

BUFFALO-RED RIVER WATERSHED DISTRICT

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MINUTES FOR MANAGERS' MEETING

April 22, 2019

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a regular meeting on Monday, April 22, 2019, at 7:00 PM in the Barnesville office. BRRWD Managers present were Jay A. Leitch, Mark T. Anderson, Catherine L. Affield, Peter V. Fjestad, John E. Hanson, Gerald L. Van Amburg, and Troy E. Larson. Others attending included: Bruce E. Albright, BRRWD Administrator, Kathleen K. Fenger, BRRWD Assistant Administrator, and Erik S. Jones, BRRWD Engineer, Houston Engineering, Inc. (HEI); Brent Edison, BRRWD Attorney, Vogel Law Firm; Gregg Thielman, Engineer, Houston-Moore Group, LLC (HMG); Paul Barthel, Jacobs Group, Fargo Moorhead Diversion Authority (FM DA) Project Management Consultant (PMC); Robert Zimmerman, Engineer, City of Moorhead; Eric Dodds, Engineer, Advanced Engineer and Environmental Services (AE2S); and others: Don Nelson, Keith Kragerud, Jay Nord, Bob Askegaard, and Chuck Anderson.

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. President Leitch asked for comments or additions to the meeting agenda. Manager Anderson requested that the Board add a discussion regarding Darin Tucker's concern as a Project/Ditches agenda item. Manager Van Amburg suggested to add a discussion regarding the status of the BRRWD Rules revision schedule. **Motion** by Manager Anderson to approve the agenda with the suggested changes. **Seconded** by Manager Affield. **Approved.**

Secretary's Report. The Board reviewed draft minutes for the 4/8/19 Board meeting. Affield noted one minor correction. **Motion** by Anderson to approve the 4/8/19 meeting minutes, subject to correction. **Seconded** by Manager Affield. **Approved.**

Treasurer's Report. The Board reviewed the BRRWD's financial status. Cash on hand is \$2,687,017.61. Total income since the 4/8/19 meeting was \$514.64 from Otter Tail County for 2018 delinquent taxes. Total income to date is \$1,145,279.03.

Other Business brought before the Board included:

FM DA

- **Permit No. 19-003, FM DA.** Albright noted the BRRWD's special meeting has been rescheduled for tomorrow night (4/23/19) from 7:00-10:00 PM in the Dilworth Community Center to allow public comment on the DA's BRRWD permit application. Speakers will be asked to fill out a form to be allotted time to present their comments. The group discussed the meeting agenda. The FM DA and the upstream opposition will both be allowed 60 minutes to make presentations regarding the Diversion permit. Whatever time is left will be opened up for public comments. Meeting handouts will be provided with a signup form to make oral comments, a Plan B map, a written comment form, and general information about the project. Written comments will be accepted until Friday, May 10, 2019, at 5:00 PM. Video Arts Studio from Fargo has been hired to record the meeting and provide a professional video of the meeting for approximately \$1,000. **Motion** by Fjestad to approve the expenditure for the video recording. **Seconded** by Affield. **Approved.**

The Board discussed the draft BRRWD permit conditions, which were distributed to the Managers and the DA. On 4/10/19, a few of the Managers met with the DA, Engineers from the Cities of Fargo and Moorhead, HMG, and the Army Corps of Engineers (COE), to review the draft permit conditions. The DA sent the Board an official response asking for clarification on a couple of issues. One of the meeting topics was the Minnesota Department of Natural Resources' (DNR) criteria for using the 500-year floodplain in Wilkin County, but since they were not at the meeting, this issue wasn't resolved. Leitch referenced a document, "The Final Supplemental Environmental Assessment No. 2", which states that "this plan in some cases exceeds Federal requirements", and places the responsibility for this on the DA. The document claims that the DA is looking at mitigation beyond COE requirements. He suggested that the Board needs to meet with the DA, DNR, and COE to work out this issue. Bob Zimmerman explained that the DA went with the DNR requirements, which exceed the COE requirements, and he agreed that the parties should meet to come to a consensus regarding the 500-year floodplain and mitigation requirements. He recommended that the BRRWD contact the other parties and schedule the meeting.

