

MEDIATION PROJECT TEAM MINUTES
June 29, 2006

A meeting of the Buffalo-Red River Watershed District (BRRWD) Mediation Project Team (PT) was held on Thursday, June 29, 2006, at 7:00 PM at the Minnesota State University Moorhead (MSUM) Science Center near Glyndon.

Attending were: Bruce E. Albright, Houston Engineering, Inc. (H.E.) and BRRWD Office Administrator; Curtis M. Nelson, E. Robert Olson, and Roger G. Ellefson, BRRWD Managers; Pete Waller, Board Conservationist, Minnesota Board of Water and Soil Resources (BWSR); Erik S. Jones, Engineer, H.E.; Steve Hofstad, Clay County Water Planner and Wetland Conservation Act (WCA) Administrator; Brian Winter, Program Director, The Nature Conservancy (TNC); Stacy Salvevold for Kevin Brennan, Fergus Falls Wetland Management District (WMD) and United States Fish and Wildlife Service (USFWS); Bob Honeman, Area Resource Conservationist, Natural Resource Conservation Service (NRCS); and Jack Frederick, Minnesota Pollution Control Agency (MPCA).

Members absent were: Dave Barsness, Fisheries Specialist, Minnesota Department of Natural Resources (DNR); Kevin Brennan, Fergus Falls WMD and USFWS; Don Buckhout, Red River Basin Coordinator, DNR; Brian Dwight, Board Conservationist, BWSR; Gerald L. VanAmburg and John E. Hanson, BRRWD Managers; Craig O. Evans, PM-D, United States Army Corps of Engineers (COE); Audubon Dakota; Leo Grabowski, Project Manager, COE; Brad Grant, District Administrator, Becker Soil and Water Conservation District (SWCD); Kevin Kassenborg, District Manager, Clay SWCD; Shawn May, Detroit Lakes WMD and USFWS; Robert G. Merritt, Area Hydrologist, DNR; Michael T. Murphy, Refuge Manager, Hamden Slough National Wildlife Refuge (NWR) and USFWS; Richard Pemble, BRRWD Citizen Advisory Committee; Maynard Pick, Staff Assistant, Congressman Collin Peterson's Office; Don Schultz, Area Wildlife Manager, DNR; and Robert A. Zimmerman, Engineer, City of Moorhead.

Albright called the meeting to order at 7:05 PM. Introductions were made for the benefit of Salvevold.

Business brought before the group included:

Meeting Minutes. Draft minutes for the 5/18/06 PT meeting were distributed with today's agenda. **Motion** by Honeman to approve the minutes. **Seconded** by Frederick. **Approved.**

Project No. 54, Whisky Creek Tributaries. This project was completed late in the fall of 2005. The project did experience some damage from the 2006 spring flood, especially along "east tributary". Wade Opsahl, Technician, H.E., is working with the Federal Emergency Management Agency (FEMA) on repairs, as well as mitigation funding that could reslope the upstream portion of "east tributary". The engineers are also looking at installing some rock check dams to control erosion along the channel bottom. The BRRWD will apply for a DNR permit to do this work, since "east tributary" is protected waters.

The BRRWD has expressed concerns to NRCS about the status of the Nichol Wetland Reserve Program (WRP), which will be located in Section 21, Humboldt Township, Clay County. This is on the upstream end of "east tributary". The Vertin WRP project has worked out quite well in Section 10, Barnesville Township. That project is still holding water even with the dry weather we are currently experiencing. Honeman said that NRCS has gone to the Nichol site to do some additional soil borings. The original design called for approximately 9,000 cubic yards (c.y.) of diking. They had a contractor lined up to do this work several years ago (William Nichol Excavating, Inc.), but Nichol never did the work. They rebid the work this spring and the low bidder was \$189,000. NRCS feels that this bid is too high. They're looking at the area soils and possibly holding a field meeting with the contractors the next time they bid the work. The BRRWD is very concerned that this project be done, since it was sold as part of a complete package to the landowners for Project No. 54. NRCS will try to locate better borrow sites for material to do the diking. Albright suggested that they might consider bidding the project on an equipment per hour basis. The way, if the contractors have to spend more time on the site, they are not liable. Ellefson said now would be a good time to complete the project, since it is so dry. He also recognized that this could be a difficult site to work in under the wet conditions we have experienced over the past several years.

