

BUFFALO-RED RIVER WATERSHED DISTRICT

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MINUTES FOR MANAGERS' MEETING March 28, 2016

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held their regular meeting on Monday, March 28, 2016, at 7:00 PM in the Barnesville office. BRRWD Managers present were Gerald L. Van Amburg, John E. Hanson, Mark T. Anderson, Breanna L. Kobiela, Catherine L. Affield, Peter V. Fjestad, and Troy E. Larson. BRRWD Staff attending included: Bruce E. Albright, Administrator, and Erik S. Jones, Engineer, Houston Engineering, Inc. (HEI). Others attending included BRRWD Attorney Tami Norgard, Vogel Law Firm; Jenny Mongeau, Clay County Commissioner; DelRae Williams, Mayor, and Attorney John T. Shockley, Ohnstad Twichell, P.C., City of Moorhead; Martin Nicholson, Engineer, CH2M; and landowners Kevin Olsgaard, John Ready, Jerry Nordick, Jared Nordick, Darrin Brandt, Don Nelson, and Michael Brandt.

Chairman Van Amburg called the meeting to order at 7:03 PM and announced that the proceedings were being recorded to aid in the preparation of the minutes.

Secretary's Report. The Board reviewed draft minutes for the 03/14/16 regular meeting. Manager Affield noted minor corrections. **Motion** by Affield to approve the minutes with the noted corrections. **Seconded** by Kobiela. **Approved.**

Treasurer's Report. The Board reviewed the BRRWD's financial report. Cash on hand is \$364,968.37, and the total income for the year is \$637,339.34. The only income this month was \$3,412.17 from the Minnesota Pollution Control Agency (MPCA) for the Red River Total Maximum Daily Load (TMDL) project.

Clay/Wilkin County Line Drainage Concerns. The BRRWD has held two landowner informational meetings to evaluate potential project options for a possible new drainage ditch on the south side of the county line. The water would be carried directly west to the Red River to address drainage concerns in and around Trunk Highway (T.H.) No. 75 between Wolverton and Holy Cross Townships. Following the last meeting, the Board agreed to wait for the landowners to decide what their next steps will be. Kevin Olsgaard, who operates the Harriet Ness property, attended tonight's meeting to get an update from the Board regarding the proposed project. The Board discussed the new buffer legislation as it relates to a possible new ditch project, or the Larry Ness property in Section 32, Holy Cross Township, that has a natural waterway draining through it.

Other Business brought before the Board included:

Permit No. 16-005, Polar Communications. Applicant proposes to install buried fiber communication cable in Wolverton, Roberts, and Deerhorn Townships, Wilkin County. This application was tabled at the 02/08/16 meeting because it was incomplete. The office now has the plans for the proposed installations. Albright will draft a letter to Polar Communications alerting them to the fact that their cable will cross Wolverton Creek in a couple of locations, and there is a pending project on the creek channel. Albright recommended permit approval.

Permit No. 16-015, Harmen Tande. Applicant proposes to install pattern tiling in the east 40 acres of the SW¼, Section 19, Moland Township, Clay County, outletting to Clay County Ditch (C.D.) No. 35, to which it is assessed. The new tile will tie into an existing tile main. Jones recommended permit approval.

Permit No. 16-016, Etzler Farms. Applicant proposes to hire Tightline Drainage to install a main line and pump lift station in the E½, Section 6, Foxhome Township, Wilkin County, and then Etzler would install the lateral lines over the next couple of years. The project will outlet south along Etzler's property on County Road (C.R.) No. 169 to Wilkin C.D. No. 4A to which the property is assessed. Jones recommended permit approval.

Permit No. 16-017, KTM Farm. Applicant proposes to install pattern tiling in the E½, Section 9, Alliance Township, Clay County, outletting via gravity flow east to the South Branch of the Buffalo River. Jones recommended permit approval.

Permit No. 16-018, KTM Farm. Applicant proposes to pattern tile the E½, Section 16, Alliance Township, Clay County, outletting via a lift station to the South Branch of the Buffalo River. Jones recommended permit approval.

Permit No. 16-019, Gloria Radtke. Applicant proposes to install random tile in the SW¼, Section 23, Trondhjem Township, Otter Tail County, outletting to C.D. No. 56, and another tile line in the NW¼ that will follow an existing old tile line, eventually draining south to Hovland Lake, which is out of BRRWD jurisdiction. Kyle Westergard, Otter Tail County Land & Resource Management, reviewed the proposal and exempted Radtke's project from the Wetlands Conservation Act (WCA) provisions. Jones recommended permit approval.