The Board discussed the format for the upcoming 4/23/19 Diversion meeting. They agreed that their role at the meeting will be to listen to the public comments. Written public comments submitted after the 4/23/19 meeting are due by 5/10/19. The Board plans to conduct a field review of some of the Minnesota sites impacted by the proposed project before their 5/13/19 meeting.

Leitch prepared a document (copied below) with several questions for the DA regarding their permit application so that the Board can show that they have done their "due diligence" on behalf of the BRRWD citizens.

BRRWD Rules, Section 1, Paragraph 7: *It is the intention of the Managers to promote the use of the waters and related resources within the District in a provident and orderly manner so as to improve the general welfare and public health for the benefit of its present and future residents.*

Benefit-Cost Analysis is the most common tool used to assess changes in the general welfare of present and future residents. As such, we have the following questions regarding the FM Diversion Project.

1. What is the Moorhead/Clay County/State of Minnesota share, in percent and in dollars, of the total cost (\$2.75 billion, or so) of the FM Diversion Project?
2. What is the estimated annual operation, maintenance, repair, replacement and rehabilitation (OMRR&R) cost (in dollars/year) for the completed and operational FM Diversion Project?
3. What is Moorhead/Clay County's share, in percent and in dollars, of the total estimated annual OMRR&R cost?
4. What are the total estimated benefits to Moorhead/Clay County of the FM Diversion Project? Informed approximations are sufficient, but please provide detail and include assumptions for how this number is derived. In other words, 'show your work'!
5. What is the estimated cost to acquire all necessary property rights, and/or in-place mitigation, for the FM Diversion Project in Clay and Wilkin Counties?
6. What is the estimated total, one-year cost to compensate farm operators in Clay and Wilkin Counties for their losses in years the FM Diversion Project is operated at its designed maximum? What will be the source of funds to make these payments in a timely manner (within 6 months of inundation due to the Project)?

NOTE: If FM DA cannot answer these questions, it is premature to start building the project.

Several previous questions remain unanswered, which FM DA has indicated they are working on:

1. Is 5' of freeboard necessary in areas where the maximum pool depth is between 1' and 5'? Please identify the specific requirement/rule and the agency responsible.
2. Can the mitigation options and development restrictions be relaxed in the 500- and 100-year operating pool so they are no more restrictive than in the City of Moorhead or other places in Clay County? Please identify the source of the requirement and the agency responsible.

Leitch disclosed that he lives on the Red River in north Moorhead in an area that currently doesn't have flood protection. His property is on the City of Moorhead's buyout list for "internal" city flood protection, which is not associated with the Diversion project.

Albright noted that there have been questions following the recent Mediation Project Team (PT) meeting about a potential review of a different plan referred to as "Plan C" or "Plan Charlie". This option was reviewed along with several other options in the Supplemental Environmental Impact Statement (EIS). The Board has this information.

There was a brief discussion about the Minnesota share of the Diversion costs. Zimmerman explained that when the Joint Powers Agreement (JPA) formed the DA, the document stated that the Minnesota share would not exceed \$100 million, but the operative language is that the costshare is based on the Minnesota EIS socio-economic analysis, which sets the City of Moorhead's share at 2% of the median household income threshold (assuming the State of Minnesota provides the funding).

Eric Dodds, AE2S, answered Question No. 6 regarding landowner/farmer compensation for a catastrophic crop loss in the growing areas. With Plan A, the estimate for the entire staging area was a \$20 million loss. Leitch pointed out that landowners are concerned if the DA will have enough money to pay the landowners in a timely manner for crop losses. Dodds explained that if such an event took place, under the Supplemental Summer Crop Loss program, the current plan is to work with a maintenance district to sell bonds for a potential loss, as an operating expense. Zimmerman noted that the DA will provide written responses to Leitch's questions.

