

BUFFALO-RED RIVER WATERSHED DISTRICT

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PROJECT NO. 61, CLAY COUNTY DITCH NO. 11-NORTH IMPROVEMENT FINAL HEARING CONTINUATION MINUTES April 15, 2009

Pursuant to Minnesota Statutes Annotated (M. S. A.) 103E.335, and any other applicable statutes, the Board of Managers, Buffalo-Red River Watershed District (BRRWD) and Drainage Authority, continued the Final Hearing for Project No. 61, Clay County Ditch No. 11-North Improvement, on Wednesday, April 15, 2009, at 8:00 PM in the Comstock Community Center. BRRWD Managers present were: Roger G. Ellefson, Curtis M. Nelson, Gerald L. VanAmburg, John E. Hanson, and E. Robert Olson. Others attending included: Bruce E. Albright, BRRWD Administrator and Houston Engineering, Inc. (H.E.); Erik S. Jones, Engineer, H.E.; Nathan Gannon, Clay County Highway Department; and landowners: Dan Olsgaard, Dean Nelson, Brian Leiseth, Rodney Schmidt, Darcy Brandt, T. J. Leiseth, Mark Anderson, Orlen Valan, Jr., Neil Wieser, Roger Reinke, Jason Reinke, Della Brandt, Mel Nygaard, Steve Walker, David Thingvold, Barb Dahl, Kevin Olsgaard, Lance Onan, David Krabbenhoft, Darin Brandt, Denice Wieser, William Bye, Peter Livdahl, and John Leseth.

Chairman Ellefson called the hearing back to order at 8:00 PM. He noted that tonight's hearing is a continuation of the 3/30/09 hearing. Because of the flooding situation in Moorhead and inclement weather on 3/30/09, the Board decided to continue the Final Hearing to provide an additional opportunity for project landowners to give testimony. He added that the Viewers did make some changes to their Report following the 3/30/09 hearing. He introduced the BRRWD Board, Viewers, and Staff. Albright circulated a sign-up sheet for the audience to record their attendance and noted that the hearing was being taped to aid in the preparation of the minutes.

Albright gave a history of Clay County Ditch No. 11. He explained that County Ditch No. 11 consists of two branches (north and south) and was initially built in approximately 1910. The County transferred ditch jurisdiction to the BRRWD in 1999. In 2000, landowners started to work with the BRRWD regarding a possible ditch improvement. The Board decided to try cleaning the ditch first to see if that would address landowner concerns to avoid the cost of a ditch improvement project. Following the ditch cleanout work, the landowners filed the ditch improvement petition for the one mile of County Ditch No. 11-North that starts west of Rustad, at Trunk Highway (T.H.) No. 75 and goes downstream to where an inlet culvert eventually drains the water to the Red River of the North. In 2004, landowners also had concerns about benefits for four area ditch systems (County Ditch Nos. 11, 36, 40, and 60) because the rates and areas had not changed since the ditches were built. On February 1, 2005, the redetermination of benefits hearing was held, but the process has not yet been completed.

A few years ago, a group of landowners filed a petition to review the outlet of County Ditch No. 11 N. The outlet structure, which was installed following the 1975 summer flood, is a pipe that is approximately 350' long and conveys water from County Ditch No. 11 N to the Red River. The BRRWD held the Preliminary Hearing on 4/19/07. Erik Jones, Engineer, H.E., reported at the hearing that the ditch is flat from the culvert in T.H. No. 75 to the outlet. The Board determined after the Preliminary Hearing by Order, dated 4/23/07, to continue the project development. According to Drainage Law, the Board authorized Jones to prepare the Engineer's Detailed Survey Report (M.S.A. 103E.265) and have the Viewers start their field work (M.S.A. 103E.315) to determine benefits and