Permit No. 16-020, City of Moorhead. Applicant proposes to install sewer infrastructure along 17th ST S from 34th AVE S to 36th AVE S in the SW¼, Section 21, Moorhead Township, Clay County, with two backyard catch basins for residential lots. Jones recommended permit approval.

Permit No. 16-021, KTM Farm. Applicant proposes to pattern tile the NE¼, Section 21, Alliance Township, Clay County, outletting via a lift station to the C.R. No. 58 ditch. The project will need to drain along other properties before reaching the South Branch of the Buffalo River. Wade Opsahl, Technician, HEI, has already notified Miller that he will need to have his neighbors fill out landowner notification forms. The Board agreed that the application could be approved, subject to receipt of the downstream forms.

Permit No. 16-022, Jim Klein Land LPP. Applicant proposes to install 300 acres of pattern tiling in the S½, Section 29, Mitchell Township, Wilkin County, outletting via a lift station on the south line of Section 29 into the north ditch of C.R. No. 26, 200' east of the junction of C.R. Nos. 3 and 26, then it will drain south along the east ditch of C.R. No. 3 for approximately 2 miles to Whiskey Creek in Nordick Township. The outlet will be placed off the Wilkin County Highway Department road right-of-way (r-o-w). The pump and main lines will be set this spring with the rest of the project to be installed at a later date. There are a number of downstream landowners who will be affected by the tile water draining past their property along C.R. No. 3, so Klein will be required to obtain signed landowner notification forms from his neighbors. **Tabled.**

Permit No. 16-023, Daryl Velo. Applicant proposes to install approximately 150' of 24" dia. concrete pipe along an existing field ditch in the NE¼, Section 9, Trondhjem Township, Otter Tail County, to create a crossing for machinery into the northwest corner of his property. Velo has safety concerns because he must drive his machinery about 1.5 miles on the County highways to access his field. The Board determined that the waterway was not DNR protected waters.

Permit No. 16-024, Daryl Velo. Applicant proposes to install approximately 150' of 18" dia. pipe in an existing field ditch in the NE¼, Section 16, Trondhjem Township, Otter Tail County, to access a small portion of his property in the northeast corner of the section. The upstream culvert in C.R. No. 21 is approximately an 18" dia. pipe and the downstream culvert in C.R. No. 28 is a 24" dia. pipe. High water should still be able to flow through area and would only affect Velo property. The Board determined that the waterway was not DNR protected waters.

Permit No. 16-025, Gerald Zimmerman. Applicant proposes to install a field entrance with a culvert in the southeast corner of the NE¼, Section 31, Morken Township, Clay County, for access to his property off of a township road. The new culvert should match the existing upstream 24" dia. culvert. Approval would be subject to road authority approval to work within their r-o-w.

Permit No. 16-026, Gerry and Sharry Zimmerman. Applicants propose to widen an existing field entrance and install a longer culvert of the same size as the existing culvert in the northwest corner of the NW¼, Section 31, Morken Township, Clay County, for North Dakota State University (NDSU) research plot access. Again, approval would be required from the road authority to work within their road r-o-w.

Motion by Anderson to approve Permit Nos. 16-005, and 16-015 through 15-026, except 16-022, which was tabled, pending receipt of the downstream landowner notification forms. Permit approval is subject to the applicable standard disclaimers, state/federal agency permitting requirements, and road authorities' permission to work within their road r-o-w. **Seconded** by Fjestad. **Approved.**

Duane Boeder Complaint. Albright received an email message from the Boeder family, stating that they wish to have this issue resolved. Frank Schindler had the Boeder's approach removed in Section 33, Barnesville Township, Clay County, because the approach was blocking his drainage. The contractor, Bryan Kritzerberger, is also willing to do what is necessary to address the Boeders' concerns, including reinstalling the approach with a culvert to match the upstream culvert on Frank Schindler's property. Albright needs to find time to respond to the complaint.

Bryan and David Henderson Waterway Concern. The Board had authorized an additional survey in the NW¼, Section 27, Manston Township, Wilkin County, regarding drainage concerns in Section 34, Manston Township, which HEI has now completed. According to the survey, there are some high spots that could be cleaned. Albright will forward copies of the survey to the landowner/renter for their review.

HEI also completed a preliminary investigation for a possible lateral extension in Sections 20 and 21, Manston Township. It appears a lateral extension could be quite expensive. Albright met with Tom Arnhalt and Tom Paulson regarding results of the investigation. They are considering the installation of 25-30 acres of bufferstrips along the waterway on Arnhalt's property and then using their buffer payment to buy replacement farmland. Wilkin County SWCD is working with Paulson on this proposal.

