

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

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## MINUTES FOR MANAGERS' MEETING

September 28, 2020

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held their regular meeting on Monday, September 28, 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 Peter V. Fjestad, Catherine L. Affield, John E. Hanson, Gerald L. Van Amburg, Paul G. Krabbenhoft, Troy E. Larson, and Mark T. Anderson. BRRWD staff attending in person were Erik S. Jones, Engineer, and Julie Jerger, Senior Administrative Assistant, Houston Engineering, Inc. (HEI). Others attending via the conference line: Jenny Mongeau, Clay County Commissioner; and in person: Lyle Hovland, Wilkin County Commissioner; Brent Edison, Vogel Law Firm; Joel Fremstad, Fremstad Law; and landowners Kraig Nelson and Greg Ronning.

BRRWD President Fjestad called the meeting to order at 7:03 PM and informed the audience that the meeting was being recorded to aid in the preparation of meeting minutes.

**Agenda.** Additions to the meeting agenda: the Turtle Lake Improvement Association (TLIA) request, Wilkin County Ditch (C.D.) No. 3 and Clay C.D. No. 10 repairs, Park Township highwater concerns on Dewey Lake, Section 33, Barnesville Township ditching concern, a closed executive session regarding the Diversion Authority (DA) lawsuits, and a report regarding the Red River Basin Flood Damage Reduction Work Group (RRBFDRWG) meeting. **Motion** by Anderson to approve the agenda with the noted additions. **Seconded** by Krabbenhoft. **Approved** by unanimous roll call vote.

**Secretary's Report.** The Board reviewed draft minutes for the 9/14/20 regular meeting. Affield requested more detail on Attorney Norgard's DA lawsuit report, and Jones had one landowner name correction. **Motion** by Affield to approve the minutes, subject to correction. **Seconded** by Van Amburg. **Approved** by unanimous roll call vote.

**Treasurer's Report.** The Board reviewed the BRRWD's financial status. Cash on hand is \$3,092,153.30. There was no income since the 9/14/20 meeting. Total income this year is \$4,225,357.93.

**Citizens to be Heard.** Landowners Greg Ronning and Kraig Nelson discussed their concerns about their neighbor Todd Boit's drainage activities in Section 13, Audubon Township, Becker County. The group had an extended discussion regarding Boit's drainage violations and the work he will need to complete to correct the area drainage to his neighbors' satisfaction. Ronning and Nelson expressed concerns about Boit doing the work without supervision given his past drainage violations and trespass issues. They requested that Boit be directed to return the area drainage to the original configuration. Jones will prepare an updated list of corrective actions for Boit to complete. **Motion** by Hanson to approve the updated list of actions as prepared by Jones and to forward it to Boit. **Seconded** by Larson. **Approved** by unanimous roll call vote.

**Executive Session.** As permitted by the attorney-client privilege exception to the data practices act in accordance with M.S.A. 13D.05, Subd. 3(b), the Board closed their meeting at 7:43 PM to consult with their attorneys regarding the Minnesota Department of Natural Resources (DNR) permit contested case trial and DA permit denial lawsuit. **Motion** by Anderson to reopen the meeting at 8:34 PM. **Seconded** by Larson. **Approved** by unanimous roll call vote. Attorney Edison reported that the Board had a closed session to discuss the status of the DNR permit contested case. He noted that the record closed today, and the Administrative Law Judge now has 90 days to issue a decision, and the DNR has an additional 90 days to

accept or modify the Judge's decision. No action items were required from the discussion. Attorney Fremstad reported that he provided the Board with an update of the permit denial lawsuit and the timelines involved with the case. No other permit actions were taken during the closed session.

Van Amburg noted that there is a Minnesota-Clay County Joint Powers Agreement (MCCJPA) meeting on 10/1/20.

**2019 Audit.** Harold J. Rotunda, CPA, presented the 2019 audit. He discussed the BRRWD's management of our project assessment practices, project administration fees, and the M.S.A. 103D.905, Subd. 3, taxing authority. He noted that while the staff's bookkeeping process using QuickBooks software may be time consuming, it provides a very detailed and accurate account of the District's finances. **Motion** by Anderson to accept the 2019 Audit. **Seconded** by Van Amburg. **Approved** by unanimous roll call vote. Rotunda agreed to conduct the BRRWD's 2020 audit.