damages. After the Viewers' completed their work, the BRRWD scheduled the Final Hearing. At the 4/19/07 Preliminary Hearing, Clay County Highway Department discussed the County State Aid Highway (CSAH) No. 8 slumping/sliding problems, which parallels County Ditch No. 11 North along the one-mile stretch where the improvement project is proposed. The County suggested that the ditch and road repairs could be combined and bid as one project to save both entities money. The Board decided to accept this proposal and put the ditch project on hold until Clay County and H.E. could design a joint project that would both regrade CSAH No. 8 and improve County Ditch No. 11 N. Albright noted that the County and BRRWD project costs will be kept separate. Jones' project design hasn't changed significantly since the Preliminary Hearing. Following tonight's Final Hearing, the BRRWD will need to make a decision to either move forward with project as presented, to review the project engineering/Viewer's reports, or to dismiss the project petition (M.S.A. 103E.341). Following the Board's Order, there is a 30-day appeal period for anyone to file a project appeal with the District Court and the BRRWD (M.S.A. 103E.091 and M.S.A. 103E.095). Albright noted that with the improvement project, the benefit area for County Ditch No. 11 will be revised. According to Drainage Law, one-rod grassed bufferstrips are required for any project where Viewers are appointed. He felt that eventually, all of the legal ditch systems will have bufferstrips. Part of the acreage that the BRRWD will purchase for right-of-way (r-o-w) for this project would have been acquired anyway for the redetermination of benefits proceeding. Albright referred to the benefit maps located around the room, showing the benefit rates/areas that were determined in 2005.

Using an overhead projector, Erik S. Jones, Engineer, H.E., presented the Engineer's Report. He referred to an area map showing the project location. He noted that about 60% of the drainage area water flows north to Clay County Ditch No. 40 and 40% drains west to County Ditch No. 11 North (approximately 5.8 square miles). The project starts at the Red River of the North and goes east for approximately 1 mile to the T.H. No. 75. Jones explained that the design calls for removing about 35' of the east end of the inlet pipe to allow for an extra 3' of gradient (drop) on this mile. The ditch bottom will have a 0.08% grade, or about 4' of drop per mile. Currently, the ditch drops approximately 1' in this stretch. The ditch will have a 10' wide bottom. The road side of the ditch (north) will have a 12:1 slope and the field side (south) will have a 4:1 sideslope. Jones noted that the new design calls for the replacement of the existing Leseth driveway crossing, which is a timber bridge that is beginning to fail, with a 14' x 8' reinforced concrete box culvert (RCB). John Leseth's crossing is at Station (Sta.) 32+00. The upstream culvert (12' x 8' RCB) in the township road (Sta. 36+91) will be lowered approximately 0.8' to match the proposed channel grade. It will be extended 8' to provide the necessary sideslopes for the township road (Section 32, Kurtz Township quarterline). There are no other proposed centerline structure changes.

Jones discussed the design changes he has made since the Preliminary Hearing. The mandated bufferstrip installation/seeding along all of County Ditch No. 11 will increase the preliminary cost estimate. The buffers will be installed on the entire County Ditch No. 11 system (both North and South). On Clay County Ditch No. 11 S there is 9.2 acres of new bufferstrips @ \$2,000/acre (\$18,500) and for County Ditch No. 11 North, there is an additional 12.39 acres of new bufferstrips @ \$2,000/acre (\$24,780). The one mile project area required 6.11 acres of additional permanent r-o-w @ \$3,000/acre (\$18,330). The total construction costs for the proposed project is \$359,650.

Jones discussed the issue of the ditch r-o-w. He investigated the ditch records for the redetermination of benefits and for the bufferstrip installation. He went to the Clay County Auditor's office to access the available documents. Jones found that we will need about 27.75 acres of additional r-o-w along both County Ditch Nos. 11 N and S, which will cost about \$61,610.00. For the one mile stretch of County Ditch No. 11N where the project is located, we will also need about 7.5 acres of temporary or construction r-o-w @ \$450/acre (\$3,380.00). These added costs for bufferstrip installation bring the

total project cost up to \$359,650. Albright pointed out that this amount is only Jones' estimate and the actual construction bids may vary. The Board can only accept bids within 130% of the Engineer's cost estimate. Jones expects that the bids could come in lower than his estimate, given the current bidding climate.

