

**STATE OF MINNESOTA**  
*Before the*  
**BUFFALO-RED RIVER WATERSHED DISTRICT**  
**IN THE MATTER OF**  
**PROJECT NO. 80 STONY CREEK RESTORATION**  
**AND**  
**CLAY COUNTY DITCH NO. 31**  
**CLAY COUNTY, STATE OF MINNESOTA**

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**In the Matter of:**

**Establishment of Project No. 80 Stony Creek  
Restoration and the Petition to Reroute Clay  
County Ditch No. 31.**

**FINDINGS AND ORDER**

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The above-captioned matter came before the Board of Managers of the Buffalo-Red River Watershed District (BRRWD) for hearing pursuant to Minnesota Statutes (Minn. Stat.) 103D.605, 103D.729, 103E.227, and any other applicable statutes, at 1303 4<sup>th</sup> AVE NE, Barnesville, Minnesota on June 26, 2023. Appearing at the hearing was: Board Managers: Peter Fjestad, Catherine Affield, John Hanson, William Davis; BRRWD Staff: Kristine Altrichter, Matthew Schlauderaff; BRRWD Consultants: Bennett Uhler, Ted Rud (Houston Engineering Inc.); and other persons indicating an interest in said project including: Gary Forsberg, Shirley Peterson, Curtis Jalbert, Jeanette Just, Kenneth Just, Tim Aakre, Lisa Hoelzer, Noah Hoelzer, Joe Robertson, Christy Robertson, Steve Thompson, Michael Dohn, Mark W. Dohn, Peter Lewis, Mike Lewis, Chuck Anderson, David Janssen, Carol Janssen, Alex Hanson, Kenneth Lemke, John Seitz, Dave Ackerson, Paul Krabbenhoft, John Thompson (remote), Jackie (remote), Darin Dillion (remote).

All parties present at the hearing, requesting the opportunity to be heard, were given the opportunity to present their views and testimony to the Board about the project.

BRRWD Board of Managers, having fully considered the project, the determination of a water management district (wmd), the reports and testimony of the duly appointed engineer, and the testimony of all persons appearing at the hearing, and having duly considered all exhibits submitted to the BRRWD, and being fully advised in the premises and having considered the matter, Manager Larson moved, seconded by Manager Davis to adopt the following Findings and Order:

**FINDINGS OF FACT**

1. A Petition dated February 13, 2023 was initiated by BRRWD Board of Mangers intending to reroute Clay County Ditch No. 31 located in Sections 2, 3, 4, 5, 11, and 12, Barnesville Township, Clay County for Project No. 80 Stony Creek Restoration.
2. BRRWD Board of Managers acting as the drainage authority for Clay County Ditch No. 31 appointed Bennett Uhler of Houston Engineering Inc. as the engineer to investigate the effect of the proposed

installation pursuant to Minn. Stat. 103E.227, Subd. 3a and 103E.806, Subd. 3b. Uhler, a licensed engineer, filed a report of findings with the drainage authority on March 13, 2023.

3. BRRWD Board of Managers has jurisdiction over Project No. 80, Stony Creek Restoration and Clay County Ditch No. 31, pursuant to Minn. Stat. 103D and 103E and all notices provided by Minn. Stat. 103D and 103E were properly given.
4. Project No. 80, Stony Creek Restoration is a governmental program that involves rerouting Clay County Ditch No. 31 to restore the channelized stream and riparian wetland and prairie habitat to improve water quality, manage erosion, reduce sedimentation, and enhance natural resources. Project No. 80, Stony Creek Restoration is practical, necessary, and will be of public utility and benefit and will promote public health based upon the Engineer's report.
5. The Engineer's Report is within the scope of the Comprehensive Watershed Management Plan for the BRRWD. Pursuant to Minn. Stat. 103D, said Engineer's Report is confirmed.
6. BRRWD Board of Managers used Minn. Stat. 103D.729 for the purpose of collecting revenues and paying part of the project's costs. After the Engineer's Report was filed, the Engineers, determined the area to be included in the wmd, the amount of necessary charges, the methods used to determine said charges, and the length of time the water management district will remain in force. The wmd report was initially dated March 27, 2023 and Amended June 28, 2023.
7. All required right-of-way easements necessary to construct, maintain, and manage the project were obtained by notice (Minn. Stat. 130D.741, Subd. 3). Damages will be paid in a single lump sum according to Damage Statement Reports dated July 10, 2023. Damage Statement Reports will be held on file by the Secretary of the District.
8. BRRWD Board of Managers finds, based upon the Engineer's wmd reports and the evidence presented at the hearing: that the project is necessary, feasible and practical and is conducive to public health and will promote the general welfare of the District; that it is in compliance with the provisions of Minn. Stat. Chapter 103D and 103E; and, that the benefits resulting therefrom will be greater than the costs of construction and damages as provided in the Engineer's Report.

