

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

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## **BUFFALO RED RIVER WATERSHED DISTRICT WILKIN COUNTY DITCH NOS. 5A, 22 (LATERALS NO. 1 & 2), AND 26 Buffer Strip Establishment/Outlet Stabilization Hearing September 17, 2015**

In accordance with Minnesota Statutes Annotated (M.S.A.) 103E.021, and any other applicable statutes, the Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a hearing for the establishment of one-rod (16.5') grassed buffer strips, installation of side inlets, and outlet stabilizations for the above referenced ditch systems on Wednesday, September 17, 2015, at 7:00 PM in the BRRWD office, Barnesville, MN. BRRWD Managers present were Gerald L. VanAmburg, John E. Hanson, Catherine L. Affield, and Peter V. Fjestad. Others attending included: Bruce Albright, BRRWD Administrator, and Erik Jones, Engineer, Houston Engineering, Inc. (HEI.); Arvid Thompson, Eddie Bernhardson, and Lauren Peterson, Viewers; and landowners: Bradley Nelson, Lois Picotte, Taylor Smith, Brice Bellmore, Eldon Hermunslie, Ross Aigner, Jeff Nord, Dennis Van Wechel, Stuart Nichol, and Jay Nord.

BRRWD Chairman Van Amburg called the hearing to order at 7:03 PM. He explained that this hearing was being held in regards to buffer strip establishment, side inlet installation, and outlet repairs for Wilkin County Ditch (C.D.) Nos. 5A, 26, and 22 (Project No. 1, Laterals No. 1 & 2) in accordance with M.S.A. 103D.625 and permit requirements put forth by the Minnesota Department of Natural Resources (DNR) for the Wolverton Creek/Comstock Coulee Habitat Restoration project, which requires that all of the legal drainage systems entering the Creek have the referenced work completed in order for the project to meet eligibility requirements. Van Amburg introduced the BRRWD Managers, Staff, and Viewers. He explained that the Viewers will present their Report and the landowners will have a chance to ask questions regarding the proposed work.

BRRWD Administrator Albright stated that the hearing was being recorded to aid in the preparation of the minutes, and he passed a sign-up sheet to record meeting attendance. He requested that when landowners have questions or give testimony, they should state their name for the record. Using the overhead monitors, Albright briefly discussed the project location and history. When the main ditch of Wilkin C.D. No. 22 (Project No. 1) was constructed, the buffer strips were installed, but for the 1980s improvement project, when Laterals No. 1 and 2 were built, buffers were not installed. Wilkin County transferred C.D. Nos. 5A and 26 to the BRRWD in the 1980s without buffers.

Albright explained that according to Minnesota Drainage Law (M.S.A. 103D.021), legal ditch systems require a one-rod grassed buffer strip. There are particular proceedings that would also trigger the installation of buffer strips, including benefit redeterminations and ditch improvements. Albright estimated that approximately one-third of the ditch systems under BRRWD jurisdiction have buffer strips. Another reason for the hearing tonight regarding the installation of buffer strips is that last year, the BRRWD obtained a DNR permit for restoration of 26.2 miles of Wolverton Creek. The DNR permit requirements include the use of best management practices (bmps) for all the legal drainage systems entering Wolverton Creek/Comstock Coulee, including the installation of buffer strips, side inlet installations, and grade stabilization structure installations at the ditch outlets. Albright discussed the history and development of the channel restoration project, which started in the 1980s. Since receiving the DNR permit, the BRRWD has begun project development in earnest, starting with a search for funding. Albright and Chair Van Amburg recently attended an interview with the Lessard-Sams Outdoor Heritage Council (LSOHC) to present the restoration project to them with the goal of obtaining \$4.963 million. The LSOHC will notify

the grant recipients in mid-October. The BRRWD hopes to complete this project in the next five years.

Albright discussed another reason for tonight's hearing regarding the installation of buffer strips on the three ditch systems. The 2015 State Legislature passed a Buffer and Soil Loss Legislation bill, which sets a deadline of 2017 for all the DNR Public Waters in the state to have 50' buffers. Wolverton Creek/Comstock Coulee from Wilkin County Road (C.R.) No. 30 (Wolverton Road) downstream to the Red River is Public Waters. The second part of the Legislation requires that all of the County ditch systems in Minnesota must have one-rod grassed buffer strips installed by November 1, 2018. Albright noted that the Legislation places the responsibility for the buffer strip installation on the individual landowner. If the work isn't completed by the deadline, the State could fine the landowner. As the drainage authority, Albright said that the BRRWD feels we have an obligation to assist the landowners to comply with the new legislation.

