

BUFFALO-RED RIVER WATERSHED DISTRICT

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MINUTES FOR MANAGERS' MEETING

June 22, 2020

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held their regular meeting on Monday, June 22, 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 Mark T. Anderson, Peter V. Fjestad, Catherine L. Affield, Troy E. Larson, John E. Hanson, and Gerald L. Van Amburg. BRRWD staff attending were Kathleen K. Fenger, Interim Administrator, and Erik S. Jones, Engineer, Houston Engineering, Inc. (HEI). Others attending in the office: Lyle Hovland, Wilkin County Commissioner, and via conference line: Attorney Brent Edison, Vogel Law Firm, and landowners: Dean Meyer and Chuck Anderson.

BRRWD Acting President Fjestad called the meeting to order at 7:03 PM. The Board briefly discussed the need for continuing the practice of roll call voting given that all the Managers were in the office. They decided to abandon the practice, noting that if anyone wished to vote "no", they could make it known during the voice vote.

Agenda. Fjestad asked for comments or additions to the meeting agenda. Items added: Becker County Ditch (C.D.) No. 15 beaver control, Clay C.D. No. 10 inlet culvert repairs, and an update on the Clay C.D. No. 51 repair appeals. With those additions, **motion** by Van Amburg, **seconded** by Larson to adopt the agenda. **Approved.**

Secretary's Report. The Board reviewed draft minutes for the 6/8/20 regular meeting and the 2/28/20 Wilkin C.D. No. 27 informational meeting. **Motion** by Anderson, **seconded** by Affield to approve both sets of minutes. **Approved.**

Treasurer's Report. The Board reviewed the BRRWD's financial status. Cash on hand is \$1,523,434.09. Income since the 6/8/20 meeting totals \$121,091.08. Total income this year is \$1,075,948.84.

Citizens to Be Heard. Wilkin County Commissioner Hovland asked about the process Clay County plans to follow regarding their Manager appointments. Fenger explained that the County Board will advertise for two 3-year term appointments since both Manager Van Amburg and Anderson's 3-year terms will expire on 8/31/20 and a one 1-year term appointment to fill out former Manager Jay Leitch's term. Interviews will take place on 7/21/20 with appointments/reappointments to be made at their 7/28/20 County Board meeting. The new Manager(s) will start their terms on 9/1/20.

Hovland discussed the Minnesota Department of Natural Resources (DNR) Contested Case Hearing with the Board. Fjestad reported on his discussion with Joel Fremstad, Fremstad Law Firm, who is handling the Diversion Authority (DA) permit denial appeal lawsuit. The judge in that case was considering if he should delay his decision until the DA Contested Case is done.

Attorney Edison gave updates on both lawsuits. The contested case trial concluded after 8 days of video testimony. There were some surprises during the trial: 1. There was a concern regarding the wording of the DNR's Condition 22, regarding property rights/mitigation, which has vindicated the concerns the BRRWD had about this issue. 2. There have been some changes to the models, so new impact maps are being developed. 3. Just before the trial, the DA had presented a new version of the Property Rights and Mitigation (PRAM) Version 5 to the North Dakota entities and they approved the Plan on 6/1/20, while the case lawyers

only received it on 6/5/20 and the DNR had still not received it at the conclusion of the contested case trial. The DNR witnesses' testimony was that having not seen the document there could be concerns that Version 5 might not comply with permit requirements. The Administrative Law Judge wanted to try to sort out the new evidence in a two-week time frame. At the end of the trial last week, the Judge concluded that the evidence-taking for this current trial is over. The parties would have to reach an agreement on how to proceed with the new evidence by 7/15/20, and she would consider a motion to reopen the evidentiary portion of the trial to receive the new evidence, including explanatory testimony. The Judge wants the attorneys to submit draft proposed decisions and post hearing arguments to her by 7/29/20 when she can make her decision. The BRRWD has to determine how to access the new modeling information from the DA.

Jones gave a brief explanation about why the project modeling could have changed. Edison noted that the modeling changes were quite significant. For example, the new model would exclude the City of Wolverton from flooding. He questioned how the North Dakota entities could approve the changes before the Minnesota entities even received the information. Anderson suggested that we have Gregg Thielman, HEI, come to a meeting and present the new information. Attorney Edison suggested that the Board wait until their 7/13/20 meeting to make a decision about the new information, pending DNR and DA responses.

