

BUFFALO-RED RIVER WATERSHED DISTRICT

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MINUTES FOR MANAGERS' MEETING March 23, 2020

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held their regular meeting on Monday, March 23, 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 Jay A. Leitch, Peter V. Fjestad, Mark T. Anderson, John E. Hanson, and Catherine L. Affield and on the conference line: Troy E. Larson and Gerald L. Van Amburg. BRRWD staff attending in person: Kathleen K. Fenger, Assistant Administrator, Houston Engineering, Inc. (HEI) and via conference line: Bruce E. Albright, Administrator, and Erik S. Jones, Engineer, HEI. Others attending via conference phone included Jenny Mongeau, Clay County Commissioner; Brent Edison, Attorney, Vogel Law Firm; Kim Melton, Wilkin Soil and Water Conservation District (SWCD); and landowners via conference line: Chuck Anderson, Don Nelson, and Gerald Zimmerman.

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. He announced the names of the persons in attendance in the office and asked all the online attendees to state their names for the record.

Agenda. Leitch asked for comments or additions to the meeting agenda. Jones wanted to add an update on the Whiskey Creek Restoration project, discussions regarding the Wilkin County Buffer installation effort, and the BRRWD Administrator position transition. With those additions, the agenda was approved.

Secretary's Report. The Board reviewed draft minutes for the 3/09/20 regular meeting. Affield and Leitch noted corrections to the minutes. **Motion** by Affield to approve the minutes, subject to correction. **Seconded** by Fjestad. **Approved** on a unanimous roll call vote.

Treasurer's Report. The Board reviewed the BRRWD's financial status. Cash on hand is \$2,206,610.70. Total income this year is \$286,169.85. Income since the 3/09/20 meeting totals \$8,542.75 from the Red River Watershed Management Board (RRWMB) for Mediation Project Team (PT) expenses.

Parliamentarian Report. Leitch noted that when he took over as BRRWD President, he appointed Vice President Fjestad to act as the BRRWD's Parliamentarian. He explained that it was common practice for groups like the Watershed Board to appoint the Vice President to this position. Fjestad reported that he contacted the Otter Tail County Auditor regarding Rules for Open Meeting Law and Clay County's concerns about potential violations. The Auditor said that their County Commissioners aren't required to notice an executive session prior to holding it. Fjestad said they can call one during their regular meetings. He also contacted Emily Javens, Executive Director, Minnesota Association of Watershed Districts (MAWD), who said that a Watershed Board does not need to pre-publish an executive session if the Board has a legitimate reason for calling one during a regular meeting. The Auditor also said the Board wouldn't be in violation if we didn't print a pre-approved agenda. Fjestad discussed an email that President Leitch received from Casey Carmody, Policy Analyst, Data Practices Office, State of Minnesota Office of Administration, regarding this issue. Carmody indicated that a Board could go into a closed session even if it did not include the closed session on its agenda. Fjestad's finding was that the Board didn't violate any open meeting laws.

Anderson asked that Leitch's email and Carmody's response be published in the meeting minutes:

As President of the Board of the Buffalo-Red River Watershed District (www.brrwd.org) in NW Minnesota, I was recently accused of 'meeting law violations'. My simple question: Can a public board go into closed session (with a proper motion & legitimate reason) during a regularly scheduled meeting without having 'closed session' on the agenda? I was told by two county commissioners that we can only go into closed session if it is on the meeting agenda. Thanks.

Hi Jay,

Thanks for reaching out to our office with this question.

There's no requirement in the Open Meeting Law that a public body must include a "closed session" notification on its agenda. In fact, the Open Meeting Law does not even require public bodies to prepare meeting agendas.

Rather, the requirements a public body must follow when closing a meeting are found in Minn. Stat. 13.01, Subd. 3, which include stating on the record the specific grounds permitting the meeting to be closed (as outlined in 13D.03 and 13D.05) and describing the subject to be discussed. Our website does have some further guidance about the process public bodies should use when closing a meeting.

In short, there would not be an Open Meeting Law violation when a board goes into closed session even though it did not include a closed session on its meeting agenda.