Wilkin C.D. No. 42 Outlet Concerns. Albright met with Ron Erdman last Friday (03/25/16) regarding the work he completed last year to correct outlet problems in the NE¼, Section 22, Atherton Township, on property he rents from the Fankhanel family. Albright distributed photographs he took of the site. He also confirmed that the south end of the field ditch still doesn't drain since Ivan Nelson blocked the outlet in violation of the BRRWD Rules. Erdman initially claimed that water broke out of the C.D. No. 42 outlet and drowned out some of his new alfalfa seeding. Albright suggested that in order to resolve the plugged field ditch, the Board could direct Nelson to open the outlet on their property either by a surface drainage ditch or by connecting a line to the tile to the main on his property. He will have a specific recommendation for the Board regarding this issue at the 04/11/16 meeting.

In regards to Erdman's C.D. No. 42 outlet work, Albright acknowledged that it may have exceeded the Board's initial expectations, but he felt in general, the work was justified. Erdman submitted a bill for

approximately \$14,000. Albright recommended that the Board pay Erdman half of his bill now with the understanding that we will pay the balance when he completes the seeding and spoil leveling. Partial billing is included on tonight's bill payment list.

Project No. 16, Stinking Lake Detention. Jason Mikkelsen contacted the office recently with a request to repair a cattle crossing with culverts on Hay Creek that the BRRWD installed for Mikkelsen's father, Mike, around 1995, as a project expense. Opsahl will meet with Mikkelsen this week to determine what needs to be done to restore the crossing. He will prepare a recommendation for the Board's review.

Project No. 77, Clay C.D. No. 51-Lateral No. 3. BRRWD Attorney Tami Norgard, Vogel Law Firm, is in the process of reviewing and listing the documents related to Attorney Zenas Baer's request for information from the BRRWD. Baer represents Robert Norby, who has filed an appeal and lawsuit regarding the Board's Order to move forward with Project No. 77. A tentative court date has been scheduled for January 2017. Baer also wants to depose Jones in the next few weeks. Albright reported that Travelers' Insurance Company will be covering the costs for defending against the lawsuit via their 2005-2006 policy.

Project No. 56, Manston Slough Restoration. HEI will continue to monitor the township roads where "soft spots" developed last fall. If the roads still need repairs this spring, HEI will ask the contractor, Gladen Construction, Inc., to come back. Albright commented that there had been plans to schedule a meeting with the Operation and Maintenance (O&M) partners in the near future to discuss the project maintenance, but because of the dry spring, a meeting might not be necessary.

Jared Nordick mentioned that Meadows Township has also received complaints about the road condition, which has developed into a traffic hazard. Turner Sand and Gravel has been grading the road at their expense because their material was used on the road during project construction. Albright reiterated that the BRRWD will work with the contractor to make repairs as soon as conditions permit.

Project No. 49, Oakport Flood Mitigation. Jones reported that the contractor, R.J. Zavoral and Sons, Inc., has started tree removal for Phase 4. The Board discussed coordination between the contractor and the County Highway Department on the road resurfacing projects for Wall ST NW and North Broadway. Plans are to keep one access to North Dakota open at all times during construction.

Andrew Noah has an option to buy two lots with a 05/01/16 deadline to make decision regarding these options. Albright has also contacted Noah to expedite discussions about the Fees house, as we don't want to delay Phase 4 construction this summer for house moving or demolition.

Diversion Authority (DA) JPA. The Board discussed the DA's Joint Powers Agreement (JPA). Albright provided a brief update regarding the revision of the current JPA and a copy of a letter from the Attorney representing the Richland-Wilkin Joint Powers Authority. Chairman Van Amburg commented that Attorney Norgard should review the Richland-Wilkin Counties' letter and report back to the Board. She will also confer with Attorney Shockley and the County's legal advisor, as the letter refers to all the Minnesota entities.

Albright also noted that a revised cost estimate of \$2.1 billion for the Diversion project was released today, which reflects a \$300,000 million increase. A 6-entity meeting is scheduled for Thursday, March 31, 2016, at 1:00 PM, at the Fargo City Commission Room, to review the revised 2016 budget. Albright and Managers Van Amburg, Hanson, and Fjestad will not be able to attend as they will be at the Minnesota Association of Watershed Districts (MAWD) Legislative Reception in St. Paul. On 03/22/16, Managers Van Amburg, Fjestad, and Anderson attended a meeting of the Minnesota entities to discuss the revised JPA. Van Amburg noted that Attorney Shockley addressed several of the Board's questions and comments at that meeting.

