

BUFFALO-RED RIVER WATERSHED DISTRICT

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MINUTES FOR MANAGERS' MEETING

May 26, 2020

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held their regular meeting on Tuesday, May 26, 2020, at 7:00 PM in the Barnesville office. Due to the Coronavirus protocols for public meetings, the Board held an electronic meeting in accordance with Minnesota Statutes Annotated (M.S.A.) Section 13D.021. BRRWD Managers present in the office were Mark T. Anderson, Peter V. Fjestad, Catherine L. Affield, Troy E. Larson, John E. Hanson, and on the conference line: Gerald L. Van Amburg. BRRWD staff attending in person: Kathleen K. Fenger, Interim Administrator, and Erik S. Jones, Engineer, Houston Engineering, Inc. (HEI). Others attending via conference line included BRRWD Attorneys Tami Norgard and Brent Edison, Vogel Law Firm, and landowners Chuck Anderson and Jay Nord.

BRRWD Vice President Fjestad called the meeting to order at 7:02 PM and announced the proceedings were being video recorded to aid in the preparation of the minutes. He did a roll call of the Managers and asked all the online attendees to state their names for the record.

Agenda. Fjestad asked for comments or additions to the meeting agenda. Items added: Drainage concern in Wilkin County, Kerria Burns internship proposal, bid opening results/contract award for Clay County Ditch (C.D.) Nos. 9 and 11 repairs, One Watershed, One Plan (1W1P) discussion, Audubon Dakota support letter, a Hamden Township drainage violation, and a discussion on reorganizing the Board officer positions in light of Clay County's action today to remove Jay A. Leitch as a BRRWD Manager. With those additions, **motion** by Larson, **seconded** by Affield to adopt the agenda. **Approved** by unanimous roll call vote.

The Board discussed Leitch's removal. BRRWD Attorney Tami Norgard, Vogel Law Firm, advised the Board on their options for reorganization. According to the BRRWD's Bylaws, the Board must "immediately elect a new officer." Norgard explained that the Board could accept nominations and have an election for Board President tonight, or they could move forward with Vice President Fjestad as acting President until their next meeting when they could hold the election. Richland/Wilkin Joint Powers Authority (JPA) Attorney Jerry Von Korff forwarded an email voicing concerns about the County's decision and encouraging Leitch to consider challenging Clay County's action in court. Norgard noted that Vogel could look into the County's actions, but she advised against the Board's involvement with Manager disputes with the entity that appointed them. Attorney Edison noted that at this point, he has not researched Von Korff's points/issues.

Manager Anderson commented that the Board should stay out of any potential legal action regarding Leitch's removal and that the Board should wait until the next meeting to make decisions about reorganization. Van Amburg agreed with Anderson on both staying out of any potential Leitch/Clay County lawsuit and delaying reorganization until the next meeting. Affield questioned how Leitch's removal could affect the BRRWD's ongoing contested case and permit denial lawsuits with the Diversion Authority. Attorney Norgard and Edison agreed that the BRRWD will have to enter into a contract with Leitch for him to continue to act as one of our lay witnesses. Edison stated that the BRRWD will proceed to trial with the contested case as planned, starting 6/8/20, unless the Board directed otherwise. Affield commented that the County's action to remove Leitch could complicate the lawsuit. Edison agreed that it is not an ideal situation. He hasn't had time to assess the actual effect on the litigation. He indicated that the attorneys could report to the Board in closed session. Affield questioned the legality of removing Leitch. She pointed out that keeping politics out of Watershed District business is the reason why Managers are appointed rather than elected. She was concerned that the County did not share the reasons for Leitch's removal. Van Amburg noted the Board doesn't have that information and until we do, the Board should move forward with our work and try not to

get tangled up in the matter. An extended discussion followed regarding Leitch's removal. **Motion** by Anderson, **seconded** by Larson to address potential Board reorganization at the 6/8/20 meeting when more information will be available. Affield wanted due diligence done to find out what happened at the County level because of the effect Leitch's removal could have on the contested case. Edison has communicated with Leitch, who has indicated that he will be willing to give testimony at the contested case hearing. Edison mentioned that Bruce Albright has also agreed to testify. Norgard commented on Von Korff's email where he lists a number of issues he sees as problematic with the County's action. She thought that Affield's concerns are going to be aired whether the Board becomes involved, or not. **Approved** by unanimous roll call vote.

Secretary's Report. The Board reviewed draft minutes for the 5/11/20 regular meeting. Affield noted corrections to the minutes. **Motion** by Anderson, **seconded** by Anderson to approve the minutes, subject to correction. **Approved** by unanimous roll call vote.

Treasurer's Report. The Board reviewed the BRRWD's financial status:

- Cash on hand: \$1,631,272.50.
- Income received since the 5/11/20 meeting totaled \$121,289.
- Total income this year is \$450,210.06.

