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## Hay Creek Water Management District Hearing Minutes Monday July 10, 2023

**Managers Present:** Peter Fjestad; Catherine Affield; John Hanson; Troy Larson; Gerald Van Amburg (remote); M. Hanson; William Davis.

**Staff Present:** Kristine Altrichter, Administrator; Matthew Schlauderaff, Watershed Specialist.

**Consultants Present:** Bennett Uhler, Engineer, Houston Engineering, Inc. (HEI).

**Others Attending:** Kathy Borgen; Jeremy Aakre; Matt Bjerke; Barry Nelson; Dan Ringsaker; Steve Mathias; Michael Haley; Dan Anderson; Lisa Hoelzer; Noah Hoelzer; Doug Nord; Duane Erickson; Tammy Erikson; Michael Theil; Tom Bergren; Brant Bigger (remote); Paul Krabbenhoft, Clay County Commissioner (remote).

President Fjestad called meeting to order at 5:30 PM.

Altrichter noted that Hearing is for the establishment of the Hay Creek Water Management District (wmd) for Project No. 16 – Stinking Lake Detention Project. Project No. 16 – Stinking Lake Detention Project was established and constructed in 1990. All parties were invited to provide comment following project presentation. Board of Managers will consider an Order to establish the Hay Creek Water Management District at their next Board Meeting scheduled July 10, 2023 at 7:00 PM. If an Order is signed, individuals wishing to appeal Order may file a notice of appeal with the court administrator of the district court within 30 days of the date of the Final Order.

Uhler presented project history and proposed wmd. Hay Creek watershed has a contributing area of 41 square miles. It includes land in Becker and Clay Counties. Project 16 – Stinking Lake Detention was established on June 27, 1990 and constructed later that year. Project provided 5,159 acre-feet of flood storage to the Hay Creek watershed. Project 16 – Stinking Lake Detention reduced flood damage along Hay Creek and downstream by reducing peak discharge through flood water detention. Project also reduced erosion of cropland and riverbanks by reducing peak discharges and confining floodwaters within channel banks. Project increased wildlife and wetland benefits.

Average annual operation and maintenance costs between 2018 and 2022 have been \$8,856.75. Costs have been associated with operation and inspection of outlet structure, beaver management, mowing and spraying to keep outlet structure clear of vegetation, culvert repair between outlet structure and Buffalo River.

Proposed wmd was developed using analyses of local drainage, non-contributing land, existing land use, runoff of current land use compared to pre-settlement conditions, existing soil types, and change in runoff. Proposed wmd allows for an annual assessment of up to \$35,000. Annual costs per acre range from \$0.00 to \$2.58. Non-contributing land was considered in calculations. Based on project needs, BRRWD Board of Managers will determine assessments annually. Funds assessed through wmd can be used for operation and maintenance of Stinking Lake outlet, maintenance of Hay Creek and its structures as it relates to the function of Stinking Lake between Stinking Lake outlet and Buffalo River, and Board Ordered projects in the watershed.

Doug Nord asked about maintenance requirements on the dam. Uhler noted maintenance generally includes beaver management, sediment removal or anything that would inhibit channel drainage. Nord asked if BRRWD had plans to dredge the channel. Uhler noted that plan could be developed to dredge channel if sediment prohibits natural drainage. Nord asked if BRRWD had an assessment of the average costs of beaver removal over the last years. Altrichter noted that beaver management accounts for a large portion of the average annual maintenance expenses for the project. Annual expenses also include annual inspection costs. BRRWD has not replaced downstream culverts in the last two years. Nord asked if culverts

are on private property. Uhler confirmed and stated that private downstream culverts were included in original project plans to ensure adequate drainage from detention site to the Buffalo River. Nord stated that the wmd is perpetual and asked when Board plans to assess. Uhler noted that Board will determine assessment annually. Altrichter noted that Board of Managers hold Budget Hearing annually in August to set assessments. During this Hearing, Board reviews average annual expenses, known upcoming expenses, and current account balance to determine assessments for the following year. Annual assessment will be determined based on the maintenance and operation needs of the Project. Nord asked if BRRWD has annual communication with landowners. Altrichter noted that all landowners are invited to Budget Hearing and landowners contact BRRWD if there is a concern, however, BRRWD does not send out memos or notices regarding maintenance. All Board Meeting are open to the public and concerned landowners are also able to call the office for information. Uhler noted that at this time the outlet structure does not need to be repaired, and there are no known upcoming expenses, however, if it needed to be repaired the wmd would cover repair expenses.