That said, it's probably good public policy to include closed sessions on any agendas your public body creates so that members of the public don't arrive at a meeting just to learn that it is closed. However, topics unexpectedly come up at meetings on occasion, so you can't always know when a closed session might be necessary.

Feel free to reach out with any additional questions. I'm happy to help however I can.

Casey

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Leitch noted that if the Board decides to go into closed session during a meeting, he plans to read a prepared statement to be sure to follow the Statutes precisely: "This meeting will be closed as permitted by the attorney-client privilege exception, provided for in M.S.A. Section 13D.05, Subd. 3B to discuss ..."

Wilkin SWCD Funding Request. Kim Melton, Wilkin SWCD, gave the Board a brief update on the Cover Crop Incentive Program's Fall 2019 Statistics:

- 18 contracts that covered 723.94 acres
 - 16 out of 18 had overwintering species
- Utilized 11 different species of cover crops
- Average cost of cover crop mix was \$11.27/acre

- Average cost share paid out \$1,515.86

She also discussed the Cover Crop Program Guidelines:

- 1-Year Contract
- 5-acre minimum-50-acre maximum
- \$22/acre species & \$26/acre multi-species
- No tillage allowed for life of the contract after the cover crops are planted
- Can utilize the program up to 5 years
- No eligibility requirements except cannot be getting paid for cover crops through a different program
- Wilkin SWCD offers free yearly soil health assessment on those acres contracted.

The Board also reviewed comments from producers who participated in the program. Melton explained that their application for Minnesota Board of Water and Soil Resources (BWSR) funding was denied. She requested that the Board consider a \$25,000 contribution to continue this program. Melton also plans to approach the Wilkin County Commissioners and the Bois de Sioux Watershed District for equal contributions.

Van Amburg supported their funding request and congratulated Melton and the other SWCD staff on their achievements, commenting that he thought the program was a "resounding" success.

Fenger advised the Board that the 2020 M.S.A. 103D.905, Subd. 3, included \$25,000 for soil health programs, plus an additional \$22,000 for Wilkin County conservation marketing and technical assistance.

Larson asked why BWSR denied their funding request. Melton said it wasn't clear why they made that decision but thought it could be because the program has adequate local funding support. Van Amburg noted that the BWSR funding is an extremely competitive program with each request scored and ranked. **Motion** by Anderson to approve the Wilkin SWCD's \$25,000 funding request in the hope that they can continue their good work. **Seconded** by Larson. **Approved**, on a unanimous roll call vote.

COVID-19 BRRWD Action Plan. Fenger reported that the office will continue to follow the Federal, State, and local recommendations, which have been changing on a daily basis. Fenger noted that most of the recently scheduled meetings/hearings have been postponed until further notice. The Board agreed with the decision. Leitch commented that in light of everything that's going on, the BRRWD should follow the "abundance of caution" guidelines. He also suggested that the Board cancel the 4/13/20 regular meeting. Fenger noted that some of the first of the month bills will need to be paid to avoid service charges. **Motion** by Fjestad to cancel the 4/13/20 meeting and to authorize staff to pay bills that may incur a service charge if not paid before the 4/27/20 meeting. **Seconded** by Anderson. **Approved** on a unanimous roll call vote.

Other Business brought before the Board included:

Permit No. 19-003, FM Diversion. Leitch reported that he and Anderson are working with the Attorneys on their pre-file testimony for the contested case hearing. Attorney Edison confirmed that the deadline to file that testimony has been extended to 4/30/20 due to the COVID-19 guidelines. Because the Minnesota Department of Natural Resources (DNR) staff is working remotely, the deadlines might be pushed back even further. Edison said that the attorneys recently received over 100,000 pages of documents from the DNR and 37,000 pages from the Diversion Authority.

The Minnesota Land Committee is holding a virtual meeting on Thursday, March 26, 2020. Leitch asked about the status of the letter the Board approved at the last meeting to send to the Wilkin County landowners to assist the Minnesota-Clay County Joint Powers Agreement (MCCJPA) in obtaining voluntary rights-of-entry within the BRRWD's jurisdiction. Fenger reported that the letters were sent last week, but she was not aware of any responses.

