

BUFFALO-RED RIVER WATERSHED DISTRICT

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MINUTES FOR MANAGERS' MEETING December 9, 2019

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held their regular meeting on Monday, December 9, 2019, at 7:00 PM in the Barnesville office. BRRWD Managers present were Jay A. Leitch, Peter V. Fjestad, John E. Hanson, Mark T. Anderson, Troy E. Larson, and Catherine L. Affield. BRRWD staff attending included: Kathleen K. Fenger, Assistant Administrator, and Erik S. Jones, Engineer, Houston Engineering, Inc. (HEI). Others attending included Joel Paulsen, Executive Director, Fargo-Moorhead Diversion Authority (FM DA); and landowner Don Nelson.

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. Leitch asked for comments or additions to the meeting agenda. Fjestad thought the Board should discuss BRRWD Administrator Bruce E. Albright's retirement plans. Fenger proposed adding a Board review of quotes for a log jam removal project, and Jones wanted to add an update for the Upper South Branch of the Buffalo River project. **Motion** by Anderson to approve the agenda with the three additions. **Seconded** by Affield. **Approved.**

Secretary's Report. The Board reviewed draft minutes for the 11/25/19 regular meeting and the 7/10/18 Lower Otter Tail River (LOTR) informational meeting. Jones and Leitch had corrections for the 11/25/19 minutes. **Motion** by Anderson to approve both sets of minutes, subject to correction. **Seconded** by 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 \$2,940,400.33. Administrative disbursements this month equal \$30,956.18, and for the year, total \$318,431.85. Total income this year is \$5,435,902.91. Income received since the 11/12/19 meeting totaled \$789,245.01, including property/ditch tax proceeds from Becker County (\$87,641.43), Otter Tail County (\$16,641.88), and Wilkin County (\$268,573.76), and property taxes only from Clay County (\$403,685.36). Other income came from the Minnesota Pollution Control Agency (MPCA) Upper Buffalo River 319 Grant (\$4,926) and \$2,742.90 from Janice Getz for the purchase of wetland mitigation credits from the BRRWD. The remainder of the income came from Midwest Bank for November interest (\$4,808.68) and HEI for their monthly office rent (\$225). **Motion** by Fjestad to approve the Treasurer's Report. **Seconded** by Affield. **Approved.**

Citizens To Be Heard.

Don Nelson discussed the Minnesota-Clay County Joint Powers Agreement (MCCJPA) Land Committee meeting scheduled for 12/11/19. He noted that the landowners, who received legal eminent domain notices from the DA, questioned the choice of holding the meeting in the Law Enforcement Center in Moorhead, noting that they could have chosen a more neutral non-threatening venue. He also pointed out that none of the landowners have received a meeting notice. Nelson explained that the C-W Valley Cooperative Elevator Board expected to meet with the DA at their meeting last week, but no one from the DA showed up or contacted the Board to say they weren't able to attend.

Other Business brought before the Board included:**FM DA Revised Project.**

Joel Paulsen, DA Executive Director, introduced himself to the Board. He discussed the challenges he faces in mending relations with the landowners upstream of the Diversion project area. He hopes to be able to open the lines of communication with impacted landowners so that cooperation, compromise, and solutions to their project concerns can be achieved. Paulsen will be available to attend Board meetings to answer questions, noting that because we are in litigation with the DA, there might be some topics he can't discuss. Paulsen explained that because of a scheduling mix-up, he missed the CW Valley meeting, but he has rescheduled to meet with them this week. He plans to hire public relations staff to allow for better communication with local entities regarding the Diversion project. The group discussed the DA's lack of public credibility. Paulsen acknowledged that it will be difficult for the DA to win back the public's trust.

Leitch asked Paulsen to explain the reasons for hiring staff and not using consultants. Paulsen discussed the staff positions he plans to fill. He explained that cost for public vs. consultant staff has a potential savings of about one-third. He said that in the consultant industry, a baseline is about a three-time multiplier above the labor rate, which accounts for overhead. Leitch asked if the DA was subject to the Federal Acquisition Regulations (FAR), which in part requires that private consultants may not serve in public positions where the public believes they are public employees. Paulsen said that even though the DA is not regulated by FAR, he plans to implement FAR protocols to provide transparency. Leitch pointed out that in his opinion the BRRWD has violated FAR guidelines by having HEI employees serving in a capacity where the public thinks they are public employees.