Kathy Borgen owns land in Section 33, Highland Grove Township, Clay County where Hay Creek outlets in the Buffalo River. Culverts through Hay Creek washout every year. Culvert filled with loose sand this year and within five days it washed out five feet which prevents her from accessing hay field. Borgen stated culvert has washed out every year since Project 16 – Stinking Lake Detention was constructed. Uhler noted this is the last crossing on Hay Creek. Washout was brought to Board at their May 8, 2023 Board Meeting. Uhler stated crossing has always been an issue because channel turns at a 90 degree angle before it passes through culverts. Uhler noted road is a township road. Uhler noted over the years BRRWD has altered culvert spacing and packing material to try to keep culverts from washing out. Borgen noted water levels change significantly between spring and summer conditions due to release of water from Stinking Lake. Borgen thought this made washouts worse. Borgen asked if the amount of water released could be changed to be more consistent. Altrichter noted that at the May Board Meeting Board of Managers decided that since culverts were in good condition, road washout was the responsibility of the Township. Uhler noted BRRWD could attempt to find a solution to reduce washouts in this location. Borgen noted she has offered to let someone cut the road and straighten channel so water does not need to flow at right angle. She stated the water has cut its own path and has made it difficult to use a portion of property. Uhler asked if there were beavers or beaver dams on their property resulting in high water levels. Borgen stated there are beavers but they have removed all of the dams. Uhler asked if water overtops the township road. Borgen stated that water often overtops road. Borgen asked if BRRWD could slow release of water from Stinking Lake. Uhler noted Wade Opsahl, HEI Civil Technician, still manages Stinking Lake Project. Uhler noted Opsahl keeps gates closed during fall and spring and opens them in summer. Uhler stated he would discuss slowing release of water with Opsahl. Larson asked if there is a reason the angle of the culverts cannot be changed. Uhler noted since channel is a Minnesota Department of Natural Resources (MN DNR) public water there are restrictions on changing path of channel. Uhler stated it could be possible to flip the curve to allow water to flow straight into the culverts instead of making the curve. Altrichter noted that at this time, there is no way to fund this effort. The proposed wmd could be used for this effort, if approved.

Tammy Erikson farms on north side of Stinking Lake. T. Erikson asked if BRRWD works with MN DNR, because they received a letter that MN DNR was draining Stinking Lake. T. Erikson also asked what the goal of project was and if it is to retain water. Uhler noted MN DNR conducts periodic drawdowns of lake to control for vegetation for water clarity. Uhler noted BRRWD holds annual maintenance meetings with MN DNR to discuss maintenance. T. Erikson asked about maintenance costs and what it will be used for if most of the culverts are Township culverts. Uhler noted much of the annual maintenance costs will be used for beaver dam removal, operation of the dam, inspections, and mowing and spraying weeds to ensure outlet structure is functioning. T. Erikson noted State budget surplus and asked if there is any federal funding to pay for operation and maintenance. Uhler noted funding is available for new projects and funding for existing projects does not exist. T. Erikson asked how much water BRRWD plans to hold back and asked if it is going to be held during rainy seasons. T. Erikson also asked if anything is going to be built. Uhler noted that there are no modification planned for Project 16 – Stinking Lake Detention and wmd is a mechanism to fund operation and maintenance of existing project. T. Erikson asked if tax assessment is for amount of water flowing downstream off a parcel. Uhler noted boundary was determined based off properties that contribute water to the system. Altrichter noted that landowners downstream of Stinking Lake are included in the wmd because they are protected by Stinking Lake holding water back. T. Erikson asked if there is anything landowners can do on their own instead of having an annual assessment. Uhler noted there is not much landowners can do on their own because project is functioning how it is designed to function. Uhler noted if project was built today, a wmd would be established with the project. In 1990 it was not standard practice to set up a wmd with the project. Fjestad noted currently, operation and maintenance is funded by all landowners within BRRWD not just landowners benefiting from project. T. Erikson asked if landowners would be assessed \$35,000.00 annually. Fjestad stated

annual assessments would be based on project needs. Altrichter noted that \$35,000.00 is the maximum annual assessment. Board of Managers set annual assessment at their Budget Hearing. Altrichter noted that the recommended assessment for 2024 is \$15,000.00 to cover annual maintenance and any other expenses that may arise in 2024. Uhler noted that MN Statute and BRRWD Comprehensive Water Management Plan provide guidance on determining annual maximum assessments. Guidance allows 0.1 percent of taxable market value. If guidance were followed for the Hay Creek wmd annual maximum assessment would be \$185,000.00. BRRWD attempted to find a reasonable assessment to cover project operation and maintenance and not be over burdensome to landowners. Uhler noted that part of determining annual assessment is to plan for future maintenance needs. T. Erikson asked if there would be any annual federal funds to help pay for annual expenses. Uhler stated that generally there would not be any funds, however, if there was a massive failure due to a catastrophic event (a flood for example), it is possible that funding could be available.

