The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held their regular meeting on Monday, March 9, 2015, at 7:00 PM in the Barnesville office. BRRWD Managers present were Breanna L. Kobiela, Mark T. Anderson, John E. Hanson, Catherine L. Affield, and Peter V. Fjestad. BRRWD Staff attending included: Bruce E. Albright, Administrator, and Erik S. Jones, Engineer, Houston Engineering, Inc. (HEI). Others attending included: Attorney Zenas Baer, Baer Law Office (representing Robert Norby); Attorney Roger Minch, Serkland Law Firm (representing Minch Family LLC), and Jenny Mongeau, Clay County Commissioner.

In Chairman Van Amburg's absence, Vice Chairman Fjestad called the meeting to order at 7:00 PM. He announced that the proceedings were being recorded to aid in the preparation of the minutes.

**Secretary's Report.** The Board reviewed draft minutes for the 11/22/11 and 02/23/15 regular meetings. Kobiela and Affield noted some minor corrections. **Motion** by Anderson to approve both sets of minutes, subject to corrections. **Seconded** by Kobiela. **Approved.**

**Treasurer's Report.** Albright presented the monthly financial statements, including the project account balance sheet, administrative disbursements, summary of income, and the accounts receivable report. Cash on hand is $1,224,076.64. Administrative disbursements for the year total $63,457.42. Income since the 02/09/15 meeting totaled $171,153.02. We received payments from Clay County for the 2014 ditch/project taxes ($9,096.71), the Minnesota Department of Natural Resources (DNR) for the Hawley Buffalo River Restoration project ($124,040.78), the Minnesota Board of Water and Soil Resources (BWSR) for the Minnesota Agricultural Water Quality Certification Program (MAWQCP) ($12,847.86), the Minnesota Pollution Control Agency (MPCA) for the Upper Red River Total Maximum Daily Load (TMDL) Study ($978.25), the Red River Watershed Management Board (RRWMB) for Mediation Project Team (PT) expenses ($4,256.87) and an acceleration grant payment for the Stony Creek Project ($12,598.87), and North Dakota State University (NDSU) for Project No. 7, Clay County Ditch (C.D.) No. 39, Sustainable Agriculture Research and Education (SARE) Grant reimbursement ($4,854.00).

Affield asked about an outstanding billing on the Accounts Payable list regarding Blayne Tonsfeldt's ringdike from 2012. Albright will check the records and follow up with a report at the next meeting. **Motion** by Affield to approve the Treasurer's Report. **Seconded** by Anderson. **Approved.**

**Project No. 77, Clay C.D. No. 51-Lateral No. 3.** Albright gave a brief account of the current project status. The Board approved a motion to continue project development in accordance with Minnesota Statutes Annotated (M.S.A.) 103E.215 at their 02/09/15 meeting by authorizing Jones to prepare the Detailed Survey Report and to direct Albright to work with BRRWD Attorney Tami Norgard to prepare the Findings and Order for the Board's signature at a future meeting. The Petitioner, Minch Family LLC, mailed a check for $10,000 to increase the bond, which the office has not yet received. The Order has been drafted and is under review by our Attorney Tami Norgard, Vogel Law Firm. Jones is working on the Detailed Survey Report, and Albright has contacted the Viewers we used for the previous petition (Project No. 74, Clay C.D. No. 51-Lat. 3) to determine their availability.
March 9, 2015

Roger Minch, representing the Petitioner, Minch Family LLC, discussed the status of the petition/project proceedings. He stressed that the Board can and should move forward with their 02/09/15 Findings and Order for the project despite Attorney Baer's Minnesota Data Practices Act requests for Jones to provide "data" from his Preliminary Survey Report. Minch also commented on Attorney Baer's attempts to contact the individual Managers directly. Minch distributed excerpts from Minnesota Statutes regarding the Petition process and commented on issues Attorney Baer has raised about the Board's Order. Using area photographs, he discussed the history of the drainage issues in Section 28, Kragnes Township, and Robert Norby's alleged diking violations, which Minch has proven causes flooding on his property. He pointed out that according to the Minnesota Statutes, the Engineer isn't obligated to provide possible alternatives for a petitioned project. Minch reviewed M.S.A. 103E.431 with the Board, which deals with the petition process and the Board's responsibilities in regards to making the Final Order for the project.

