Commissioner/Richland Wilkin Joint Powers Authority (JPA); Paul Barthel, Jacobs Group, Fargo-Moorhead Diversion Authority (FM DA) Project Management Consultants (PMC); Kevin Campbell, Clay County Commissioner/FM DA; Tim Fox, Attorney (retired); Katie Bertsch, Associate Attorney, Ohnstad Twitchell, and others: Jay Nord, Don Nelson, and Chuck Anderson

BRRWD President Leitch called the meeting to order at 7:00 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. Erik Jones, BRRWD Engineer, noted three items to add. With those additions, the agenda was adopted.

**Secretary's Report.** The Board reviewed draft minutes for the 6/24/19 regular meeting, the 6/25/19 Stony Creek Preliminary Resolution Hearing, the 6/28/19 special meeting, and the 7/2/19 Rules Hearing. **Motion** by Manager Anderson to approve the minutes. **Seconded** by Manager Fjestad. **Approved.**

**Treasurer's Report.** The Board reviewed the BRRWD's monthly financial statements, including the project account balance sheet, administrative disbursements, and summary of income. Cash on hand is \$2,969,641.42. Administrative disbursements this month equal \$22,666.29, and for the year, \$170,233.76. Total income this year is \$2,330,819.82. Income received since the 6/10/19 meeting totaled \$606,072.53, including \$105,582.34 from Becker County and \$490,244.14 from Clay County (property) for 2019 1<sup>st</sup> half ditch/property tax proceeds; \$4,185.00 from Audubon Township for 50% of the cost of culvert replacements on Project No. 23, Becker County Ditch (C.D.) No. 15, \$4,660.05 from Midwest Bank June interest, and \$225 from HEI for their monthly office rent. **Motion** by Anderson to approve the Treasurer's Report. **Seconded** by Fjestad. **Approved.**

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

**DNR Contested Case and Permit No. 19-003.** Brent Edison, Attorney, Vogel Law Firm, gave the Board a brief update on the status of the contested case and the DA permit denial. At the Board's special meeting on 6/28/19 at the Fargo Vogel Law office, the Managers authorized Edison to contact the DA regarding potential further discussions concerning the permit denial. Edison noted that to date, he was not aware that the DA had filed an appeal of the Board's action to deny their permit application. The Board also considered additional conditions that might form the basis for discussions to avoid an appeal, which has a 30-day deadline.

Regarding the Minnesota Department of Natural Resources (DNR) contested case, Edison explained that the Administrative Law Judge assigned to the current contested case for the DA Diversion's Plan B is the same judge who presided over the contested case for Plan A, so she will be familiar with the details of this case. The pre-hearing conference was held 7/2/19 where she gave the Attorneys involved with the case directions

for moving forward. The contested case hearing is scheduled for June 8-June 19, 2020. The City of Horace is considering joining the contested case proceeding, which has to occur by the Court deadline of August 30, 2019, for petitions to intervene in the case. A pre-trial phone conference is scheduled for 11/04/19, to review the discovery process. Edison discussed several other deadlines set by the Court. He explained that the BRRWD's next step will be to wait for Horace to make a decision about joining the contested case.

There was a brief discussion about the status of the Plan A contested case. Currently, it is generally understood that the Plan A contested case could be dismissed, but the Federal case continues. Attorney Tim Fox explained that the reason the Richland Wilkin JPA opposes dismissing the Federal case is that the Federal Court is the only entity that has the requirement for federal/state/local permit approval prior to the Diversion project moving forward. If it weren't for the ongoing Federal case, the DA would be able to move forward with their project without the BRRWD's approved permit. Fox added that the JPA will share the discovery information they receive from the DA with the BRRWD. Attorney Edison noted that the discovery deadline is March 9, 2020.

**Permit No. 19-067, Adam Schenck/Buffalo River Properties.** Applicant proposes to install an approach with an 18" dia. culvert with a 30' drivable top within the City of Hawley in Section 11, Hawley Township, Clay County. The culvert size matches adjacent structures. Jones field reviewed the site and recommended permit approval, subject to City approval to work in their street right-of-way (R/W).

**Permit No. 19-068, Hawley Township.** Applicant proposes to install an 18" dia. culvert across 220<sup>th</sup> ST S approximately 0.5 miles south of 40<sup>th</sup> AVE S in Section 27, Hawley Township, Clay County. This road was reopened a few years ago after having been closed for several years. The existing culvert is either collapsed or buried. Water overtops the road on the west, and the road is deteriorating at this location. The culvert will equalize the water elevations on both sides of the road and route water east to an existing wetland. Jones recommended permit approval.

**Permit No. 19-069, Troy Larson.** Applicant proposes to install a new approach off 240<sup>th</sup> ST with an 18" dia. culvert in the NE<sup>1</sup>/<sub>4</sub>, Section 14, Akron Township, Wilkin County. The Township has approved the project. Jones recommended permit approval.