COVID-19 BRRWD Action Plan. There are currently no changes regarding the COVID-19 office/staff protocols. Fenger will review HEI's "Return to Work" plan to see if it could be applied to the BRRWD office.

Other Business brought before the Board included:

Permit No. 19-003, FM Diversion. Attorney Edison reported on the BRRWD contested case lawsuit:

- The contested case hearing is scheduled to begin 6/8/20 via video with attendees logging in remotely, using WebEx. Pretrial testimony was filed for Leitch, Albright, Manager Anderson, and Larry Prather (expert witness). The group discussed arrangements to participate either in person at the Vogel Law office in Fargo or online via WebEx.
- Discussed filling Leitch's vacated seat on the Minnesota-Clay County Joint Powers Agreement (MCCJPA). Fenger will reach out to the MCCJPA for their input.

Permit No. 20-027, Bob Leiseth. Applicant proposes to remove and replace damaged and undersized culverts in the SE¹/₄, Section 17, Alliance Township, Clay County. Anderson conducted a field review with Leiseth and found no problems with the project. Jones recommended permit approval, subject to township approval to work within their road right-of-way (R/W).

Permit No. 20-028, Myron Ehlert. Applicant proposes to add a new field approach with an 18" dia. culvert in the NE¹/₄, Section 19, Nordick Township, Wilkin County, off County Road (C.R.) No. 18. Jones recommended approval.

Permit No. 20-029, Jeff Lavigne. Applicant proposes to install pattern tile in the NW¹/₄, Section 25, Elkton Township, Clay County, outletting to Spring Creek and the township road ditch. He also plans to add two culverts through two approaches on the north end of the field in the township ditch, which he will clean so that water will drain west without breaking out. Jones noted that the outlet is adequate and recommended permit approval.

Permit No. 20-030, Pheasants Forever-Tyler Zimmerman. Applicant proposes restoration of one drained wetland basin in the NE¼, Section 14, Eglon Township, Clay County, by removing 366 cubic yards of sediment and constructing a ditch plug with a rock armored spillway. Jones recommended permit approval.

Permit No. 20-031, Brian Piekarski. Applicant proposes to install a single line of 6" dia. tile, 0.25 miles long, to connect some low areas into an existing tile project in the NW¼, Section 27, Carlisle Township, Otter Tail County, outletting via the existing outlet. Jones recommended permit approval, subject to our standard tiling disclaimer.

Permit Nos. 20-032 & 20-033, Dilworth-Glyndon-Felton Public Schools. Applicant proposes school building additions and remodeling in Dilworth and Glyndon. Both sites will have stormwater retention ponds, associated utilities, sanitary sewer, water services and parking lot storm sewer. For the Dilworth project, the water will drain to Clay County Ditch No. 50 to which it is assessed. Post project peak flows will be less than the existing site runoff. For the Glyndon project, the same conditions exist. The outlet is C.D. No. 68 to which the drainage is assessed. Jones recommended approval of both permits.

Permit No. 20-034, Michael Hasbargen. Applicant proposes to install pattern tile in the SE¼, Section 22, Nilsen Township, Wilkin County, outletting south into Branch 3 of C.D. No. 3 to which it is assessed. Jones recommended permit approval.

Motion by Anderson to approve Permit Nos. 20-027 through 20-034, subject to the referenced disclaimers and conditions. **Seconded** by Affield. **Approved** on a unanimous roll call vote.

Project No. 46, Turtle Lake Outlet. The Clay Soil and Water Conservation District (SWCD) sent a cost share request for shoreland restoration for two Turtle Lake properties. The request is for the BRRWD to contribute 25% of the total cost, or \$1,006.12. The Becker SWCD will be doing the installation. The Clay SWCD would provide 50% of the funding with the balance (25%) coming from the landowners. **Motion** by Van Amburg, **seconded** by Hanson to approve the proposed cost share request. **Approved** by unanimous roll call vote.

Project No. 49, Oakport Flood Mitigation. Jones presented an amendment to the Memorandum of Understanding (MOU) with Audubon Dakota to add two habitat restoration sites and to extend the enhancement period by 10 years. **Motion** by Anderson, **seconded** by Affield to approve the MOU amendment. **Approved** by unanimous roll call vote.

Project No 79, Wolverton Creek Restoration. At the 4/27/20 meeting, the Board approved Change Order No. 4 to extend the Phase 1 work for approximately 0.5 miles downstream through Section 22, Holy Cross Township, Clay County. Jones submitted the finalized Change Order for the Board's approval in the amended amount of \$180,773.33. **Motion** by Anderson, **seconded** by Larson to approve the finalized change order, as referenced. **Approved** by unanimous roll call vote.