The Board discussed their 6/8/20 decision to appoint Manager Anderson to serve on the Minnesota-Clay County Joint Powers Agreement (MCCJPA) land acquisition committee. Anderson has a conflict of interest regarding the Diversion project and has had to abstain from voting on a number of Board decisions regarding both the DA permit and contested case. Attorney Edison's opinion regarding that appointment is that Anderson's conflict would apply to the MCCJPA, as well. He suggested that the Board should reconsider his appointment to maintain consistency regarding Anderson's voting eligibility. Fenger noted that the MCCJPA has also questioned Anderson's status. Edison said that he checked with the former BRRWD MCCJPA representative, Jay Leitch, who agreed that there could be an issue with Anderson serving on the MCCJPA since he has had a conflict with voting on other DA issues. Fjestad expressed his displeasure at the idea that Managers affected by a project don't have a voice in the process because of an appearance of conflict of interest. He directed Attorney Edison to research the law further. The Board will revisit the issue at their next meeting.

COVID-19 BRRWD Action Plan. Fenger reported that HEI has provided some guidelines for an office preparedness plan for the staff to review.

Other Business brought before the Board included:

Permit No. 20-035, Michael Steiner. Applicant proposes to install a new gravity tile line along the west side of the field from the existing gravity outlet near a waterway on the south end of the field to a new lift station installed in the northwest corner of the NW¼, Section 3, Andrea Township, Wilkin County. Discharge from the new lift station is proposed to pump tile water west along the south side of the township road, eventually to Wilkin C.D. No. 3. At the last meeting, the Board postponed action on this application, pending a field review of the proposed outlet. Jones discussed the project with Charles Steiner regarding the proposed location of their lift station/outlet. He suggested that they consider moving the pumped outlet to the south end of the field. If they left the proposed lift station in the northwest corner of the section and then drained the water for 3 miles west to C.D. No. 3, they would need to get downstream landowner notifications from all the landowners along the outlet route. Steiner agreed to move the pump to the south end of the field to outlet to a natural waterway along the outlet alignment of the existing tile. With the modification as noted, Jones recommended permit approval, subject to our standard tiling disclaimer.

Permit No. 20-046, Pheasants Forever (PF). Applicant proposes to restore 15 wetlands in the S½, Section 22, Highland Grove Township, Clay County, using scrapers to remove sediment and removing or crushing existing tile. Spoil will be spread above the full pool elevation of the wetlands with the exception of Wetland Nos. 6 and 12, which will also include ditch plugs. Wetland Nos. 6 and 12 are along the south boundary of

the property, which adjoins United States Fish and Wildlife Service (USFWS) property. Jones recommended permit approval.

Permit No. 20-047, PF. Applicant proposes to restore one wetland in the NW¼, Section 28, Tansem Township, Clay County, on USFWS property by constructing a ditch plug with a rock spillway. Jones recommended permit approval.

Permit No. 20-048, Archie Tanner. Applicant proposes to widen an existing field approach in the SW¼SE¼, Section 17, Riverton Township, Clay County, and to extend the existing 30" dia. approach culvert to reach a 40' total length. Jones recommended permit approval.

Permit No. 20-049, Donovan Marquardt. Applicant proposes to install a new approach and 18" dia. culvert in the SE¼, Section 16, Akron Township, Wilkin County, along County Road (C.R.) No. 20 to provide field access. Jones recommended permit approval. Marquardt filed a Wilkin County Highway Department access driveway permit application, which was approved. Jones noted the watershed to that culvert is very limited and recommended permit approval, subject to County approval to work within their road right-of-way (R/W) and the noted culvert sizing.