**Motion** by Anderson to approve Permit Nos. 19-067 through 19-069, subject to the referenced disclaimers and conditions. **Seconded** by Fjestad. **Approved.**

**Project No. 23, Becker C.D. No. 15-Branch 7 Repairs.** Jones discussed his recommendations for a 220<sup>th</sup> ST structure replacement on Branch 7 in Audubon Township, Becker County. In response to a question from Manager Hanson at the last meeting regarding a potential cost share program to help pay for the culverts, Jones explained that the cost to prepare an application could potentially double the cost of the crossing. Jones recommended that the project should be done as a ditch system expense with a possible 50/50 split with the Township. The estimated cost is \$12,000 to \$15,000. **Motion** by Fjestad to approve the proposed repair for Branch 7 and work with Audubon Township on a cost share agreement. **Seconded** by Hanson. **Approved.**

**Project No. 27, C.D. No. 55.** Jones reported that Wade S. Opsahl, HEI Technician, still has one more landowner to contact before he can finalize the repair recommendations.

**Project No. 79, Wolverton Creek Restoration.** Jones reported that the survey has been completed for the Gruenberg property drainage concerns in the NW<sup>1</sup>/<sub>4</sub>, Section 34, Wolverton Township, Wilkin County. There are some Conservation Reserve Program (CRP) strips along the waterway branches in Section 27, Wolverton Township, that have between 0.5' (west) to 1.0' (east) of sediment. The area is designated as wetlands on the 1984 National Wetland Inventory. Jones discussed the issue with Don Bajumpaa, District Manager, Wilkin Soil and Water Conservation District (SWCD), who advised that the waterways could be cleaned, but a larger project to excavate more material would invoke wetland mitigation requirements. Jones commented that we

could do some limited repairs, but we wouldn't be able to do a project to excavate down to the original culvert grade through the highway. He suggested that the staff could schedule a meeting with the landowners to discuss the survey results and a possible limited cleanout. Jay Nord asked about the condition of the channel north of the Gruenberg property. Jones observed that the gradeline in this waterway is flat north of County Road (C.R.) No. 30, which limits the effectiveness of any potential cleanout and would require regular continual maintenance.

**One Watershed, One Plan (1W1P).** The Planning Team is meeting on July 16, 2019, from 9:00-11:00 AM in the BRRWD office. The Policy Committee is meeting again on July 24, 2019, from 10:30 AM-Noon. The next Advisory Committee meeting is scheduled for August 30, 2019.

**2019 Annual Report.** Fenger reported that staff is working on the Report. Leitch has submitted his President's letter, and as soon as the Board approves the 2018 Audit, it will also be incorporated into the Report.

**Stony Creek Restoration.** The Preliminary Resolution hearing was held on 6/25/19. Staff prepared a Final Order to approve the project and to identify it as Project No. 80, Stony Creek Water Resource Management Project. Jones explained that a final hearing to discuss financing and landowner benefits must be held before the project can move forward to construction. Leitch commented that he wants to work with HEI to implement value engineering in the design process. Jones agreed that there is still some flexibility in the design. The Board discussed continuing with project development and potential funding sources. **Motion** by Van Amburg to approve the Final Resolution Order to move forward with the Stony Creek Project. **Seconded** by Hanson. **Approved.**

**Clean Water Funds (CWF) Applications.** Jones has been working with the Wilkin and Clay SWCDs and Clay County Planning and Zoning to partner with the BRRWD to submit applications for potential CWF project funding. Potential Wilkin County projects include, a retrofit of C.D. No. 27, which is a tributary to the Otter Tail River, and a possible match for federal funding for Whiskey Creek channel work. Both the Wilkin and Clay SWCDs could be involved with side inlet/bank stabilization work on the Buffalo River (Clay County) and the South Branch of the Buffalo River (Wilkin County). The Board will have a chance to review and approve the draft applications.

**Ditch Spraying.** LM Road Services has been hired to spray for cattails and leafy spurge on the ditch systems under BRRWD jurisdiction. Larson Helicopters will spray areas that LM Services can't access.

**Wilkin-Otter Tail Judicial Ditch (J.D.) No. 2.** Jones reported on the construction status. The wet weather has slowed progress. The contractor has stripped back the topsoil along the last mile of the channel from the county road to the Otter Tail River and is expecting to start excavation as soon as possible.

