

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

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## MINUTES FOR MANAGERS' MEETING May 23, 2016

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held their regular meeting on Monday, May 23, 2016, at 7:00 PM in the Barnesville office. BRRWD Managers present were Gerald L. Van Amburg, John E. Hanson, Mark T. Anderson, Breanna L. Kobiela, Catherine L. Affield, Troy E. Larson, and Peter V. Fjestad. Others attending included: Bruce E. Albright, Administrator, Houston Engineering, Inc. (HEI); North Dakota State District 25 Senator Larry Luick; Frank Gross, Clay County Commissioner; Brian Berg, Clay County Administrator; Robert Zimmerman, Engineer, City of Moorhead; Paul Krabbenhoft, Chairperson, Clay Soil and Water Conservation District (SWCD); John T. Shockley, Attorney, Ohnstad Twichell; BRRWD Attorney Tami Norgard, Vogel Law Firm; Craig Hertsgaard, Don Nelson, and Mark Askegaard, MNDIAK Upstream Coalition; Harold J. Rotunda, Certified Public Accountant (CPA); and landowners: David Simmer, Jared Nordick, Darin Brandt, Michael Brandt, Jay Nord, John Ready, Gloria Nelson, Kelly Nelson, Ivan Nelson, and Clay Dietrich.

Chairman Van Amburg called the meeting to order at 7:00 PM and 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 05/09/16 and the 09/28/09 regular meetings. **Motion** by Affield to approve the minutes. **Seconded** by Anderson. **Approved.**

**Treasurer's Report.** The Board reviewed the BRRWD's financial status. Cash on hand is -\$414,643.95, which includes two retained checks to HEI and to R. J. Zavoral and Sons, Inc., for Project No. 49, Oakport Flood Mitigation. The total income for the year is \$774,310.30. Income this month to date totaled \$133,146.95 from Clay County for delinquent 2015 ditch/project tax collections (\$4,569.52), and a payment from the Minnesota Department of Natural Resources (DNR) for the Oakport project (\$128,477.43). Other income included a rental fee payment from Stoneridge Software, Inc. for the use of our office (\$100). Albright noted that a pay request was sent to the DNR last week for approximately \$360,000 for Oakport. He noted that he plans to wait a few days to see if DNR forwards the second Oakport payment before working with Treasurer Anderson to advance funds from the BRRWD's Midwest Bank line of credit.

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

**Nelson/Fankhanel Drainage.** Albright noted that Ronald Erdman has contacted the office several times regarding the blocked ditch on the east-west quarterline on the south side of property Erdman rents from the Fankhanel family in the NE<sup>1</sup>/<sub>4</sub>, Section 22, Atherton Township, Wilkin County. The Board invited Erdman, the Fankhanel family, and the Nelsons to tonight's meeting to discuss this issue further. Ivan, Gloria, and Kelly Nelson were in attendance, but the other parties were not present. During the time that Ivan Nelson rented the Fankhanel property, Nelson installed a ditch that drained south across the Fankhanel property and Nelson's property directly into Deerhorn Creek. In 2014, when Nelson was no longer the renter, he started farming his field in an east/west direction, blocking Fankhanel's flow to the south, causing water to back up on the property. Last year, Nelson and the Fankhanel family attended a BRRWD meeting, and agreed to work together to restore the outlet.

Ivan Nelson explained to the Board that neither the Fankhanel, nor Erdman have contacted him regarding the repairs since the 04/13/15 BRRWD meeting. Nelson said that he has all the tiling materials ready for Erdman to install with his backhoe. He said that if they would come and talk to him, the work could be done immediately. There was a brief discussion about how the tile inlet could be connected to the tile main on Nelson's property. There had been concerns that Nelson's 4" dia. tile line wouldn't be adequate to convey enough water from the Fankhanel property. Nelson pointed out that since most of the water on the Fankhanel property already drains north to Wilkin County Ditch (C.D.) No. 42, the tile would only have to take residual water in the ditch to the south. However, the existing ditch should be cleaned to the north, and an existing culvert on C.D. No. 42 should be replaced with a gated inlet culvert set at the proper grade so more water will drain north. Since the Fankhanel and Erdman did not attend tonight's meeting, the Board directed Albright to contact them to work with Nelson to get the proposed work done (tile connection).

**Permit No. 16-041, Minnesota Department of Transportation (MNDOT).** Applicant proposes to replace a deteriorating 65-year old bridge on Trunk Highway (T.H.) No. 9 over Deerhorn Creek in the NW¼, Section 22, Atherton Township, Wilkin County. The new bridge will be a shorter and wider 3 span and 2 pier structure. MNDOT plans to clean the channel below the bridge to repair scour holes and protect the area with riprap. Erik Jones, Engineer, HEI, provided written comments regarding this application. He noted that the proposed structure hydraulics were the same as the existing structure for the 50 and 100-year flood events, and recommended permit approval.

**Permit No. 16-042, Sullivan Construction.** Applicant proposes the construction of Centennial Addition in the City of Glyndon with the installation of underground utilities: sewer, water, storm sewer, and streets as necessary for the addition of 140 residential lots east of County State Aid Highway (CSAH) No. 17 and south of 12<sup>th</sup> ST SE. The area is assessed to drain to Project No. 51, Clay C.D. No. 68. The building pads will be set at a minimum of elevation 925, which is 1' above the Base Flood Elevation (BFE). The proposed stormwater pond will hold the 100-year flood event with 1.5'-2.0' of free board and will actually reduce current discharges from this area. In his comments, Jones recommended permit approval.