Motion by Anderson to approve Permit Nos. 20-035, 20-046 through 20-049, subject to the referenced disclaimers and conditions. **Seconded** by Larson. **Approved.**

Project No. 28, Clay C.D. No. 2. Ryan Zimmerman has coordinated with the neighboring landowners to clean a stretch of the east Trunk Highway (T.H.) No. 9 road ditch along the west line of Section 28, Spring Prairie Township, Clay County, to improve drainage to the C.D. No. 2 system outlet. Zimmerman requested the BRRWD's assistance to obtain a Minnesota Department of Transportation (MNDOT) permit to work in the road R/W. **Motion** by Larson to authorize Jones to assist Zimmerman with the MNDOT permit application. **Seconded** by Affield. **Approved.** A BRRWD permit application will be required for the proposed approach relocation, but not for the ditch cleaning.

Project No. 34, Clay C.D. No. 41. Key Contracting, Inc., submitted Change Order No. 1 for the 2020 Clay ditch channel liner repairs at 28th ST and 2nd AVE N. The change order is the result of additional concrete channel liner wall repair as well as repair of a slope failure along 28th ST. The City of Moorhead also requested additional concrete be placed between the ramps and the existing channel walls. The total Change Order amount is \$56,982, increasing the contract from \$159,100 up to \$216,082. Jones recommended Board approval. **Motion** by Van Amburg to approve Change Order No. 1. **Seconded** by Hanson. Hanson noted the Cities of Moorhead and Dilworth ultimately pay for the repairs as ditch system expenses. **Approved.**

Becker C.D. No. 5, Jay Lake Dam. Jones submitted a repair recommendation for the failing outlet structure on Jay Lake Dam on Becker C.D. No. 5 in Section 28, Audubon Township. The structure consists of a 24" dia. riser approximately 3' high with a 12' x 78' conduit outlet. In 1996, the existing dam was repaired. The metal pipe is now rusted and deteriorating, causing soil erosion along the pipe. Jones recommended the replacement of the pipe, incorporating a poly coating of the new structure to extend the life of the pipe. The probable opinion of cost is \$10,000-\$12,000. **Motion** by Anderson to approve the recommended repairs for Jay Lake Dam. **Seconded** by Hanson. **Approved.**

Becker C.D. No. 19. Jones visited with Peter Randolph, Holmesville Township, regarding the culverts between Rock and Rice Lakes on Rock-Rice Road on the C.D. No. 19 system. Previously, the Township had considered culvert replacements, but Jones reported that all they are interested in now is to lower the culvert at the outlet of Rice Lake. This spring, ice pushed up one end of the culvert about 1'. Jones advised Randolph that maintenance work of this kind wouldn't require permits from the BRRWD and is generally not required by the DNR.

Clay C.D. No. 11 N. Landowner Dean Meyer requested that the Board consider either repairs or replacement of the bridge crossing on C.D. No. 11N into his farmstead along C.R. No. 8 in the N½, Section 33, Kurtz Township. The north side of the bridge has started to collapse. He is planning some concrete work on his property this fall and is concerned that the concrete company may refuse to cross the bridge, as they did a few years ago. The County plans to resurface C.R. No. 8 this summer, and Meyer would like to see the bridge repaired or replaced with culverts before the road work takes place. Anderson noted that this is one of the last wooden bridges left in Clay County. Jones suggested that the bridge should be replaced with either two lines of 95" x 67" or 103" x 71" corrugated metal arch pipe (CMPA), depending on the hydraulics. The crossing replacement will cost about \$15,000-\$20,000. Dennis Drewes, Inc. is replacing two upstream culverts in this area later this summer, and Jones suggested we could have him do this work at the same time. **Motion** by Anderson to approve the requested bridge replacement, as a ditch system expense. **Seconded** by Van Amburg. **Approved.** Meyer discussed his concerns about the sizing of the downstream culverts in the Burlington Northern/Sante Fe (BNSF) Railroad tracks and thought he would need the Board's help to negotiate with the Railroad to increase the culvert sizes. Fjestad noted the Board understands BNSF can be difficult to deal with, but for now, the Board will focus on getting the bridge replacement completed. Meyer asked if the bridge work would be timed so that it would coincide with the County's road project. Jones noted that Drewes would be starting the other culvert replacement work in August.