Shockley explained to the Board that he is looking for additional comments/feedback on the newest version (3.2) of the JPA before the DA meeting on Thursday. Following that meeting, Shockley will present the new version to the DA and technical/legal consultants for review and then send a "near" final version out for final comments. Manager Anderson asked about a DA proposal to secure liability coverage for the Minnesota entities. Norgard explained that to date, the DA has agreed to obtain liability insurance, and all the separate DA members will be listed as "additionally insured". Norgard noted that the DA will expect contributions from the various entities to cover the insurance premiums. Any liability that is not covered by the insurance will be split according to the formulas identified in Section 11.09, Cost Share, in the JPA. Norgard commented that more work needs to be done to identify how the maintenance costs will be shared by the Minnesota entities, which could be covered in a Minnesota entities sub-agreement. In any cost share agreement or benefit assessment, the City of Moorhead and Clay County will have the largest portion.

Norgard discussed insurance/liability limitations, as identified in Article XIV. Norgard suggested that the \$3 million minimum limit will need to be supplemented to address the gap between the North Dakota and Minnesota liability limits. In Section 14.03, it states that member entities will not sue other entities for damage to or loss of their own autos and equipment as a result of project activities. She explained the understanding is that the DA would reimburse any losses, and litigation would not be necessary. It is assumed that we would have our own insurance coverage, as well. Anderson commented that \$3 million limit on the liability insurance coverage wasn't enough. Norgard explained that in Minnesota, the maximum liability award is limited to \$1 million.

Norgard noted that in Section 14.05, Defense and Indemnification, the DA agrees to defend and indemnify the member entities, and the individual DA Board Members from liability claims. The member entities would contribute funds for the defense, according to the cost share formula.

Norgard pointed out that according to Article XV, Ownership of Property Acquired for the Project, Section 15.03, Ownership of the Project Property, (e), the BRRWD would have title to the easements, r-o-w, and land necessary and related to the part of the Red River Control Structure located in Minnesota. The BRRWD would also own the part of the southern embankment and retention area located in Minnesota. Commissioner Mongeau asked if the same ownership would be in place for the Comstock Levee, if one is constructed. Shockley said that the DA assumes that the BRRWD would be responsible for that construction. If the BRRWD doesn't want to take on ownership, Shockley explained the agreement can be revised to name a different responsible entity. He added that the State of Minnesota's share of the project costs is capped at \$100 million. The local entities have no required contribution for capital (construction) costs. He added that the DA takes on the risk that the State of Minnesota might fail to appropriate funding. Anderson questioned if the BRRWD would also be responsible for maintenance costs if we assume ownership of these project components. Shockley explained that this issue is currently being discussed. Currently, thoughts are that the BRRWD's 50% liability for maintenance would include normal items, such as mowing. More extensive maintenance items would be paid for under a different formula. He expected that this item will be addressed in the next version of the JPA.

Fjestad asked about how voting would be handled. In the JPA, it appears that only a majority (2/3) vote is needed to pass most proposals. Shockley said that as he understood it, the only items that had required all six entities to vote in the affirmative were past operating budgets. The project construction and implementation budget would not require all six entities to vote for it. He added that the BRRWD would have an opportunity to provide comments on the budget according to the revised JPA, but Norgard noted that from now on, the budget would be voted on at the DA Board level, so the BRRWD won't be asked to vote on future budgets.

Shockley noted that the DA is currently discussing easement values and a crop protection program. He pointed out that if the BRRWD does not want to own the easements, control structure, or embankment levees, the rest of the JPA member entities need to know soon. Norgard explained that if the BRRWD does

take ownership of these project features, then we will be the entity to negotiate with the landowners for the easements. She added that the BRRWD would also be the entity to invoke eminent domain/condemnation. Norgard encouraged the Board to consider who would be better at working with the landowners to acquire a fair value for their easements, the BRRWD or a non-local entity, such as the COE.

Norgard discussed Section 15.06, Request for Acquisition of Project Property. She explained that the process would start with a written request from the DA for the BRRWD to acquire project property, easements, etc., which would require the BRRWD to either obtain the property voluntarily, or invoke eminent domain. She added that the BRRWD would be reimbursed for all the acquisition costs. Norgard stressed that if the BRRWD decides to participate in the JPA, but then refuses to follow through with our obligations spelled out in the agreement, the DA could find the BRRWD in default of the agreement. If this happens, the BRRWD might still have financial commitments to the project, but have no more opportunities to be a part of the decision making process. She added that if the BRRWD wants to be a member of the JPA, but doesn't want to own the structures or easements, then it would be best to say so now, and allow Clay County or some other entity to take ownership.

Hanson asked at what elevation the Red River would need to be at to use the diversion/staging area. Anderson commented that the O&M Plan has not yet been developed. Shockley explained that the JPA is an agreement between the six entities, and then there is a Project Participation Agreement (PPA) between the COE and the non-federal sponsors, including the City of Moorhead, City of Fargo, and potentially, the DA. The PPA will develop the O&M Plan for the control structures. He added that as a member of the PPA, the BRRWD would have the opportunity for input into the development and execution of the O&M Plan.