**Permit Nos. 16-043 and 16-044, Whiskey Creek Farms.** For Permit No. 16-043, applicant proposes to install an 18" dia. culvert in a new approach on the east line of the section on the quarterline off from County Road (C.R.) No. 11 in the E½, Section 36, Deerhorn Township, Wilkin County. For Permit No. 16-044, applicant proposes to install an 18" dia. culvert in a new approach in the E½, Section 10, Alliance Township, Clay County, on the east line of the section near the quarterline off from C.R. No. 15. The proposed culvert sizings match the existing upstream and downstream pipes at both locations. In his written comments, Jones noted that all the work will be on Thompson's property and should not affect any other property owners. He recommended that the Board approve both permits.

**Motion** by Anderson to approve Permit Nos. 16-041 through 16-044. Permit approval is subject to the applicable standard disclaimers, state/federal agency permitting requirements, and road authorities' permission to work within their road right-of-way (r-o-w). **Seconded** by Fjestad. **Approved.**

**Duane Boeder Complaint.** Albright has not had time to respond to the Boeder family with a final solution to their concerns about Frank Schindler's removal of a dry approach on their property.

**Clay/Wilkin County Line Drainage Concerns.** Landowners Kevin Olsgaard and Luther Blilie both contacted the office recently regarding the status of the potential legal ditch system on the south side of the county line in Wolverton Township west of T.H. No. 75. Albright plans to draft a petition, and then meet with Matt Ness, Mark Askegaard, and Blilie to discuss the petition process, which includes obtaining the signatures of landowners where the proposed ditch will pass over and posting a \$10,000 petitioners' bond with the BRRWD. Albright noted that the landowners could also install the proposed ditch by BRRWD permit. He plans to discuss the pros and cons of both options with the landowners.

**Tansem Township Drainage Concern.** Albright explained that Tansem Township replaced a culvert last fall/summer in 255<sup>th</sup> ST just south of T.H. No. 34. They contacted the BRRWD to report that water was not draining west from the new culvert to 250<sup>th</sup> ST, and the new pipe was submerged. When culverts freeze full of water, they are slow to open in the spring, sometimes causing the road to overtop. Albright sent a letter to landowner Craig Andvik in the W<sup>1/2</sup>, Section 29, regarding the Township's concerns about the cause of the blockage. There is a wetland/natural waterway on Andvik's property between the new pipe on 255<sup>th</sup> ST and 250<sup>th</sup> ST, which has 20' of fall between the two pipes. He reported that parts of the waterway probably need to be cleaned, and there is also a small crossing that could be contributing to the blockage. Tansem Township requested that the BRRWD consider using some of our Survey and Data Acquisition funds to pay for a survey on Andvik's property to determine the cause of the blockage. **Motion** by Fjestad to authorize HEI to conduct the requested survey. **Seconded** by Kobiela. **Approved.**

**Project No. 14, Clay C.D. No. 10.** Ronnie Tang contacted Albright to report that someone had removed an existing berm in the northeast corner of their property in the SW<sup>1/4</sup>, Section 23, Flowing Township, Clay County, and partially filled in a ditch without a BRRWD permit. The berm directed water coming from the east to the north in a ditch on the quarter line to C.D. No. 10. With the dike gone and the ditch partially filled, part of Tang's property (SW<sup>1/4</sup>) flooded this spring. Albright contacted Don Schultz, Area Wildlife Manager, DNR, regarding this issue. The DNR has acquired some land on the upper end of the ditch system, and the referenced quarter is part of the DNR's Flowing Wildlife Management Area (WMA). Albright met with Schultz and their operator, Ron Morken, on 05/17/16, who explained that he had filled in the ditch to gain access to the DNR property. Schultz directed Morken to restore the ditch and berm. Using the overhead monitors, the Board looked at a LiDAR map of the site and reviewed photographs Albright took during his field visit. Albright felt that this issue has been resolved.

HEI is soliciting bids for the two proposed slope failure repairs on C.D. No. 10 along 130<sup>th</sup> AVE N in Section 13, Kragnes Township, and Section 16, Morken Township. We will review the bid results with the Township. Depending on the bids for C.D. No. 10, we can decide how we want to proceed with similar repairs for C.D. Nos. 32 and 33 south of Moorhead. We plan to work with the Clay County Highway Department to discuss the repairs and develop a cost share formula for C.D. No. 32.

**Ryan Vossen Culvert/Approach.** Vossen is building a house on the north side of T.H. No. 10 east of Hawley in the Riverview Country Estates. He contacted the BRRWD to find out if he needed a culvert in his proposed driveway. Wade Opsahl, Technician, HEI, conducted a field review and determined that Vossen would not need a pipe if he did some minor grading.

**Eglon Township Culvert Concerns.** Eglon Township Chair Amos Baer contacted Albright about two culverts the Township would like the BRRWD to investigate and make recommendations. The first culvert is a high water outlet in 17<sup>th</sup> AVE S in Section 14, eventually draining into Sand Lake. Now that water elevations are down, the landowner wants the Township to lower the pipe to drain even more of the wetland, while other landowners want the culvert removed. The other pipe is located between Sections 31 and 32 in 250<sup>th</sup> ST N on the west side of T.H. No. 32. The 48" dia. culvert is separated in the middle and the ends are eroding. Albright asked Opsahl and Cody Zarak, HEI, to conduct a field review and provide recommendations.

