

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

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## MINUTES FOR MANAGERS' MEETING

June 10, 2019

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a regular meeting on Monday, June 10, 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, Troy E. Larson, and Gerald L. Van Amburg. Others attending included: Bruce E. Albright, BRRWD Administrator, Kathleen K. Fenger, BRRWD Assistant Administrator, and Erik S. Jones, BRRWD Engineer, Houston Engineering, Inc. (HEI); Pete Waller, Board Conservationist, Minnesota Board of Water and Soil Resources (BWSR); Kevin Campbell, Clay County Commissioner/Fargo-Moorhead (FM) Diversion Authority (DA) Co-Chair; Lyle Hovland, Wilkin County Commissioner/Richland Wilkin Joint Powers Authority (JPA); David Morken, Chair, and Don Nelson, Director, MNDAAK Upstream Coalition; Robert Zimmerman, Engineer, City of Moorhead; Gregg Thielman, Engineer, Houston-Moore Group, LLC (HMG); Eric Dodds, Engineer, Advanced Engineer and Environmental Services (AE2S); and landowners: Howard Pender, Jr. 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. There being none, the agenda was adopted.

**Secretary's Report.** The Board reviewed draft minutes for the 5/28/19 Board meeting. President Leitch noted a few minor corrections. **Motion** by Manager Anderson to approve the minutes, subject to correction. **Seconded** by Manager Affield. **Approved.**

**Treasurer's Report.** The Board reviewed the BRRWD's monthly financial statements, including the project account balance sheet, administrative disbursements, summary of income, and the accounts receivable report. Cash on hand is \$2,581,724.57. Administrative disbursements this month equal \$36,946.99, and for the year, \$147,567.47. Current 2019 accounts receivable are \$5,624,961.00. Total income this year is \$1,724,747.29. Income received since the 5/13/19 meeting totaled \$533,910.28: \$465,011.36 from Wilkin County, \$26,129.91 from Clay County, and \$37,492.96 from Otter Tail County for 2019 1<sup>st</sup> half ditch/property tax proceeds; \$284.38 from the Red River Watershed Management Board (RRWMB) for 3<sup>rd</sup> quarter Mediation Project Team (PT) expenses; \$4,766.67 from Midwest Bank May interest, and \$225 from HEI for their monthly office rent. **Motion** by Manager Larson to approve the Treasurer's Report. **Seconded** by Manager Van Amburg. **Approved.** Albright noted that Harold Rotunda, Auditor, plans to attend the 6/24/19 Board meeting to present the 2018 audit report.

**BWSR Legislative Update.** Pete Waller, BWSR, provided a summary of the 2019 Legislative Session funding allocations related to BWSR programs. The general fund grants and programs appropriations for 2019-2021 biennium remained basically the same as 2018, at \$15.5 million. The funding bill included two new programs:

- \$200,000-Environmental Quality Board under BWSR leadership to continue exploring the feasibility of the State assuming wetland permitting from the Federal government.
- \$900,000-Lawns to Legumes program to fund conversion of residential lawns to native vegetation and pollinator-friendly forbs and legumes.

BWSR will receive funding for three Lessard-Sams Outdoor Heritage Council (LSOHC) recommended projects, including \$2.3 million for Reinvest In Minnesota (RIM) program for grassland restoration. The Clean Water Fund (CWF), also supported by the Legacy fund, will receive \$138,434,000 with nearly 90% for grants to local governments for conservation implementation projects, including:

- \$4 million for One Watershed, One Plan (1W1P)
- Approximately \$27 million for Watershed-based funding grants.
- \$1.7 million for Conservation Drainage Management projects
- Approximately \$17 million for the Conservation Reserve Enhancement Program (CREP)

Waller discussed the Soil and Water Conservation District (SWCD) Capacity Funding (\$24 million) with each SWCD receiving \$100,000 per year for the biennium from the CWF. He felt that the increased funding reflects the expansion of the SWCD duties. The remaining funds will be distributed based on county allocations, amount of private lands, and the amount of public waters. The Legislature enacted several policy changes related to BWSR and local government units, including increasing Watershed District Manager per diem rate from \$75 to \$125.