Zenas Baer, Attorney, representing Robert Norby, discussed his concerns about the Board adopting the Findings and Order without reviewing it first. He also voiced concerns about the Preliminary Survey Report because he claims it doesn't include information about the existing drainage and alternative drainage routes to the east in Section 28, Kragnes Township, which he feels the Viewers and Board need in order to make a decision regarding the project. He wants the 2011 survey analysis included in the Findings and Order. Baer discussed details of the 2011 analysis regarding drainage timing. Jones pointed out that he replaced the 2011 report recently with the a more extensive analysis of the same conditions, which yielded different results because the 2011 survey didn't take into account the hydraulic losses along the drainage channel from the low area in Minch's field. Baer complained that Jones did not provide him with the data used to prepare the 2015 report, so his statements might be based on erroneous assumptions about the data. Baer then reviewed a number of Minnesota Statutes regarding the Engineer's requirements for the preparation of the Preliminary Survey Report and the criteria the Board must take into account when making the Findings and Order. He requested that the Board reserve a decision to move forward with the project until they have reviewed the Findings and that the December 2011 alternative report be included in the information under review.

Later in the meeting, the Board discussed their Preliminary Findings and Order for the project. Albright will have the draft document available for the Board to review prior to their next meeting. He noted that the Attorneys will be able to make their arguments regarding the proposed project, when and if the Board makes the Final Order for the project.

Clay County Commissioner, Commissioner Jenny Mongeau noted that the County Commission appointed her to be their liaison with the BRRWD. The Board welcomed her to their meeting.

Other business brought before the Board included:

Permit No. 15-007, Jeff Halvorson. Applicant proposes to install approximately 40 acres of pattern tiling in the SE¼, Section 18, Carlisle Township, Otter Tail County, outletting via gravity flow to a Lateral of Otter Tail/Wilkin County Judicial Ditch (J.D.) No. 2 to which the property is assessed. Jones reviewed the proposal and recommended permit approval. Motion by Anderson to approve Permit No. 15-007, subject to our standard tiling disclaimer. Seconded by Hanson. Approved.

Permit No. 15-008, City of Moorhead. Applicant proposes to construct Prairie Meadows 5th Addition subdivision, consisting of residential streets, sidewalks, watermain, sanitary sewer, storm sewer and services on approximately 5.4 acres in the NW¼, Section 28, Moorhead Township, Clay County. Jones reviewed the proposed addition. He noted that all residential drainage will flow to a man-made pond that was sized to handle water from this subdivision and is designed for the 100-year flood with 3' of freeboard. He recommended permit approval. Motion by Hanson to approve Permit No. 15-008. Seconded by Kobiela. Approved.
Permit No. 15-009, Kevin Hanson. Applicant proposes to install random tiling in low areas located in the E½, Section 27, Hamden Township, Becker County, outletting via gravity flow eventually to Project No. 23, Becker C.D. No. 15, to which the property is assessed. Motion by Anderson to approve Permit No. 15-009, subject to our standard tiling disclaimer. Seconded by Affield. Approved.

Permit No. 15-010, Clay County Highway Department. Applicant proposes ditch improvements, culvert replacement, and new surface (concrete or bituminous) for the completion of the County State Aid Highway (CSAH) No. 52 regrading project from Clay County Road (C.R.) No. 21 to Trunk Highway (T.H.) No. 9 in Barnesville. Jones reviewed the plans and recommended permit approval. Motion by Kobiela to approve Permit No. 15-010. Seconded by Affield. Approved.