Steve Hofstad said the Clay SWCD office is working with the renters of Bill Thompson's property in the E½, Section 20, Humboldt Township. Thompson is concerned about the erosion that is occurring in his field from drainage that is coming from the proposed upstream WRP site. Albright explained that the water is now going through a 24" dia. culvert in County Road (C.R.) No. 25, instead of flowing north on the east side of C.R. 25 to the beginning of "east tributary". The neighbor on the east side of the road, Virgil Holt, has expressed concerns that the culverts in C.R. 25 are not large enough. The BRRWD has assured the landowners that if the 400 acre Nichol WRP project is completed, this should resolve most of their drainage problems. The current renter of the Thompson property is David Janssen. Janssen is interested in repairing the erosion. Albright said the office has also received complaints from the neighboring landowner to Thompson's property, Greg Settlemeyer, who is concerned that all the sediment is washing into the creek and trees behind his house. The BRRWD has applied for a DNR permit to change the sizing of Settlemeyer's driveway culvert on "east tributary". That was part of our easement agreement with him.

Ellefson suggested that the NRCS specifications might be too tight and contractors are concerned about bidding this work, especially given the poor soil types located in this area. Honeman discussed the compaction requirements. Opsahl is still working on the monitoring report, which in accordance with the Monitoring Plan, should continue for two to three years after the project is built to ensure that all of the project features worked as intended.

Spring Prairie Township Erosion. The office is aware of a proposed gravel pit being developed by Aggregate Industries in the SW¼SE¼, Section 29, Keene Township, Clay County. The BRRWD studied the waterway in Section 29 several years ago as a possible detention site. Albright has recently discussed the project with Roger Wang, who owns property in the W½, Section 28. Even without the proposed gravel mining activity in this area, the site's capabilities are limited. The north line of Sections 28 and 29 is the Wild Rice Watershed District (WRWD) boundary. The gravel mining contractor would like to install a crossing in the waterway. Wang did express concerns regarding the proposed culvert sizing. Hofstad has been working with Mike Rose, Aggregate Industries, regarding possible wetland impacts with their project. Rose is also aware of the BRRWD permitting requirements. Albright said to date, no permit application has been submitted for this project.

Albright said the office is still receiving complaints from downstream landowners on Clay County Ditch No. 39 regarding the amount of sediment that is being eroded from the natural waterway channel in Spring Prairie Township, which flows through the culverts in County State Aid Highway (CSAH) No. 26 and entering the ditch system. It appears that Spring Prairie Colony may be filing a ditch repair request again this summer to have the sand removed from the upstream end of the drainage system.

One of the other means for addressing water quality/quantity issues associated with this natural waterway is the installation of bufferstrips along the waterway and various tributaries. Hopefully, we can use the Conservation Reserve Enhancement Program (CREP) II to address this issue. Albright will send a copy of the BRRWD's survey map used to analyze the detention site to Hofstad, which may be of some use to him when working with Aggregate Industries.

Project No. 56, Manston Slough Restoration. Kevin Brennan has developed the draft Operation and Maintenance Agreement (O&M) and the Memorandum of Understanding (MOU) for this project. Rather than go through these documents at a PT meeting at this early development stage, Brennan has suggested that a special meeting be held with Jones, Albright, Don Schultz, and himself, to review the documents. The meeting will be held in July. Frederick suggested that the BRRWD start the COE Points of Concurrence process. He's involved with several other PTs in other watershed districts, and they are having some problems with this issue. He suggested that we try to get the COE involved with this project as soon as possible.

The NRCS is ready to start signing Wetland Reserve Enhancement Program (WREP) easements with those landowners who are ready to go. Albright said the BRRWD has not started their easement option acquisition process. Bob Usgaard, Ducks Unlimited (DU), who formerly worked out of the Fergus Falls NRCS office, has now been replaced by Mark Norton. Albright met with Norton and John Voz, DU, who is stationed in the Detroit Lakes NRCS office. Norton and Voz were going to meet with Donald Holubok. The BRRWD has a standing offer of approximately \$679,000 for Holubok's property located in the SE¼, Section 30, Manston Township.

Albright said we have a lot of work to do on this project. Several months ago, Jones distributed a task list at a PT meeting. Much of the work that needs to be done pertains to engineering, which H.E. will need to complete.

Ellefson felt we had some options to deal with the Holubok property. If he's not interested in participating for the offer that we have already made, which some feel is very lucrative, then perhaps we could dike around his property and leave him out of the project. Albright said the BRRWD was successful in securing \$1.5 million in Legislative bonding money through the Flood Damage Reduction (FDR) program administered by the DNR. This amount should represent approximately 50% of the total estimated project costs. There was some discussion that Governor Pawlenty might be touring the area some time in August. If so, he may want to look at the Manston site.