**Todd Blilie Culvert Concern.** Todd Blilie contacted Albright on 05/18/16 regarding a piece of property he just rented in the NE<sup>1/4</sup>, Section 8, Holy Cross Township, Clay County, on the west side of T.H. No. 75. There is an approach off T.H. No. 75 in the northeast corner of the property that doesn't appear to have a culvert. Blilie noted that the west T.H. No. 75 ditch is full of cattails. Water from this area is assessed to C.D. No. 36. He asked if the BRRWD would investigate and let him know what his options are.

Manager Anderson conducted a field review and thought that if Blilie leaves the approach in its present location, he should install a culvert. If he moves the approach about 200' south to the high spot in the ditch,

he wouldn't need a culvert. Cody Zarak, HEI, conducted a field survey and reported that at the half-mile line, water drains south to Wolverton Creek, and north of the quarterline, it flows to C.D. No. 36. Anderson thought that Blilie would have to decide if he wants to install a culvert or move the approach, given the cost of a pipe and MNDOT requirements. Jones forwarded a letter to the Board with a repair recommendation for an 18" dia. x 60' corrugated metal pipe (CMP) with a flap gate on the south side of C.D. No. 36 off T.H. No. 75. He noted that the BRRWD would work with MNDOT to obtain a permit and do the installation according to their requirements, as a ditch system expense. The probable opinion of cost for the work is \$3,500-\$4,000 for materials and labor. Using the overhead monitors, the Board reviewed an aerial map of the area. **Motion** by Anderson to authorize the recommended repair in accordance with MNDOT requirements, as a ditch system expense. **Seconded** by Affield. **Approved.**

**Project No. 77, Clay C.D. No. 51-Lateral No. 3.** Robert Norby's Attorney, Zenas Baer, offered to drop the lawsuit against the BRRWD if the Managers were willing to pay Norby \$50,000. The Board decided to refer the offer to our insurance company, Liberty Mutual Insurance, regarding any possible payments to Norby in an effort to settle the lawsuit. Albright reported that Liberty Mutual Insurance offered Norby a payment of \$2,000. To date, there has been no response from Norby.

**Project No. 56, Manston Slough Restoration.** Albright noted that with the current dry weather, there have been no problems with the Township roads. When we get some significant rainfall, we will work with the Townships/County to review their concerns about soft spots along the project embankment. A landowner asked permission to hay the project easement on his property and the neighboring land. The Board thought he could go ahead, as long as he has permission from the neighboring landowner. This would save the cost of hiring someone to mow the area to control weeds.

**Project No. 49, Oakport Flood Mitigation.** Century Link Internet Service has a 900-pair cable on the west side of Clay C.R. No. 1 in the way of the project. They recently indicated that they would not move their utility. After further discussions, they have now agreed to move their cable, but would be charging the BRRWD for the costs associated with the move. After researching their permit, it appears that Clay County gave them a permit to install the utility within the road r-o-w with a disclaimer that if the road ever needed improvement and the cable was in the way, Century Link must move it at their expense. Century Link claims that the Oakport project is not a County project, but is under the jurisdiction of the BRRWD, so the utility disclaimer doesn't apply. Albright explained our view is that we are conducting two projects at the same time, as we are collaborating with the County on rebuilding their road and constructing the dike.

The contractor, R. J. Zavoral and Sons, Inc., has threatened to move to a new job if the Howard Fees house isn't moved to make way for Phase 4 construction. The owner, Andy Noah, has indicated that the house will be off the foundation by 05/25/16.

Kris Carlson, Ulteig Engineers, Inc. (UEI), told Albright that the contractor is nearly finished with moving the fill off the Fischer Family's property. Elaine Gess, the contact person for the Fischer family, called Albright last week to discuss their temporary storage easement. At the 02/08/16 BRRWD meeting, the Board approved a motion to make a final offer of \$24,153.27 to the Fischer family for their easement in an attempt to settle this issue, but the Fischers countered with \$35,000. The Fischers initial settlement offer last summer was for \$40,000. Following the 5/09/16 meeting, the Board agreed to hold to their 02/08/16 final offer. Gess proposed that the BRRWD meet the family half way and agree to a settlement of \$32,076.64, and they would be satisfied with that amount. BRRWD Attorney Tami Norgard, Vogel Law Firm, has advised the Board to wait until the project is finished to settle with the Fischers. Our lease on the temporary fill storage site expired 12/31/12, and negotiations with the Fischers have continued for the last four years. The Board discussed what we paid for the other storage lease we have with Carl Pierce property, how we arrived at our final offer of \$24,153.27, the fact that the project's retention pond was sized to allow the Fischers the option to develop their land north of the dike for a housing subdivision, plus

the project included hookups for sanitary sewer and water services on their property. The Board agreed to discuss this issue with Attorney Norgard.

Later in the meeting, the Board discussed the Fischer easement issue with Attorney Norgard, who advised the Board to wait to negotiate a final easement payment until the project is completed, and the temporary storage site is restored. The Board agreed, and directed Albright to notify the Fischer family of their decision.

**Project No. 39, Georgetown Levee.** Opsahl is working with the contractor on the cleanup items and the baseball diamond seeding. Opsahl will tour the project with the City Council on 06/06/16 at 6:00 PM.

**Project No. 38, Farmstead Ringdikes.** Albright reported that there are two sites that should qualify for the Natural Resources Conservation Service (NRCS) Environmental Quality Incentives Program (EQIP) and will be handled through NRCS. There are also two sites that will qualify for the 2015 Red River Watershed Management Board (RRWMB)/DNR Flood Damage Reduction (FDR) funding. HEI is working with those two landowners.