Lower Otter Tail River (LOTR) Corridor Habitat Restoration. The Board discussed the Lessard-Sams Outdoor Heritage Council (LSOHC) funding application Jones has prepared for the proposed project to establish a corridor for a future river restoration project on the Otter Tail River. The BRRWD is partnering with the Wilkin SWCD and Minnesota Board of Water and Soil Resources (BWSR) to secure voluntary conservation easements along the Otter Tail River by using LSOHC funding. The total funding request is for \$4.5 million. At the 5/11/20 meeting, the Board approved a motion to add a possible incentive payment up to 20% to match actual land values for the conservation easement acquisitions, which would total \$614,700 over 5 years in local costs. BWSR's easement division would be responsible for obtaining the easements, which would be planted to native prairie. The SWCD would be responsible for long-term maintenance. Potential funding will not be available until July 1, 2021, and based on previous LSOHC funding, will probably be much less than the requested amount. Jones explained that easement

acquisition/LSOHC funding will probably be completed in phases. The LSOHC application deadline is 5/28/20. **Motion** by Larson, **seconded** by Hanson to authorize Jones to submit the LSOHC funding application, as referenced. **Approved** by unanimous roll call vote.

Beaver Control Requests. Jones submitted beaver control proposals for Whiskey Creek and the Buffalo River. **Motion** by Anderson, **seconded** by Affield to authorize hiring a beaver trapper. **Approved** by unanimous roll call vote.

Wilkin/Otter Tail Judicial Ditch (J.D.) No. 2. Fjestad reported that he received a call from Dan Bradow regarding new culverts installed for Jeff Yaggie on J.D. No. 2. Jones explained that the new culverts were only replacements for deteriorated inlet culverts on Yaggie's property. In the past, Bradow has requested that the J.D. No. 2 culverts be moved and angled downstream to improve drainage. Jones explained that he has looked at this issue before and determined that changing the angle of the culverts would not address Bradow's drainage problems because the property is in a low area that has been identified as a public water known as Shaws Slough. The DNR has jurisdiction over drainage in this area. Fjestad also noted that Bradow had a question about the flapgates on his inlet culverts because water tends to back up into his field when the ditch fills up. Jones said that issue could be investigated.

Construction on the J.D. No. 2 outlet repair should be starting this week. The construction deadline is 6/8/20.

Becker C.D. No. 5. The Becker SWCD notified the BRRWD that the outlet end of the Jay Lake outlet is failing, which will require repair. Jones will prepare a repair recommendation for the Board's review at the 6/8/20 meeting.

Clay C.D. No. 33 Repair. Jones submitted a repair request from landowner James Nelson for two field inlet culverts with damaged flapgates in Kurtz Township. One inlet is in Section 14 and will require a new 18" dia. flapgate. The other pipe is in Section 16 and will also require an 18" dia. flapgate along with a short section of 18" dia. corrugated metal pipe (CMP) to replace the damaged culvert. The opinion of probable cost is \$2,000 to \$2,500, including materials, equipment, and labor. **Motion** by Anderson, **seconded** by Hanson to approve the proposed inlet pipe repairs. **Approved** by unanimous roll call vote.

Paul Friederichs Drainage Concern. Friederichs contacted Manager Affield with concerns about excavation work done by Bob Yaggie in Section 22, Sunnyside Township, along Wilkin County State Aid Highway (CSAH) No. 17 and 370th ST. A field review with the landowners and the township officials will be scheduled.

BRRWD Internship. Van Amburg discussed Kerria Burns' National Science Foundation (NSF) Research internship request. She is enrolled in North Dakota State University (NDSU) and has qualified for an NSF QuEST internship. Burns is seeking an internship to work with the BRRWD's water quality monitoring program to analyze existing data and also participate in field data collection. The internship is fully funded by NSF funds. The Board would have to approve a MOU from the University of Vermont and provide an offer letter for Burns, as her sponsoring organization. Van Amburg would be her onsite supervisor. He explained that the MOU holds the BRRWD indemnified from damages of any kind regarding Burns' internship. The duration of the internship would be from mid-May to early August. **Motion** by Van Amburg, **seconded** by Hanson to approve the internship proposal for Kerria Burns and to provide the necessary MOU and offer letter. **Approved** by unanimous roll call vote.

Clay C.D. Nos. 9 and 11 Repairs. The Clay County Highway Department opened bids this morning to replace culverts along C.D. Nos. 9 and 11. Dennis Drewes, Inc. was the low bidder at \$209,710. The Engineer's estimate was \$504,126. The BRRWD has entered into a MOU with the Highway Department to complete these repairs. **Motion** by Anderson, **seconded** by Affield to award the contract to Dennis Drewes, Inc. **Approved** by unanimous roll call vote.

Drainage Violation. The Board discussed a drainage violation committed last year in Section 16, Riverton Township, Clay County. Jones asked that the Board consider authorizing a survey to determine the best route for the area drainage. **Motion** by Anderson, **seconded** by Larson to authorize HEI to conduct a drainage survey. **Approved** by unanimous roll call vote.