The Governor also signed a drainage bill, developed in accordance with Red River Basin Flood Damage Reduction Work Group (RRBFDRWG) recommendations, that initiates three significant changes for Chapter 103E:

- Improve the Ag Best Management Practices (BMP) Loan Program
- Improve Chapter 103E associated with incremental buffer strips, drainage system legal counsel, and redetermination of benefits
- Added an alternative method in Chapter 103E for determining an equitable allocation of drainage system repair costs, based on relative runoff and sediment contributions.

Waller noted that the BWSR competitive grant application process will be starting up soon, and the continuous CREP signup restarted June 3, which will be important for the BRRWD's Wolverton Creek and Stony Creek projects. Jones asked when the RIM program funding will be available. He's interested in finding funding for the Phase 1 restoration work in Section 11, Manston Township, Wilkin County, east of Trunk Highway (T.H.) No. 9 on the Rogelstad family property associated with the Upper South Branch of the Buffalo River restoration project. Waller said the funding wouldn't be available until after July this year. Waller thanked the BRRWD for all our efforts.

### **Citizens to Be Heard.**

Lyle Hovland, Wilkin County Commissioner/Richland-Wilkin JPA, thanked the Board for inviting him to their recent meeting in St. Paul with the Minnesota Department of Natural Resources (DNR), City of Moorhead, and the FM DA to discuss the contested case regarding the DNR's Diversion permit. Since the DNR objected to meeting with a member of the JPA, Hovland was not able to attend, but he appreciated the Board's consideration.

### **Other Business brought before the Board included:**

**Permit No. 19-003, FM DA Diversion.** Albright explained the process by which the BRRWD's draft permit conditions have been developed. The DA granted the BRRWD a time extension until 6/28/19 to make a decision regarding their permit application. Managers Leitch, Anderson, Van Amburg, plus Albright and Jones met with the DA, DNR, Army Corps of Engineers (COE), and City of Moorhead on 6/5/19 in St. Paul to discuss the DNR's permit. Albright suggested that the Board could consider scheduling a special meeting to review our potential permit conditions, adding in any items from the 6/5/19 meeting.

Albright summarized the discussions the BRRWD and the DNR had regarding the 500-year floodplain boundary, or the Probable Maximum Flood (PMF). The DNR appeared to show some flexibility regarding flood proofing options by classifying ringdikes and elevated structures as acceptable alternatives for eligible properties. The DNR also suggested using the same buyout criteria that was used in Oxbow for all the property acquisitions in the upstream staging area.

Leitch commented that his impression was that the DA and COE personnel were willing to listen and compromise. The DNR admitted that it was their decision to restrict development in the 500-year floodplain because of concerns about a "takings" issue, meaning the DNR wanted to protect themselves from future litigation problems involved with land acquisitions.

In regard to Permit Condition #22, the DNR agreed to take a look at the mitigating properties within the staging area on a case by case basis. Robert Zimmerman, Engineer, City of Moorhead, explained that as a result of the DNR meeting, the DA engineers are trying to develop flood proofing language to describe the flexibility the BRRWD would like to see and then work with the BRRWD to fine tune the language to present to the DNR for their consideration. Eric Dodds, Engineer, AE2S, distributed and discussed a draft document regarding potential mitigation flexibility for structures located upstream of the southern embankment, including structure mitigation and new development within the Operating Pool and the Maximum Pool. Dodds presented several maps showing examples of how individual properties could fit into the new proposed guidelines.

The Board also plans to meet with our attorney to discuss the DNR permit contested case. The DNR has scheduled a prehearing telephone conference on July 2, 2019, at 10:00 AM. Albright noted that the Cities of Wolverton and Comstock have asked the BRRWD to support them in the contested case proceedings. The Board will have to decide if they want to mediate with the DNR or join with the JPA to move forward with the Administrative hearing process. The Board appointed Leitch, Anderson, and Van Amburg to form a committee to meet with our attorney and to participate in the DNR prehearing conference with Manager Fjestad as alternate.