Project No. 58, Riverton Township Retention. Jones forwarded the draft Engineer's Report to Brian Winter, TNC, on 5/08/06. The proposed project is located on their property in the E½, Section 28, Riverton Township. On 6/01/06, a copy of that same report was forwarded to Phil Gerla. Winter said that he and Gerla did have some time to go through the Engineer's Report. They did have a few issues that they would like to see addressed, but there was nothing major. Their comments will be forwarded to Jones. Winter is also working with the USFWS to delineate wetlands on the Williams property, which they purchased this year. That site is located upstream of the proposed detention site. Winter hopes that they would find time in July to view the site.

Albright said the BRRWD received \$230,000 through the 2006 Legislative bonding bill for this FDR project. Again, this funding is approximately 50% of the total estimated costs. Winter said the Williams property will remain in the Conservation Reserve Program (CRP) until 2007. Albright said the office is still taking phone calls from Lee and Brandy Alm, who own property in Section 25, Riverton Township. Their land is surrounded by the Williams property. Since they purchased the property, they've been running sump pumps continuously to try to address ground water problems in their basement. They are concerned that any wetland restoration work done on the Williams property does not increase their problem. Albright felt that the BRRWD has had success in addressing these types of groundwater seepage issues. In the past, we always hired Dr. Jimmie Richardson, North Dakota State University (NDSU), to do these types of analyses. Dr. Richardson has left the area and has taken another job. There are other professors in the soils department at NDSU, who could also make this assessment. Albright said Alm has also complained about beaver dams located in a ditch downstream of his property that he feels are backing up water into his area and could be causing some of his basement seepage problems. Winter said that he has been working with Alm on this issue.

A meeting will have to be held with the Riverton Township Board of Supervisors regarding the use of their road on the east side of the E½, Section 28. The spillway design will allow water from the natural waterway in Section 27 to spill over the township road into the detention area. Winter felt that since TNC owns land on both sides of the township road (150th ST S), the road could be abandoned from their standpoint. Albright said there is a process the Township would need to follow if they plan to abandon the road.

Winter felt we should also start looking at the draft O&M plan, which is included as Appendix A to the Engineer's Report. Winter said the Williams property has been in CRP for the past 20 years. There is a major ditch coming off from the beach ridge on this property that has caused downstream erosion and flooding problems. After Williams installed the ditch, they installed a concrete weir to slow the water down, but this weir has also now washed out. Winter felt that if they could restore the wetlands on this property, that particular problem might go away.

Project No. 49, Oakport Flood Mitigation Project. A landowner informational meeting was held on 5/11/06. Twenty-two landowners have signed up for a voluntary buyout program. These are homes that are either located where the proposed dike will go, cannot be protected by the dike, or are too close to the Red River. Guy Miller, Miller Realty, Inc., Breckenridge, has been hired to do the appraisals. He expects to complete his work by 8/01/06. The Township has also been getting permission to survey forms signed by the landowners. Ulteig Engineers, Inc. (UEI) is anxious to start the dike alignment survey work. Optimistically, actual construction of the project could begin in 2007. The BRRWD will need to wait until the 2008 Legislative Session to acquire enough funding to finish the work. Initially, we told the landowners in this area that once the dike was built to COE and FEMA standards, they would no longer be required to purchase flood insurance inside the levees. There is a bill currently being discussed by the Senate in Washington that this may change issue. However, if the homeowners are still required to purchase flood insurance, it will be at a lower rate because of the diking. The new flood insurance rate maps for this area will put the entire area within the 100-year floodplain of the Red River of the North.

Project No. 60, Swede Grove Lake Outlet. The BRRWD has scheduled an informational meeting with landowners and agencies for 7/13/06 at 7:30 PM in the Hawley Community Center. Notices will be mailed this week. The project has taken on a different focus than the County's original petition just to lower the water away from their road. Two meetings have been held with the DNR and USFWS to discuss natural resource enhancement (nre) benefits that could be achieved by possibly lowering the

lake as much as 8'. The BRRWD may want to consider releasing the County from their petition obligations, especially if this project is going to be developed through the PT process.

Buffalo River Levees. Albright has recently talked with Curt Nelson, Lake Park, who rents land in Section 5, Riverton Township. A field meeting is tentatively scheduled for 7/14/06 to discuss the drainage/flooding problems in this area with him.