Permit No. 15-011, Dale Binde. Applicant proposes 70 acres of pattern tiling in Section 33, Lake Park Township, Becker County. There will be five gravity tile outlets discharging to nearby natural waterways or wetlands. The project will address side hill seeps and improve crop production. Jones reviewed the proposal and recommended permit approval. Motion by Anderson to approve Permit No. 15-011, subject to our standard tiling disclaimer. Seconded by Hanson. Approved.

David Watt Drainage Concerns. Albright reported that he met with Watt, who operates land in Section 25, Moland Township, Clay County. He gave a brief account of the historical drainage/diking issues in this area involving a number of landowners, including Dale Fischer, Keith Fischer, and Terry Stulz. The BRRWD has made recommendations for culvert installations that could alleviate the landowner drainage concerns, but to date, nothing has been resolved. Watt is interested in trying to work with his neighbors again and wanted the BRRWD's assistance to file a permit application and to install an inlet pipe into Clay County C.D. No. 2, as a ditch system expense. Tabled, pending further contact from the affected parties.

Project No. 75, Wilkin C.D. No. 31-Lateral. The Wilkin County Planning Commission approved the Conditional Use Permit (CUP) at their 03/04/15 meeting with a recommendation that the Wilkin County Commission approve it at their upcoming 03/17/15 meeting. Landowners commented that the BRRWD was starting repairs on the wrong end of Whiskey Creek. According to Drainage Law, the BRRWD can only do repairs up to one mile downstream of a ditch outlet, so we can't extend the work all the way to the Red River at Kent, MN. However, the Wilkin County Environmental Office has submitted an application for a BWSR grant for funding to continue the survey downstream to Kent, which could make it possible to develop a project to address the downstream area drainage problems in the future.

The office mailed the last easement agreements today for the four landowners affected by the project. The Board approved the easement values at their 02/09/15 meeting. Albright and Jones briefly discussed the project details.

Project No. 56, Manston Slough Restoration. Gladen Construction, Inc., notified Albright that their insurance carrier has been in contact with Terry Czichotzki regarding his crop damage claim, and negotiations are underway.

HEI has distributed the specifications for the native grass seeding (approximately 73 acres). The bid packets will be sent to a list of Wilkin County vendors that the Wilkin Soil and Water Conservation District (SWCD) provided, and the bids will be opened at the 03/23/15 BRRWD meeting. The final BWSR approval for the project will be delayed until the project is completed and record drawings are furnished to Al Keane, BWSR, for his review.

The office submitted an application to the Minnesota Environmental Initiative (MEI) to nominate Project No. 56, Manston Slough Restoration, for their 2015 Environmental Initiative Award in the Natural Resources category. The Board discussed the various features of the Manston Slough Restoration project.
**Project No. 49, Oakport Flood Mitigation.** On 03/03/15, Albright and Manager Fjestad traveled to St. Paul to testify at a House Sub-Committee hearing regarding Flood Damage Reduction funding. Albright testified on behalf of the Oakport project. Bills were submitted by Representative Ben Lien in the House and by Senator Kent Eken in the Senate for $17 million, which includes funding for Oakport ($5.66 million). BRRWD Lobbyist Joel Carlson has also been in contact with Albright regarding the pending legislation. Albright noted that when they met with Kent Lokkesmoe, DNR, he indicated that Oakport is the fourth project on his 2015 list, and the largest expenditure. If the Legislature passes the $17 million bonding bill, Albright was hopeful that we will be able to get the funding needed to finish Phase 4 of the Oakport project in 2015.

Albright noted that Pat Lynch, CFM, Flood Hazard Mitigation Grant Assistance Program Manager, DNR, contacted him regarding the DNR's offer to write a new grant for the outstanding Oakport eligible expenditures, which would be for $134,032 out of a total of $147,205.86 of current unreimbursed expenses, leaving a balance of $13,173.46 that could not be reimbursed by grant funds. Lynch indicated that there are some unencumbered DNR funds available that might be allocated to the unreimbursed balance of our grant. He advised Albright that he will delay payment until it becomes clear how much money he will be able to add to the grant payout. The Board agreed to wait for payment.

Albright noted that the Fischer Family has still not responded to the BRRWD's offer on their 2015 stockpile storage lease.