Albright explained how the acreage for the buffer strip right-of-way (R/W) for each property was determined. The Viewers used this information to establish a buffer easement value. The BRRWD's goal is to get the buffers staked this fall after harvest, so the area can be set aside during spring planting. As conditions permit, the BRRWD will seed the R/W to grass. Landowners are encouraged to maintain the R/W, but the BRRWD can hire someone to mow the buffers if necessary. Albright pointed out that the ditch system account would be charged for maintenance, so if the landowners are able to do the work, it would be a cost savings for the entire ditch system. Once the buffers are established, the BRRWD will record the easement with the County. Landowners should check with the Assessor's Office to have that acreage deducted from their tillable acres.

Albright explained how the buffer acreage is determined. Most of the ditch system R/Ws do not meet the requirements: public road (33'), and the original ditch R/W (approximately 15'). As the ditch/road footprint expanded over time (since the 1950s), the landowners were not compensated. The BRRWD will correct this by acquiring additional R/W from the line of record up to what we need for the new buffer installation. Albright noted that some channel repair might be needed for the ditch systems, including C.D. No. 22, Lateral No. 2, which isn't draining properly. The repair work would be done prior to the buffer strip seeding. Buffer strips for C.D. No. 22, Lateral No. 3, were installed in conjunction with the improvement project that was completed a few years ago. Albright commented that R/W encroachment is something the landowners should try to avoid.

Albright distributed maps of each ditch system for the landowners' examination, and Jones explained how the R/W survey was conducted. The survey included picking up section corners, the top of the slope on the field side of the ditch, and the existing edge of grass. The R/W was squared off of the section line to allow for even dimensions for each parcel. He also considered how the field was tilled to keep the field square. Jones spent some time reviewing the additional easement acreage needed in each section along the ditch systems. For C.D. No. 5A, a total 7.05 acres of additional permanent ditch easement will be needed with 4.3 acres of seeding for the buffer strips. The cost to establish the buffer strips is approximately \$4,500. For C.D. No. 26, a total 4.86 acres of additional permanent ditch easement will be needed with 7.1 acres of buffer strip seeding with a cost of approximately \$7,000. For C.D. No. 22, Laterals No. 1 and 2, a total of 20.65 acres of additional permanent ditch easement will be needed with 17.5 acres of buffer seeding. The cost to establish the buffer strips for this ditch system is approximately \$17,500.

Appraiser Eddie Bernhardson presented the Appraisers' Report:

In accordance with M.S.A. 103E.021, and any other applicable statutes, we herewith submit the following Viewers' Report:

### Damages Statement

This report covers the determination of damages for the incremental implementation of vegetated ditch buffer strips for the referenced drainage systems, which is being completed by BRRWD in accordance with Minnesota Drainage Law. Our assignment was to determine damages for the project, in accordance with the right-of-way acreage listed in reports filed by Houston Engineering, Inc. On 07/15/14, the DNR issued a permit to the BRRWD for the restoration of 26.2 miles of Wolverton Creek/Comstock Coulee. Landowners have noted problems with this area since the 1950s. At the present time, the BRRWD also has a Minnesota Board of Water and Soil Resources (BWSR) grant for Wolverton Creek that can be used to assist with installing the one-rod grassed buffer strips that are required by law. We were appointed to perform our duties by the BRRWD on 06/08/15 in accordance with M.S.A. 103E.305, 103E.311, 103E.315, and 103E.321.

These three systems, along with other legal drainage systems that use the Wolverton Creek/Comstock Coulee as an outlet, were all listed in the DNR's permit. The proposed buffers and outlet grade stabilizations should help protect the Creek Restoration project so that it doesn't fill back in with sediment. Also, the 2015 Legislative Buffer and Soil Loss Ordinance mandated that by 11/01/18, landowners along legal drainage systems must have the one-rod (16.5') grassed buffer strips.

We (Lauren Peterson, Arvid Thompson, and I, Eddie Bernhardson) were appointed by the BRRWD to determine the benefits for these proposed projects. We took our Oath of Office and held our first meeting on July 22, 2015. On that same date, we conducted a field inspection of all the ditches involved. We filed our reports for damages with the Board of Managers, BRRWD, (drainage authority) on August 10, 2015.

Keep in mind; this is one of the requirements for the DNR permit. The first step will be acquisition of the necessary R/W for the required one-rod grassed buffer strips. We were informed that after this is completed, the R/W will be staked (this fall after crop harvest), so the seeding can be completed next spring when conditions permit.

Supporting documentation for our analysis and conclusions of the Report are contained in our files and are available for inspection.