Frederick commented that eventually the main stem of the Buffalo River in this area will be listed as impaired waters for turbidity. A Total Maximum Daily Load (TMDL) study for the area will need to be completed. It is common knowledge that the river carries the majority of sediment during periods of high runoff. Upstream storage projects that could slow down the volume of runoff might help address TMDL concerns. Due to the volume of water that stream channels are now carrying, we are seeing aggradation in many locations. This means that the channels are getting deeper and wider in some areas and filling in other places. There was some discussion about if the DNR Shoreline Ordinance could help place bufferstrips along these waterways. According to the existing rules, the DNR may require a 50' bufferstrip on all protected waterways. To date, there has been no county within the State of Minnesota who has enforced this rule. Frederick said there was a recent Wisconsin study that talked about buffer continuity. By controlling the upstream hydrology, we should be able to address turbidity issues. Ellefson said many farmers clean their field ditches on an annual basis. Once they remove the sod from the ditch bottom, this leaves them open in the spring of the year for erosion. Frederick said many areas around the state are looking at developing large scale ethanol plants. While they will need a good water supply to run the plants, they're also looking at biomass that could fuel the plants, such as switch grass. Perhaps this grass could be planted along the waterways as bufferstrips to address two issues at once.

BWSR was allocated some money from the 2006 Legislature to work on their Clean Water Legacy Program. However, the majority of this money will be used for implementation in areas where TMDL studies have been completed. Waller and Honeman attended a 6/06/06 WRP conference where they talked about projects that could be done along the Red River mainstem. The work could also include projects on the tributaries, such as Wolverton Creek. In areas where flooding problems exist, setback levees could be used to help contain water in the waterways. Land inside the levees could be placed in a permanent easement, such as WREP. More funding for the program should be allocated in 2007.

Albright has been invited to attend the Greenway on the Red Annual Board meeting, scheduled for 7/27/06. Agenda items include Riparian Restoration updates, mapping, funding strategies, and Board development. Scott Bilben, RLA, Greenway/Riparian Corridor, Audubon Dakota, is coordinating the meeting. Their mission statement is to "promote the development of a greenway system on the Red River of the North and its tributaries that mitigates floods and protects people through education and partnerships that enhance the economy, environmental and communities of the Red River Basin".

Wolverton Creek/Comstock Coulee Restoration. One of the recommendations from the PT this spring was to establish a monitoring system along the waterway. To date, the BRRWD has not installed staff gauges to obtain water level readings. Waller has furnished the BRRWD office with information on how to set up a storm water utility district. The landowners in this area would like to establish some type of assessment area so they could raise money to complete their study as well as deal with minor problems, such as beaver dams, etc.

Lawndale Trout Stream Restoration. Representatives from DNR Fisheries have recently met with Dave Yaggie, the primary landowner in Sections 2 and 3, Manston Township, and Section 34, Atherton Township, to discuss ways to address his irrigation concern. Right now, Yaggie has a permit to take water from the trout stream for irrigation. They would like to find funding to drill a well for Yaggie. Assuming they get funding in 2006, they could actually start reconstruction of the natural channel across the Atherton Wildlife Management Area (WMA) in 2007. A ditch system hearing will be required to divert the drainage flows.

South Branch of the Buffalo River. Don Bajumpaa, District Manager, Wilkin SWCD, has taken an interest in this area. Ross Aigner, one of the Wilkin SWCD Supervisors, would like to see a project developed that would protect and enhance the South Branch of the Buffalo River. The BRRWD has a permit to clean one mile of the river downstream of Wilkin County Ditch No. 44. That work is expected to take place this summer. The BRRWD has identified the drainage area as one of their CREP II priority areas. Aigner would also like to see WRP utilized in the drainage area to help slow down the water flows. The original creek channel east of Trunk Highway (T.H.) No. 9 was rerouted back in the early 1900s with the construction of Judicial Ditch No. 3, which routed water along section lines and cut off the creek flows at several locations.

Ellefson said the BRRWD currently has a petition on file from Joel Wulfekuhle to drain 80 acres located in the southwest corner of Section 5, Manston Township, west into Wilkin County Ditch No. 13-Lateral. The petition came in before the 2006 spring flood. Wulfekuhle had assured the Board that he had diked the creek so that it would not break out and flow into the area that would be drained into the legal ditch system. However, all of Section 5 flooded this spring, and downstream landowners are very concerned about opening up the river water to drain into the legal ditch. Ellefson felt that there were opportunities to do both flood damage reduction (fdr) and nre work in this area. Aigner would like to be part of the Comprehensive Planning process when we discuss this area.

Deerhorn Creek Flood Control Levees. H.E. will obtain some survey elevations regarding the diversion structure that's installed on the east side of CSAH No. 52 on the upstream end of the project. Ellefson feels that the rock riprap berm may have settled, which allows more water to escape from Deerhorn Creek during a flooding period and flow north into Wilkin County Ditch No. 42. H.E. should have the information in the next several weeks.