As a member of the Minnesota Land Acquisition Committee, Leitch noted that he did read the draft Minnesota-Clay County Joint Powers Agreement (MCCJPA) and reported that he had no substantive problems with the document. Clay County Commissioner Kevin Campbell said that the draft MCCJPA is being presented to the Moorhead City Council at their meeting tonight with proposed action expected on 6/24/19. The Clay County Commissioners will review the draft JPA on the 6/18/19 with action expected from them on the 6/25/19. The DA will also act on the JPA at their next meeting. A MCCJPA organizational meeting will be held in early July.

**Permit No. 18-008, Paul Daugherty.** Applicant proposes to install 47.15 acres of pattern tile in the W $\frac{1}{2}$ SW $\frac{1}{4}$ , Section 27, Wolverton Township. Daugherty revised his 2018 application by moving the tile outlet to the west via a riprapped lift station to the County Road (C.R.) No. 30 for about one mile, then to the railroad ditch on the east side of Wolverton, eventually west to the natural waterway through the City. Jones recommended permit approval, subject to our standard tiling disclaimer.

**Permit No. 19-059, Minnesota Department of Transportation (MNDOT).** Applicant proposes to abandon a field entrance with a failing 36" dia. on T.H. No. 9 in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 18, Humboldt Township, Clay County, and to build a new entrance on 150<sup>th</sup> AVE S with a 24" dia. plastic pipe under the entrance. The driveway will be placed east of the existing 30" dia. T.H. No. 9 culvert under 150<sup>th</sup> AVE S upstream of the drainageway so as not to impede drainage. This is an after-the-fact application. The Township gave their approval for work within their road right-of-way (R/W). The approach was needed to plant the field.

**Permit No. 19-060, Todd Boit.** Albright gave a brief history of the drainage issues surrounding this permit application in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 13, Audubon Township, Becker County. Applicant proposes to replace a damaged 18" dia. culvert in C.R. No. 144 with the same size culvert and lower the inlet end approximately 1'. The downstream landowners have refused to sign the downstream landowner notification form for the proposed work. Albright suggested that action on this application be postponed until a field review can be conducted with Manager Hanson. **Action Postponed.**

**Permit No. 19-061, Spring Prairie HB, Inc.** Applicant proposes to install two 18" dia. culverts for access to a proposed fueling station and storage site in the NW $\frac{1}{4}$ , Section 13, Clay County. One culvert is along the east side on 170<sup>th</sup> ST N and the other is in a private ditch. Albright recommended permit approval, subject to township approval to work within their road R/W. He noted that Clay County Planning and Zoning and the Minnesota Pollution Control Agency (MPCA) will also be involved with the proposed fueling station/storage construction.

**Motion** by Anderson to approve Permit Nos. 18-008, 19-059, and 19-061, subject to the referenced disclaimers and conditions. **Seconded** by Fjestad. **Approved.**

Albright reported on a few permit violations. The Board discussed how they would prefer to have the staff present these types of issues for future meetings.

**Project No. 27, Clay County Ditch (C.D.) No. 55.** A landowner informational meeting was held on 6/4/19 to discuss possible repairs for C.D. No. 55. Albright noted that the office has received a few phone calls regarding the proposed repairs. Landowner Howard Pender, Jr. was in attendance to discuss the proposal, and his son, Jeff, also called the office today. Pender thought that the ditch should be cleaned. Jones added that landowners were also interested in using spoil from the cleanout to make the ditch berm elevation more uniform. He thought more survey data would be needed for the individual sites where spoil could be added. The repair plans are already prepared. Jones explained that the repair would be limited to the bottom of the channel.

Albright discussed the upstream impacts to C.R. No. 55 from Stony Creek breakouts during the spring runoff. He noted that Fremont Pender's well was contaminated during this year's spring flood from water breaking out of the ditch, and neighboring landowners feel that the ditch system should pay for decontamination. Albright suggested that he could submit the bill for the Board's consideration.

Van Amburg thought that the majority of landowners who attended the 6/4/19 meeting supported the proposed repair. Albright suggested that Jones could prepare a few repair options for the Board's review at their next meeting. Jones noted that the repair could be delayed until after the crop was off this fall. Albright suggested that the Board could postpone a decision until the 6/24/19 meeting to give Jones more time to gather spoilbank survey information.