**Project No. 30, Clay/Wilkin Judicial Ditch No. 1 (J.D. 1).** In accordance with Minnesota Statutes Annotated (M.S.A.) 103E.238, Albright forwarded the petition for a diversion on the county line to Attorney Norgard for her review. The petition is for an outlet diversion to take water out of J.D. No. 1 to flow west along the south side of the county line to Wolverton Creek. If Norgard determines that the petition/bond is valid, the Board could authorize Jones to prepare the Preliminary Engineer's Survey Report.

**Project No. 7, Clay C.D. No. 39.** Landowner Gerald Zimmerman is interested in undertaking repairs for a slide along C.D. No. 39 in his field in the NE<sup>1</sup>/<sub>4</sub>, Section 31, Morken Township. Zimmerman has a plan to reinforce the ditch bank with used power poles at his own expense. A supply line for Zimmerman's sub-irrigation broke and leaked water underground in the area where the slide developed. HEI informed Zimmerman that the BRRWD wants to see the results from the NRCS investigation of the channel condition and their borings before making a decision about authorizing his repair proposal.

**2015 Auditor's Report.** Harold J. Rotunda, CPA, presented the BRRWD's 2015 audit. In 2015, the District's total revenue was \$5,383,581, and the total expenses were \$5,435,545. The year-end cash fund balance was \$582,594. Rotunda discussed the BRRWD's practice of funding deficits for some of the project/ditch accounts, but at the same time, being more aggressive in assessing delinquent accounts to keep them current so that the BRRWD doesn't turn into a self-funding agency. He also discussed the BRRWD policy of assessing a 1% administrative fee based on an account's financial activity. Rotunda noted that the BRRWD is doing a good job managing their use of our M.S.A. 103D.905, Subd. 3, taxing authority.

The group briefly discussed the Board's policy of spreading out the assessments over a number of years for larger projects. Van Amburg pointed out that we have the flexibility to "finance" certain projects because we have the funds that were built up during the time we had the ability to levy a district-wide tax as members of the RRWMB. After further discussion, **motion** by Anderson to accept the 2015 audit. **Seconded** by Fjestad. **Approved.**

**2015 Annual Report.** Albright distributed copies of the 2015 draft annual report to the Board for their review. Now that the Board has approved the 2015 Audit, it will be added to the annual report. The Board can approve the Annual Report at an upcoming meeting, and then it will be forwarded to the Counties and Minnesota Board of Water and Soil Resources (BWSR). Albright suggested that we could meet with the four County Boards to discuss the reports and any questions they might have regarding BRRWD activities.

**Mediation Project Team (PT).** The next PT meeting will be held on Thursday, June 16, 2016, in the Barnesville office at 7:00 PM. Notices will be sent next week.

**Upper South Branch of the Buffalo River.** The BRRWD authorized HEI to develop a Phase 1A for this project, which will be a restoration site plan in the upstream reaches of the South Branch of the Buffalo River east of T.H. No. 9. These features could provide significant natural resource enhancement (nre) benefits, but in order to develop a comprehensive project with flood damage reduction (fdr) benefits, we would still need to include detention capabilities on the South Branch of the Buffalo River south of C.R. No. 30. The BRRWD will meet with the resource agencies once HEI has completed the preliminary design for Phase 1A to review the proposal and get their input.

**Barnesville Township Area Retention.** Albright will prepare information regarding easement values for the Board's review and then invite the affected landowners to a meeting to discuss the proposed project. Albright mentioned that NRCS's Ag Land Easement (ALE) program could provide 50% funding for the project easement acquisition.

**Stony Creek Off-Channel Storage Site.** Albright noted that Jones participated in a teleconference with the DNR Dam Safety staff regarding their dam classification. Initially, DNR classified the dam as a high hazard structure. Jones has been working with them, using modeling to clarify how the dam would function under different flood scenarios so that they will reconsider their decision, and we can avoid the mandatory Environmental Impact Statement (EIS) requirement for a high hazard structure. Jones felt that with a few minor adjustments, the DNR will change the dam classification.

**Glyndon Waterway Concern.** Wayne Kirmis, who owns the land adjacent to a DNR protected natural waterway located on the east and north sides of Glyndon, reported that the waterway is plugged with cattails, beaver dams, and other debris. When the City releases water from its lagoons, the water can't flow away because of the blockage. Albright discussed this issue with Kirmis's renter, Kirk Watt. The PT has discussed this issue in the past, and Albright thought we could put it back on the PT's agenda. He expected that the PT would want to have a survey of the waterway. Albright explained that during of the 2009 flood, the Buffalo River broke out of its banks and created significant washouts and gullies in this area. Most of the sediment ended up in this waterway.

**Watershed District Enlargement (WDE)/Revised Watershed Management Plan (RWMP).** Albright is working on his review of the final sections of the RWMP. They plan to have the final draft RWMP ready for the Board's review at an upcoming meeting.

**Buffalo River/Upper Red River Total Maximum Daily Load (TMDL) Studies.** Albright reported that HEI has completed their response to the comments for the Buffalo River and Upper Red River TMDL Studies. It's now up to the Minnesota Pollution Control Agency (MPCA) to complete their work. The target date for completion of the Upper Red River work is 06/30/16. The BRRWD is missing out on some grant opportunities because we don't have a TMDL in place on the Buffalo River, which actually started in 2008 as a pilot project. Van Amburg felt we may have to visit with the State MPCA office regarding the lack of local progress.