Leitch reported that he has been working with BRRWD Attorney Joel Fremstad, Fremstad Law Firm, on the DA's appeal of the BRRWD's permit denial. A scheduling hearing has been set for 12/17/19.

Leitch continues to work with Attorney Brent Edison, Vogel Law Firm, on identifying expert witness testimony regarding the Minnesota Department of Natural Resources (DNR) Permit Contested Case. The hearing has been scheduled to start on June 8, 2020.

Leitch noted his disappointment that the public could be unaware of the upcoming 12/11/19 landowner informational meeting the MCCJPA has scheduled at the Law Enforcement Center in Moorhead from 6:00 to 8:00 PM to discuss the environmental investigation easements. Paulsen acknowledged that if there are questions about the meeting, it should be delayed. In response to Nelson's concerns about the meeting venue, the MCCJPA thought that the Law Enforcement Center would be a centralized location for all the affected landowners. Paulsen explained that the meeting is only for those landowners who will be impacted by the potential eminent domain proceedings associated with the soil boring and monitoring easements. The DA has agreed to pay \$250/soil boring, plus any crop or property damages that occurs during the sampling/testing.

Don Nelson pointed out that neither of the letters the MCCJPA sent to the landowners mentioned the proposed 12/11/19 meeting. Paulsen will check the letters to see if the meeting notice was omitted and contact Leitch. He thanked the Board for the opportunity to meet with them and offered to attend future meetings if the Board had further questions.

Project No 17, Hamden Slough/Project No. 23, Becker County Ditch (C.D.) No. 15. Jones gave a brief history of the Hamden Slough Refuge project, which included the "Big Five" wetland complex. The original complex culverts/gates are deteriorating and will be replaced with modified structures. The United States Fish and Wildlife Service (USFWS) also plans to raise the Homstad wetland 1' above the "as-built" elevation. Because the structures are on one of the C.D. No. 15 branches, the ditch system must receive a petition to do

the project. This process requires that a Board appointed engineer review the plans. **Motion** by Anderson to appoint HEI as project engineer for the USFWS wetland modification. **Seconded** by Hanson. **Approved.**

Project No. 46, Turtle Lake Outlet. Jones submitted a quote of \$3,700 for the replacement of one of the syphon system's vacuum pumps and various fittings for the Turtle Lake outlet project. Wade S. Opsahl, Technician, HEI, will install the pump. **Motion** by Fjestad to authorize the purchase of the referenced pump and fittings. **Seconded** by Larson. **Approved.**

Wilkin/Otter Tail Judicial Ditch (J.D.) No. 2. Fenger reported that there has been some email correspondence between Otter Tail and Wilkin Counties regarding the Oscar Lake outlet. Staff and Manager Fjestad will attend a field review/meeting that has been tentatively scheduled for 12/19/19. Fjestad explained the concerns about the elevation of the lake at the outlet and a potential blockage. Wilkin County would like to have the lake outlet closed because of a concern about continual water flowing down J.D. No. 2. There also were breakouts from J.D. No. 2 into Wilkin C.D. No. 7 last spring. Potential ice build-up next spring in J.D. No. 2 could make downstream flooding worse on C.D. No. 7. The Board had a brief discussion regarding the issue.

Log Jam Removal. In August, a landowner reported a log jam on the Buffalo River in Glyndon Township on a bridge along 12th AVE S. Opsahl received a quote from William Nichol Excavating for \$3,713 to remove and burn the log jam. He also received a quote from Mike Staber, American Enterprises for \$8,500. **Motion** by Anderson to hire William Nichol Excavating for the referenced work. **Seconded** by Hanson. **Approved.**