Albright commented that the Board has questions about the JPA because there are still many "unknowns" about the Diversion project, but the agreement spells out specific required actions for the signers. Shockley noted that if the BRRWD had a legal basis for not acquiring land according to a DA request, then the DA can't force the BRRWD out of the DA. Norgard briefly explained that Article XIX, Dispute Resolution, lays out how the JPA will work out Member disputes, starting with informal resolution, and ending in mediation with the understanding that either party will waive a jury trial in any issue/disagreement based on the JPA.

In Section 8.02, Party Contributions, Norgard noted that the BRRWD contribution does not have a direct cost obligation for the capital outlays, but the BRRWD will be a conduit for State of Minnesota monies, including actively lobbying for Legislative project funding. In Section 8.03, the BRRWD would agree to levy for the project, such as setting up a watershed management district (wmd) to collect a fee for O&M costs, according to the cost share formula, which has not yet been determined by the DA. The voting on this issue would require a 2/3 member approval vote with one affirmative vote from the Minnesota Entities. Section 8.04, recognizes that the BRRWD has made significant In-Kind contributions with our various projects along the Red River (Oakport Township) and that those costs will be credited against the BRRWD's respective Project cost share. Norgard explained that in Section 10.03, the DA will repay the City of Fargo and Cass County for Sales Tax Revenue temporary project loans by the North Dakota entities issuing additional Debt Obligations, based on the formula. Shockley noted that the Minnesota Entities are exempt from incurring debt for the project.

Shockley noted that in response to comments received from other member entities, there will be a general section added to clarify local permitting issues, such as building permits, floodplain development permits, etc. Individual member entities will retain their permitting authority. The P3 Agreement will be clarified to reflect that the Agreement only relates to the project structures in North Dakota and the North Dakota Entities.

Anderson asked about the status of the North Dakota permitting for the project. Shockley explained the State of North Dakota is conducting a review similar to the Minnesota DNR's permitting process. Anderson asked if the BRRWD should sign the JPA prior to the DNR releasing the final Environmental Impact Statement (EIS) and issuance of the high hazard dam permits. Shockley noted that there is a "get out" clause, so that if the project were halted for some reason, the entities would be able to terminate the JPA. He added that a provision could be included stipulating that if construction permits aren't secured within a proscribed time, the entities would have the ability to mutually agree to terminate the Agreement.

Albright commented that BRRWD Board members will have an opportunity to discuss this issue with our local Legislators this week during the Minnesota Association of Watershed Districts (MAWD) Legislative Reception in St. Paul. Anderson asked if the attorneys thought the Minnesota Attorney General's office should review the JPA. Norgard observed that the North Dakota Attorney General has to review this type of agreement, but she wasn't sure if Minnesota has that same requirement. Shockley noted that since this is technically an amendment to the JPA, he didn't think the North Dakota Attorney General would be involved, but he thought it could be researched. Norgard suggested that the JPA could be submitted to the Bond Council for their comments.

Shockley plans to submit any further comments and hopes that a "near" final JPA would be ready by the March 31 DA meeting for the BRRWD's final review. The DA hopes the BRRWD could vote on the JPA approval by the first meeting in April.

Van Amburg commented that the Board should discuss ownership of the Red River Control Structure and the southern embankment. Norgard asked the Managers if anyone had an opinion regarding this issue. Van Amburg suggested that it might be best to have an entity that will be a permanent organization in charge of the structures, like the County. Norgard pointed out that in the case of the BRRWD dissolution, there would be guidelines in effect to handle structure ownership transfer. Van Amburg noted that it might be good for the BRRWD to be in charge of maintenance, etc.

Manager Kobiela noted that the JPA would bring about a change in the way the BRRWD handles projects, since in the past, we tried not to own property related to projects. She wondered about staffing commitments regarding the creation and administration of possible wmds, participation in lobbying, etc. Norgard didn't think the current BRRWD staff would need to be increased. Most of the administrative work could be outsourced at the DA's expense.

Albright pointed out that the upstream staging area wouldn't be used unless the diversion project was in full operation. As he understands the project, Shockley explained that the control structure will allow a preset amount of water (37') through Fargo and as the staging area slowly rises, there is a cross flow channel in front of the levee on the North Dakota side that will take water into the Diversion channel. Jones noted that there will also be flood forecasts involved with this process associated with the Operation Plan.

Manager Affield thought that some of these questions regarding the fundamental operation features should be addressed before the BRRWD is asked to sign the JPA.