Permit No. 20-013, City of Moorhead. Applicant proposes to decommission Sanitary Lift Station No. 14 in the Regal Estates mobile home park and relocate a new lift station to the north in the SE¼, Section 4, Moorhead Township, Clay County. This project will also require the relocation of the storm pond discharge into County Ditch No. 41 approximately 175' south of the existing pond discharge point. The storm water pond and ditch will be restored, and a new outlet into the concrete ditch liner will also be created. Jones reviewed the project plans and recommended permit approval, subject to our standard utility disclaimer.

Permit No. 20-014, Four Hills Farms. Applicant proposes to install a Natural Resources Conservation Service (NRCS) designed grade stabilization project to provide erosion control in the SW¼, Section 2, Humboldt Township, Clay County. Jones reviewed the application and recommended permit approval. Fenger noted that Nate Thompson plans to approach the BRRWD for a possible costshare contribution for his project once they have completed work and have a final cost. Leitch questioned why Thompson would wait until the project was completed before asking for a contribution.

Motion by Anderson to approve Permit Nos. 20-013 and 20-014, subject to the referenced disclaimers and conditions. **Seconded** by Hanson. **Approved** on a unanimous roll call vote.

Project No. 80, Stony Creek Water Resource Comprehensive Management Project (WRCMP). Jones discussed the DNR grant agreement for \$1.5 million they forwarded for our signature. No costshare is required for this grant, which is comprised of Lessard-Sams Outdoor Heritage Council (LSOHC) funds targeted for stream restoration. The stream restoration component of the Stony Creek project is estimated to cost approximately \$2 million. DNR expects to provide the remaining \$0.5 million later this year after the next LSOHC allocation. Jones explained that the channel restoration work will require the completion of an Environmental Assessment Worksheet (EAW), which will take about five months to complete. The project will also require general permitting from the Army Corps of Engineers (COE), the Wetlands Conservation Act (WCA), and the DNR. The DNR will not consider a permit application until after the EAW is completed. **Motion** by Hanson to approve signature of the DNR grant agreement and to authorize HEI to move forward with the project's EAW and permitting process. **Seconded** by Anderson. Fjestad asked what would happen if the Board waited on the motion. Jones explained that the EAW process would be delayed. Leitch asked if the State would have the funding available. Jones explained that the LSOHC channel restoration funding is taxation proceeds that have already been collected and are available as dedicated funds. Van Amburg noted that "politicians" would have to approve any new allocations. Leitch wondered if any of the funding might be raided, given the current coronavirus situation.

Affield asked if the Board should wait for the Final Hearing before they approve the grant agreement since we aren't through the hearing process. Jones explained that we should have funding in place to help pay for the EAW process. If the project doesn't make it past the Final Hearing, whatever grant money we don't use for development costs would go back to the DNR. Van Amburg commented that the way a project is developed includes many moving parts that proceed concurrently, including the funding search. He pointed out the Stony Creek project has the approval of the landowners, who are hoping to see the project progress, and he thought that the Board should move forward with the expectation that the project will be built. Jones explained that for the Wolverton Creek project, there were a couple of grant agreements that were signed prior to the Final Hearing to help advance the project development.

Leitch pointed out that he doesn't think the Board knows what "the Project" is. He still hasn't seen the factsheet that he asked Jones to provide, and he is unclear about the project. Van Amburg disagreed with Leitch, noting that he thought that the project has been clearly defined. The BRRWD started project development in about 2015, and since then, we've reviewed a number of alternatives. He pointed out that we know what the project is, what it will do, and the need for it, even though we do not know the exact imprint of the final design. Van Amburg pointed out that the Board has voted twice to approve moving forward with the current alternative. He didn't see any reason to hold up project development by waiting to sign the DNR grant agreement.