- **DNR Permit Contest.** Albright has not heard from the DNR regarding the contested case hearing request regarding the DNR's Diversion permit. It is expected that DNR will combine the three contests from the Cities of Wolverton, Comstock, and the BRRWD, and eventually, the combined case will be sent to an Administrative Law Judge.
- **Minnesota Land Acquisition Committee.** Albright received the DA's draft Minnesota-Clay County Joint Powers Agreement (MCCJPA) and forwarded it to the Managers. Leitch is a member of the Committee and will have voting privileges, but the BRRWD will not sign the JPA.
- **Cities of Wolverton and Georgetown Issues/Impacts.** Staff met with Comstock and Holy Cross Township on 4/2/19 to discuss project impacts. Discussions also continue regarding the potential to include 100-year certifiable flood protection for the communities of Wolverton and Georgetown in the BRRWD DA permit conditions.

Permit No. 19-025, Audubon Township. Applicant proposes to replace a washed out 18" dia. culvert under the township road (185th ST) in Section 7. The road where the culvert is located washed out during the spring flood for approximately 12'-14'. Jones recommended permit approval with a 36" dia. replacement culvert.

Permit No. 19-028, Becker Soil and Water Conservation District (SWCD)/Kevan Nelson. Applicant proposes to install water and sediment control basins with surface intakes and an underground outlet in the NE¼, Section 29, Lake Park Township, Becker County. Jones recommended permit approval.

Permit No. 19-029, Becker SWCD/Kevan Nelson. Applicant proposes to install two water and sediment control basins with surface intakes and an underground outlet in the NE¼, Section 33, Lake Park Township, Becker County. There are additional basins associated with this permit, but they are located in the Cormorant Lakes Watershed District. Jones recommended permit approval.

Permit No. 19-030, Curtis Stubstad. Applicant proposes to remove and relocate a driveway approach on County Road (C.R.) No. 17 from the middle of the quarter to the south end to provide field access and to clean the ditch going north to reestablish the gradeline for the existing culverts in the NE¼, Section 10, Elmwood Township, Clay County. Jones recommended permit approval, subject to County approval to work within their road right-of-way (R/W).

Permit No. 19-031 through 19-046, Wilkin County SWCD. The Wilkin County SWCD proposes to install side inlet structures for a number of landowners along the Red River, the Otter Tail River, and Whiskey Creek, plus its tributaries near Kent. Bryan Albertson's application (19-036) is for a water and sediment control basin in the NW¼, Section 36, Foxhome Township. Jones and Albright recommended that the Board approve the applications, noting that they are all for grade stabilization projects associated with the County's effort to repair DNR protected waterway inlets in compliance with the 2015 Buffer Law alternative practices options. At their 3/11/19 meeting, the Board approved a Buffer Aid request from Wilkin County to help fund these projects. Jones noted that the County expects to complete the work this summer.

Permit No. 19-047, Dan Rosenfeldt. Applicant proposes to install a new approach with an 18" dia. culvert about 650' south of a private ditch off the west side of 28th ST S in the NE¼, Section 28, Moorhead Township, Clay County. The proposed culvert size matches the adjacent structures. Jones recommended permit approval, subject to township approval to work within their road R/W.

Permit No. 19-048, Bob Hansen. Applicant proposes to install a 30' or 36' wide approach with a culvert on the west side of 220th ST S in the NE¼, Section 34, Hawley Township, Clay County. Hansen requested that the Board recommend a culvert size. Jones recommended permit approval with an 18" dia. pipe, subject to township approval to work within their road R/W.

Permit No. 19-049, Andrew Maier. Applicant proposes to install random tiling for 27 acres in the NW¼, Section 28, Deerhorn Township, Wilkin County, going across the NW¼, Section 28, (Arne Peterson), then extends into the northeast corner of Section 27, where it will outlet on Tom Arnhalt's property. Maier obtained signed downstream landowner notification forms from both Peterson and Arnhalt. Jones recommended permit approval, subject to our standard tiling disclaimer.

Permit No. 19-050, Wilkin County Highway Department. Applicant proposes to repair a flood site in Section 25, Manston Township, by replacing an existing 36" centerline corrugated metal pipe (CMP) with a 36" dia. reinforced concrete pipe (RCP). County policy requires the use of RCP through roads. Jones recommended permit approval, subject to matching the downstream culvert sizing.