Upper South Branch of the Buffalo River. Jones reported on the negotiations with the Rogelstad family regarding an easement on their property in Section 10, Manston Township, Wilkin County, for the potential restoration of an upstream portion of the South Branch channel east of Trunk Highway (T.H.) No. 9. The Minnesota Prairie Chicken Society was interested in purchasing the Rogelstad land, but the family decided they didn't want to sell. Jones suggested that the BRRWD will attempt to work with the Rogelstads on a potential project easement limited to just the channel area on their property. They have a total of 320 acres in Section 10 and all the acres eligible for Conservation Reserve Program (CRP) have been enrolled. Jones explained that the land within the channel footprint is not eligible for CRP, so if we could acquire an easement for that area, it might be possible to move forward with the channel restoration. Because the channel area has never been cropped, the land would not be eligible for Conservation Reserve Enhancement Program (CREP). Jones will try to arrange a meeting with the Rogelstad family during the Holidays to discuss an easement proposal.

The following bills were presented for approval:

Accounts Payable	Description	Account	Amount
American Enterprises, Inc.	#1904, 3rd Mowing	Pj. 49, Oakport	\$ 4,620.00
AmeriPride	November Rug Billing	Admin.	\$ 87.72
Barnesville Record-Review	RFP Notice	Admin.	\$ 75.00
Beau Lofgren	Hawley River Watch Meals (3)	M.S.A 103D.905, Sub. 3	\$ 278.48
Cardmember Service	MAWA (2)/MAWD (3) Reg. & Checks	Admin.	\$ 1,561.03
Catherine L. Affield	Voucher #19-29, 09/01/19-10/31/19	Admin.	\$ 568.47
City of Barnesville	#10040992, 11/25/19 Phone/Utilities	Admin.	\$ 871.86
City of Dilworth	#50-2019, Weed Maintenance & Mowing	Clay C.D. No. 50	\$ 7,850.00
Clay County Union	RFP Notice (2)	Admin.	\$ 120.00
Dennis Drewes, Inc.	Pay Request No. 5	Pj. 78, Clay-Wilkin J. D. No. 1	\$ 134,386.57
Forum Communications	#C-04005930, RFP Notice-DL Trib. (2)	Admin.	\$ 130.40
Forum Communications	#CL01759347, RFP Notice	Admin.	\$ 23.36
HEI	December Billing	Varies (see attached)	\$ 125,411.14
IWI	2019 WQ Monitoring	M.S.A 103D.905, Sub. 3	\$ 18,276.53
JB Construction Services	November Snow Removal	Admin.	\$ 180.00
MN BWSR	RIM Income Contract	Pj. 79, Wolverton Crk.	\$ 52,600.00

MPS	10/18/19-11/20/19 Service, FL #21	Pj. 49, Oakport	\$ 31.32
New Century Press	#300318280, Request for Proposals	Admin.	\$ 96.00
Northern States Excavating	Repairs & Beaver Control	Varies	\$ 11,835.00
Olson Construction, Inc.	Repairs	Varies	\$ 5,776.00
Pelican Rapids Press	RFP Notice (2)	Admin.	\$ 355.16
Premium Waters	November billing	Admin.	\$ 58.79
RRVCPA	11/01/19-12/01/19 Service	Pj. 49, Oakport	\$ 78.00
Scott Shellito	Permanent Easement Payment	Pj. 79, Wolverton Crk.	\$ 855.09
The Hawley Herald	RFP Notice (2)	Admin.	\$ 120.00
TrueNorth Steel	#FP0000016360, Culverts	Clay C.D. No. 21	\$ 358.08
US Bank	11/27/19-12/27/19 Copier Lease	Admin.	\$ 274.65
Wahpeton Daily News	RFP Notice (2)	Admin.	\$ 130.20
Wilkin County	Blilie 2019 Real Estate Taxes (2nd 1/2)	Pj. 79, Wolverton Crk.	\$ 185.76
Wm. Nichol Excavating	#312, Repairs-Baumgartner outlet	Pj. 21, Wilkin C.D. No. 13-Lat.	\$ 3,851.00
WREC	10/18/19-11/18/19 Service (2)	Pj. 46, Turtle Lake	\$ 414.30
Xcel Energy	10/23/19-11/21/19 Gas Service	Admin.	\$ 62.99
			\$ 371,522.90