Fjestad asked if a funding source has been identified for the project. Shockley said that there is a financial plan coming out in April that will address project funding, which currently is expected to be a \$0.05 sales tax from the City of Fargo and Cass County, backed up by a special assessment through the Cass County Joint Water Resource District. With this plan, there is no bonding requirement for the Minnesota Entities. Fjestad said that United States Representative Collin Peterson told him that Governor Dayton has stated that Minnesota will not contribute any funding to this project. Shockley clarified that according to the JPA, the local Minnesota entities (City of Moorhead, BRRWD, or Clay County) will not be expected to contribute any funding for capital (construction) costs. The DA/North Dakota entities are assuming the risk

that the State of Minnesota might not contribute to the project. Albright noted that Minnesota's contribution would be for the project's operation and maintenance, but not for the initial construction.

Van Amburg commented that if the BRRWD did take on the easement acquisition process, it would be best if our staff handled the negotiations. He asked if the BRRWD would be reimbursed for our staff time. Norgard thought we would. Anderson asked if Shockley knew when the DA would have easement evaluation information available. Shockley said that flowage easement values are included in the project cost estimate that will be released later this week.

Albright commented that it is important that the Minnesota entities continue to work together regarding the Diversion project and the JPA. Mayor Williams felt that it would be best for the BRRWD to handle the easement acquisition process "in house", so that the landowners can work with people they know on this sensitive issue. Van Amburg said that land and easement acquisition was one of the reasons that he has felt all along that the BRRWD should participate in the project development by being members/signers of the DA and previous JPAs.

Don Nelson asked if it was legally required for the Minnesota Attorney General to review the JPA. He added that even if it wasn't required, the BRRWD could benefit from an unbiased opinion from the State. Van Amburg observed that the BRRWD would welcome input, and the only reason not to seek an opinion would be time limitations. Albright observed that projects of this scale take time to develop.

Nelson asked if the residents/landowners who would potentially be assessed for project maintenance would be notified prior to the assessment. Van Amburg replied that there is detailed process to follow if the BRRWD were to set up a wmd for the project, including landowner hearings. Albright added that the findings would be subject to public appeal, so there is a possibility that the BRRWD might fail to create a wmd. Shockley agreed that there might be a scenario where the BRRWD would not legally be able to assess for maintenance. He noted that the JPA acknowledges this possibility, stating that the BRRWD shall use their "best efforts" to raise maintenance funding.

Nelson also asked Shockley to clarify a statement regarding the DA budget approval and BRRWD agreement to build the project. Shockley explained that he meant that in the future when the project is already under construction, only the DA Board would approve operating budgets with advice and comment from the member entities. Currently, there has been no formal agreement to proceed with the project because in order to proceed, the PPA would have to be signed with the COE, which has not been completed. Shockley thought that July 1, 2016, would be the earliest date that the PPA could be signed.

Nelson asked that if the BRRWD signs the JPA, is the Board in essence, agreeing that the project should move forward. Both Managers Larson and Fjestad thought that's what signing the JPA would mean. Van Amburg thought the JPA was a document assigning duties and fiscal responsibilities if a project is built. Norgard explains that the JPA gives the BRRWD a voice in making decisions regarding the potential project. If the BRRWD doesn't participate, our vote will be given to another Minnesota entity, either a City or County representative. Anderson pointed out that our "seat at the table" comes with a cost, which the JPA spells out. Larson commented that he is concerned about the cost to the Board's credibility if our decision to participate in the Diversion project turns out to be the wrong one.

Jerry Nordick discussed concerns about the BRRWD's liability for costs related to project maintenance (50/50 split for infrastructure in Minnesota) and administration. According to the JPA, Norgard explained that the DA would reimburse documented costs related to easement acquisition efforts. Nordick also asked who would pay for the BRRWD's share of maintenance costs if we can't raise funding, either assessments or State monies. Norgard explained that the JPA makes it clear that the North Dakota entities would have to make up the short fall, if the State of Minnesota does not contribute to the project, or if the BRRWD has made their best effort to assess for maintenance costs, but can't legally levy for the costs. Nordick asked if

anyone knew what the actual dollar amounts would be for the BRRWD project costs. Van Amburg said that at this point, no one is for sure. He added that with a wmd, the City of Moorhead and land north of the "dam" would receive the majority of the assessments. Land in Wilkin County in the southern staging area would probably not have any benefits from the project. Ownership of the roads, railroad r-o-w, etc., would remain with the road authorities. Jones noted that the amount we will pay for maintenance costs will be determined in part by the O&M Plan, once it is prepared.