Leitch pointed out that at the July 8, 2018, meeting, Jones ended the discussion on the project alternatives by saying that the project was "more of a concept". Leitch noted that he doesn't think we have had a definitive project for any of the decisions Van Amburg referred to. After watching the past meeting videos, Leitch thought it was very unclear what the project was. He observed that the meeting minutes tell a different story than the meeting videos. Van Amburg pointed out that we have seen maps of the alternatives and financial projections regarding the project design. Hanson felt that he was aware of what the project is. Anderson agreed with Van Amburg that every project has changes during the design phase, but as a whole, he understands what the project is. He acknowledged that the project will be expensive. Leitch maintained that for every dollar we spend, we get \$0.30 back. He agreed to go along with the project, as long as all the Board members understood that his calculations show that the project benefits do not return the cost. Affield suggested it might be better to wait until we're out of the present situation with COVID-19 when we can get back to meeting in person as a full Board and maybe we need that factsheet. She thought she knew what the project is, but she wasn't positive. She asked if the Board could have a copy of the printed factsheet that Leitch has asked Jones to provide. She asked Hanson if he would be interested in reading the factsheet. Fenger asked Jones if he has a copy to share with the Board. Jones said he could send one to Fenger.

Van Amburg noted that we've had a factsheet for some time that we've been working from, which probably has had some slight changes. He noted that as far as he was concerned, he didn't think the COVID-19 issues have anything to do with approving the DNR stream grant. He feels that signing the grant is something that we can do during this emergency so we can get started on the other parts of the project in an effort to move the entire project forward. There's no reason to hold up the EAW.

Albright explained that the grant agreement is for the channel restoration portion of this multiple phased project. He read an excerpt from the DNR's channel restoration grant agreement document:

This project involves restoring 21,320 feet of ditched stream back to a meandering stream channel. The project will reestablish the natural channel profile and floodplain, allowing a stable 2-stage channel to meander over time. The project will also improve riparian habitat by establishing a vegetated buffer at least 340 feet wide.

Albright thought this description was quite specific. Van Amburg noted that this is why LSOHC has provided the \$1.5 million grant. Regardless of anything else the project entails, LSOHC wants to see the channel restoration/reclamation take place.

Anderson asked if he was correct in understanding that this grant agreement is for the channel restoration feature of the Stony Creek project, which is similar to the Wolverton Creek project, and doesn't have anything to do with the project's retention feature. Albright said that the retention feature is a part of the larger multiphase comprehensive Stony Creek project. He explained that the question before the Board tonight is entering into a grant agreement to help fund the creek restoration component, which can be independent of the full project. The Board is not voting tonight to move the entire project forward, including the impoundment feature.

Leitch thanked Albright for the clarification and called for any further discussion. Hearing none, Leitch called for a roll call vote. In favor: Larson, Fjestad, Affield, Hanson, Anderson, Van Amburg. **Approved.**

Lower Otter Tail River (LOTR) Revised Project Management Plan. Fenger reported that the soil boring effort is on hold for now and will be revisited this summer. Regarding the potential project to establish a corridor for a future habitat restoration project on the Otter Tail River using LSOHC funding, Fenger said that staff has been working on the information the Board requested for their review. Jones explained how the proposed project is similar to the COE and the Wild Rice Watershed District's (WRWD) project along the Wild Rice River near Ada, where the COE straightened a portion of that waterway in the 1950s. Jones explained that WRWD applied for LSOHC funding through BWSR and the Reinvest In Minnesota (RIM)

program to acquire voluntary conservation easements at the RIM rates along the river channel corridor for a future project. For the LOTR area, cropland rates would amount to approximately \$3,700-\$4,000/acre. The funding process that the WRWD followed was to obtain the LSOHC funds, working with BWSR. The WRWD paid an additional 20% over the RIM rates. The WRWD's role was to develop the legal descriptions of the lands that were acquired. Once their funding was in place, the WRWD sent letters to the landowners within the project area, advising them that they would have to complete an application to participate in the program. In general, the Watershed District would work with the SWCD to determine estimated payment rates for the parcels within the project area. Assuming the landowners feel the offer is fair and they want to move forward, they would sign agreements for RIM and Watershed District easements to allow for future project construction in that area. Jones advised that the BRRWD would want to set up a specific financial account for the RIM easements separate from other BWSR funded projects. He added that if the Board decides to move forward with the LSOHC application, the WRWD has already created a template for project development.

Leitch asked if Jones was looking for Board action on this item. Jones explained that the application submission deadline is in May. He reiterated that the easement acquisition would be on an entirely voluntary basis. Albright commented that at this point, he thought a Board decision regarding the program application could be delayed. Everything at the State level is delayed because of the current health emergency and the May deadline could also be extended.