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

**Permit No. 20-052, Jerry Butenhoff.** Jones explained that Jerry Butenhoff wants to install a dry approach into the W $\frac{1}{2}$ , Section 12, Elkton Township, Clay County, where a Conservation Reserve Enhancement Program (CREP) Conservation easement project is being developed. Jones noted that the approach is situated on a ridge and wouldn't require a culvert.

**Permit No. 20-062, Wilkin County Highway Department.** At their 7/13/20 meeting, the Board postponed action on this permit for a repair of the centerline pipe through County Road (C.R.) No. 186. After further review, Tim Christopher, Wilkin County Highway Department, notified Jones that he might decide to withdraw this permit and to reapply when he has a final plan. **Action Postponed.**

**Permit No. 20-070, Whitt Case.** Applicant has decided to withdraw this permit for 100 acres of pattern tile in the SE $\frac{1}{4}$ , Section 16, Riverton Township, Clay County. **Administratively Withdrawn.**

**Permit No. 20-084, Duane Hanson.** Jones noted that the applicant has given no indication that he plans to proceed with the proposed work in the NW $\frac{1}{4}$ , Section 16, Riverton Township, Clay County, and he has not provided a workable plan. He recommended that the Board should deny the permit application. **Motion** by Anderson to deny Permit No. 20-084. **Seconded** by Larson. **Approved** by unanimous roll call vote. Staff will send a letter to Hanson regarding the Board's decision.

**Permit No. 20-099, John Thompson.** Manager Anderson and Jones conducted a field review of Thompson's proposal for a ditch improvement project on the west side of County State Aid Highway (CSAH) No. 11 in the NE $\frac{1}{4}$ , Section 24, Deerhorn Township, Wilkin County. The plan has been revised so that the ditch excavation will stay off the downstream Quittschreiber property. With that change, Jones recommended permit approval.

**Permit No. 20-105, John Overland/Minnesota Board of Water and Soil Resources (BWSR).** Applicant is working with the landowner, Ogema Investors, LLC, to develop a wetland banking site in the W $\frac{1}{2}$ W $\frac{1}{2}$ , Section 6, Callaway Township, Becker County. Jones discussed possible impacts to neighboring property with John Overland, BWSR. The project involves the installation of a diversion tile outlet to provide drainage to upstream property. The applicant has agreed to lower this tile to provide positive grade. With that change, Jones recommended permit approval.

**Permit No. 20-106, United States Fish and Wildlife Service (USFWS).** Applicant proposes to widen an existing approach and culvert extension for the Holland/Braton Northern Tallgrass Prairie Refuge in Section 32, Humboldt Township, Clay County. Jones recommended permit approval.

**Permit No. 20-107, Wilkin County Highway Department.** Applicant proposes to remove two existing 18" dia. entrance pipes along the south side of CSAH No. 11 in the N½, Section 12, Mitchell Township, outletting to Wilkin C.D. No. 22-Lateral 3, and to resize the structures to 30" dia. culverts to establish a consistent gradeline and culvert sizing. Jones recommended permit approval.

**Permit No. 20-108, Brice Bellmore.** Applicant proposes to clean Wilkin C.D. No. 26 and the road ditch along C.R. No. 3 on the east and west side of Mark Zimmerman's driveway to improve field drainage and address water ponding east of Zimmerman's yard in the N½NW¼, Section 8, Mitchell Township. The BRRWD is responsible for the C.D. No. 26 channel maintenance, but Bellmore could do the road ditch cleaning without a permit. The Board discussed allowing Bellmore to clean the legal drain at the same time as the road ditch. Jones suggested that a minimal survey could be conducted to determine how much material needs to be removed. He will contact Bellmore to discuss the ditch system/road ditch cleanout and the Nyquist Coulee cleanout. **Action Postponed.**

**Permit No. 20-109, Shane Thompson.** Applicant proposes to add up to 8,000' of random tile to an existing tile system (Permit No. 18-070) in the N½, Section 8, Barnesville Township, Clay County, outletting to the existing outlet system which then discharges via a lift station. Jones recommended permit approval, subject to our standard tiling disclaimer.

