

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

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## MINUTES FOR MANAGERS' MEETING

March 25, 2019

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a regular meeting on Monday, March 25, 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, John E. Hanson, and Troy E. Larson. Others attending included: Bruce E. Albright, BRRWD Administrator, Kathleen K. Fenger, BRRWD Assistant Administrator, and Erik S. Jones, BRRWD Engineer, Houston Engineering, Inc. (HEI); Kevin Campbell, Clay County Commissioner/Vice Chair, Fargo-Moorhead Diversion Authority (FM DA); Jenny Mongeau, Clay County Commissioner; Robert Zimmerman, Engineer, City of Moorhead; Lyle Hovland, Wilkin County Commissioner; Mary Scherling, Cass County Commissioner/FM DA; Gregg Thielman, Engineer, Houston-Moore Group, LLC (HMG); Eric Dodds, Engineer, Advanced Engineer and Environmental Services (AE2S); Tim Fox, Attorney, Richland-Wilkin County Joint Powers Authority (JPA); David Morken, Chair, Pat Otto, Secretary/Treasurer, Don Nelson, Director, MNDAK Upstream Coalition; and others: Darin Brandt, Michael Brandt, John Ready, Jay Nord, Jeff Nord, Brian Field, 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. Being none, the agenda was adopted.

**Secretary's Report.** The Board reviewed draft minutes for the 3/11/19 Board meeting. **Motion** by Manager Affield to approve the meeting minutes. **Seconded** by Manager Fjestad. Leitch noted one correction. **Approved**, subject to correction.

**Treasurer's Report.** The Board reviewed the BRRWD's financial status. Cash on hand is \$3,173,182.30. Total income since the 3/11/19 meeting was \$7,267.56 from the Red River Watershed Management Board (RRWMB) for Mediation Project Team (PT) expenses. Total income to date is \$1,139,809.99.

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

**FM Diversion Project.** Jeff Nord, who owns property in Wolverton, Deerhorn, and Mitchell Townships, Wilkin County, commented that the BRRWD should prepare a listing of properties that could be affected by the Diversion project outside of the mitigation area the Army Corps of Engineers (COE) has identified. He has had flood waters within 2' of his buildings in the past, so with the potential for an additional 2' of water coming from the proposed Diversion project, he would have water in his buildings. He doesn't believe that the project's impacts will be limited to the COE's designated Operating and Maximum Pools, and he thinks that the COE should be responsible for mitigation/protection in outlying areas. Nord pointed out that Minnesota has addressed flooding for the most part on our own, and now North Dakota should do the same thing. He reiterated that the BRRWD should include a list of potential impacts that the COE hasn't anticipated to include in our permit conditions, or the problems will end up coming back on the BRRWD.

Attorney Tim Fox, Richland-Wilkin JPA, asked about the format for the upcoming public meeting for the FM DA's permit application. President Leitch explained that the Board would discuss this issue later in the meeting.

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

**Permit No. 19-011, Oakport Holdings, LLC.** Applicant proposes a new 28 lot residential development in the NE $\frac{1}{4}$ , Section 18, Oakport Township, Clay County. The project will include the installation of roads, ditches, and culverts. Jones noted that we are waiting for the applicant to provide additional design information regarding the overall drainage plan. **Action Postponed.**

**Permit No. 19-012, Shawn Norman.** Applicant proposes to install pattern tile in the NW $\frac{1}{4}$  and the W $\frac{1}{2}$ NE $\frac{1}{4}$ , Section 23, Manston Township, Wilkin County, outletting via gravity flow to an existing tile project Norman installed last year (Permit No. 18-003). The tile will eventually drain into the Manston Slough project. The property is assessed to drain to C.D. Nos. 44, 13, and 13-Lateral. Jones recommended permit approval.

**Permit No. 19-013, Heritage Homes.** Applicant proposes to install a driveway/culvert for a new single family construction on the south side of County Road (C.R.) No. 67 in the SE $\frac{1}{4}$ , Section 7, Elmwood Township, Clay County (100 4<sup>th</sup> AVE W near Sabin). Jones recommended permit approval, subject to County approval to work within their road right-of-way (R/W) and with the requirement that the culvert be placed on grade to match the existing upstream and downstream culvert elevations.