Later in the meeting, the Board discussed a revision of the Hunting Waiver for the BRRWD's buyout properties in Oakport Township. The revision requires that the signed hunting authorization form should be in the hunter's possession while on BRRWD property and that the hunter must be able to provide the form if requested by law enforcement and/or Oakport Township residents. Albright will also add a provision that hunters need to abide by the City of Moorhead's hunting regulations. **Motion** by Anderson to adopt the referenced revisions. **Seconded** by Affield. **Approved**.

**Project No. 39, Georgetown Levee.** US Bank holds the mortgage on Greywind's old house, and they are unable to allow modifications to Greywind's loan. Because of the problems we have had trying to negotiate a new mortgage for Greywind from US Bank, Attorney Norgard has suggested that the Board consider condemnation of the property. It could be that the Bank may look at a condemnation in a different light and reconsider the loan modification. The project has already been delayed over a year because of this one issue, and the Board is unwilling to hold up project completion any longer. Albright explained that the first step for the condemnation proceeding would be to have the old Greywind house appraised. Albright will contact Chuck Anderson, ARC Appraisals, regarding his schedule. There is a possibility that Greywind's son might be eligible for a home loan, so that possibility is also being explored.

**Project No. 30, Clay/Wilkin J.D. No. 1.** Albright will work with Attorney Norgard on the petition requirements, as the petitioner's have had some trouble getting signatures to create a diversion on the County line.

**Project No. 23, Becker C.D. No. 15 Repair.** Albright plans to contact the United States Fish and Wildlife Service (USFWS) regarding the requested repair of the ditch channel starting at the beginning of the project in the SW¼SE¼, Section 11, Audubon Township. USFWS is in litigation with their contractor regarding his appeal of their decision to cancel his contract. Nanik Construction was hired to repair C.D. No. 15 through the Hamden Slough National Wildlife Refuge (NWR) last fall, but he did not start the work. The BRRWD's ditch repairs are on hold until the legal issues regarding the USFWS and their contractor can be resolved. Tabled, pending contact with the USFWS.

**Mediation PT.** The next PT meeting has been scheduled for Thursday, March 19, 2015, at 1:30 PM in the BRRWD office. The meeting notice will be distributed this week.
**Upper South Branch of the Buffalo River Erosion Concerns.** A meeting with Carolyn Swenson regarding a smaller project on her property in the NE¼, Section 6, Manston Township, Wilkin County, was held on 02/24/15. It appears that the Environmental Quality Incentives Program (EQIP) funding for the dike installation on Swenson's property can't be used for land enrolled in the Conservation Reserve Program (CRP). Albright will contact the Wilkin County Farm Service Agency (FSA) Committee to discuss possible alternatives for Swenson's CRP contract. The Board is aware that Swenson wants her costs for a project be kept to a minimum, since she has already lost a significant amount of rental income and property devaluation as result of the erosion problems on her property. Albright noted that there could be funding for her project from the BWSR Upper South Branch of the Buffalo River Clean Water Fund (CWF) grant if the EQIP money is not available. The property would only be encumbered for 10-years with the CWF grant.

There was also discussion about a possible retention site in Section 11, Manston Township. The landowner has submitted an application to enroll his property in the Reinvest in Minnesota (RIM) program. Because the RIM funding is from the Lessard-Sams Outdoor Heritage Council (LSOHC), RIM can only do traditional wetland restorations and native grass establishment, and the BRRWD can't use the RIM easement for a larger scale impoundment project. The BRRWD will need to make a decision in the near future if we want to explore a larger project, or let BWSR proceed with their RIM easement. The Natural Resources Conservation Service (NRCS) has also indicated that we might not be able to develop a large scale impoundment project on their Wetlands Reserve Program (WRP) easement in part of the SE¼, Section 11. The Board had an extended discussion regarding seasonal impoundment limitations for water depths and inundation timing, and alternative projects for the area. Albright noted that there is an additional area in Section 14, Manston Township, where a larger project could be developed, but he hasn't had any contact with the landowner, Ruth Dow. He suggested that he could meet with Czichotzki regarding the Deutsch property in Section 11 and Dow regarding her property in Section 14 before the next meeting.