Wilkin County Ditch (C.D.) No. 27 Repairs. Jones submitted a letter and cost breakdowns for more repair options for C.D. No. 27. He prepared a cost estimate showing the total project costs for three different scenarios ranging from a full ditch retrofit along both 310th AVE (east ditch) and 320th AVE (west ditch) to only a ditch cleanout for both branches. He explained that C.D. No. 27 consists of two branches draining from north to south to the Otter Tail River. The east branch is along County State Aid Highway (CSAH) No. 19. He referenced the two informational meetings we held with the landowners last fall and again in February 2020. In response to the landowners' concerns about costs at the February meeting, the Board directed HEI to investigate possible options and provide cost estimates for each alternative. Jones described the full ditch retrofit project which would include cleaning/grading the ditch between the existing culverts to match the 2008 repair plans and to reconfigure the ditch sideslope geometry based on expected stable slopes and current road design standards for the east and west ditches. The total local share of the costs for a retrofit of both ditches with the Wilkin and Otter Tail County SWCDs' grant funding subtracted (\$257,000) would be \$216,175. The landowners' local share for a repair of the west ditch and a full retrofit for the east ditch, including the safety improvements along CSAH No. 19 to address the steep east slope of the highway, would cost \$143,841. The local costs for a clean out only with side inlets for the east ditch would be approximately \$102,000. Jones explained that the local cost difference between the two scenarios would be approximately \$45,000. Wilkin County Highway Department is currently considering a possible contribution to the project for the future reconstruction of CSAH No. 19, as described, to help make up the local cost difference for the east ditch. The Highway Department will be doing the ditch repairs.

Anderson asked if the County SWCDs' grant funding is secured. Jones said that the grant funding is already in place, it just depends on how much of the money we'll be able to leverage based on the final project options. Albright suggested that the Board could share Jones's information with the landowners and then wait to make a decision about the project alternatives until we have their input. The Board agreed to forward the new information to the landowners.

Fjestad commented that the landowners were concerned about the cost of the full retrofit for both ditches. He added that after a field review of CSAH No. 19, both he and Albright agreed that the road slope is a safety hazard. He thought it would be to the Highway Department's advantage to find the funding to contribute to fixing their road properly now instead of years from now after someone has an accident. However, he noted that it is the landowners' ditch, and the Board can't force them to spend money on a project they don't want.

Jones added that sooner or later, the County and the landowners will have to pay for the retrofit on the CSAH No. 19 ditch.

Whiskey Creek Restoration. Jones provided the Board with an update of the status of the National Water Quality Initiative (NWQI) program signup. All the landowners within the first reach of the channel restoration have enrolled, plus a few further downstream have also signed up. In order to access the potential NWQI funding (\$2.9 million total), local landowners would have to work with NRCS staff to implement conservation practices on their private land through the Environmental Quality Incentives Program (EQIP). He added that some landowners have also signed up for the Conservation Reserve Enhancement Program (CREP).

The Board had approved moving forward with the project's permitting and environmental review at an earlier meeting. Jones contacted George Holley, Moorhead State University-Moorhead Archeological Department, for a Whiskey Creek channel cultural review cost estimate. Holley estimated it would cost approximately \$22,000 to do the review. Van Amburg thought that the estimate sounded reasonable. Jones noted that for the Wolverton Creek cultural review, the cost was \$28,000 because it was a longer stretch of channel. Albright explained that the cultural review is needed for the EAW and the DNR permit application. Leitch asked Jones to ask Holley to prepare a formal proposal for the Board's review.