Motion by Anderson to approve Permit Nos. 19-025 and 19-028 through 19-050, subject to the referenced disclaimers and conditions. **Seconded** by Fjestad. **Approved.**

Ralph Schellack Dike Complaint. Albright explained that staff prepared a record of the Board's contact and actions regarding Schellack's diking complaint in Section 29, Riverton Township, Clay County, on a natural waterway along the north side of C.R. No. 12. He will forward the information to Schellack and the

Board and then set up a field meeting. Schellack was in the office again today regarding the status of his complaint.

Darin Tucker Drainage Concern. Anderson noted that Tucker contacted him regarding flooding concerns along Clay County Ditch (C.D.) No. 55 where the ditch spoil bank is lower in several spots. He thought a ditch repair might be considered. Albright said that C.D. No. 55 is scheduled for cleaning this summer and the spoil from the repair could be placed in the breakout areas. The Board will discuss the repair at their 5/13/19 meeting.

Project No. 79, Wolverton Creek Restoration. The Blilie/Bixby closing is tentatively scheduled for 5/6/19. The purchase agreements will be forwarded to the affected parties this week.

Patty Floden, daughter of Violet Gruenberg, contacted the office regarding drainage concerns on their property in the NW¼, Section 34, Wolverton Township, Wilkin County, which eventually outlets to Wolverton Creek. Robert Nord is their renter. Albright explained to her that the BRRWD was aware of this issue, but any action will need to wait until after the Wolverton Creek project is completed. A landowner meeting could be held to see if there is any interest in a project to address the area drainage problems. The first step would be to conduct a waterway survey.

Project No. 78, Clay/Wilkin Judicial Ditch (J.D.) No. 1-Improvement. Earlier this year, the contractor, Dennis Drewes, Inc., had thought that they would be starting the project later this summer, so there had been some discussion about letting the landowners plant wheat on the temporary R/W to control weeds. Recently, Drewes indicated that they have decided to start their work this spring with the J.D. No. 1 project, so R/W planting won't be necessary. Anderson asked about landowners' requests for changes to some of the inlet culverts. HEI staff will meet individually with the landowners to determine their drainage needs and make the necessary adjustments to the project plans during construction.

Albright reported that the bond sale was very successful. Ehlers and Associates, Inc. thought the 15-year bond with an interest rate at 3% was the best they've seen this year. Albright noted that the low bond interest rate and construction bid was very good news for the benefited property owners.

Project No. 49, Oakport Flood Control. The Board discussed hunting on the BRRWD Oakport properties. The office issues nearly 60-70 hunting permits per year and permit regulation is getting to be burdensome for staff. Albright recently visited with Anthony Nelson, Pheasants Forever/Clay SWCD, about possibly enrolling the Oakport hunting areas into the Walk-In Access Public Hunting Program. Albright also noted that hunters are trespassing on the Robley property which is adjacent to one of the BRRWD hunting areas. Kathy Robley asked that the BRRWD close that area to public hunting to address future encroachments on her property. Albright suggested we could also close the north stormwater hunting area that is adjacent to a future subdivision. These changes would limit public hunting to areas south of Wall ST and west of Broadway. The BRRWD could eventually transfer the lands in the project area to the City of Moorhead. **Motion** by Anderson to make the referenced changes to the hunting areas and to work with Tony Nelson to enroll the Oakport hunting areas in the Walk-In Access program. **Seconded** by Fjestad. Leitch briefly discussed the hunting regulations in the Oakport area within the City of Moorhead. **Approved.**

Stony Creek Restoration. A meeting is scheduled tomorrow morning (4/23/19) at 9:00 AM in the BRRWD office with Clay SWCD and Minnesota Board of Water and Soil Resources (BWSR) personnel to discuss criteria for using the Conservation Reserve Enhancement Program (CREP) to acquire R/W for the Stony Creek project.