Kevin Olsgaard commented that the Managers need to read the letter from the Rinke-Noonan Law Firm. Olsgaard feels that the letter makes it clear that the BRRWD would be violating State Law by signing the JPA at this time. Norgard pointed out that there will be several attorneys reviewing the JPA to be sure of its legality. The group discussed the effects of the project on farmland on the Minnesota side of the Red River. Martin Nicholson, Engineer, CH2M, noted that the affected acres, volume of water to flow through the City, etc., are known, and CH2M could provide that information to the Board if necessary. Van Amburg mentioned that this information is also on the DA's website.

Affield asked why the BRRWD had to be in a rush to sign the JPA. Norgard explained that the old JPA will expire soon, and the DA wants a new JPA in place before then and also prior to the execution of the PPA potentially on July 1, 2016. Affield asked if the PPA will be executed prior to the Minnesota Department of Natural Resources' (DNR) EIS is final. Shockley thought that the final EIS is due to be released in the beginning of May, followed by a 10-day comment period with the Record of Decision due by the end of May or beginning of June 2016. The COE has to decide if the PPA can be signed before the EIS is finalized, and if all the regulatory issues have been resolved. Affield asked if Norgard thought it would be appropriate for the Minnesota Attorney General's Office to review the JPA prior to the BRRWD signing it. Norgard said that we could request that the Attorney General review it. Don Nelson thought that the BRRWD would get a response. Norgard noted that it could take some time for the Attorney General's Office to provide a review of the JPA.

Nordick asked if we knew the makeup of the DA Board in accordance to the new JPA. Norgard explained that there are 3 representatives from the City of Fargo Commission (1 must be the Fargo Mayor), 2 representatives from Moorhead City Council (1 must be the Moorhead Mayor), 3 from Cass County, 1 from the Clay County Commission, 1 from the Cass County Joint Water Resource District, 1 from BRRWD, and 1 from the upstream coalition appointed from one of the Wilkin or Richland County Commissions. There has been talk of appointing someone from the City Of West Fargo, which would then allow for one more representative from Minnesota to maintain membership balance. The JPA would remain a 6-member entity.

Don Nelson commented that since the six entities are currently operating under the old JPA, which states that all 6 entities must approve the new JPA for it to take effect. Shockley explained that any member who doesn't want to be part of the new JPA, can elect to not to sign the new JPA, and that member's obligation to the project ends. Nelson requested that the BRRWD ask the Attorney General's Office for a review of the JPA before they sign it. Van Amburg said we could check on the process, and if it is possible, we could ask for a review. Anderson said we should be sure we have the final revision before giving it to the State. Shockley asked the Board to forward any comments/concerns to him so that he can address it prior to finalizing the JPA. Norgard noted that the Board appears to have concerns about owning/liability for the structures. Shockley said that the DA is working on the insurance issue for the high hazard dam. Van Amburg asked about the COE responsibility regarding liability/insurance issues. Those issues will be addressed in the PPA, which should be in draft form for review in the near future.

The Board will continue discussion on the JPA at their next meeting on April 11, 2016. Albright noted that the Board will also want to work with the City of Moorhead and Clay County regarding the JPA. There is a meeting scheduled on March 31, 2016, to review the new cost estimate with the other Minnesota entities. Shockley added that he will try to incorporate Norgard's comments into the document that will be reviewed

at that meeting. The DA Board has to approve the proposed changes before it can come back to the BRRWD as a draft.

Project No. 39, Georgetown Levee. Attorney Corey Elmer, Vogel Law Firm, continues to work on the Greywind condemnation issue. Wade Opsahl, Technician, HEI, will be working with the contractor on a few final cleanup items this spring, including seeding of the ball diamond. Opsahl is also working with the Federal Emergency Management Agency (FEMA) to determine what the final payment will be for the City of Georgetown. He thought it would be this summer before FEMA makes a final determination on what costs they will cover for the 2011 spring flood.

Project No. 34, Clay C.D. No. 41. At their 03/14/16 meeting, the Board discussed repair alternatives for a slide on the ditch system in the American Crystal Sugar Company (ACSC) factory yard. Jones and Albright met with ACSC on 03/08/16 to discuss repair alternatives. They indicated that they have some funding budgeted (about \$100,000) for this crossing repair and would be willing to contribute to a single line of 14' x 7' pipe, placed at a lower elevation to provide protection for the 10 to 15-year event. Jones reported that he is working with ACSC's consultant on a design with a higher embankment and different sized culvert. Jones expects to have a recommendation that the Board can act on for the next meeting.

Project No. 30, Clay/Wilkin Judicial Ditch No. 1 (J.D. 1). The landowners have submitted their petition and \$20,000 bond for an outlet diversion to take water out of J.D. No. 1 to flow west along the south side of the County line to Wolverton Creek. Albright will review the petition and then forward it to Attorney Norgard for her review.