THEREFORE, upon motion duly made, seconded, and approved on a 7 to 0 vote in the affirmative, the BRRWD Board of Managers makes the following:

#### ORDER

1. That the Engineer's Report, pursuant to Minn. Stat. 103D is hereby in all respects adopted, ratified, and confirmed.
2. That the BRRWD's Petition to reroute Clay County Ditch No. 31 is granted.
3. That the wmd report dated March 27, 2023 and Amended June 28, 2023 pursuant to Minn. Stat. 103D is hereby in all respects adopted, ratified, and confirmed, and shall remain in effect indefinitely, or until deemed unnecessary at the discretion of the Board of Managers, and will become effective on the date of said order. The wmd will replace the Viewers Report of Clay County Ditch No. 31 dated August 27, 1913.

4. That BRRWD will amend the Certificates of Survey dated June 15, 2023 to reduce the permanent easement area of Parcel 1 to  $\pm 7.063$  acres and will record the right-of-way easements obtained for the purpose of the project detailed in the amended Certificate of Survey with Clay County.
5. That the right-of-way easements detailed in the Certificates of Survey dated June 15, 2023 and as amended are State bond-financed property under Minn. Stat. Sec. 16A.695, are subject to requirements imposed by that statute and the Fourth Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property, and as such, cannot be sold, canceled, terminated, mortgaged, encumbered, or otherwise disposed of without approval of the Commissioner of Minnesota Management and Budget.
6. No party may create or allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the right-of-way easements detailed in the Certificates of Survey dated June 15, 2023 and as amended without prior written consent of the Minnesota Department of Natural Resources and the Commissioner of Minnesota Management and Budget.
7. That the right-of-way easements detailed in the Certificates of Survey dated June 15, 2023 and as amended are permanent for the construction, maintenance, and management of Project No. 80, Stony Creek Restoration and may be transferred in event that BRRWD makes the necessary determination to sell its interest therein, and allow such interest to be transferred to the purchaser of such interest.
8. Right-of-way easements will be acquired utilizing Department of Natural Resources Flood Hazard Mitigation Grant Program. Terms, conditions, and provisions of that certain Natural Resources Flood Hazard Mitigation Grant Agreement by and between BRRWD and Minnesota Department of Natural Resources dated December 15, 2021 control over any inconsistent provisions of this Order.
9. That contract for the construction of Project No. 80, Stony Creek Restoration be let according to law, and that the duly appointed engineer, Houston Engineering, Inc., proceed with making the necessary surveys in preparing such plans and specifications as are needed to construct the proposed project and report the same to this Board with reasonable dispatch.
10. That the hearing regarding this project shall be recessed to await the Engineer's Report and the receipt of bids, provided that if bids are received which do not exceed thirty percent (30%) of the engineer's estimated cost as contained in his report and if the bids do not exceed the benefits less damages and other costs, the project is hereby established.
11. The original drainage system records shall be modified to reflect the reroute of the portion of Clay County Ditch No. 31 system running counter to the reroute location as described in the project concept plans and engineer's report of findings.
12. The drainage authority shall have jurisdiction over and be responsible for repairs of the rerouted portion of the drainage system. The Buffalo Red River Watershed District shall be solely responsible for the maintenance of the proposed project.
13. This order shall be immediately filed with the Secretary of the District and a certified copy thereof shall be filed with the Auditor of Clay County, the Minnesota Board of Water and Soil Resources, the Commissioner of the Minnesota Department of Natural Resources (DNR), the Director of the Division of Waters, DNR, the Minnesota Pollution Control Agency, and the Commissioner of Health.

The total cost of the proposed project is estimated at \$3,000,000. Of this amount, \$2,000,000.00 is estimated for construction, \$800,000.00 for land easements, and the remaining balance for engineering, legal services, and contingencies associated with the project. The project will be funded by the Lessard-Sams Outdoor Heritage Fund (\$1,600,000), Department of Natural Resources Flood Hazard Mitigation Grant Program (\$400,000.00), Buffalo-Red River Watershed District and their basic water management account (\$600,000.00); and wmd \$400,000.00.

Any person aggrieved by this Order shall file with the Clerk of the District Court and the Secretary of the BRRWD at its office in Barnesville, Minnesota, within thirty (30) days of the date of this final order, a notice of appeal pursuant to Minn. Stat. 103D to the Clay County District Court, which shall state the grounds upon which the appeal is taken.

Upon vote, the President declared the motion passed and the Findings and Order adopted.

/s/ Peter V. Fjestad  
President

Dated: July 10, 2023

ATTEST: /s/ John E. Hanson  
Secretary