Wilkin County Ditch Buffers. Jones reported that there are several locations on the ditches that were retrofitted a few years ago where approximately 40-50 acres of buffers need to be reseeded. He requested that the Board authorize the staff to forward letters to those landowners to notify them that we will be staking the sites before spring planting and that the Wilkin SWCD will follow up with the buffer seeding this summer. Albright explained that the seeding needs to be done on ditches where the buffer has already been acquired, but it is no longer in compliance. Anderson agreed that landowners need to be compliant with the Buffer Law. **Motion** by Anderson to send the referenced letter to authorize HEI to stake the buffers, and for the SWCD to complete the seeding. The letter should also include language stating that the next time the buffer is disturbed, the landowner will have to pay for the reseeding. **Seconded** by Van Amburg. Leitch called for a roll call vote. In favor: Larson, Fjestad, Affield, Hanson, Anderson, Van Amburg. **Approved.**

HEI Office Staff. Jones reported that he and Albright met today to discuss future BRRWD administration and his retirement date. Albright has decided to no longer be the full-time BRRWD Administrator as of 5/1/20. They recommended that starting in April, Assistant Administrator Fenger would be in charge of the meetings, and on 5/1/20, she would become the Administrator, while Albright could be available on a part-time basis, as needed, if the Board wanted. Leitch thanked Jones for the information. Anderson congratulated Albright on his retirement.

BWSR Wetland Credits. Albright explained that during a recent conference with BWSR, it was suggested that the BRRWD might consider selling them some of our banked wetland credits from the Elkton site. Albright noted that we have about 60 acres of credits in our wetland bank, and Jones estimated that the credits could be worth approximately \$30,000 per acre. Albright noted that this would be a way to recoup some of the cost of developing the site. The deadline to submit a purchase offer to BWSR is 4/21/20. Van Amburg explained that BWSR needs wetland mitigation credits for their road replacement program. Albright thought that if necessary, the Board could hold a special teleconference meeting prior to BWSR's deadline date to agree on a value for our credits and to approve submitting a bid to BWSR.

Buffalo River Culverts. Albright explained that Amanda Hillman, DNR, conducted a Buffalo River culvert survey approximately 3 years ago, looking for fish passage issues within the BRRWD. Hillman's first study identified a few sites that were problematic for fish passage, including a dam in the Glyndon area on the south side of Trunk Highway (T.H.) No. 10. The Texas crossing near Georgetown was also identified for fish passage and debris. Albright commented that this crossing could potentially be removed, as it is rarely

used. Hillman plans to compile the costs to address these sites and submit a LSOHC funding application that the BRRWD could help sponsor. Currently, Hillman is still working on the application.

AV System Update. Fenger distributed the proposals from both NetCenter Technologies and Marco Technologies. She suggested that the Board could put the AV system update on hold given the current health emergency and other Board issues. The Managers agreed.

The following bills were presented for approval:

Accounts Payable	Description	Account	Amount
Catherine L. Affield	Voucher #20-01, 01/01/20-02/29/20	Varies	\$720.94
FRS Works	#V12000843, Self-Inking Stamp - Paid	Admin.	\$31.45
Jay A. Leitch	Voucher #20-06, 01/01/20-02/29/20	Varies	\$1,650.12
Joel Carlson	April Lobbyist Fees	Admin.	\$850.00
Liberty Business	#411197, Contract overage 12/27/19-3/26/20	Admin.	\$262.58
Marco	#INV7439782, Annual Support & Maint.	Admin.	\$3,753.56
Moorhead Public Service	02/04/20-03/03/20 Service (4)	Pj. 49, Oakport	\$154.97
Purchase Power	February Postage	Admin.	\$150.00
RRBC	LTFS Update - Local cost share	M.S.A. 103D.905, Sub. 3	\$7,500.00
Vogel Law Firm	#252318, February Billing	COE	\$16,708.00
WayPoint	#219, Liability Insurance Renewal	Insurance	\$5,865.04
			\$37,646.66

Motion by Hanson to approve payment of the bills. **Seconded** by Fjestad. Leitch called for a roll call vote. Unanimously **approved**.

Comments and Announcements. Fjestad noted that the MAWD 2020 Summer Tour has been cancelled.

Next Meeting. The next regular BRRWD meeting, scheduled for 4/13/20, has been cancelled. The Board will tentatively meet on Monday, April 27, 2020, at 7:00 PM in our Barnesville office via teleconferencing, depending on the COVID-19 meeting restrictions.

Adjournment. President Leitch adjourned the meeting at 8:27 PM.

Respectfully submitted,

John E. Hanson, Secretary