**Motion** by Anderson to approve Permit Nos. 19-012 and 19-013, subject to the referenced disclaimers and conditions. **Seconded** by Fjestad. **Approved.**

**FM DA Revised Project.**

- **Permit No. 19-003, FM DA.** At their 3/11/19 meeting, the Board decided to hold a public meeting for Permit No. 19-003 to allow both sides of this issue time to present their arguments. Albright has contacted several venues for the meeting, and the office will advertise the meeting once a facility has been secured. The Board discussed possible formats for the public comment portion of the meeting. Albright suggested that we provide a signup sheet for those wishing to speak and then limit their time so that both sides of the issue are heard. The DA Engineers provided individual maps of the flood prone properties that the Board requested, and the Board plans to field review the affected properties in Minnesota using those maps. Leitch noted that the Board appreciated the DA's quick response to their requests. The group discussed the meeting format. Leitch assured the group that the Board will endeavor to allow all who wish to speak ample time to do so. Attorney Fox stated that the Richland-Wilkin JPA will forward a summary of their presentation to Albright with a listing of their speakers.

Albright noted that the Board and staff are working on the potential BRRWD permit conditions. He suggested that the Board could also take public comments on the draft conditions at the meeting. Anderson asked if the DA has had a chance to review our draft conditions. Albright said that it would probably be best to wait until the upcoming meeting to share the draft conditions with the public. If our conditions happen to conflict with the Minnesota Department of Natural Resources' (DNR) list, Albright observed that we will have to work with them to clear up the differences. Nord asked again if the BRRWD plans to include a list of impacted properties he talked about at the beginning of the meeting in our permit conditions. Leitch asked for clarification. Nord feels that there will be a significant number of unanticipated impacts from the Diversion project in the areas outside of the maximum pool elevation that the COE has not considered in their mitigation plan. Albright offered to meet with Nord to discuss his concerns further.

Leitch asked the Diversion engineers to meet with him to answer questions regarding the definitions for impacted lands/structural mitigation based on the various flood elevations. He questioned the identification of land in the Probable Maximum Flood (PMF) for Plan B as threatened and asked to see a hydrograph of the PMF. Robert Zimmerman, Engineer, explained that the Operating Pool is defined by the COE, and the Maximum Pool was defined by the DNR and COE's Dam Safety Regulations. He suggested that a joint meeting with those agencies could be arranged. Leitch

speculated that the COE's Federal authorization for the Diversion project might be based on the Obama administration's Federal Flood Risk Management Standard, which was rescinded by the Trump administration in 2017. He suspected that this could change or eliminate the 500-year/PMF floodplain impacts for Plan B. Zimmerman thought the COE would be willing to address this issue when they meet with the Board.

Albright asked if the DA-owned land under the footprint of the southern embankment in Minnesota would stay on the tax rolls or be tax exempt. Eric Dodds, Engineer, AE2S, explained that for the North Dakota lands already acquired by the DA, the decision has been made to leave those lands on the tax rolls until the property is no longer productive or occupied (farmstead/house). This issue is still under discussion. Albright asked which entity will hold the title when a property is acquired for the project. Dodds said that with the JPA, the title for North Dakota buyout property will be held by the Cass County Joint Water Resource District. Zimmerman thought that either the City of Moorhead, Clay County, or the Minnesota-Clay County Joint Powers Agreement (MCCJPA), would hold the title. Kevin Campbell, Clay County Commission, explained that according to the draft Lands Acquisition agreement, the MCCJPA will hold the title. Being a government entity, it would be exempt from taxation. Dodds pointed out that the DA is not interested in owning land and at some point, they will dispose of land not needed for the project. Anderson said that as long as the land is still being farmed, it would remain on the tax rolls. Leitch noted that the Board will try to complete our draft permit conditions soon. Campbell assured the Board that the DA intends to work with the BRRWD on their permit application. Securing a BRRWD permit is actually one of the DNR's permit requirements. DA Chair Mary Scherling reiterated Campbell's commitment to cooperate with the BRRWD on their permit application. She added that the DA plans to work fairly with the impacted Minnesota landowners, businesses, and other governing bodies to develop agreements that will be acceptable to all. Zimmerman explained that Moorhead Mayor Judd would have been in attendance at tonight's meeting, but their City Council meeting took longer than expected. He added that Mayor Judd is also committed to working with the BRRWD on the permit and conditions.

Leitch noted that the local groups may need to meet with the COE at the Federal level regarding the Diversion project.

Campbell reported that the draft MCCJPA will be ready for review and comments in about two weeks. He said that the land acquisition portion of the draft document could address some of Anderson's earlier land ownership questions.

Jeff Nord asked who would be taxed to make up for the lost revenue when land is taken off the tax rolls as a result of the Diversion project. Campbell explained that any time private property is transferred to the public, that lost revenue is disbursed to the rest of the county or taxation district. Nord suggested that the lost revenue should be transferred to the City of Fargo.