Motion by Fjestad to approve payment of the bills. **Seconded** by Anderson. **Approved.** Anderson suggested that the Board authorize staff to pay any bills coming in before our next meeting that might incur late fees. **Motion** by Fjestad to authorize staff to pay bills that might incur late fees before our 1/13/20 meeting. **Seconded** by Anderson. **Approved.**

Project No. 78, Clay/Wilkin J.D. No. 1. Jones submitted Pay Request No. 5 in the amount of \$134,386.57 for Dennis Drewes, Inc. with 2% retainage (\$19,325.88) to cover clean-up work next spring. He also submitted Change Order No. 1, reflecting a net increase of \$28,704 to the original contract for a current total of \$966,294. **Motion** by Fjestad to approve the pay request and change order. **Seconded** by Affield. **Approved.**

MAWD Annual Meeting. The Board discussed the recent Minnesota Association of Watershed Districts (MAWD) annual meeting and trade show held December 4-7, 2019. Fjestad noted that there was record attendance at the annual meeting. He noted there are openings on a number of MAWD committees.

Fjestad explained that MAWD is hoping that individual Watershed Districts will submit policy resolutions to increase their administrative levee, currently set at \$250,000. They hope that if the State Legislators receive enough resolutions regarding this issue, they could decide to draft a bill for a levee increase for all Watershed Districts in the State. Districts have until the 1/17/20 MAWD Board meeting to submit their resolutions. Staff will prepare a resolution for the Board's approval. Fjestad noted that the MAWD Board officers changed.

The BRRWD received the MAWD Project of the Year Award for our Oakport Flood Mitigation project. The Board discussed the quality of the projects we have developed in association with our regional partners.

Administrator Retirement. Leitch noted that it was announced at the MAWD luncheon conference that Albright is considering a retirement date of 5/1/20. Fenger pointed out that Albright has not formally submitted his resignation to HEI. Leitch requested that this issue be added to the next meeting agenda. He noted that the Board should be advised of Albright's plans as soon as possible so that they can commence a search for his replacement. He thought that the Board should have someone in place by March so that the new hire can have a couple of months to train with Albright before his departure. Fjestad commented that the Board will have to wait before moving forward with changes to the office staffing until Albright's retirement is finalized. Leitch reiterated that, according to FAR guidelines, it is illegal for Federal agencies to have a consultant in a position where everyone thinks they are public employee. While the BRRWD is not under FAR regulations, he pointed out that the BRRWD has always had HEI consultants as our administrator and staff. He added that according to his research, Minnesota Board of Water and Soil Resources (BWSR) regulations could also consider this practice to be a clear conflict of interest. He also

believes that the BRRWD could save \$400,000 to \$500,000 per year if the Board did not contract for administrative services from HEI.

Comments and Announcements. The Board had a general discussion regarding the many problems the area farmers encountered this growing season.

Affield is working on learning how to use Google Docs, as a possible way to disseminate digital meeting materials. The Board talked about Minnesota Open Meeting Laws and potential remote meeting attendance in association with a potential update of the Boardroom AV system.

Upcoming Calendar Events. Fenger noted that the next Mediation Project Team (PT) meeting is scheduled for December 19, 2019, at 1:30 PM in the BRRWD office. Leitch has a MCCJPA meeting that day and will not be available to attend the PT meeting.

Performance Review and Assistance Program (PRAP). The Board watched a short BWSR training video on soil health, specifically cover crops. Following the video, the Board had a brief discussion on this topic. This video provides training to meet the Level II PRAP performance standards.

Erosion Control Conference. Fjestad noted that the 32nd Annual Conference of the Erosion Control Association will be held in Plymouth, MN on January 22-23, 2020. He shared the conference information handout with the Board.

Next Meeting Agenda. Leitch requested that a discussion regarding the organization of the BRRWD be added to the next meeting agenda. The next time the Board meets will be for their Annual Meeting on 1/13/20, which will include election of 2020 BRRWD officers and the appointment of consultants.

Next Meeting. The next regular BRRWD meeting and 2020 annual meeting will be held on Monday, January 13, 2020, at 7:00 PM in our Barnesville office. The second December meeting (December 23) will not be held due to the Holidays.

Adjournment. President Leitch adjourned the meeting at 8:17 PM.

Respectfully submitted,

John E. Hanson, Secretary