**Barnesville Township Area Drainage.** Jones is working on alternative designs and will prepare a report for the PT on 03/19/15.

**WRP Sites.** A meeting of the Becker SWCD Technical Evaluation Panel (TEP) scheduled for 03/10/15 has been rescheduled for March 16, 2015, at 10:00 AM in Detroit Lakes at the Becker SWCD office. The meeting will include a discussion about the Reep Lake site with DNR, COE, and BWSR Wetland Specialists.

In regards to the Haick/Peppel site, HEI is currently working on an area survey for this site. Albright noted that the Board should meet with the landowners when we have more information to share with them.

**Stony Creek Detention.** The BRRWD's Acceleration Grant application for this project was approved for $12,598.87 from the Red River Basin Flood Damage Reduction Work Group (RRBFDRWG). This amount will cover some of the cost of preliminary work including soil borings. The City of Fargo will consider our funding application at their meeting on 03/12/15.

Midwest Terracon, Inc. provided an estimate of $17,500-$19,500 for preliminary geotechnical soil testing for 10 borings throughout the proposed project site. We will work with the landowner to be sure the soil borings avoid tile lines. **Motion** by Anderson to authorize the soil borings. **Seconded** by Hanson. **Approved**.

**Revised Watershed Management Plan (RWMP)/Watershed District Enlargement (WDE).** Albright plans to schedule a Technical Advisory Committee (TAC) meeting in the near future. The goal is to have the meetings completed and a draft plan completed in the near future, so BWSR can begin their 60-day
review period. To date, Bois de Sioux Watershed District (BDSWD), has not contacted the BRRWD regarding the new proposed boundary petition.

**Army Corps of Engineers (COE) F-M Diversion.** The Board reviewed the most recent map of the boundaries for the Diversion project. Manager Anderson shared an email message from Attorney Norgard stating that according to her discussions with the COE, it has been established that he currently does not have land within the project footprint, and he does not have a conflict of interest.

The Board discussed a possible revised 2015 Diversion Authority (DA) budget that would remove funding for the Oxbow/Hickson/Bakke (OHB) dike to allow the continuation of flood mitigation work and buyouts within the City of Fargo, funding for the Minnesota DNR's Environmental Impact Statement (EIS), NDSU studies, and hardship case buyouts. The DA proposed this revision to eliminate the appearance that the BRRWD could be violating Minnesota law by approving a budget with the OHB dike funding. The DNR and Governor Dayton have stated that this work should not be done until the DNR completes their EIS. Anderson commented that he had no problem approving a revised budget. Fjesta noted that the DA's money should have been used to build permanent dikes within the City rather than in OHB. The group discussed their concerns about the scope of the F-M Diversion project. The next DA meeting is scheduled for 03/12/15. Manager Anderson plans to attend the meeting. When the DA forwards their revised budget to the BRRWD, Albright will make sure the Board has copies for review, hopefully prior to the 3/23/15 BRRWD meeting.

**MAWQCP.** A Farm Forum was held at the Nordick Farm on 02/26/15. Albright and Manager Fjestad attended. Albright noted that approximately 35 to 40 producers attended, who said they liked the meeting format and hoped we would schedule similar events in the future.

**Elkton Township Wetland Restoration.** Albright gave representative Bruce Manston his father's easement for review. Albright will contact Manston to get the documents resigned and filed.

**Buffalo River/Upper Red River TMDL.** Albright and Manager Fjestad attended a MPCA Watershed Conference on 03/03/15. Fjestad shared some of the discussion topics with the Board. The group discussed the status of the TMDL studies, and possible legislation regarding mandated 50’ bufferstrips on Minnesota waterways.

**Wolverton Creek/Comstock Coulee CWF.** HEI is working on the maps identifying landowners along the channel that will be affected by the project, and when the maps are ready, the BRRWD will hold another landowner informational meeting. Currently, there is a sign up period running for the Red River Basin EQIP, which ends April 17, 2015.