Attorney Fox pointed out that in the court filings being made regarding the ongoing Richland-Wilkin JPA Diversion injunction hearing, the DA's attorneys' arguments contradict the statements that the DA representatives are making at tonight's meeting. Fox explained that the DA's attorneys have repeatedly made it clear that the DA and the COE are immune to any State of Minnesota or BRRWD rules or regulations. The injunction oral hearing is scheduled for 4/2/19 before Judge Tunheim.

- **Cities of Wolverton and Georgetown Issues/Impacts.** Albright noted that staff is working with the Cities of Wolverton and Comstock, and Holy Cross Township to set up meetings to discuss project impacts. The BRRWD is also meeting with the City of Georgetown on 3/27/19 to discuss 2019 flood preparations. Zimmerman offered to participate in the meetings the BRRWD has scheduled with the Cities of Wolverton, Comstock, or Georgetown. Commissioner Campbell asked about the 3/27/19 meeting the BRRWD has scheduled with Georgetown. Albright explained that they are meeting with the City to discuss possible 2019 flooding concerns. Campbell suggested that the County Sheriff's

Department should be included in the meeting, regarding possible road closures, etc. Albright agreed to contact the Sheriff and the Clay County Emergency Manager.

- **DNR Permit Contest.** Leitch noted that the FMDam.org Website should take down the analysis he presented at the last meeting refuting the assertions that delays caused by the BRRWD's contest of the DNR permit is adding \$130,000-\$180,000 per day to the cost of the Diversion project. He said he didn't want to appear to be taking sides on this issue and the organization didn't have permission to publish the statement.

Albright reported that he and Managers Leitch, Anderson, and Fjestad traveled to St. Paul on 3/15/19 to meet with DNR representatives regarding the contest case where they discussed the BRRWD's questions about the DNR's conditions. In the event that the BRRWD continues with the contest in conjunction with the other contesting parties (Wolverton and Comstock), Albright explained the BRRWD will be required to submit documents defining our issues for the Office Administration Hearing (OAH). Nord asked why the other townships affected by the Diversion aren't included in the contest proceedings. Anderson explained that Holy Cross Township isn't involved in the contest, they only have concerns about the township roads the project will close. Albright noted that if any townships have concerns, the Board is willing to meet with them.

Leitch referenced Robert's Rules of Order. He noted that at times, the Rules can be relaxed to allow for the free flow of discussion.

**Project No. 79, Wolverton Creek Restoration.** Albright reported that the office sent a second round of letters to the Phase 2 landowners asking them to sign and return their temporary easements as soon as possible so we can let bids for Phase 2 sometime in May. HEI has been directed to stake all the Phase 2 R/W so the cropland isn't planted this spring. Todd Blilie should be returning to the area sometime this week, so we expect to close on his property in Section 10, Wolverton Township, Wilkin County, in the next several weeks. When the Farm Bill details are finalized regarding the Conservation Reserve Program (CRP) funding, the Wilkin County Soil and Water Conservation Districts (SWCD) will be able to move forward with the Conservation Reserve Enhancement Program (CREP) signup for Phase 2. Jones reported that the easement documents for Phase 3 (Clay County) are nearly completed. There is a two-mile stretch north of the County line where we will need a channel survey as soon as conditions permit this spring, so the engineer can get an accurate excavation quantity for the contractor. It will help the Judicial Ditch (J.D.) No. 1 project if this area is restored before the J.D. No. 1 construction starts.

Jay Nord asked if the Board planned to give the Phase 1 landowners a second temporary construction easement payment for the 2019 crop year since the Board gave the contractor an extension until June 15, 2019, because of the inclement weather last fall. **Motion** by Anderson to pay for additional temporary construction easements on an annual basis to landowners in areas where construction is not completed. **Seconded** by Hanson. Manager Fjestad asked if the cost for additional construction easement payments could be charged to the contractor. Jones will research this issue. **Approved.**

**Project No. 78, Clay/Wilkin J.D. No. 1-Improvement.** The Clay County Board of Commissioners approved a resolution for a bond sale for the J.D. No. 1-Improvement. A conference call is scheduled the first week in April with Ehlers and Associates, Inc., the Clay County Auditor, and Albright to discuss the bond sale process. Albright expects that the bond sale proceeds will be available in June. The landowners will see the project assessments on their 2020 tax statements. R/W payments to the Wilkin County landowners are on the bill list tonight for approval. Those payments will be sent to the landowners with a letter advising them to expect to see R/W staking activity as soon as conditions allow and to refrain from seeding in those areas. The preconstruction meeting will be scheduled in the near future with the contractor, Dennis Drewes, Inc.