David Thingvold asked why Jones didn't increase the size of the project outlet culvert. Jones explained that by increasing the grade of the ditch, he was able to increase the pressure on the outlet to speed up the water flow. Thingvold commented that the grade of the ditch and culvert can only increase water flow by a limited amount. Jones explained that under normal conditions, the existing culvert size should be adequate. Thingvold didn't think that the project would improve area drainage if the outlet culvert remains the same size. Jones explained that currently, the water flow is restricted by the flat grade of the ditch, not the outlet culvert size. During summer events, water isn't backed up behind the pipe, because water just can't get to it since the ditch is so flat.

Steve Walker asked what the elevation of the ditch is from T.H. No. 75 to the outlet pipe. Jones estimated that currently there is about a 1' drop along this stretch. Jones explained that the proposed design will lower the outlet culvert about 3' to utilize the full capacity of the existing culvert.

Bill Bye related that in 1997 water backed up into his field and washed it out. Jones noted that water flow acts differently during spring runoff, and that it is hard to predict spring flood effects. Bye added that County Ditch No. 11S overtopped 120th Ave S and washed off nearly 1' of gravel.

Ellefson questioned Jones' statement about installing bufferstrips on County Ditch No. 11 South. Albright explained that County Ditch No. 11 is one ditch system with two branches, not separate ditch systems. Both branches will have bufferstrips installed in conjunction with this project. The Viewers' Report pertains to both branches of Clay County Ditch No. 11. Albright explained the development of County Ditch No. 11. He said that the two branches (County Ditch No. 11N and County Ditch No. 11S) were developed at the same time as one ditch system. The benefit area for County Ditch No. 11 pays for the work on either branch.

Albright discussed project financing. The Board plans to sell bonds through Clay County to finance the project. We plan to combine three or four of our other current projects into one bond sale. The interest rate for bonds is currently at an historic low of about 2.5%. Following the bid letting and the budget has been finalized, the BRRWD will ask Clay County to sell bonds, and we receive the proceeds from that sale to pay for the project. Then the County will assess the project costs to the project landowners on a per year basis over the life of the bond, which could be 7-10 years. The County also assesses a small handling fee of approximately 0.5%. Landowners can pay off their share of the project costs at any time, or pay the costs annually through their taxes.

Neil Wieser asked if the south branch is going to be cleaned before the bufferstrips are installed. He felt it would be shortsighted not to clean the ditch before seeding the spoil placement area. There are also cave-ins/slides on the system. Jones said that after the flood waters recede, the BRRWD will be inspecting the ditch systems for flood damages, some of which could be repaired with Federal Emergency Management Agency (FEMA) funds. He will keep in mind that the south branch needs work.

Ellefson explained the difference between a repair and an improvement. He said that the Board could send out a technician to check County Ditch No. 11 S. He felt that any repair/cleanout work should be done before the bufferstrips are seeded. He added that the landowners along the ditch system would

know the ditch better than the Board, and they should bring any issues regarding ditch maintenance to our attention.

Albright noted that unlike other types of bufferstrips, i.e., Conservation Reserve Program (CRP), etc., haying is allowed on the ditch system bufferstrips.

Bill Bye asked if the proposed project would increase the volume of water in County Ditch No. 11 S. He feels the Ditch No. 11S culverts need to be resized and the ditch is need of repair. Jones noted that at this time, we have not considered repairs for County Ditch No. 11S.

Steve Walker asked how they could get emergency vehicles through the water on the road along County Ditch No. 11S, if the road to the north (120th AVE S) is under water.

Peter Livdahl said that during the peak of the 2009 spring flood, the road was under water, and the culvert was damaged. Ellefson said that the road/culvert maintenance was the responsibility of the Township. If the culvert is on the ditch system, then the BRRWD and ditch system would be responsible.

