In accordance with Minnesota Statutes Annotated (M. S. A.) 103E.325, 103E.335, and any other applicable statutes, the Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a Continuation Hearing for Project No. 72, Wilkin County Ditch No. 22-Lateral 3 Improvement, on Tuesday, August 21, 2012, at 7:30 PM in Hildebrand Hall, Assumption Catholic Church, Barnesville MN. BRRWD Managers present were: Gerald L. Van Amburg, Roger G. Ellefson, Curtis M. Nelson, and John E. Hanson. Others attending included: Bruce E. Albright, BRRWD Administrator, Zach Herrmann, Engineer, and Wade Opsahl, Technician, Houston Engineering, Inc. (H.E.); Lauren Peterson and Eddie Bernhardt, Viewers. Also present were landowners: John Hulne, Joseph Wulfekuhle, Tim Buth, Jeff Nord, Jay Nord, Edward A. Ernst, and Dennis Van Wechel.

BRRWD Chairman Gerald L. Van Amburg called the hearing to order at 7:30 PM. He introduced the BRRWD Board, Staff, and Viewers. He indicated that tonight's hearing was for Project No. 72, Wilkin County Ditch (C.D) No. 22-Lateral 3 Improvement and was a continuation from a hearing held on July 10, 2012. Albright distributed a sign-up sheet and advised the audience that the hearing was being recorded to assist in the preparation of the minutes, which will be on file in the BRRWD office. He noted that members of the audience having questions should state their name for the record.

Albright gave a brief history of the project explaining this was a continuation from the 7/10/12 hearing. He stated that an informational meeting was held on 8/30/11 and at that time, landowners requested that the BRRWD move forward on a project to improve Lateral 3. A petition and bond were filed, and H.E. was authorized to complete the preliminary engineer's report. On February 16, 2012, the preliminary hearing was held. Albright explained the difference between a ditch repair, which could restore the lateral back to the plan of record, and an improvement, which could include changing culverts and grades, etc. Jones presented the Preliminary Engineer's Report at the 2/16/12 hearing. The Board made an Order to continue with the project development, and Jones prepared the Detailed Survey Report. After that report was filed, those benefitting from the project were determined by the Viewers. Albright explained the 30-day appeal process that begins once the Final Order is made.

Albright said that in 1981, a petition was filed to improve the main ditch of Wilkin C.D. No. 22 and add 3 laterals. This was completed in 1982. Since then, the system has been maintained, and repairs made, though the effectiveness of the laterals has been questioned with the recent wet conditions. He stated the water breaks to the north when C.D. No. 22 can no longer handle it and then flows through culverts along County Road (C.R.) No. 182. It continues north to Section 2, Mitchell Township, which fills up during larger floods such as in 2009. The water from Lateral No. 3 also fills Section 35 in Deerhorn Township.

Albright commented on Robert Nord's concerns from the hearing on 7/10/12. Nord believes the Wolverton Creek/Comstock Coulee issues need addressing. Albright stated the BRRWD has been involved with the Coulee for over 30 years. Two grants have been received in the past 5 or 6 years for $500,000, that allowed studies to be conducted on the Coulee. Though cleaning of the Coulee is favored to help Nord, the cleaning would have to be extended 4.5 miles to the north of C. R. 30 to achieve a gradeline.
A meeting was held in Barnesville recently with the Minnesota Department of Natural Resources (DNR). The DNR has agreed to issue a permit for a cleaning of the Wolverton Creek/Comstock Coulee. Albright believes that the comprehensive plan that was presented to the DNR was influential in the DNR agreeing to grant future permits. The challenge of future funding exists. Albright added that help for Nord is in the planning stage.

Albright introduced Zach Herman, H.E., who was available to answer questions regarding engineering. Albright explained that the Viewers met again after the last hearing to address concerns from the 7/10/12 hearing. Eddie Bernhardson presented the Viewers proposed revisions:

At the 7/10/12 hearing, several questions were raised by attendees regarding our work. Those comments were documented by Bruce E. Albright, Administrator, BRRWD. On 7/12/12, we met again to review these concerns. Those questions raised at the referenced hearing were reviewed.

After further discussion, we would recommend that the following changes be made to our Viewers' Report, originally dated June 11, 2012.

Delete all protection benefits in Sections 33 and 34, Deerhorn Township, T136N, R47W, and the N½, Section 3, and Section 4, Mitchell Township, T135N, R47W, previously at the rate of $25/acre.

Change the drainage benefits in the W½ NW¼, Section 24, Mitchell Township, T135N, R47W from 80 acres to 40 acres.

The above referenced changes result in the following changes to our Viewers' Report. Our initial report found 5,937.54 acres of private land being benefited, totaling $598,426. With the proposed changes, the benefitting area would be reduced to 4,277.54 acres of private lands being benefited by $545,556. The total benefits shown on Exhibit Nos. 1 and 3 in our initial report were $608,426, and with the proposed changes, now total $555,556.

We would recommend to the Board of Managers, BRRWD, that our changes be adopted into the Final Viewers' Report. If there are questions or comments, we would be happy to try to address those concerns.