Dan Anderson asked about the assessment and how assessments were determined. Anderson noted that he owns 20 acres and it is in the range of \$1.00 to \$1.50, but all the water on his land comes from properties with \$0.00 to \$1.00 assessments. Uhler asked about land use of his land. Anderson stated it was grassland. Uhler noted that BRRWD could review his parcel if he gave staff his information.

Lisa Hoelzer attended meeting on behalf of parents. They have 29 acres that are only partially farmed and it likely will not be farmed in the future. Uhler noted farm sites do have an assessment due to increased runoff from buildings and other impervious surfaces. Uhler noted wmd determines assessment based on current land use. Uhler noted BRRWD could review parcel if she gave staff her information. Hoelzer asked what BRRWD tries to control with spraying. Uhler noted BRRWD sprays for noxious weeds and cattails that could reduce performance of the project.

Barry Nelson stated he was attending Hearing as a landowner and as a Becker County Commissioner. Nelson stated the Hearing Notice was misleading. Nelson stated the Notice stated the wmd would be used for the Stinking Lake Project and other uses the Board determined were needed. Nelson felt that this was too open ended and he interpreted statement to mean there would be an annual assessment of \$35,000.00. Nelson interpreted that to mean landowners would be paying for their own incentives and funds would be paid to watershed as a whole. Nelson presented a resolution from Becker County not in favor of the establishment of the wmd. Altrichter clarified the statement Nelson referred to in the Hearing Notice was intended to mean Board Ordered projects in the watershed. Altrichter used the example of the portion of the channel on Borgen's property. Board of Managers could Order a project to be completed in this area to solve a water related issue in the watershed that would benefit the watershed as a whole. Altrichter noted this would allow flexibility to address problems in the watershed that BRRWD does not currently know about. Altrichter noted there would have to be some type of public meeting before a Board Ordered project would be funded with the wmd. Nelson stated he was concerned that landowners were being taxed \$2.58 per acre. Nelson asked how many acre feet of storage BRRWD has in total. BRRWD did not have that information on hand. Nelson asked how many storage projects BRRWD has in total and what is the goal. Uhler noted that in the entire Red River Basin, there is a goal of a 20 percent reduction with upstream storage. Uhler noted Manston Slough project has a large assessment area and benefit rates go up to \$100.00 per acre. Uhler noted Manston Slough assessment is in addition to other drainage assessments. Nelson asked what the maximum assessment is for Manston Slough. Altrichter noted it was around \$1.7 million. Nelson asked what their assessment will be in 2024. Altrichter stated currently, the proposed assessment for Manston Slough is \$65,000.00. Nelson stated watershed districts have funding restrictions and that is why the wmd was being proposed. Nelson then stated the wmd would tax a small amount of people for the Hay Creek watershed when project supports the goal of BRRWD. Nelson stated proposed 2024 assessment of \$15,000.00 would only be to benefit of structure and two miles downstream. Nelson asked if wmd would be held in an account only to be used within the Hay Creek watershed. Uhler confirmed. Nelson asked if there was carryover if BRRWD subtract what was in the account from assessment for the following year. Altrichter confirmed. Nelson said he still had questions that could have been answered if the Hearing Notice was more clear and had more information. Altrichter stated the entire wmd was posted on BRRWD's website which included all the information presented at the Hearing and that anyone could have called the office to ask for clarification. Nelson stated the 1989 estimate was \$686,000.00 and asked if that is what landowners would be assessed. Nelson wondered if structure needed to be replaced and that is what was being funded with wmd. Nelson thought the wmd was a heavy tax burden. Nelson views wmd as a disincentive to have flood control projects in a subwatershed. Nelson stated he thought this was a slippery slope for taxing landowners for doing good work. Nelson stated he put numerous sediment basins on his property, has buffer strips, put permanent easements on part of his land, and sometimes uses cover crops. He stated there is no advantage for doing those projects if landowners are going to be taxed \$2.58 per acre. Nelson presented Fjestad with resolution from Becker County.