**Elkton Township Wetland Restoration.** Albright reported that Chuck Anderson got a settlement offer from the contractor's insurance company, Auto Owners Insurance, for his crop loss claim. Corey Elmer, Attorney, Vogel Law Firm, needs to forward information to BWSR to resolve the acquisition of landowner signatures for the wetland banking easement process.

Albright visited with a representative from the East Otter Tail SWCD office regarding a proposal from a local landowner to graze cattle on the Elkton Wetlands Reserve Program (WRP) site. The SWCD will prepare a grazing plan for the Board's review. Albright observed that a system of rotational grazing could

save the BRRWD the cost of mowing and weed control, and he thought the landowner would probably want a 3-5 year lease agreement. Jon Voz and Steve Hofstad from the Detroit Lakes BWSR office, indicated that they would be willing to consider a local grazing plan.

**Wilkin C.D. No. 6A.** Albright gave a brief summary of a request from John F. Beckman to have his land in the NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, Section 9, Akron Township, and the SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, Section 21, Tanberg Township, Wilkin County, removed from the C.D. No. 6A benefit area. Beckman claims that his land is native prairie with no manmade drainage improvements on it. Albright noted that The Nature Conservancy (TNC) and the DNR own the rest of the property around where Beckman's land is located. He explained that if the land doesn't have any manmade ditches, etc., it doesn't meet the definition of "benefitted" land in accordance with M.S.A. 103E.315. Albright pointed out that it might not be cost effective for the BRRWD to embark on a release of property proceeding, depending on how much Beckman is paying in taxes. He plans to research Beckman's request and the history of the drainage system. Larson commented that when the initial benefits were determined, Beckman's property was probably included so that the land could be drained

**Clay C.D. Nos. 10, 32, and 33.** The BRRWD plans to advertise for bids for the repair of the slope failure on C.D. No. 10 along 130<sup>th</sup> AVE N in Section 13, Kragnes Township, and Section 16, Morken Township, and then review the results with the Townships. Depending on the bid results for C.D. No. 10, we could consider completing the repairs for the other two ditches south of Moorhead. We plan to work with the Clay County Highway Department to discuss the repairs and develop a cost share formula for C.D. No. 32, where part of the slumping is in the r-o-w of Clay C.R. No. 67.

**Wolverton Creek/Comstock Coulee.** Albright reported that our BWSR Targeted Watershed Program application was successful, and we will receive the requested \$2.8 million in funding. Jones will have the Lessard-Sams Outdoor Heritage Council (LSOHC) Conservation Partners Legacy Grants (CPLG) Program application for approximately \$3.5 million ready to submit by the 05/26/16 deadline. NRCS has also indicated that they could have funding available for this project. Albright suggested that we could let bids for the project and work with landowners regarding planting intentions this winter, and be ready to start construction next year. The BWSR grant should be enough to complete Phase 1 of the project from the Wolverton Road (C.R. No. 30) up to the Clay County line, which is the worst stretch of the channel, containing the most sediment.

Albright noted that we need to work on creating a wetland management district (wmd) (M.S.A. 103D.729) to raise local funds to be used as a match for the various grants. Landowner hearings will be held once the process and fees have been determined.

Jones has been working with Rob Maroney, Army Corps of Engineers (COE), regarding permitting, which has been delayed because of COE staffing changes. The project has been designed according to COE Rules so that no spoil will be placed in the area wetlands, and a "general" permit should apply.

**Otter Tail River and Whiskey Creek Restoration.** HEI has started the survey work on both projects. We have received a number of the permission to survey forms, and a few landowners have called with questions about the surveying. To date, we haven't received any further information from the COE regarding funding for the Section 1135 program on the Otter Tail River.

**Clay C.D. No. 28.** Manager Van Amburg asked about Melvin A. Richards's petition to have his land in the SE<sup>1</sup>/<sub>4</sub> (less tracts), Parcel I.D. No. 18017400, Section 17, Kragnes Township, removed from the C.D. No. 28 benefit area. This land drains south to a private ditch system, not into C.D. No. 28. Albright suggested that since the ditch system has a small benefit area, a hearing could be held in conjunction with a regular Board meeting.

**Minnesota Association of Watershed Districts (MAWD) Summer Tour.** MAWD has scheduled their 2016 Summer Tour for June 22-June 24, 2016 in Winona. The office has already made hotel and event reservations for Managers Hanson, Van Amburg, and Fjestad.

**BRRWD Rules.** The Managers have copies of the draft Rules for review, and we might need to schedule a special meeting to complete their review. Once the Managers have approved a final draft, the office will distribute the Rules to BWSR and other governmental agencies for the mandatory 60-day review and comment period. The BRRWD must also hold a public hearing before adopting the new Rules.

**Meeting Recess.** At 8:50 PM, Chairman Van Amburg recessed the meeting to allow time for all parties to arrive for the BRRWD's discussion of the Fargo-Moorhead Diversion Authority's (DA) Joint Powers Agreement (JPA). At 9:00 PM, Van Amburg called the meeting back to order.

**COE FM Diversion.** The Board and audience entered into an extended discussion regarding the issue of the BRRWD's participation in the DA's revised JPA. Albright gave a brief history of the development of the 2016 JPA document, and the Board's deliberations about the BRRWD's involvement with the new JPA. Several 6-Entities meetings have been held to discuss the JPA revisions, including BRRWD questions about financial obligations, roles, and responsibilities. The six entities associated with the JPA include the City of Fargo, Cass County, Cass County Water Resource District, (North Dakota), the City of Moorhead, Clay County, and the BRRWD (Minnesota). Following a meeting with Attorney Norgard on 05/10/16, it appeared that the BRRWD was not going to participate in the JPA, and Albright alerted John T. Shockley, Attorney, Ohnstad Twichell, who represents the City of Moorhead and has been responsible for the JPA revisions, so that he could revise the document accordingly. Albright also noted that the DNR released their final Environmental Impact Statement (EIS) on 05/16/16. The next phase of DNR involvement with the Diversion project will be permitting.