The figures stated within our Report are based on a full and fair consideration of all pertinent facts and information that we were aware of at the time of our work. The following aids were used during our review process:

1. Wilkin County soil survey manuals and maps
2. FSA aerial photographs
3. USGS topographical maps
4. LiDAR data
5. Sales data from the Wilkin County Assessor's Office
6. Visual inspections of the project properties
7. Market values as determined by the Wilkin County Assessor's Office

HEI furnished R/W tables for each individual system with a breakdown of the existing and proposed R/W on a per 40 acre parcel basis. Their information included a column showing the existing ditch R/W and the

additional R/W needed to install the one-rod grassed buffer strips. In most cases, the amount of R/W needed is greater than 16.5 feet due to the fact that the existing ditches are wider than the R/W on record.

We propose one damage rate for all of the needed R/W. To determine a rate for this additional R/W, we contacted the Wilkin County Assessor's Office, who keeps a record of all County land sales. For Deerhorn, Mitchell, Roberts, and Wolverton Townships, between the years of 2012-2015, there were approximately 16 recorded transactions, ranging from a low of \$2,500 per acre to a high of \$7,065 per acre. For the new permanent R/W, a part of which will no longer be able to be farmed, we propose a fair damage rate of \$6,000/acre. We understand that stakes denoting these areas will be placed so the buffer strips are kept in place, and this "permanent" R/W will not be available in the future for cultivation.

We would urge the Board and affected landowners to proceed with this process. The BWSR grant funds will offset some of the direct landowner costs to get something done with these ditches that may/would have become mandatory anyway by 11/01/18. The ditch systems should take advantage of this opportunity.

Bernhardson stated that the Viewers would be happy to answer any questions the audience may have regarding the Viewers' work or findings, and they were pleased to be of service to the Board in this regard.

Albright briefly summarized the Viewers' Report. He stated the Viewers evaluated each ditch, taking crop patterns and soil types into consideration. They determined there was very little difference between each ditch and noted all are located close together. The Viewers determined an easement value of \$6,000/acre applies for all three ditches based on the above conclusions.

Albright mentioned there is approximately \$150,000 remaining in the BWSR Clean Water Fund (CWF) Grant, which could pay up to 50% of project costs with the remainder being local costs.

Albright stated HEI has prepared grade stabilization plans for each ditch outlet. The grade stabilization will consist of either rock or a rock substrate. This will help control the outlet grade and prevent channel erosion at these sites. HEI opened bids today for establishing the outlet grade stabilization structures.

Jones explained the structures will consist of either rock riprap or Flexamat, which is a reticulated concrete matting. The affected portion of C.D. No. 5A begins at the boundary between Sections 23 and 24, Wolverton Township, at 130<sup>th</sup> ST. The centerline of the ditch runs from east to west just south of the north section line before emptying into Wolverton Creek/Comstock Coulee. The restoration of Wolverton Creek has a proposed flowline of elevation 920.10 at the outlet of C.D. 5A. The outlet reach for C.D. No. 5A is an 8' bottom width and 4H:1V sideslope. The grade control will fit this existing geometry. The estimated cost for C.D. No. 5A outlet grade control is \$14,686.

The affected portion of C.D. No. 22 begins near the boundary between Sections 26 and 35, Holy Cross Township, at C.R. No. 30. The centerline of the ditch runs from east to west just north of the south section line before emptying into Wolverton Creek/Comstock Coulee. The restoration of Wolverton Creek has a proposed flowline of elevation 926.30 at the outlet of C.D. No. 22. The outlet reach for C.D. No. 22 is a 16' bottom width and 4H:1V sideslopes. The grade control will fit this existing geometry. The estimated cost for C.D. No. 22 is \$14,696.

The affected portion of C.D. No. 26 begins at the boundary between Sections 1 and 12, Roberts Township, at 170<sup>th</sup> ST. The centerline of the ditch runs from east to west just south of the north section line before emptying into Wolverton Creek/Comstock Coulee. The restoration of Wolverton Creek has a proposed flowline of elevation 931.95 at the outlet of C.D. No. 26. The outlet reach for C.D. No. 26 is 4' bottom width and 4H:1V sideslopes. The grade control will fit this existing geometry. The estimated cost for C.D. No. 26 is \$6,868. Jones stated it is possible the project will be 50% cost shared with the BWSR CWF Grant.

Albright discussed a question raised by a landowner. The landowner asked if the BRRWD plans to cultivate

and re-seed a section of ditch which is currently seeded and runs along his property. Albright stated we will not re-seed areas already established. These areas already meet the Statue requirements. Jones mentioned only areas with no vegetation will be seeded. He said that approximately 30 acres will require seeding. The seeding bids were opened today with the low bid at \$14,660.82. The deadline to complete buffer strip seeding is 06/30/16. He also mentioned the deadline for the completion of the outlet control structures is 12/14/15.

Van Amburg opened the floor for questions.

Bradley Nelson asked if a specific grass mix is required for the seeding. Jones stated the standard Minnesota Department of Transportation (MNDOT) roadside mix will be used. It contains 8 different grasses and legumes.