Giedt/Berg Drainage Concern. The Board briefly discussed the ongoing landowner drainage concerns downstream of the Aggregate Industries, Inc. gravel pit in Sections 1 and 2, Riverton Township. The Board agreed to monitor the situation.

BRRWD 60th Anniversary. The Board briefly discussed possible options to recognize the BRRWD's 60th Anniversary.

Priority List. The Board agreed to review the provided list and discuss it at the 6/8/20 meeting. Affield wanted Fenger to consider what the office needs are and to provide a list of possible items/additional staff they might need.

HR Committee Report. Affield provided a report on the HR Committee's activities since the last meeting regarding the transition of the three current HEI office staff members to BRRWD employees. They met on 5/21/20 with representatives from the BRRWD Advisory Committee, which included County Commissioners, to solicit input before making recommendations to the Board at the 5/26/20 meeting. The group recommended that the HR committee engage an outside consultant to do a cost comparison of having HEI contracted staff versus BRRWD staff. They also discussed the question of perceived conflict of interest concerns. The Board discussed the HR Committee meeting recommendations. **Motion** by Affield, **seconded** by Anderson for the HR Committee to hire a consultant to analyze the staffing costs and to obtain a legal opinion regarding the conflict of interest issue. **Approved** by unanimous roll call vote.

One Watershed, One Plan (1W1P). The 1W1P Policy Committee will be meeting tomorrow via conference line. Fjestad is Leitch's alternate on the Policy Committee, so he will attend.

Audubon Dakota. Jones explained that Audubon Dakota has requested that the BRRWD act as the fiscal agent/land purchaser for their LSOHC grant application to purchase and restore approximately 70 acres of wetlands in the Bluestem area in South Moorhead north of the BRRWD's 50th AVE project. The BRRWD would need to provide a letter of support for the application. **Motion** by Van Amburg, **seconded** by Anderson to provide the letter of support for the LSOHC application. **Approved** by unanimous roll call vote.

The following bills were presented for approval:

Accounts Payable	Description	Account	Amount
Carmen Pattengale	May Cleaning (2)	Admin.	\$ 130.00
Catherine L. Affield	Voucher 20-08, 3/1/20-4/30/20	Admin	\$ 425.66
Clay County Auditor-Treasurer	2020 Assessment	Pj. 49, Oakport	\$ 1,600.38
Dakota Mailing	#AR39222, Postage Ink (2)	Admin.	\$ 151.96
Edwin Askegaard	Easement Option	Pj. 79, Wolverton	\$ 2,278.75
Gary D. & Paul V. Israelson	Permanent Easement Payment	Pj. 79, Wolverton	\$ 6,890.20
Gerald L. Van Amburg	Voucher 20-14, 3/1/20-4/30/20	Admin.	\$ 588.69
Gregory & Patricia Freitag	Easement Option Payment	Pj. 79, Wolverton	\$ 100.00
Israelson Land Partnership	Permanent Easement Payment	Pj. 79, Wolverton	\$ 54,982.26
JB Construction Services	#496, April Snow Removal	Admin.	\$ 80.00
Joel Carlson	June Lobbyist Billing	Admin	\$ 850.00
John E Hanson	Voucher 20-11, 3/1/20-4/30/20	Admin.	\$ 436.01
Julie K. Korth	Permanent Easement Payment	Pj. 79, Wolverton	\$ 29,282.07
Mark T. Anderson	Voucher 20-09, 3/1/20-4/30/20	Admin.	\$ 398.06
MN Department of Agriculture	#BRRWD03, Nordick Farms	M.S.A 103D	\$ 11,692.63
MPS	04/02/20-05/02/20, Service	Pj. 49 Oakport	\$ 816.62

Paul & Beverly Israelson	Permanent Easement Payment	Pj. 79, Wolverton	\$ 6,572.79
Robert D. & Amber M. Nord	Easement Option	Pj. 79, Wolverton	\$ 6,134.00
Roger Lundberg	Beaver Control	Varies	\$ 1,515.80
Vogel Law	#255974, April billing	COE	\$ 32,203.60
			\$ 157,129.48

Motion by Larson, **seconded** by Affield to approve payment of the bills. **Approved** by unanimous roll call vote.

Comments and Announcements. The group discussed the removal of Manager Leitch.

Next Meeting. The next regular BRRWD meeting is scheduled for June 8, 2020, at 7:00 PM in our Barnesville office via teleconferencing, depending on the COVID-19 meeting restrictions.

Upcoming Meeting Agenda Items. Affield wanted the HR Committee report added to the next meeting agenda.

Adjournment. Vice President Fjestad adjourned the meeting at 8:51 PM.

Respectfully submitted,

John E. Hanson, Secretary