**Project No. 49, Oakport Township.** President Leitch had asked that a discussion about transferring the Oakport project to the City of Moorhead should be added to tonight's agenda. Albright explained that there could be complications regarding the Office of Management & Budget (OMB) guidelines about transferring the properties to the City. He explained that the City of Moorhead currently handles the maintenance on several existing BRRWD ditch systems within the City. Albright will investigate property transfers for both the Georgetown and Oakport projects, and the Board will consider this issue at a future meeting.

**Project No. 79, Wolverton Creek Restoration.** Jones reported on the contractor's progress on the channel excavation with about 1.5 miles completed. This year, he's working with landowner Robert Nord to set up a conservation easement on the channel corridor and a permanent vegetation easement for his pasture. Jones said that Sellin Brothers will need another extension until 7/30/19, and he will submit that request at the 6/24/19 meeting. He has discussed a possible change order to the Phase 1 construction contract with Scott

Sellin to clean two additional miles of the channel downstream of the Clay County line to the Comstock Road (C.R. No. 2) to provide a better outlet for Project No. 78, Judicial Ditch (J.D.) No. 1-Improvement, which will also be completed later this summer.

Jones noted that HEI staff contacted the affected landowners regarding a waterway survey to address the Gruenberg family drainage concerns in the NW1/4, Section 34, Wolverton Township, Wilkin County. He said that HEI has already completed most of the survey work. The BRRWD will send informational letters to the landowners.

**Wilkin-Otter Tail J.D. No. 2.** The contractor, States Borders Construction, Inc., plans to start the project in late July/early August. Albright contacted Kevin Fellbaum, Otter Tail County Drainage Ditches Inspector, to find out the status of the Viewers' work on the redetermination of benefits.

**One Watershed, One Plan (1W1P).** The Policy Committee met on 5/29/19, but due to poor attendance they didn't have a quorum. The next Policy Committee meeting is scheduled for 7/24/19. The next Advisory Committee meeting is scheduled for June 19, 2019, 1:00-3:00 PM. Moriya Rufer, Water Planner/Scientist, HEI, who is now working with the BRRWD on our 1W1P effort, will send notices/meeting materials prior to those meetings.

**2018 Annual Report.** Albright provided Leitch with a draft of a working copy of the Annual Report.

**Project Development Timeline.** Jones noted that he has been updating the timeline. Leitch will meet with Jones regarding the format.

**Stony Creek Restoration.** The Preliminary Resolution hearing is scheduled for Tuesday, June 25, 2019, at 7:00 PM in the BRRWD office. Newspaper notices have been sent for publication and a meeting notice will be mailed to the affected landowners. The easement option packets are being worked on and should be mailed to the landowners this week. Copies of the easements will also be forwarded to Tony Nelson, Clay County SWCD, so that he can start working with the landowners regarding potential CREP on permanent easement acres. The DNR has ranked the Stony Creek Restoration as the 3<sup>rd</sup> project statewide for the Round Two of the LSOHC grant funding for the stream restoration portion of the project. Jones will prepare an overview of the comprehensive components of the project for the 6/25/19 preliminary hearing. Jones and Leitch still plan to meet to discuss the project benefit/cost ratio (BCR) analysis.

**BRRWD Rules Update.** Albright reported that BWSR, and others, have forwarded some comments, which have been incorporated into the draft Rules. The Rules are still out for the mandatory 45-day comment period. The public hearing is scheduled for 7/2/19 with final Rules adoption to take place at the 7/8/19 Board meeting.

**The following bills were presented for approval:**

Accounts Payable	Description	Account	Amount
AmeriPride	#160519253, May Rug Billing	Admin.	\$ 81.22
Barnesville Record-Review	Public Hearing Notice-Rules	Admin.	\$ 70.00
Bruce E. Albright	Meals DA Meeting	COE	\$ 73.32
Cathy Affield	Voucher #19-08, 03/01/19-04/30/19	Varies	\$ 604.65
HEI	May Billing	Varies-See Attached	\$ 150,603.46
Lake Region Electric Coop	05/06/19-06/01/19 Service	Pj. 79, Wolverton Crk.	\$ 35.62
Moorhead Public Service	04/18/19-05/21/19 Service, FL #21	Pj. 49, Oakport	\$ 31.23
NetCenter Technologies	#170713, Remote IT Camera Support	Admin.	\$ 57.50
Premium Waters, Inc.	#366590-05-19 May Water Service	Admin.	\$ 110.48
Purchase Power	May Postage	Admin.	\$ 244.69
RMB Environmental Labs	#446117, WQ Analysis	M.S.A. 103D.905, Sub. 3	\$ 26.00