Chairman Van Amburg discussed the history of the BRRWD's involvement with the Diversion project and the previous JPAs, starting in 2008. He pointed out that in his opinion, the Board's participation in the JPAs was not a show of support for the Diversion project, but was an attempt to have input in the process. Albright noted that the DA hopes that all the entities will have signed the new JPA by mid-June.

Van Amburg asked if any citizens from the BRRWD wished to make a statement. Robert Zimmerman, Engineer, City of Moorhead, related a conversation he had with City of Moorhead Mayor Del Rae Williams regarding the BRRWD's participation in the JPA. Zimmerman said that Mayor Williams would encourage the BRRWD to continue to be a part of the Diversion project process. He noted that the City and the BRRWD have had a good working relationship over the years, and the City would value the BRRWD's expertise regarding project permitting, mitigation, etc. The COE will be scheduling meetings with the DNR on the permitting process, and Zimmerman hoped to have input from Albright and Jones regarding that process. He added that the City supports the BRRWD's continued involvement in the Diversion project.

Brian Berg, Clay County Administrator, commented that the Clay County Commissioners will act on the JPA tomorrow. He encouraged the BRRWD to stay engaged in the Diversion project development as the "water experts" for Clay County.

Landowner Paul Krabbenhoft discussed the BRRWD's involvement with difficult water decisions since the 1975 flood. He asked the Board to continue to be part of the DA and to represent all of the Clay County citizens. He thought both the Cities of Fargo and Moorhead needed the BRRWD's "voice" on these water issues.

Manager Kobiela asked Attorney Shockley who would get the BRRWD's vote if we don't sign the JPA and are subsequently dropped from the DA. Shockley thought it would go to the City of Moorhead. Then the



City would have three votes and Clay County would have two. Shockley explained that the JPA's intention is to maintain the balance between North Dakota and Minnesota.

Albright pointed out that the JPA states that "it is in the best interest of their constituents to establish a permanent JPA entity to provide flood protection for the Fargo-Moorhead metropolitan community." He feels that considering the "best interest of their constituents" is a useful way for the Board to judge the merit of their decisions.

Frank Gross, Clay County Commissioner, stated that the BRRWD, as the Clay County "water authority", is a vital part of the Diversion project development. He noted the Commission appointed three of the BRRWD Managers to represent the County on water issues, and it is very important that the BRRWD continue to be a part of the JPA.

Jay Nord stated that he was not against flood protection for Fargo-Moorhead, but he didn't think it should be accomplished by flooding a new area so that they can continue to build in the floodplain south of Fargo. He took issue with the statement that if the BRRWD doesn't sign the current JPA, the citizens of Moorhead won't be represented. He pointed out that they already have two representatives: the City of Moorhead and Clay County. Nord observed that the BRRWD is the only representation that Wilkin, Otter Tail, and Becker County has, and if we vote to approve the JPA, it is a vote against the rest of the BRRWD. He stated that there didn't appear to be any advantage for the other BRRWD constituents to be involved in the JPA. Van Amburg commented that he viewed the Board's role on the DA in part as an advocate regarding easements and drainage issues. Nord thought that the BRRWD will still have influence over the project through permitting. He listed impacts he feels the Diversion project will cause in the upstream areas of the BRRWD. Van Amburg thought that it was the BRRWD responsibility to remain involved and not hand over our responsibilities to the other JPA members.

Manager Anderson asked Attorney Shockley which agency exercised the use of eminent domain for the inlet structure in North Dakota. Shockley explained that the Cass County Joint Water Resource District acts as the land agent for the North Dakota entities, and they initiated the eminent domain proceeding. Shockley also discussed a number of changes that were recently made to the JPA, and noted which portions of the project the COE will implement. The local entities will be responsible for the Diversion channel and the in-town levees and any mitigation actions, such as a ringdike for the City of Comstock. The BRRWD would also have a seat on the land management and finance committees with jurisdiction over mitigation, including flowage easements, cemetery issues, etc. He noted that the BRRWD would also now be getting a full voting position on the DA, which we do not have currently.

Anderson commented that the DA's easement/land acquisition budgets do not reflect current land values. Shockley pointed out that having a position on the DA would allow the BRRWD to provide input/influence regarding this type of mitigation issue.

Van Amburg commented that it appears the JPA has been revised to give the Minnesota entities the flexibility we need to be involved with the project. Shockley explained that the DA had attempted to limit project liability for the local Minnesota entities with the revised JPA. We would not be responsible for capital construction costs. Any monies for construction costs would come from the State of Minnesota Legislature appropriation, not to exceed \$100 million. The DA takes on the risk of non-appropriation, so if the Minnesota Legislature decides not to fund the project, the DA has assumed that risk. The finance plan has taken into account the DNR percentage identified in its report, or about 2% cost/benefit ratio to Minnesota. Maintenance costs would be split at the same rate, while operation costs would be determined according to the operation plans, which at this point is unknown. Shockley also talked about how DA voting, committee membership, and Chair and Vice Chair rotation would be changed to give the BRRWD and the other Minnesota entities more influence.

Van Amburg observed that if built, the Diversion project will be in operation for many years, and the BRRWD should be involved with the operation and maintenance process. He observed that the BRRWD did not receive our many awards by being afraid of controversy and challenges.