**Stony Creek Restoration.** Albright travelled to St. Paul again last week to give testimony before the House Capital Investment Committee regarding funding for the Stony Creek Restoration project. Representative Paul Marquart sponsored the bill for Stony Creek. Albright also testified with Representative Jeff Backer for funding for the 220<sup>th</sup> ST Drainage and Flood Control project in Wilkin County. The State Senate hasn't yet taken up any bond funding legislation.

**Norby Lawsuit.** Albright reported that the Judge in the Norby Lawsuit upheld our motion for a summary judgement, so the 4/11/19 court date has been cancelled. Norby has the right to appeal this decision. BRRWD Attorney Tami Norgard, Vogel Law Firm, immediately withdrew our insurance company's \$35,000 settlement offer.

**Wilkin-Otter Tail J.D. No. 2.** Albright reported that the Otter Tail County Viewers are working on a redetermination of benefits. He noted that we have obtained a Minnesota Board of Water and Soil Resources (BWSR) grant to repair the outlet. We will need to acquire additional temporary R/W for this year's construction work. Jones explained that there are two affected parcels, totaling about 8.5 acres. Total cost for the temporary R/W would be approximately \$250 or \$300/acre. The J.D. No. 2 Joint Ditch Committee will need to meet to approve the R/W acquisition and the repairs. Expenditures for R/W are eligible to be used as grant cost share funds (25% matching funds). The Viewers will determine the permanent R/W needed to install the one-rod (16.5') grassed bufferstrips. **Motion** by Fjestad to approve the R/W acquisition at the rate of up to \$300/acre. **Seconded** by Hanson. **Approved.** Albright noted that the BRRWD will hire and pay the contractor, then we will bill the County, who will act as the grant's fiscal agent. The J.D. No. 2 Ditch Committee will meet on April 2, 2019, at 1:30 PM in Fergus Falls.

**One Watershed, One Plan (1W1P).** An Advisory Committee/Planning Team meeting has been scheduled for 3/27/19 at 9:00 AM in the Barnesville office. All the Class 1 and 2 Issues have been approved and draft goals have been identified. The Planning Team will meet on 4/1/19 in Barnesville.

**2018 Annual Report.** Leitch asked River Keepers and the Red River Basin Commission to provide a one-page report to be included in our annual report. Leitch asked if a hyperlink would satisfy the BWSR requirement that the financial audit be included in the report. Albright will investigate this issue.

**Project Development Timeline.** Leitch asked about the status of the requested document and Jones noted that he expects to have the timeline ready for the next meeting.

**Georgetown/Oakport/Kragnes 2019 Flood Preparations.** Jones reported on the flood preparations being considered for several locations within the BRRWD:

- Oakport-the City of Moorhead will handle most of the flood preparations for the Oakport area, including gate closures, pump operations, dike monitoring.
- Kragnes-monitor/operation of ringdike at Flood Stage 21' on the Buffalo River/gate closures
- Georgetown-meet with City of Georgetown to review the storm water ponds' operation/pump operation/monitoring river levels and upstream gauges, road closures if necessary.
- Stony Creek/Stinking Lake-monitor gauges on the Waterfowl Management Areas (WMA) to maximize benefits. Albright noted that the water has broken out of Stony Creek along Interstate-94 (I-94) and has been on the rise since yesterday.
- Manston Slough-install all the boards in the weir.

Albright noted that the staff will respond to calls as they come into the office regarding flooding issues.