Mediation PT. The next PT meeting will be held on Thursday, April 7, 2016, in the Barnesville office at 1:30 PM.

Elkton Township Wetland Restoration. Attorney Elmer is working with Minnesota Board of Water and Soil Resources (BWSR) on the landowner easements. Chuck Anderson's crop loss claim has been turned over to Auto Owner's Insurance Company's legal department.

2016 MAWD Legislative Reception and Breakfast. The MAWD Day at the Capitol is scheduled for Wednesday and Thursday, March 30-31, 2016, in St. Paul. Albright, and Managers Van Amburg, Hanson, and Fjestad plan to leave the office by about 1:00 PM on Wednesday.

Flood Damage Reduction (FDR) Landowner Forums. The Board discussed the three public FDR Forums that we held on March 15, 18, and 22. Van Amburg felt that the landowners appreciated the presentation regarding the BRRWD operations and activities and suggested that we might want to consider more events like this in the future to keep landowners informed.

BRRWD Advisory Committee. The Board has scheduled their annual Advisory Committee meeting on April 1, 2016, at 1:30 PM in the BRRWD Office in Barnesville. Meeting notices were mailed last week.

BRRWD Insurance. Van Amburg signed the application for quotes to renew the BRRWD's insurance coverage through our insurance agent John Hoffman, Waypoint Insurance.

BRRWD Rules. The Managers have copies of the draft Rules. Once they have completed their review and are ready to move forward with a final draft, the office will distribute the Rules to BWSR and other various entities for a 60-day review and comment period. The BRRWD must hold a public hearing before adopting the Rules.

Wilkin County Ditch No. 22, Lateral No. 2 Repairs. Jones provided repair recommendations for Lateral No. 2 to clean 1.5 miles of the ditch along Section 3 and the west 0.5 miles of Section 2, Mitchell

Township, to remove excess sediment prior to seeding the bufferstrip this spring. The opinion of probable cost is \$10,000-\$12,000 for materials and labor. **Motion** by Hanson approve the recommended repairs. **Seconded** by Anderson. **Approved.**

The following bills were presented for approval:

Accounts Payable	Description	Account	Amount
Allstate Excavating	#469121, 50% outlet work	Pj. 25, Wilkin C.D. 42	\$ 7,340.00
Barnesville Phone Co.	03/25/16 billings	Admin.	\$ 290.75
Bruce E. Albright	Walmart/FDR Forum	Mediation PT	\$ 58.57
Catherine L. Affield	#16-01, 01/01/16-02/29/16	Varies	\$ 499.67
City of Barnesville	01/29/16-02/29/16 utilities	Admin.	\$ 767.39
Clay County Union	Forum notices (3)	Mediation PT	\$ 175.50
Danielle Scheffler	FDR Forum supplies	Mediation PT	\$ 65.39
Desing's Eagle Café	FDR Forum Meal	Mediation PT	\$ 454.22
Erik Jones	FDR Forum Donuts/Cookies	Mediation PT	\$ 65.88
Gerald Van Amburg	FDR Forum Donuts/Cookies	Mediation PT	\$ 65.98
Joel Carlson, Inc.	April Lobbyist billing	Admin.	\$ 850.00
Kathy Fenger	FDR Forum Supplies-buns/pop	Mediation PT	\$ 37.16
Lake Park Café	FDR Forum Food-BBQ	Mediation PT	\$ 135.00
Liberty Business Systems, Inc.	#235472, 12/22/15-03/21/16 overage	Admin.	\$ 224.07
NetWork Center	#0000037947 Video Service	Admin.	\$ 75.00
New Century Press	#300099784, FDR Forum Notice	Mediation PT	\$ 108.00
Quill	#4154217, Office supplies	Admin.	\$ 70.34
Terracon	#T753998, slope repair	Clay C.D. No. 33	\$ 4,502.75
The Hawley Herald, Inc.	Forum notices (3)	Mediation PT	\$ 175.50
UEI	#56620, Phase 4	Pj. 49, Oakport	\$ 19,317.04
			\$ 35,278.21

Motion by Anderson to approve payment of the bills. **Seconded** by Affield. **Approved.**

Succession Planning. The Board discussed hiring an Assistant Administrator to work with Albright in accordance with our Succession Plan. HEI will develop a proposal to advertise statewide for a candidate, who could be in place by Labor Day.

Next Meeting. The BRRWD will hold their next regular meeting on Monday, April 11, 2016, at 7:00 PM in our Barnesville office.

Adjournment. Chairman Van Amburg adjourned the meeting at 10:15 PM.

Respectfully submitted,

John E. Hanson, Secretary