Matt Bjerke owns land in Lake Park Township. Bjerke agreed with Nelson regarding sediment basins. Bjerke stated he has installed dozens of sediment basins on his property to slow down water and hold it back on his property. Bjerke is disheartened that he spent money on these projects and now is being assessed. His land is in southeast corner of the Hay Creek watershed. Bjerke does not think Stinking Lake project matters in regards to his land, since he is on the upstream end of project. Bjerke noted Stinking Lake helps landowners downstream but does not think he benefits. Bjerke asked how BRRWD monitors water levels and determines when to open gate. Uhler noted BRRWD has adjusted management based on past experience operating system. Bjerke asked how BRRWD knows the benefits of how structure is operated now compared to how it was operated in the past. Uhler noted early on there were washouts, which resulted in modifications to operation to reduce downstream damage. Bjerke states he is unable to farm 10 to 15 acres he rents because water is held back on land. Uhler noted HEI monitors flows on behalf of BRRWD to ensure downstream culverts do not wash out. Bjerke noticed water has been held back longer in recent years. Bjerke asked for clarification on other wmds established by BRRWD and asked if it is becoming more common. Uhler stated BRRWD establishes projects for local landowners and attempts to reduce local construction costs as much as possible. Landowners are then responsible for maintenance and operation costs of projects they benefit from. Bjerke noted BRRWD has helped fund a number of the sediment basins on his property. He would not mind if \$2.58 per acre went towards more projects like that in the watershed. Uhler noted even though Bjerke may not benefit from the Stinking Lake Project, his water still goes there as it is his outlet. His land is assessed for use of the project as an outlet. Even with sediment basins holding water for a period of time, water will still outlet through Stinking Lake. Bjerke stated landowners in the upper portion of the watershed are paying higher rates and paying more than people downstream of Stinking Lake. Bjerke did not think this was a good system. Uhler noted upstream portion of the watershed has more tillable land, downstream are wetlands and grasslands. Downstream land has not changed from pre-settlement conditions, and therefore their runoff contribution has not changed. Bjerke asked if there was a way to look at his land that holds water for a day or two compared to other land. Uhler noted that Bjerke has seen benefits on his land from presence of sediment basins such as reduced erosion.

Kathy Borgen asked how BRRWD monitors how much water is discharged. Borgen stated if BRRWD knew how much water was discharged from Stinking Lake, they could figure out the best time to release water to benefit upstream and downstream landowners. Borgen stated it would likely take a few years to collect adequate data. Uhler noted BRRWD would need to install flow meter at outlet. Borgen said that would not be hard. Uhler stated flow would also depend on how much water is in the system. Uhler stated there is currently a float system for a stage recorder set up on an annual basis to monitor constant lake elevation. Borgen thought this information might help level out the system to have more constant water levels. Uhler stated Board could consider collecting data. Uhler noted BRRWD relies on landowners to inform them of issues onsite. Uhler noted constant monitoring would increase expenses and possible assessments.

Tom Bergren attended Hearing on behalf of sons that own property in Hay Creek watershed. Bergren asked for more detailed explanation on how rates were determined. Uhler stated rates were determined based on change in land use. Land that is in agricultural production was assessed the same across the watershed. Land that is in area that does not contribute water right away to the system or at all, were assessed a reduced benefit. Uhler stated that \$35,000.00 was selected to find reasonable assessment with ability to cover potential future maintenance. Bergren asked for clarification on the timeframe for the change in land use. Uhler clarified that it is change in land use from pre-settlement. Uhler noted that on previous wmds BRRWD proposed including soil type and elevation in determination of assessment rates. In these cases, landowners farther from the system often had higher assessments than those closer to the channel or project due to erodibility of soils higher in the watershed. In those cases, landowners asked if BRRWD would assess based on land use versus including soil type. Bergren noted that many of the landowners in the Hay Creek watershed have installed sediment basins that is holding water back. Uhler noted that sediment basins are great projects, but even if water is held back for a while it will still outlet through the project. Uhler stated that generally the same quantity of water is released from land with sediment basins compared to the same land without sediment basins. Landlocked land have a reduced assessment because water does not contribute to project area. Bergren asked Board of Managers to consider capping maximum amount that could be in Project account to limit abuse of over taxing. Bergren stated he thought a cap would prevent BRRWD from continuing to assess landowners even when there were sufficient funds in the account. Altrichter stated that the Board could consider placing a cap on the account balance with their Order, however, this could result in negative impacts for landowners in the future. Since future repair costs are unknown due to inflation and other factors, if a cap is placed on the account balance, BRRWD may not be able to adequately plan and budget for future repairs of the structure. Without a cap, BRRWD could assess for larger repair project over multiple years instead of needing to use other methods to assess landowners to fund repair.