**Permit No. 20-110, Karlo Etten.** Applicant proposes to pattern tile the NW¼, Section 3, Meadows Township, Wilkin County, outletting via a lift station to Wilkin C.D. No. 6A, to which it is assessed. Jones has questions about the outlet. **Action Postponed.**

**Permit No. 20-111, Emmanuel Jerger and Sons.** Applicant proposes to install 159 acres of pattern tile in the NW¼, Section 29, Atherton Township, Wilkin County, outletting via an existing main directly into the South Branch of the Buffalo River, completing a tile project started in 2014 (Permit No. 14-130). Jones recommended permit approval, subject to our standard tiling disclaimer.

**Motion** by Van Amburg to approve Permit Nos. 20-099, 20-105 through 20-107, 20-109, and 20-111, subject to the referenced disclaimers and conditions. **Seconded** by Anderson. **Approved** by unanimous roll call vote.

**Otter Tail River Corridor Habitat Restoration.** The Army Corps of Engineers (COE) is completing a Federal Section 1135 Ecosystem Restoration feasibility study for the BRRWD. The Federal Section 1135 funding contribution is limited to \$10 million. The cost share on a project of this kind is funded 75 percent federal, 25 percent non-federal funds. The overall project was broken down into feature groups consisting of individual segments of river meander restoration areas. Various combinations of different feature groups were considered. In total, the COE evaluated 129 different alternatives which they narrowed down to a list of 12. The COE requested the Board select a Preferred project plan alternative from this list for the study. In order to maximize the COE's Section 1135 contribution, based on Jones' recommendation, the Board selected Alternative G, as their preferred option. **Motion** by Anderson to select Alternative G, as referenced. **Seconded** by Krabbenhoft. **Approved** by unanimous roll call vote.

**Project No. 79, Wolverton Creek Restoration.** The Board received the 9/26/20 project status report from HEI for the work Gladen Construction, Inc. has completed on Phase 2.

**Project No. 80, Stony Creek Restoration.** The Board discussed the Environmental Assessment Worksheet (EAW) process for the channel restoration phase of the Stony Creek Restoration project. The EAW will include an off-channel storage site to avoid repeating the process if the Board decides to move forward with the full project in the future. **Motion** by Van Amburg to approve submittal of the EAW. **Seconded** by Larson. **Approved** by unanimous roll call vote.

**Project No. 46, Turtle Lake Outlet.** The Board discussed a request from the TLIA that the BRRWD consider authorizing a cost analysis of converting the Long Lake siphon to a gravity outlet, including an analysis of the potential long-term operating cost savings. **Motion** by Anderson to authorize the requested investigation. **Seconded** by Hanson. **Approved** by unanimous roll call vote.

**Wilkin C.D. No. 3.** Landowner Jay Schuler requested the replacement of his low water crossing field access road with a 30" dia. culvert on C.D. No. 3. Jones noted that the replacement might have to be multiple culverts because the crossing would provide only minimum cover. **Motion** by Larson to authorize a hydraulic analysis to determine the culvert sizings and to approve the proposed culvert replacement. **Seconded** by Anderson. **Approved** by unanimous roll call vote.

**Clay C.D. No. 10.** The Board discussed road slope problems in Sections 15 and 17, Morken Township, on the north-south township road. The Township requested that the BRRWD investigate alternatives to address the road/ditch slope. Jones described a design that allows the road slope to be steeper and still maintain integrity. **Motion** by Hanson to authorize the requested investigation. **Seconded** by Affield. **Approved** by unanimous roll call vote.

**Dewey Lake Outlet.** Parke Township has requested that the BRRWD assist them with a DNR permit application and technical assistance to install a permanent tile outlet for Dewey Lake, which is a landlocked waterbody, split by 280<sup>th</sup> ST in Section 34 and 35. The outlet would be to the west-northwest into pastureland. Jones contacted Roger Hemphill, DNR Area Hydrologist, for historical information regarding Dewey Lake. **Motion** by Anderson to authorize Jones to assist Parke Township, as requested. **Seconded** by Krabbenhoft. **Approved** by unanimous roll call vote.

**Section 33, Barnesville Township Drainage Concern.** The Board had an extended discussion about a ditching dispute in Section 33, Barnesville Township, between Frank Schindler and the Boeder family. Staff has worked with the landowners since 2016 to develop an agreement that would allow Schindler to clean the ditch adjacent to both properties and a field inlet in the Boeder family's Conservation Reserve Program (CRP) acreage, and to allow Boeders to use Schindler's field approach to enter their property. This summer, Schindler had the township road ditch along the Boeder property cleaned and now refuses to sign the agreement, as he no longer has any plans to clean the ditch on the Boeders' CRP. Schindler's contractor excavated more material than the 2016 drainage survey recommended, so that water will now stand in the ditch. The contractor only removed topsoil, so the project technically did not require a BRRWD permit. Jones has contacted Attorney Norgard for advice regarding possible BRRWD action in response to this issue. The Managers thought that Barnesville Township should be involved, since Schindler's project impacted the township ditch drainage.