Wilkin-Otter Tail J.D. No. 2. Albright reported that the R/W payments have been made. HEI has prepared the plans and specifications. The bid opening is scheduled for May 10, 2019, 10:00 AM in the HEI Fargo office. Jones provided a copy of the specifications for the Board's review. He noted that he sent the plans

and specifications to a number of contractors. Otter Tail County will be the fiscal agent for the Clean Water Fund (CWF) grant. The BRRWD will hire and pay the contractor, then we will bill the County.

One Watershed, One Plan (1W1P). The Policy Committee and Planning Team have meetings scheduled for 4/24/19 at 9:00 AM in the BRRWD office.

Albright mentioned that Verna Kragnes contacted him regarding a possible BRRWD partnership in a Farmland Conservation Partners LLC, which would be a farmland stewardship management company to repurpose the 4,500 acres coming up for sale in Clay County. The project will pilot transformative agricultural community restoration and a carbon sequestration model. The Board discussed the proposal and agreed that we would not participate at this time.

2018 Annual Report. Leitch asked about the status of the Annual Report. Albright noted that the annual activity report has been completed for the Advisory Committee meeting, which is included as a significant portion of the report. Albright will check if the Audit can be linked in the Report or if it must be included in its entirety.

Project Development Timeline. Leitch asked about the status of the timeline. Jones is still working on it.

Becker C.D. No. 15, Hamden Slough National Wildlife Refuge (NWR). Albright and Jones have discussed the replacement of the NWR waterfowl control structures (installed in 1985) on C.D. No. 15 with the United States Fish and Wildlife Service (USFWS) and Ducks Unlimited (DU). When the Hamden Slough NWR structures were first installed, a site on Homstead Lake was only partially restored. The agencies would now like to restore this site and raise the water levels by 2'-3'. A ditch system hearing would be required to make those changes, and the USFWS/DU would need to work with the township and adjacent landowner to address potential road and neighboring property impacts. The agencies will contact the BRRWD when their plans are completed. Manager Hanson thought that the Lake in question is mostly cattails and raising the levels wouldn't affect anything. Van Amburg agreed that a hearing should be held. Albright commented that the area landowners have seen the NWR in operation for many years and expanding the site at Homstead Lake, probably wouldn't be too controversial.

Mary Rutten Flooding Problem. Mary Rutten contacted the BRRWD office regarding flooding problems near Rustad in Kurtz Township, Clay County. Albright suggested that the Board could hold an informational meeting with the affected landowners to discuss this issue. HEI can prepare a landowner database for the office to create a mailing list. Anderson thought the problem is probably caused by a plugged or damaged culvert, connecting the railroad track drainage to the 19th ST S ditch that drains north to C.D. No. 40. Anderson noted that we conducted a survey of this ditch last year, so it wouldn't be expensive to work on a solution for Rutten's concern.

Becker C.D. No. 5. Jay Meacham contacted the office regarding the Jay Lake Project that included a dam installation on C.D. No. 5 to create some additional wetlands. This dam has been inspected annually and is in working order. Meacham is interested in revisiting the project that the BRRWD, Becker SWCD, and the Natural Resources Conservation Service (NRCS) investigated (2008-2011). The proposed project would be to install another "plug" on C.D. No. 5 north of Jay Lake and south of another structure on the Todd Brandon property to restore a wetland basin on Meacham's property. There is also a washed out access road downstream of this site on Bruce Hein's property that needs repairs. Albright suggested that the Board could schedule a meeting with the affected landowners to discuss a possible project later this summer.

BRRWD Rules. The Board discussed the status of our pending Rules revision. Earlier, Leitch suggested that the Board should suspend the Rules revision until after the Board has dealt with the Diversion permit application. Albright explained that the revised Rules have a provision stating that permit applications received after the effective date of the new Rules would be subject to them, but applications filed prior to

that date would still be covered by our current Rules, which would apply to the DA's application, filed on 1/24/19.