**BRRWD Advisory Committee.** The annual Advisory Committee meeting will be held on Tuesday, March 31, 2015. Notices will be sent this week. The Board discussed possible appointments to the Committee.

**Redetermination of Benefits for Clay C.D. Nos. 9, 32, and 33.** The Viewers' Reports were filed. Albright, Opsahl, and the Viewers will be meeting with the City of Sabin on 03/13/15 to discuss the City's ditch benefits. The Redetermination Hearing is scheduled for Thursday, April 9, 2015, at 7:30 PM in the Moorhead City Hall Council Chambers. **Motion** by Anderson to accept the Viewers' Reports and to schedule the Final Hearing as referenced. **Seconded** by Affield. **Approved.** The Viewers will be available to meet with landowners on Tuesday, April 7, 2015, from 1:00 PM-4:00 PM in the Clay County Courthouse. Hearing notices will be sent in the next few weeks.

**Peterson WRP Concerns.** The BRRWD asked NRCS to investigate concerns about seepage from their Peterson WRP project in the E½, Section 28, Wolverton Township, Wilkin County. According to an
NRCS summary of a review of the historic area drainage, they don't feel that the Peterson WRP construction is directly responsible for the downstream concentrated flow channels seen in the fields immediately to the north of the site. Albright will forward the NRCS review to the concerned downstream landowners.

**Shulstad WRP Site.** The NRCS is working with Stuart Shulstad on a possible WRP site east of Barnesville in the SE¼, Section 26, Humboldt Township, Clay County. Jones conducted an analysis of the proposal to determine if there might be the possibility of developing a larger retention site. Based on the soils analysis, etc., it doesn't appear that it would be feasible to enlarge the site. He recommended that the Board encourage the NRCS to develop whatever temporary storage they can on the site. Albright will forward Jones' recommendation to NRCS.

**David Watt Erosion Site.** Watt met with Albright and discussed an erosion site on his property in Section 34, Moland Township, Clay County, along the Buffalo River. NRCS conducted an investigation of that site and recommended the installation of a toe wood bank restoration project, but noted that they don't design this type of project. The Board reviewed photographs of the erosion site. Albright noted that the BRRWD has funding leftover from a Buffalo River erosion project (Project No. 26) we did several years ago ($12,000). He suggested that Jones could conduct an investigation and provide recommendations for a toe wood project for this area. **Motion** by Hanson to authorize Jones to work with Watt to develop a project as referenced, as Project No. 26 expense. **Seconded** by Kobiela. **Approved.**

**City of Detroit Lakes.** The City notified the BRRWD that they plan to outlet their new waste water treatment discharge to Lake St. Clair instead of the BRRWD.

**Minnesota Association of Watershed Districts (MAWD) Legislative Reception.** The MAWD Legislative Reception will be held in St. Paul on March 11-12, 2015. Albright and Managers Fjestad and Hanson will attend.

**RRWMB/RRBFDRWG Conference.** The RRWMB/RRBFDRWG Conference is scheduled for March 25-26, 2015, at the Courtyard by Marriott in Moorhead. Manager Fjestad requested that the office reserve a room for him since the room cost would be nearly the same as his mileage expense.

The following bills were presented for approval:

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Motion by Affield to approve payment of the bills. Seconded by Kobiela. Approved.

Bufferstrips. The Board had a brief discussion regarding pheasant populations and habitat on ditch buffers.

Special Meeting Topics. The Board agreed that our special meeting topic for the 03/23/15 will be to continue review of our short, immediate, and long term goals.

Next Meeting. The next regular meeting will be held on Monday, March 23, 2015, at 7:00 PM in our Barnesville office.

Adjournment. Motion by Anderson to adjourn the meeting. Seconded by Affield. Approved. Vice Chairman Fjestad adjourned the meeting at 9:45 PM.

Respectfully submitted,

John E. Hanson, Secretary