Manager Fjestad introduced North Dakota State Senator Larry Luick, who discussed his concerns about the Diversion project's impact on the upstream staging area in Wilkin and Richland Counties. He said that there is a "huge fight" taking place on the North Dakota side of the Red River regarding the use of eminent domain to obtain properties for the inlet structure, and this same thing can happen in the Minnesota staging area. Senator Luick questioned if this is the best design to provide a legacy of water management for our "basin". He discussed some suggestions for upstream retention sites and other agricultural practices that could mitigate flooding in the F-M area and would be a better solution than the current Diversion project design. He encouraged the communities/agencies/local governments to work together to find a better flood mitigation plan, which might not cover everything the Diversion project hopes to achieve, but would have fewer negative effects and be a more workable solution. He also stated that North Dakota is becoming more reluctant to fund the current Diversion plan. The recent eminent domain proceedings raised concerns about possible law suits, etc., in response to the current plan.

Van Amburg pointed out that the idea of creating retention/detention far upstream in the watershed has been researched and was found not to be the answer in reducing the large flood events. The DNR EIS also stated that upstream retention won't work. He also noted that improved farming practices are beneficial, but as an alternative to the Diversion project, they are not enough to make any significant impact to flood reduction. Senator Luick did not think that the retention/detention option has been studied in depth.

Albright asked Senator Luick how much funding the State of North Dakota has currently appropriated for the Diversion project. Senator Luick said that to date, North Dakota has committed approximately \$570 million, including \$120 million for internal levees within the City of Fargo. Attorney Shockley noted that there are a number of Cass County and City of Fargo sale taxes in place to fund the local costs for the project. The Federal share is \$450 million, adjusted for inflation. Shockley gave a detailed explanation of the project funding and contracting strategy.

Jared Nordick discussed the retention benefits of agricultural drain tile/controlled drainage structures.

Manager Anderson observed that Shockley has done a good job explaining the entities' roles/responsibilities itemized in the JPA. He commented that it's up to the Board to decide if we want to take on the obligations expected of us, including easement acquisition in the upstream staging area in Minnesota. His main concern is that there isn't enough money allocated for easement acquisition in the project budget. If the BRRWD is forced to use eminent domain to acquire easements because there isn't enough money in the budget to offer the landowners a fair value for their property, he questioned how that would impact the BRRWD's reputation with all landowners in the future. Anderson also commented that if the DNR holds the COE to the same standards for a high hazard dam as they do other entities, the DA will probably not get a permit for the project. The COE has already indicated that they don't actually need a DNR permit for the dam. He questioned if the BRRWD should be drawn into a dispute between the COE and the DNR.

Albright agreed that the JPA does a good job of spelling out the BRRWD's responsibilities. If we sign the document, we will need to follow through with the agreement. Attorney Norgard noted that once a condemnation board sets a value with the first eminent domain proceeding, it will basically set the value of the rest of the disputed easements. She explained that in North Dakota, landowners' legal fees are always paid for them in an eminent domain proceeding, but in Minnesota, in most cases, landowners have to pay those costs. Attorney Norgard said that we won't know what land values will be until the first appraisal is completed. The line item in the budget for easement acquisition is only a place holder and hasn't actually

been determined yet. She advised the Board not to base their decision regarding JPA participation on the estimated budget allocation for easements.

Manager Larson stated that Fargo-Moorhead needs a flood diversion project. He explained that he knows people on both sides of the Diversion project issue. After much deliberation, Larson said he could not be a part of an organization that could potentially use eminent domain to acquire property for the Diversion project as it is currently designed, especially so people can continue to do the wrong thing and build in the floodplain.

Chairman Van Amburg asked if the Board was ready to vote on participation in the JPA. Albright commented that there is probably nothing more that could be changed in the JPA document, and that it would be of no benefit to delay a decision. Van Amburg agreed that the DA has allowed the Board sufficient opportunity to comment on the document. He asked for a motion and a roll call vote for the record. Manager Kobiela commented that the Board's discussions about the JPA always end up being about the Diversion project, and not the JPA. This entire issue has become divisive, and she felt that every future decision the Board would be asked to make involving the Diversion project would devolve into the same lack of consensus and inaction. Attorney Norgard stated that approval of the JPA brings with it responsibilities that the BRRWD must undertake, and if we are found to be in default of the JPA, there will be consequences. **Motion** by Anderson not to sign the JPA. **Seconded** by Fjestad. The roll call vote was as follows: In favor of the motion: Larson, Fjestad, Affield, Kobiela, Hanson, and Anderson. Not in favor: Van Amburg. **Approved.**

**Clay/Wilkin J.D. 1 Diversion.** Attorney Norgard will review the petition and provide a determination of its validity.

**Legislative Update.** Albright provided the Managers with a legislative update from the BRRWD's Lobbyist, Joel Carlson, for their review.

**MAWQCP.** Don Bajumpaa, District Manager, Wilkin SWCD, has acquired more funding from the Minnesota Department of Agriculture to continue the Minnesota Agricultural Water Quality Certification Program (MAWQCP). Bajumpaa has agreed to reimburse the BRRWD for some of the costs for the Landowner Forums the BRRWD hosted this spring. The time frame for the pay request is 01/01/16-05/31/16, and the amount is \$2,648.21.