Michael Theil stated his understanding of the Stinking Lake Project was to stop water from moving downstream to the Buffalo River. Uhler noted that is one of the benefits. Theil asked why water is being held back because we have methods to drain water. Theil stated landowners upstream are paying to maintain Stinking Lake but landowners downstream are the ones benefiting. Uhler stated the greatest benefiting area for Stinking Lake is from the outlet structure to the Buffalo River. Stinking Lake Project helps meter flow which protects the Hay Creek channel from flood damage. Theil stated for clarification that annual maintenance costs around \$8,000.00 was for beaver control. Altrichter clarified reasonably the expenses are \$5,000.00 to \$6,000.00 for beaver control. Theil asked if beaver trapping is bid out. Uhler noted BRRWD has a list of trappers that are contacted, available trappers are hired. Fjestad noted much of the expense is for removal of beaver dams versus removal of beavers. Theil stated much of his land is wetlands. Theil clarified agricultural land has highest assessment and wetlands do not have any assessment. Uhler confirmed. Theil clarified if grass he mows is assessed. Uhler stated farmsteads are assessed. Uhler noted mowed yards are assessed at a higher rate compared to native prairies. Theil also stated he did not understand the Hearing Notice.

Duane Erickson is a landowner in Becker County. D. Erikson asked if someone petitioned to set up wmd and if there was a petition to work on ditch system. Uhler noted Board requested HEI establish wmd for Hay Creek watershed. D. Erikson asked why BRRWD is proposing to spend \$35,000.00 per year when currently they spend \$8,000.00 on average. Altrichter stated the maximum assessment is \$35,000.00, however, Board will set annual assessments at their budget hearings based on project needs. With the wmd, BRRWD could assess up to \$35,000.00 if needed. Currently, BRRWD is spending \$8,000.00 on average annually for maintenance and operation, and some years maintenance and operation costs are higher. If Board of Managers Order establishment of the Hay Creek Watershed wmd, the recommendation for a 2024 assessment is \$15,000.00. If the account balance is expected to be positive at the end of 2024, the assessment for 2025 could be reduced. If there is a known repair expected for 2025, assessment could be higher. Board will consider project needs before setting the annual assessments. D. Erickson asked if BRRWD plans to build another structure on site. Altrichter stated there are no plans to modify project. D. Erickson expressed concern that setting up the wmd would make project more expensive. Uhler confirmed that there is no proposed change to project or how it is managed. Uhler noted BRRWD requested HEI develop wmd for Hay Creek Watershed for the Stinking Lake Project. Since project was constructed all landowners in the BRRWD have been funding operation and maintenance of Stinking Lake Project. Board determined landowners that benefited from project should fund operation and maintenance. D. Erickson stated landowners can take care of their own beavers and offered to control beavers to reduce expenses. Uhler noted landowners have asked BRRWD to control beavers in watershed. D. Erickson stated taxes are getting too high. D. Erickson asked what it will cost BRRWD to set up wmd. Fjestad stated the wmd identifies a subwatershed that benefits from the project and assess landowners that benefit.

Jeremy Aakre asked for clarification that currently all landowners in BRRWD are paying for operation and maintenance of Stinking Lake Project. Fjestad confirmed. Altrichter clarified other BRRWD projects have their own assessment areas, so landowner in the Hay Creek Watershed are not paying for annual operation and maintenance of those projects. Uhler stated there is still a watershed-wide assessment, however, only landowners in the Whiskey Creek wmd, for example, are paying for annual operation and maintenance of the project. Uhler also noted if the wmds did not exist for those projects, landowners in the Hay Creek Watershed would be funding operation and maintenance of those projects. Aakre asked who has been paying for this project in the past. Uhler noted all landowners in the BRRWD. Aakre asked how it was different. Uhler clarified it is a subwatershed paying the same annual costs.

Tom Bergren asked if Stinking Lake is the last project area without a wmd. Uhler clarified it is not, however, BRRWD is working on establishing wmds for five other older projects without wmds to cover annual operation and maintenance. Davis noted he owns land that is included in three different assessment areas. Davis noted he has attended budget hearings in the past and there have been years when there have been no assessments and there have been years when he has been taxed all three assessments. He stated even when all three have been assessed, assessments have been low. Davis confirmed that land with benefit rate of \$2.58 per acre, may not be assessed the full amount each year. Assessments are used to pay for maintenance of projects.

T. Erickson asked how landowners can get information on the Board decision. Altrichter stated Board of Managers will discuss comments from the Hearing at their Board Meeting scheduled for 7:00 PM and will consider an Order. All are welcome to attend the regular Board Meeting. Minutes from Hearing will not be posted until approved by Board of Managers at their August Board Meeting. Interested parties can also call the BRRWD office for more information on the Board decision. T. Erickson asked if there would be any mailings. Altrichter stated there would not be any mailings.

President Fjestad adjourned meeting at 6:57 PM.

/s/ John E. Hanson  
John Hanson  
Secretary