Albright explained the changes to Sections 33 and 34, Deerhorn Township and the north half of Sections 3 and 4, Mitchell Township as being at the lowest rate of $25 per acre. Water that flows north from this area uses one of the two laterals as an outlet. Since the land is already taxed into Wilkin C.D. No. 22, any repairs that are needed can be done as maintenance. For this reason, the Viewers removed it from the benefitting area. The W½NW ¼, Section 24 is land that was petitioned into the ditch after the 1980 improvement. At that time, 40 acres were added, not 80 acres, and the Viewers have adjusted their report from the original C.D. No. 22 system.

Albright said that 48% of the proposed benefitted area drains into Lateral No. 3. Of the total benefits, 29% of the area is directly on the lateral, protection benefits are 19% and are north of C.R. 182, 4% of the area shown as green on the display maps is north of C.R. No. 182, but drains south into Lateral No. 3 is in the benefitted area. Albright met with John Hulne who owns the NW¼ of Section 13, Mitchell Township. Albright suggested that 20 of his 40 acres should be removed from the assessment area, and that would then match with the work done by the Viewers in 1980. John Hulne voiced his concerns about the amount he would be expected to pay. He stated he would not see an increase in acreage or improvement in yield and has never had a water problem. He commented that he is paying benefits for someone else's gain. He asked if anyone has done a return on capital study. Chairman Van Amburg said a return on capital study is not routinely done. He continued by saying that the water draining into a ditch from a property is affecting someone else, and that impact can be reduced by drainage.
Albright commented on the benefits determination including elevation, drainage, and use of the culvert. Hulne's property is approximately 1.5 miles from the proposed project. Most of Hulne's property is at elevation 970.0 to 972.0 and the inlet end of Lateral No. 3 at C.R. No. 11 is at elevation 962.0. Albright spoke of the relationship between those with the highest benefit and those with land that drains to the project, but is farther away. He also said that Minnesota Drainage Law states that manmade improvements affecting downstream landowners must be assessed benefits. Hulne stated there was no way his capital investment was going to be recaptured, unlike others who could recover their investment almost immediately after the project was done. Van Amburg asked whether Hulne's water had an effect on others downstream. Ellefson commented on there being more drainage, not less, and that adds to the problem and the need for the lateral improvement. Albright then quoted Minnesota Statute 103E.321 which addresses the Viewers' Report and responsibilities. Ellefson commented on the conservative design of the proposed ditch, handling a 2 to 5-year event. With a 4" to 8" rainfall, landowners on Lateral 3 will still have problems, but the improvement will possibly get rid of the water more quickly, though perhaps not without some damage or loss to benefited lands/crops. Albright stated that when Wilkin C.D. No. 22 was initially done, those farthest away from the ditch were determined to have the greatest benefit. Both sides of the argument have to be heard.

Albright described the area in the NE¼, NW¼, and SW¼ of the SE¼, Section 13, Mitchell Township that is documented using LiDAR. Upon closer examination, however, LiDAR shows the E½NE¼ drains to Manston Slough and to Wilkin County Ditch No. 13-Lateral. There is a culvert in 220th AVE and the field is ditched that way. Albright and the Viewers believe 20 acres of Hulne's property could be removed from the benefited area. Albright said one option available to the Board is to make the Order with some adjustments, move the project forward, and begin the 30-day appeal period. He also commented that it may be possible to get the project built yet this fall. Since conditions are dry, most crops are already off the proposed right-of-way (r-o-w) areas, and contractors have been submitting good bids.

Motion by Nelson to order in the project with the removal of 20 acres in the NE¼NE¼, Section 13, Mitchell Township, Wilkin County. Seconded by Hanson. Ellefson asked if there were any other concerns. Albright said the Board could consider a reduction to $100 an acre benefit in the area currently assessed at $150. This would provide a bit more separation between that area and the area right on the lateral that is assessed at the $200/acre rate. Adequate benefits would still remain to construct the project. Bernhardson offered comments in support of a lower assessment on the higher elevation properties. He also supported the reduction to $100/acre in the entire $150/acre area. Bernhardson also stated that any modifications made would change the multiplier and affect everyone. He also added that the life of the project needs to be considered. Albright offered preliminary detail on the multiplier change if the $150 area is reduced to $100/acre. Approved.

Chairman Van Amburg called for additional questions or comments. A question was raised as to whether this project would prevent the overflow of Lateral 3 into Section 2, Mitchell Township. Albright stated that although there were no guarantees, it is likely that the proposed project would help keep water from breaking out of Lateral 3. Bernhardson addressed a question on Section 3, Mitchell Township, from Edward Ernst. Bernhardson stated that most of the S½ of this section drains south into Lateral 3 and that the N½, Section 3, drains north to Lateral 2. Ernst also questioned the benefit to Section 35. Albright confirmed this area receives protection benefits from the proposed project.

Albright stated that during the 30-day appeal period, H.E. could be authorized to advertise for bids. If no appeals stop the project from going forward, bids could be opened toward the end of September. The lower mile of the ditch is a repair, and those costs will go to the Ditch No. 22 system.

Chairman Van Amburg thanked the audience and adjourned the hearing at 8:30 PM.
Respectfully prepared and submitted,

Bruce E. Albright, BRRWD Administrator