Buffalo River Streambank Erosion. Landowner Troy Wyland contacted the office with concerns about sloughing along the Buffalo River on his property in Section 28, Moland Township, Clay County. Lynn Foss, Clay Soil and Water Conservation District (SWCD), reported that there is a similar erosion problem on Sidney Smith's property in Section 33, Highland Grove Township, east of Hawley. Last week, Fenger, Jones, and Foss met with the landowners to review the erosion sites. The Clay SWCD is requesting the Board authorize Jones to provide technical assistance for alternative repair designs. Wyland is concerned about the bank erosion because the cracks forming on the top of the bank are close to his house. Smith's house is also threatened by the bank erosion. Fenger pointed out that the Clay SWCD received a Minnesota Board of Water and Soil Resources (BWSR) Clean Water Funds (CWF) grant to assist with bank erosion repair implementation. **Motion** by Hanson to authorize Jones to work with the SWCD for both locations, as referenced. **Seconded** by Van Amburg. Larson asked if the counties have guidelines or restrictions about locating new houses near rivers. Jones noted he has had discussions with Matt Jacobson, the new Clay County Planning and Zoning Administrator, regarding the County's ordinances. The Board had a brief discussion regarding this issue. Jones will contact the counties to investigate their building guidelines. **Approved.**

BWSR Wetland Credits. At the 4/27/20 meeting, the Board approved submitting a proposal offering to sell up to 20 wetland mitigation credits to BWSR for their road replacement project in Otter Tail County. BWSR notified Fenger last week that they want to purchase all 20 of the credits for a total cost of \$784,280. The contracts are prepared for Fenger's signature. The BRRWD will still retain approximately 30 credits in our wetland bank. **Motion** by Larson to authorize Fenger to sign the BWSR credit purchase paperwork. **Seconded** by Affield. **Approved.**

Becker C.D. No. 15 Beaver Control. Jones discussed old beaver dams along the County Ditch in Section 3, Audubon Township, Becker County, on USFWS property. He noted that we have a contractor already working in this area, and he suggested the Board authorize the contractor to remove these old dams at the same time. **Motion** by Anderson to authorize the beaver dam removal. **Seconded** by Larson. **Approved.**

Clay C.D. No. 10 Repair. Jones presented his recommendations regarding the replacement of a damaged inlet culvert in the northeast corner of Section 23, Morken Township, and a damaged 24" dia. inlet/flapgate along C.D. No. 10 in Section 21, Flowing Township. The opinion of probable cost for these repairs is \$5,000-\$6,000 for materials, equipment, and labor. **Motion** by Larson to approve the repairs. **Seconded** by Hanson. **Approved.**

Clay C.D. No. 51 Buffer Appeals. Manager Larson visited with Duane Brendemuhl today. Brendemuhl plans to contact the office to discuss his appeal of the proposed R/W values with Fenger. The appeals will be placed on the next meeting agenda.

BRRWD Revised Watershed Management Plan (RWMP). Fenger reported that Pete Waller, BWSR, notified staff that our current RWMP expires on 6/23/20, which makes the BRRWD ineligible for CWF grant funding. Jones and Waller discussed a possible RWMP extension until March 2021 when our One Watershed, One Plan (1W1P) should be completed. The office prepared a Resolution in that regard for the Board's review and approval. **Motion** by Anderson to approve the referenced Resolution and to submit it to BWSR. **Seconded** by Hanson. **Approved.**

Riverton Township Drainage Violation. The Board discussed a potential solution regarding a drainage violation committed last year by Duane Hanson in Section 16, Riverton Township, Clay County. Jones suggested that the BRRWD could work with the Township to provide an outlet for the area drainage. If Hanson wants to take advantage of the outlet, he could do his own work. HEI recently completed an area drainage survey. Using the overhead monitors, Jones explained the area drainage patterns. He noted that the problems with the downstream Glyndon waterway were impacting upstream drainage, and that it might be necessary to expand the proposed East Tributary project to provide a better outlet for the upstream water. The Board had an extended discussion regarding this issue and agreed that it could be a few years before a comprehensive downstream project is started. They directed Jones to discuss his proposal with the Township to work out an acceptable solution to the local area drainage concerns.

Larry Henry Drainage Concern. Landowner Larry Henry contacted the Board to request funding assistance to clean approximately 0.25 miles of a private ditch in Section 16, Hawley Township, Clay County. Henry's 2017 waterway grade stabilization project was designed by Natural Resources Conservation Service (NRCS) and cost shared by the NRCS and the BRRWD. The waterway on his property where the project was completed is the outlet for water coming out of Maria Lake. Jones explained that the Board could wait on Henry's request until after the 7/7/20 NRCS field review. The Board agreed to place this issue on the 7/13/20 meeting agenda for further discussion.