Van Amburg noted that according to BWSR Buffer Law requirements, there could be a problem with our Buffer program funding if we don't have the revised Rules with the Buffer Law language in place by the July 8, 2019, meeting. The group discussed a proposed timeline for Rules adoption: draft Rules approval at the 5/13/19 meeting, 45-day review period, Rules public hearing on 7/2/19, and final Rules adoption at the 7/8/19 Board meeting. They also discussed amending the current Rules with the Buffer Law language and leaving the Rules revision until a later date. Van Amburg pointed out that the Board should do whatever is possible to get a Rules document with the Buffer Law language approved by 7/8/19 to avoid problems with our Buffer funding. Albright added that Attorney Edison should review the Rules revision prior to the 5/13/19 meeting. **Motion** by Van Amburg to adopt the schedule that Albright proposed for the adoption of the complete draft Rules revision, including a review by the BRRWD's Attorney. **Seconded** by Hanson. **Approved.**

Wilkin County 4-H Funding Request. The local 4-H Club in Wilkin County sent a request for the BRRWD to sponsor the Parade of Champions at the 2019 Wilkin County Fair. Albright noted that other similar contributions were \$100. **Motion** by Van Amburg to contribute \$100 to the Wilkin County 4-H. **Seconded** by Anderson. **Approved.**

Advisory Committee Annual Meeting. The BRRWD's Advisory Committee will meet on 4/26/19 at 2:00 PM in the Barnesville office. Supper will be catered at 6:00 PM.

The following bills were presented for approval:

Accounts Payable	Description	Account	Amount
American Enterprises	Clear Ditches of Snow-Flood Work	Varies	\$ 9,202.50
Bruce D. Banwart	Permanent R/W Payment	Pj. 78, Clay-Wilkin J. D. 1	\$ 9,015.00
Bruce E. Albright	Office Supplies-Paper	Admin.	\$ 41.77
Clay County Hwy. Dept.	Pumping-Flood Work	Clay C.D. No. 3	\$ 1,700.52
Don Briks Trust	Permanent R/W Payment	Pj. 78, Clay-Wilkin J. D. 1	\$ 1,308.00
Fitzgerald Construction, Inc.	Clear Ditches of Snow-Flood Work	Varies	\$ 9,375.00
James Briks LP	Permanent R/W Payment	Pj. 78, Clay-Wilkin J. D. 1	\$ 3,271.00
Jerome Briks LP	Permanent R/W Payment	Pj. 78, Clay-Wilkin J. D. 1	\$ 3,271.00
Joel Carlson, Inc.	May Lobbyist Fees	Admin.	\$ 850.00
Lilah J. Rehder	Permanent R/W Payment	Pj. 78, Clay-Wilkin J. D. 1	\$ 7,155.00
MN Dept. of Ag	DWM Demo Pj. At Nordick Farms	M.S.A. 103D.905, Sub. 3	\$ 3,873.28
MPS	03/04/19-04/02/19 Service (4)	Pj. 49, Oakport	\$ 334.15
Olson Construction, Inc.	Repairs & Beaver Control	Varies	\$ 16,432.50
Ross Aigner	Easement Option Payment	Pj. 79, Wolverton Crk.	\$ 3,369.00
Vogel Law Firm	#233186, April Billing	COE	\$ 4,313.95
Wilkin County 4-H	Donation	M.S.A. 103D.905, Sub. 3	\$ 100.00
			\$ 73,612.67

Motion by Fjestad to approve payment of the bills. **Seconded** by Larson. **Approved.**

Manager Comments. There was a brief discussion regarding spring planting/field conditions.

Performance Review and Assistance Program (PRAP). The Board watched a short BWSR training video entitled, "Introduction to Logic Models". These BWSR videos are designed to provide Watershed Boards with free training to meet the Level II PRAP performance standards for Board training.

Next Meeting Agenda. Leitch observed that staff should try not to include discussion items on the agenda, only Board action items. He also suggested that action items could be highlighted in bold font.

Next Meeting. The next regular BRRWD meeting will be held on Monday, May 13, 2019, at 7:00 PM in our Barnesville office.

Adjournment. Motion by Anderson to adjourn the meeting. **Seconded** by Larson. **Approved.** President Leitch adjourned the meeting at 8:40 PM.

Respectfully submitted,

John E. Hanson, Secretary