Roger Lundberg	Beaver Control	Varies	\$ 1,623.23
Roger Lundberg	June Billing	Becker C.D. No. 15	\$ 252.18
RRVCPA	05/02/19-06/01/19 Service	Pj. 49, Oakport	\$ 79.20
Ryan Beattie	#600, Beaver Control	Clay C.D. No. 34	\$ 135.00
The Press	Public Hearing Notice-Rules	Admin.	\$ 78.55
UEI	#84380, May Billing	Pj. 49, Oakport	\$ 605.00
US Bank	#386333728, 5/27-6/27/19 Copier Lease	Admin.	\$ 318.36
Vogel Law Firm	#236284, June Billing	Pj. 79, Wolverton Crk.	\$ 957.50
Vogel Law Firm	#236283, June Billing	Pj. 39, Georgetown	\$ 931.00
Wilkin County Hwy. Dept.	May Billing	Varies	\$ 7,350.00
William Nichol Excavating	#289, Beaver Control	Varies	\$ 1,250.00
William Nichol Excavating	#288, Repairs	M.S.A. 103D.905, Sub. 3	\$ 1,264.00
WREC	04/18/19-05/18/19 Service (2)	Pj. 46, Turtle Lake	\$ 145.39
Xcel Energy	04/25/19-05/27/19 Gas Service	Admin.	\$ 62.99
			<b>\$ 166,990.57</b>

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

**Manager Comments.** The Wilkin SWCD is celebrating their 75<sup>th</sup> Anniversary on Thursday, June 20, 2019, from 11:00 AM to 2:00 PM in the Wells Memorial Park Commercial Building in Breckenridge. They will be serving lunch at Noon with a presentation ceremony at 1:00 PM. There will be a display featuring Past, Present, and Future Projects and Equipment.

Fjestad mentioned the proposed 2018 Fergus Falls Fish & Game Club wetland restoration project, designed by the Natural Resources Conservation Service (NRCS), in Sections 4 and 5, Orwell Township, Otter Tail County, in a RIM easement area. The permit for the project was withdrawn but as an alternative, the NRCS recommended replacing the existing 48" and 18" dia. culverts with new same-sized structures at the same elevation, which was completed. It appears that this work is now causing water problems with the township road on the south line of Carlisle Township, adjacent to the restoration (220<sup>th</sup> ST). Otter Tail C.D. No. 50 is the outlet for the area drainage, and it needs to be cleaned downstream of the Fish & Game Club's property. The Township attempted to conduct maintenance, but they were denied access. Fjestad wasn't sure who was actually responsible for stopping the work. Albright suggested the BRRWD could send a letter requiring the ditch be maintained to allow the natural flow of water through the Club's property. He will review the 2018 permit application and prepare a summary for Fjestad and the Board's review to determine what the next steps should be to address this problem.

The Managers briefly discussed an erosion site in Section 1, Barnesville Township, Clay County, where a field ditch cleanout has turned into a severe erosion problem.

Van Amburg noted that Rita Albrecht, Region 1 DNR Administrator, will retire.

Leitch questioned when the Board can increase their per diem compensation in light of the recent 2019 legislation. Waller will let the Board know when that change goes into effect.

**Next Meeting Agenda.** Leitch asked if anyone had items they would like added to the next meeting agenda. Fjestad noted that since the Board is expected to make a decision regarding the Diversion permit application at the next meeting, we should schedule the proposed meeting with our legal counsel as soon as possible. Leitch will coordinate the meeting with the newly appointed Committee and Attorney Edison.

**Next Meeting.** The next regular BRRWD meeting will be held on Monday, June 24, 2019, at 7:00 PM in our Barnesville office.

**Adjournment.** President Leitch adjourned the meeting at 9:06 PM.

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Respectfully submitted,

John E. Hanson, Secretary