**Buffalo River Restoration, Phase 2.** HEI submitted Pay Request No. 3 and Change Order No. 2 for Selling Brothers, Inc. The pay request is for \$14,462.32, and the change order increases the contract by \$9,942.50 for seeding, riprap, mulch, and erosion control. **Motion** by Hanson to approve the referenced pay request and change order. **Seconded** by Larson. **Approved.**

**BWSR Listening/Discussion Sessions.** BWSR is hosting series of listening/discussion meetings for County, SWCD, and Watershed District staff to discuss a variety of water management topics. The meeting in our area will be held in Moorhead on 07/06/16 from 8:30-11:00 AM.

**Project No. 23, Becker C.D. No. 15 Repair.** Kraig Nelson has requested the installation of a field inlet culvert/approach in Section 11, Audubon Township, on the north side of the ditch along C.R. No. 104. The existing crossing further to the east has failed and there not an adequate access to the field on the north side. Jones recommended a new 24" dia. x 40' CMP and some fill to construct the approach. The opinion of probable cost is \$3,500-\$4,000. **Motion** by Hanson to authorize the proposed repair. **Seconded** by Anderson. **Approved.**

**Kraig Nelson Diking Complaint.** Nelson also filed a complaint regarding a small dike installed in the E½SE¼, Section 28, Deerhorn Township, Wilkin County. Albright will investigate and report back to the Board at a future meeting.

**Todd Torkelson Erosion Site.** Torkelson's neighbor, Adam Bjornside, contracted the office regarding an erosion site south of Hawley on the Buffalo River on Torkelson's property off of T.H. No. 31. Albright will investigate and report to the Board at their next meeting.

**Laserfiche Video Conference.** On 05/19/16, the staff will participate in a video meeting with a representative of the Laserfiche document management software at 9:00 AM. Albright also mentioned another document management software company called Lasersystems in Fargo has contacted the office.

**BRRWD Goals.** Albright provided the Board with the 05/26/15 goal setting session notes for their review. He suggested the Board should take some time at an upcoming meeting to review our short, intermediate, and long range goals. The Board discussed office computer needs, software updates, and an upgrade the audio visual system so we can use a laptop and microphone at the extra desk in the Board room. Albright noted that Kathy Fenger, who is the newest addition to the BRRWD staff, is transitioning well into handling the financial/QuickBooks tasks.

**Clean Water Fund (CWF) Grants.** The Board briefly discussed BWSR grant funding that was appropriated specifically for SWCDs from the CWF funding to address the 2015 Buffer Law. Some Watershed Districts were concerned that only SWCDs were named in the legislation for funding.

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

Accounts Payable	Description	Account	Amount
Breanna L. Kobiela	#1612, 03/01/16-04/30/16	Varies	\$ 477.13
Bruce E. Albright	05/10/16 supper (2)	COE Diversion	\$ 29.65
Bruce E. Albright	Deluxe #2036980254, 250 checks	Admin.	\$ 157.86
Catherine L. Affield	#1608, 03/01/16-04/30/16	Admin.	\$ 376.41
Joel Carlson, Inc.	June Lobbyist billing	Admin.	\$ 850.00
Landmark Landscaping, Inc.	#6283, Tony Wulfekuhle yard	Wilkin C.D. No. 1-C	\$ 1,250.00
MN DNR	#225273, WQ 5th Pymt.	M.S.A. 103D. 905, Subd. 3	\$ 10,150.00
NTI	Phase 4 testing 04/01/16-04/30/16	Pj. 49, Oakport	\$ 11,093.76
Pitney Bowes	Postage meter contract 05/20/16-08/19/16	Admin.	\$ 112.22
Purchase Power	05/01/16 postage billing & fees	Admin.	\$ 262.21
RMB Laboratories, Inc.	#304065, WQ testing	Buffalo River TMDL	\$ 632.00
RRBC	2016 contribution	M.S.A. 103D. 905, Subd. 3	\$ 25,000.00
RRVCPA	04/01/16-05/01/16 service (3)	Pj. 49, Oakport	\$ 250.14
Sellin Brothers, Inc.	Pay Request No. 3	Hawley Buffalo River Rest.	\$ 14,462.32
UEI	#57379, thru 04/30/16, wetland	Pj. 49, Oakport	\$ 8,193.60
UEI	#57376, thru 04/30/16, Phase 4	Pj. 49, Oakport	\$ 35,283.52
Wm. Nichol Excavating	#193, seeding/pipes/beaver	Pj. Nos. 2, 30, and 31	\$ 9,308.00
			<b>\$117,888.82</b>

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

**Project No. 19, Becker C.D. No. 21.** Manager Hanson noted that Jerry Matter has contacted him regarding his proposal to clean the Buffalo River in Sections 15, 16, and 21, Riceville Township. Albright explained that in order to clean the river, we would need a DNR permit, an Environmental Assessment Worksheet (EAW), a landowner informational meeting, and a funding source. Matter feels if the river was cleaned, we'd have a better outlet for C.D. No. 21. Matter needs almost perfect drainage to farm the bottom of Sand Lake in Section 3, Riceville Township. Matter cleaned the Buffalo River in 1976, when it was dry.

**Becker C.D. No. 5.** Manager Hanson noted that Lester Kiehl contacted him regarding possible repairs on the southeast end of the ditch. Albright will have Opsahl investigate.

**Next Meeting.** The BRRWD will hold their next regular meeting on Monday, June 13, 2016, at 7:00 PM in our Barnesville office.

**Adjournment.** **Motion** by Anderson to adjourn the meeting. **Seconded** by Hanson. **Approved.** Chairman Van Amburg adjourned the meeting at 11:00 PM.

Respectfully submitted,

John E. Hanson, Secretary