Bill Bye asked if the BRRWD would be purchasing more r-o-w for the bufferstrips. Ellefson thought that if new r-o-w was needed for the bufferstrip installation, the BRRWD would have to purchase it from the affected individual landowners. If someone wants to increase the size of a culvert through a township road, they would have to apply for a BRRWD permit for a larger culvert, and the Board would authorize a hydraulic analysis to determine if the permit could be approved. Ellefson noted that because of the proximity of the river, the quicker the area water gets to the river, the better. Steve Walker disagreed, noting that he has experienced overland flooding from the Wild Rice River in North Dakota. Mel Nygaard pointed out that the ditches didn't open this spring, and he had to have a backhoe to help open the ditch by his place. He was concerned that it would be difficult to drive a backhoe close enough to the ditch with the bufferstrip to get into the ditch bottom. Ellefson commented that the bufferstrips can be driven on. Bill Bye commented that the proposed ditch slopes on Project No. 61 will make it more difficult to work on.

Jones referenced Bye's question about culvert sizing on County Ditch No. 11S. He explained that when evaluating different culvert sizes, we have to take into consideration the historic structure sizing. For example, many of the original structures were bridges that were replaced with culverts in the intervening years. If the original structures were culverts, he would conduct a capacity analysis to determine if a larger sized culvert was warranted. The process might also require that the BRRWD hold a hearing to discuss the proposed change. Bye felt that adding pipes to the existing crossings might also be a possibility. Jones agreed that that there could be a number of options to improve the drainage on County Ditch No. 11S.

Ellefson introduced Eddie Bernhardson, who presented the revised Viewers' Report. Bernhardson explained that the benefit map colors indicate which property receives the various benefit rates. For example, the yellow colored area on the map receives the highest rate, or \$100/acre. When the Viewers went back out into the field following the 3/30/09 hearing, they decided to add one more benefit rate of \$75/acre. Bernhardson explained that the Viewers tried to keep the rates that landowners paid for all the area ditches at or below \$100/acre. He then presented the following revised Viewers' Statement:

At the 3/30/09 Final Hearing for Project No. 61, Clay County Ditch No. 11 North-Improvement, we presented our Viewers' Report for this project. At the hearing, there were several landowners who suggested changes to our work. On 4/10/09, we met in the Barnesville BRRWD office to discuss these

potential changes. We also conducted a field review to verify our work and findings. At this time, the Viewers would like to recommend the following changes regarding the benefit area for Clay County Ditch No. 11.

- In the SW $\frac{1}{4}$, Section 13, Holy Cross Township, there are culverts installed through 150th AVE S to drain water from this property south into Clay County Ditch No. 53. For this reason, in the SW $\frac{1}{4}$, Section 13, we would propose that the SE $\frac{1}{4}$ SW $\frac{1}{4}$ be removed from the benefitting area for County Ditch No. 11. We would also propose that the NE $\frac{1}{4}$ SW $\frac{1}{4}$ be changed from the rate of \$20/acre to \$10/acre.
- For the SE $\frac{1}{4}$, Section 13, Holy Cross Township, we would propose that the SE $\frac{1}{4}$ SE $\frac{1}{4}$ be changed from the rate of \$20/acre to \$10/acre, and the S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ be changed from the rate of \$20/acre to \$10/acre.
- For the SW $\frac{1}{4}$, Section 18, Alliance Township, we would propose that the S $\frac{1}{2}$ SW $\frac{1}{4}$ be changed from the rate of \$20/acre to \$10/acre.
- At the 3/30/09 hearing, it was noted that there is a culvert through CSAH No. 11 draining the W $\frac{1}{2}$, Section 32, Elmwood Township, to the west into the Sabin Coulee/Clay County Ditch No. 11/Clay County Ditch No. 40 drainage area. Upon field inspection, we did note that said culvert does exist in the northwest corner of this property. The Viewers would propose that the W $\frac{1}{2}$ W $\frac{1}{2}$, Section 32, be added to the benefit area at the rate of \$10/acre. However, after discussion with the landowner of the referenced property tonight, the W $\frac{1}{2}$ W $\frac{1}{2}$ will be changed to the W $\frac{1}{2}$ NW $\frac{1}{4}$.
- We were also asked to review lands located in Sections 2 and 3, Holy Cross Township, that potentially could drain north into the County Ditch No. 11 system. We would propose that the N $\frac{1}{2}$ SW $\frac{1}{4}$, and the N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$, Section 2, and the N $\frac{1}{2}$ SE $\frac{1}{4}$, and the N $\frac{1}{2}$ SW $\frac{1}{4}$, Section 3, be added at the rate of \$75/acre. Our intentions are that no lands be assessed more than the rate of \$100/acre given the number of ditch systems that said property is assessed to either drain or is protected by. We feel the addition of this property to the County Ditch No. 11 system at the rate of \$75/acre will more correctly reflect the actual drainage patterns in the area.