HR Committee Report. Affield reported on her progress since the last meeting regarding the transition of the three current office staff members to BRRWD employees. In addition to the 2019 data, Affield requested 2018 staffing data. Attorney Edison has not yet provided the opinion letter regarding the current BRRWD staffing arrangement and concerns about the appearance of conflict of interest. Affield noted that the Red Lake Watershed District has a conflict of interest policy, which includes both Managers and Staff. Van Amburg noted that he is waiting for information from a couple of companies from Minneapolis/St. Paul who could conduct the cost comparison analysis. He asked if the BRRWD's new Bylaws address the conflict issue. Fenger thought it was only briefly addressed in that document.

The following bills were presented for approval:

Accounts Payable	Description	Account	Amount
Braun Intertec	#B214248, Concrete Testing	Pj. 33-EDA Clay C.D. 50	\$ 2,374.00
Chris Hoppe Lawn Care, LLC	Fertilizer Application	Admin.	\$ 190.00
Chris Hoppe Lawn Care, LLC	May Mowing (4)	Admin.	\$ 500.00
Jay A. Leitch	Witness Testimony	COE	\$ 2,550.00
Joel Carlson	July Lobbyist Billing	Admin	\$ 850.00
Liberty Business Systems, Inc.	#419357, Contract Overage	Admin.	\$ 105.91
Michael W. & Sara B. Aigner	Permanent Easement Payment	Pj. 79, Wolverton CRK	\$ 78,592.69
MN Dept. of Natural Resources	#2010-0535, permit fee	Pj. 56, Manston Slough	\$ 300.00
MPS	05/02/20-06/02/20, Service (4)	Pj. 49, Oakport	\$ 971.16
Petty Cash	Office Supplies, Postage, Etc.	Admin.	\$ 200.00
Quill Corporation	#7750820 - #7734206, Office Supplies	Admin.	\$ 64.45
RMB Environmental Labs.	#502658, WQ Analysis	MSA 103D0905, Sub. 3	\$ 504.00
Sir Speedy	#111542, Exhibit Copies	COE	\$ 4,199.61

Valley Excavating	Snow Removal	Clay C.D. No. 58	\$ 250.00
Vogel Law	#257367, May Billing	COE	\$ 43,383.00
Vogel Law	#256864, May Billing	Pj. 79, Wolverton CRK	\$ 539.00
Vogel Law	#257762, May Billing	COE	\$ 147.00
Vogel Law	#257761, May Billing	Admin.	\$ 514.50
Wilkin SWCD	#2020-79, Wilkin C.D. Seeding	Varies	\$ 3,210.54
			\$ 139,445.86

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

Upcoming Calendar Items. Fenger noted that the Becker C.D. No. 15/Hamden Slough hearing is tentatively scheduled for July 16, 2020, at 7:00 PM in the Barnesville office with teleconference options in compliance with the COVID-19 protocols. Alternative contact options will also be available to landowners who wish to submit comments but are not comfortable with attending in person or online: email, telephone, or a mail-in comment form provided in the hearing notice packet. Notices will be sent to landowners this week. The hearing notice includes a request for an RSVP if landowners plan to attend the meeting in person.

Comments. Affield noted that the T.H. No. 9 road ditch along the Manston Slough Restoration project has an infestation of cattails. Jones noted that the road ditch is under MNDOT jurisdiction and is not part of the Manston project. Larson noted that it is MNDOT's responsibility to control vegetation in their ditch. Anderson noted that the contractor is getting close to completion on the north end of the Wolverton Creek Restoration project. Jones said there was still some cleanup work to finish.

Next Meeting. The next regular BRRWD meeting is scheduled for July 13, 2020, at 7:00 PM in our Barnesville office via teleconferencing, depending on the COVID-19 meeting restrictions.

Adjournment. Acting President Fjestad adjourned the meeting at 8:43 PM.

Respectfully submitted,

John E. Hanson, Secretary