Manager Fjestad asked who actually owns the buffer strip and if the landowners pay for the buffer strips instead of working through the BRRWD. Fjestad thought the buffer could become several acres of alfalfa available to the public. Albright stated the landowners still own the land, but the BRRWD pays for the easement, as a ditch system expense. The R/W is called prescriptive, meaning it is for ditch use only. The public cannot hunt or trespass for any reason. The landowners can have it deducted from their tillable acres.

Bradley Nelson asked when the deadline was for constructing the outlet structures. Van Amburg informed him that the deadline is 12/14/15. Nelson then asked if they will clear the outlets to the projected depth of the restored Wolverton Creek/Comstock Coulee bed and build the slope up blending the sides along the way. Jones said they will blend into the existing slopes and to the depth of the channel bottom. Some cleaning will be needed during the channel restoration project to match the outlet and the creek bed.

Brice Bellmore owns land along C.D. 26, Section 8, Mitchell Township. Bellmore asked what was used to determine how far east the ditch extended. Jones stated it was based on the historic ditch plans from the County Auditor's Office. Albright explained the legal ditches were established by a group of landowners in the early 1900's. They defined the beginning and end of C.D. 26 at that time. The ditch remains today as it was defined back then.

Jeff Nord stated there are upstream ditches which flow into C.D. 5A, 22, and 26. These upstream ditches are not included in the ditch project. He asked if there have been any steps taken to control the sediment coming in from the upstream ditches. Albright stated he knows Nord's particular concern is Judicial Ditch (J.D.) No. 1 which is just north of C.D. 5A. J.D. No. 1 legally ends at the quarter line and there are no upstream sediment control provisions. Therefore, sediment is filling in C.D. 5A. Albright mentioned the third part of buffer strip legislation includes "other" areas determined by the DNR and Soil and Water Conservation District (SWCD). The deadline for the agencies to issue the map depicting these "other" areas is 06/2016. This part of the legislation may include areas such as the one mentioned above.

Nord asked if a gated culvert with a small dike over the top would be more reasonable than using rock at the outlets. Albright stated these structures are called Texas crossings and typically wash out easily, especially where there is a lot of flowing water. He mentioned we have not had success using this type of structure in the past. The culvert opening is also an ideal habitat for rodents. These concerns won't be an issue with rock. Nord stated the proposed outlet stabilization will work once Wolverton Creek/Comstock Coulee is restored. Currently, the smallest rainfall event causes water to back up into the ditches due to the channel condition. Albright stated the BRRWD is earnestly working to find funds to get the Wolverton Creek/Comstock Coulee project started soon.

Nord asked whether land preparation has been factored into the seeding bid for those areas with steep slopes. Jones stated no significant earth work has been proposed at this time. Albright used C.D. 22, Lat. No 2, as an example of a ditch narrower than it should be. It makes sense to correct the slope before seeding so

everything is accomplished at the same time. Another concern addressed by Nord lies in C.D. No. 22, in Section 25. There is a dike located here that had to be replaced in the past due to it washing out. Nord wants to make sure this dike is at a proper elevation before the seeding is completed. Albright acknowledged the dike height at this location is very crucial. If the water flows over the dike, it will flow north. It eventually flows into C.D. No. 5A but causes significant damage along the way.

Van Amburg asked for any further questions or comments.

Nord asked why the assessments for all three ditches are different. He feels they should be uniform. Albright explained the benefits for C.D. No. 26 are the same as when the ditch was originally established in the early 1900s. C.D. Nos. 5A and 22 had benefits re-determined during a repair and improvement project in the 1980s. Van Amburg stated the benefits would probably need to be re-determined if C.D. No. 26 ever needed major work.

Ross Aigner asked if the same parcel of land should be in two different benefit areas. Albright explained ditch benefits used to be determined individually and the whole drainage picture not evaluated. It is common to see overlapping benefit areas for the older ditch systems. Aigner asked if it was normal for a landowner to be assessed for two different ditch systems on the same parcel. Albright stated it is not uncommon to pay into more than one system due to drainage patterns. Bernhardson stated if a landowner was paying into two different ditch systems, one assessment might be for drainage and the other for protection.

**Motion** by Hanson to move forward with the projects for Wilkin C.D. Nos. 5A, 22 (Lateral Nos. 1 & 2), and 26. **Seconded** by Affield. **Approved.**

Albright noted that landowners could come to the BRRWD office with any concerns or issues they feel needed to be addressed prior to the project start date.

Chairman Van Amburg asked if there was any further testimony to come before the Board. There being none, he adjourned the hearing at 8:20 PM.

Respectfully Prepared and Submitted by

John E. Hanson, BRRWD Secretary