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

Accounts Payable	Description	Account	Amount
Bruce E. Albright	Lodging and Meals-DNR Meeting	COE	\$ 659.73
Bruce E. Albright	RRWMB Conference Lodging	Admin.	\$ 142.38
Bruce E. Albright	Lodging	Stony Creek Project	\$ 194.67
Bruce E. Albright	LaserJet Printer	Admin.	\$ 204.00
Catherine L. Affield	#19-01, 01/01/19-02/28/19	Varies	\$ 383.77
Clayton/Emmy Lou Lindgren	Easement Option Payment	Pj. 79, Wolverton Crk	\$ 1,737.25
Douglas J. Nordick	Permanent Easement Payment	Pj. 78, Clay-Wilkin J.D. 1	\$ 9,015.00
Edwards Family LTD PTR	Permanent Easement Payment	Pj. 78, Clay-Wilkin J.D. 1	\$ 2,460.00
Frederick C. Altenbernd RLT	Permanent Easement Payment	Pj. 78, Clay-Wilkin J.D. 1	\$ 145.00
Gregg D. & Beverly Jaehning	Permanent Easement Payment	Pj. 78, Clay-Wilkin J.D. 1	\$ 8,995.00
James Briks Family LP ETAL	Permanent Easement Payment	Pj. 78, Clay-Wilkin J.D. 1	\$ 7,850.00
Jean P. Altenbernd RLT	Permanent Easement Payment	Pj. 78, Clay-Wilkin J.D. 1	\$ 140.00
Jeff Nord	Permanent Easement Payment	Pj. 78, Clay-Wilkin J.D. 1	\$ 1,640.00
Joel Carlson, Inc.	April Lobbyist Fees	Admin.	\$ 850.00
John E. Hanson	Voucher #19-04, 01/01/19-02/28/19	Varies	\$ 681.21
Jon & Phyllis L. Evert	Permanent Easement Payment	Pj. 78, Clay-Wilkin J.D. 1	\$ 9,365.00
Liberty Business	#368070, Contract Overage	Admin.	\$ 29.97
Mark T. Anderson	#19-02, 01/01/19-02/28/19	Varies	\$ 779.97
Moorhead Public Service	02/04/19-03/04/19 Service (4)	Pj. 49, Oakport	\$ 149.68
Nord Real Est. Holding, LLLP	Permanent Easement Payment	Pj. 78, Clay-Wilkin J.D. 1	\$ 4,455.00
Quill	Office Supplies	Admin.	\$ 109.94
Thomas & Susan Arnhalt	Permanent Easement Payment	Pj. 78, Clay-Wilkin J.D. 1	\$ 14,195.00
Vogel Law Firm	#231723, March Billing	Pj. 79, Wolverton Crk	\$ 1,960.00
Waypoint Insurance	#7, Directors/Officers Liability Policy	Admin.	\$ 5,453.91
			\$ 71,596.48

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

**Manager Comments.** Albright noted that the Mediation PT meeting date has been changed to 4/18/19 at 1:30 PM in the Barnesville office. The J.D. No. 2 Joint Ditch Committee meeting has been scheduled for 4/2/19 in Fergus Falls at 1:30 PM. Albright won't be able to be there, but Fenger will attend in his absence.

Affield noted that she has received phone calls regarding rising waters on Wilkin C.D. No. 6A. Jones said someone will check to see if there's a block holding back flows.

Albright noted that John Boen was in the office on 3/22/19 regarding a project his neighbor installed last year in Norwegian Grove Township. The project was not installed according to the plan that Boen had reviewed. Albright suggested the Board conduct a field review, once conditions allow. The Lego League 4-H Team, who uses our garage during the winter months for their meetings, finished up their season recently. The whole team signed a Thank You card to the Board for the use of the building. They plan to use it again this fall.

Chuck Fritz, The International Water Institute (IWI), sent a request to the BRRWD to fund the Phase 6 Watershed Delineation/Hydrology Report Application on the IWI's map portal to be used to determine watersheds for project planning/design. The RRWMB will pay for their members, but since the BRRWD is a non-member, IWI has asked us to contribute \$3,490.08 for the BRRWD and \$4,084.95 for the Otter Tail River watersheds. Albright suggested that we could work with Otter Tail County to split the costs for the portion of the Otter Tail River watershed not included within the BRRWD. Albright will include this request on the next meeting agenda.

Leitch related his observations last Friday during his airplane flight over the Black Swamp and other BRRWD sites. He noted that he saw a pack of five wolves south of Downer. Albright commented that the National Weather Service is interested in local runoff/flood/snow reports.

**BWSR Training.** The Board discussed the BWSR Board training requirement for the Performance Review and Assistance Program (PRAP) report. Albright noted that there are some new items on the BWSR website that would qualify as Board training.

**MAWD Summer Tour.** The Minnesota Association of Watershed Districts (MAWD) Summer Tour will be held in Moorhead on June 26-28, 2019.

**Next Meeting Agenda.** Anderson asked about copies of the individual landowner maps regarding the Diversion impacts. The office will make copies for any Managers who want to have a set, and the document will be linked on the BRRWD's Website.

**Next Meeting.** The next regular BRRWD meeting will be held on Monday, April 8, 2019, at 7:00 PM in our Barnesville office.

**Adjournment.** President Leitch adjourned the meeting at 8:37 PM.

Respectfully submitted,

John E. Hanson, Secretary