**One Watershed, One Plan (1W1P).** The BWSR Northern Planning Committee will review the 1W1P on 10/7/20.

**Silver Lake Outlet.** The DNR grant paperwork for the redesign of the Silver Lake Outlet is moving forward. The agreement has been set up for Jones to be the authorized signer. **Motion** by Anderson to authorize Jones to sign the agreement on the Board's behalf. **Seconded** by Hanson. **Approved** by unanimous roll call vote.

**South Branch of the Buffalo River.** The Board discussed a Pheasants Forever request for a cash commitment of \$12,100 from the BRRWD to be applied toward the purchase of the Rogelstad tract in Section 10, Manston Township, Wilkin County, for a future 320-acre Wildlife Management Area (WMA). In exchange, the BRRWD will have access to the tract for the work needed to complete the stream restoration project on the upper South Branch of the Buffalo River and for future project maintenance. **Motion** by Van Amburg to approve the referenced cost-share contribution. **Seconded** by Krabbenhoft. **Approved** by unanimous roll call vote.

**HR Committee Report.** HEI received a number of applications for the BRRWD Administrator position. Online interviews with three of the candidates will be conducted this week. HR committee members Van Amburg and Affield, and possibly President Fjestad, will participate. The Board also discussed a potential administrative assistant candidate.

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

Accounts Payable	Description	Account	Amount
American Enterprises, Inc.	2020 Mowing, second cutting	Pj. 40, Oakport	\$ 7,260.00
Carmen Pattengale	September Office Cleaning (2)	Admin.	\$ 130.00
Chris Hoppe Lawn Care Service, LLC	July Mowing (4) & August Mowing (5)	Admin.	\$ 1,125.00
Clay County Union	Public Hearing Notice (2)	1W1P	\$ 120.00
Clay County Union	2021 Budget Hearing Notice	Admin.	\$ 250.00
Fergus Falls Daily Journal	Public Hearing Notice (2)	1W1P	\$ 346.50
Janet Shaddix & Associates	Motions/Supplemental Hearing Transcripts	COE	\$ 975.00
Joel Carlson, Inc.	October 2020 Lobbyist Fees	Admin.	\$ 850.00
Liberty Business Systems, Inc.	Contract Overage 06/27/2020-09/26/20	Admin.	\$ 49.94
MN DNR Ecological and Water Resources	Settelmeyer Culvert Replacement permit fee	Pj. 54, Whisky Crk.	\$ 100.00
Moorhead Public Service	08/04/20-09/02/20- Service FL #18	Pj. 49, Oakport	\$ 42.84
Pure Health Solutions Inc.	September Water Billing	Admin.	\$ 59.06
Quill Corporation	#10383261 Office Supplies	Admin.	\$ 70.73
RMB Environmental Laboratories, Inc.	#516939 WQ Analysis	M.S.A.103D	\$ 294.00
RMB Environmental Laboratories, Inc.	#517302 WQ Analysis	M.S.A.103D	\$ 790.00
Sellin Brothers, Inc.	Install Culverts	Pj. 61, Clay 11-N	\$ 22,163.75
Thompson Greenery	Mulch perennial and tree areas	Admin.	\$ 645.00
Vogel Law Firm	#261424 September Billing	Admin.	\$ 3,552.50
Vogel Law Firm	#261861 September Billing	COE	\$ 26,214.00
Western National Insurance Group	Commercial Package Renewal	Insurance	\$ 15,512.00
Wilkin County SWCD	CREP Technical Assistance & Marketing	M.S.A.103D	\$ 22,000.00
PF Land and Legacy Fund	Rogelstad tract funding	Upper S. Branch WRMP	\$ 12,100.00
			<b>\$ 114,650.32</b>

**Motion** by Anderson to approve payment of the bills. **Seconded** by Affield. **Approved** by unanimous roll call vote.

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

**Adjournment.** President Fjestad adjourned the meeting at 10:28 PM.

Respectfully submitted,

John E. Hanson, Secretary