Comprehensive Planning. The BRRWD is in the process of sending letters to the Citizen Advisory Committee (CAC) and the Technical Advisory Committee (TAC). Most of the Mediation PT members will be on the TAC. After the committees are formed, the next step will be to hold the Phase II kickoff meeting.

CREP II. Yesterday, BWSR approved a Reinvest in Minnesota (RIM) reserve payment rate increase for CREP II. The payment structure was modified to achieve 90% of the estimated market value (EMV) with the 5% discount rate, and multipliers to be increased to .333 for a 30 year easement (15-year CRP + 30-years= 45 years) and .433 for perpetual easement (15-year CRP + perpetual easement), contingent on current and future Legislative appropriations for the three approved CREP II project areas through December 31, 2007. BWSR will also work with local ditch authorities to promote incentives to achieve water quality. The new payments will apply to preexisting landowner applications. RIM reserve was also authorized for "squaring up" easements, not to exceed 10% of the easement acreage. Waller said that BWSR plans to hold some informational sessions to review this new information. There are questions if all of the federal and state funding will be able to be spent by the end of the program (12/31/07). There is a possibility that the program could be extended. The

2006 Legislative Session did not authorize any more state money for CREP II. Politicians wanted to see if we were able to spend some of the money we already have before making a new commitment. Once again, Albright thought the key to this program will be marketing. The local SWCDs are ready to market the program this winter.

Pete/Grove Lakes. A group of landowners from northwestern Otter Tail County attended the 6/26/06 BRRWD meeting to discuss high water problems on a number of area lakes. Some of the high water problems are evident by traveling T.H. 34 east of Barnesville. The BRRWD authorized H.E. to do a preliminary assessment for a potential outlet. Water would eventually drain into Whisky Creek, which is channelized west of Barnesville and known as Clay County Ditch No. 34. Ellefson said all of the lakes under study are located within the BRRWD boundaries. Back when the district was formed in 1976, Olaf Lake, which is also experiencing a high water problem, was removed from the Watershed District. At that time, Otter Tail County had a Manager appointment to the BRRWD. When the Lake Olaf area was taken out of the BRRWD, they lost their Manager appointment, which was given to Clay County. Albright said we might have a legal issue to deal with since the lake area is not assessed to drain into Ditch No. 34. Any type of an outlet for this area would need to have an O&M plan so that if downstream areas are flooding, there lake drainage would be stopped. Drainage Law does have provisions where an outlet fee could be assessed to this area. H.E. is expected to file their preliminary investigation report at the 7/10/06 BRRWD meeting. Copies of the report will be mailed to Merritt and Terry Lejcher, DNR Area Hydrologists. We probably also need to consider fisheries issues, as fish could migrate up Whisky Creek into these lakes.

Activities Update. Albright distributed a copy of the 6/26/06 meeting press release. 2006 had been a busy year in terms of permit applications. Albright expected more work will be completed this fall after the crops are harvested, especially if it stays dry. The BRRWD has a meeting scheduled with the Clay County Board of Commissioners to discuss the levy increase that was approved by the 2006 Legislature, pertaining to Minnesota Statutes Annotated (M. S. A.) 103D.905, Subd. 3. Right now, the BRRWD's levy limit per statute is capped at approximately \$220,000. The levy increase, which is good for a two period (2007/2008) would about triple the current amount that the BRRWD could collect. The BRRWD is hopeful that the Clay County Board of Commissioners will petition for the use of the additional levy. The funding would be used for many of the project being discussed at the PT level. We also have a number of cooperating agreements with local SWCDs, River Keepers, and the Red River Basin Commission (RRBC). The BRRWD is currently working with MPCA and agreed to contribute \$8,400 in 2006 for water quality testing work being done within the district.

2006 Fall Tour. A tentative date for the Fall Tour has now been set for 9/22/06. More information will be forthcoming. Members of the BRRWD's Mediation PT will be invited, along with SWCD Supervisors, members of the BRRWD's Citizen Advisory Committee, County Commissioners, and local elected leaders.

Next Meeting. The next meeting of the BRRWD's Mediation PT is tentatively scheduled for Thursday, July 27, 2006, at 7:00 PM at the MSUM Science Center. Depending on how much progress is made regarding a number of projects that were discussed tonight, the BRRWD might consider canceling this meeting.

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Adjournment. There being no further business to come before the group, Albright adjourned the meeting at 9:00 PM.

Respectfully Prepared and Submitted by

Bruce E. Albright, BRRWD Administrator