**BRRWD Rules.** The Board discussed the public hearing held on 7/2/19 and the final Rules adoption. They reviewed the draft Order. Leitch noted that we incorporated the comments we received. Van Amburg noted that changes, such as typographical errors, could be corrected. **Motion** by Van Amburg to approve the Order to adopt the amended 2019 Rules, subject to potential typographical corrections. **Seconded** by Hanson. **Approved.**

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

Accounts Payable	Description	Account	Amount
American Enterprises, Inc.	#1860, Mowing Dike	Pj. 49, Oakport	\$ 6,270.00
AmeriPride	#160523830, June Rug Billing	Admin.	\$ 81.22
Cardmember Service	Office Supplies/Summer Tour Reg. (8)	Admin.	\$ 1,974.24
Chris Hoppe Lawn Care, LLC	May Mowing	Admin.	\$ 500.00
City of Barnesville	#10034050, 06/25/19 Utilities	Admin.	\$ 658.41

Fuchs Sanitation	#33015 June Garbage Service	Admin.	\$ 51.48
Gerald L. Van Amburg	Voucher #19-21, 05/01/19-06/30/19	Varies	\$ 969.19
HEI	June Billing	Varies-See Attached	\$ 125,834.71
Jay A. Leitch	Voucher #19-20, 05/01/19-06/30/19	Varies	\$ 1,729.50
Jeffery & Joyce Wold	Easement Option payment	Pj. 79, Wolverton Crk.	\$ 317.75
John Hanson	Voucher #19-18, 05/01/19-06/30/19	Varies	\$ 877.16
Judith A. Ness	Easement Option payment	Pj. 79, Wolverton Crk.	\$ 100.00
Lake Region Electric Coop.	06/01/19-07/01/19 Service	Pj. 79, Wolverton Crk.	\$ 27.81
Mark T. Anderson	Voucher #19-16, 05/01/19-06/30/19	Varies	\$ 968.59
MPS	05/21/19-06/20/19 Service, FL #21	Pj. 49, Oakport	\$ 31.36
Northern States Excavating, Inc.	Repairs	Varies	\$ 4,980.50
Pelican Rapids Press	Preliminary Hearing Notice (2)	Stony Creek	\$ 266.38
Peter V. Fjestad	Voucher #19-17, 05/01/19-06/30/19	Varies	\$ 1,067.30
Purchase Power	June Postage	Admin.	\$ 402.50
Quill Corporation	#8414304, Office Supplies	Admin.	\$ 92.97
RMB Environmental Labs	#451513, WQ Analysis	M.S.A. 103D.905, Sub. 3	\$ 522.00
RMB Environmental Labs	#452186, WQ Analysis	M.S.A. 103D.905, Sub. 3	\$ 26.00
RMB Environmental Labs	#450736, WQ Analysis	M.S.A. 103D.905, Sub. 3	\$ 474.00
RMB Environmental Labs	#451548, WQ Analysis	M.S.A. 103D.905, Sub. 3	\$ 117.00
RRVCPA	06/01/19-07/01/19 Service	Pj. 49, Oakport	\$ 78.83
Scott Shellito	Easement Option payment	Pj. 79, Wolverton Crk.	\$ 100.00
Sellin Brothers, Inc.	Pay Request No. 6	Pj. 79, Wolverton Crk.	\$ 378,201.93
US Treasury	Form 941 QTR 2	Admin.	\$ 906.53
Wilkin Co. Hwy Dept.	Repairs	Varies	\$ 1,969.50
WREC	05/18/19-06/18/19 Service (2)	Pj. 46, Turtle Lake	\$ 507.33
Xcel Energy	#643530777,05/27-6/25/19 Gas Service	Admin.	\$ 62.99
			<b>\$ 530,167.18</b>

Jones noted that Pay Request No. 6 for Sellin Brothers, Inc. in the amount of \$378,201.93 for Project No. 79, Wolverton Creek Restoration, is listed on tonight's billing summary. **Motion** by Anderson to approve payment of the bills. **Seconded** by Fjestad. **Approved.**

**Manager Per Diem.** The State Legislature approved a Watershed District Manager per diem rate increase from \$75/day to \$125/day during their 2019 Session. The BRRWD will have to amend their Bylaws to reflect that rate change. Leitch noted that the Per Diem rates are covered under Compensation in the Bylaws. The Board discussed the rate increase. **Motion** by Anderson to amend Article III, Section 7, Compensation, to reflect the rate of compensation increase for the Managers from \$75/day to \$125/day. **Seconded** by Larson. Attorney Edison pointed out that the Board needed to allow for a 30-day notice period, and he advised that the agenda item regarding the Bylaws change would constitute legal notice. After discussion, Anderson moved to table his original motion to increase the per diem rate until the August 12, 2019, Board meeting. **Tabled.**

**Next Meeting Agenda.** Leitch asked if anyone had an item they would like added to the next meeting agenda. There were no additions.

**Next Meeting.** The next regular BRRWD meeting will be held on Monday, July 22, 2019, at 7:00 PM in our Barnesville office.

**Adjournment.** President Leitch adjourned the meeting at 8:15 PM.

Respectfully submitted,

John E. Hanson, Secretary