Our recommendations, subject to the review of the attendees at tonight's hearing, should be adopted and added to the final Viewers' Report for Project No. 61, Clay County Ditch No. 11.

If you should have questions or comments concerning our work, we would be happy to try to address your concerns.

At 8:50 PM, Ellefson suggested a recess of the hearing for approximately 10 minutes to allow the landowners some time to review the benefit maps. He asked for questions/comments before the recess.

Thingvold questioned the fairness of the assessment for building sites compared to farmland. He felt large agricultural tracts have more drainage benefits than a small farmyard with a house and out buildings. Arvid Thompson explained that the building site benefit rates are based on the value of the property. Ellefson said the rate is calculated by taking $\frac{1}{2}$ of 1% of the County's market value, and multiplying that number by the adjoining farmland benefit rate. He explained that a building site increases the value of the small acreage it is located on. Bernhardson explained that the formula for determining building site benefits takes the value of the buildings as an improvement to the acreage into

consideration. The building site is not just bare ground, and the protected buildings have value. Albright noted that when the Viewers conducted their follow up review, they drove by Thingvold's building site. He pointed out that Thingvold lives directly adjacent to the County Ditch No. 11N. Albright explained that the term "benefit" means that the property's value increases because of the project. According to the guidelines of the Minnesota Viewers' Association, our Viewers must determine benefits based on how the value of a property is affected because of the existence of the proposed ditch system. Because County Ditch No. 11 exists, the Viewers feel that the value of Thingvold's building site increases by the proposed benefit (\$8,900).

Ellefson asked what the total project benefits were. Bernhardson said the total amount of project benefits is approximately \$735,000. The total project cost is estimated at approximately \$359,000. So the cost/benefit ratio is about 50%. He calculated that land with a benefit rate of \$100/acre would pay about \$50/acre for the project. If this rate is amortized over the term of the bond sale (10 years), the rate per year would be about \$5/acre, plus interest. He commented that nothing is cheap, and nobody likes to pay taxes, but the landowners have to decide if they are willing to pay for the project, and have the BRRWD continue with development.

Bill Bye brought up the meanders/curve in the ditch design along John Leseth's property. His concern was that the ditch would have more erosion along this stretch. Ellefson commented that according to his understanding the alleged curves are not as pronounced as the landowners believe. Jones explained that the ditch will shift approximately 20' over a 300' stretch, which he feels constitutes a very gradual curve that will not have a significant impact on the performance of the ditch.

John Leseth pointed out that on the preliminary design, the ditch channel stayed in the original location, but on the new plans, it shifts to the south. He asked why Jones moved the ditch alignment. Jones noted that in general, while some of the original ditch alignment remains in place, the preliminary cross sections show that the ditch is shifting south because typically when a ditch is deepened, the alignment will shift to match the new road slope. Jones explained that the County took his preliminary design and incorporated his offsets from the road into their plan. The cross-sections in the final design are similar, but may not be in exactly the same locations.

Denice Wieser had concerns regarding the fairness of the benefit rate for building sites vs. farmland. She pointed out that over the life of the bond sale, the agricultural land will be generating income, where a building site does not. Thompson noted that prior to the new formula, the Viewers just considered rates based only on the acreage, as if the buildings didn't exist. The farmers felt that wasn't equitable because they felt they were paying to protect the property with buildings attached. Wieser commented that there was never a problem with the rate calculation since 1894 when the ditch was built.

Thingvold thought he should be taxed on either the house or the land, but not both, which constitutes a double tax. If we compared the farmers' income compared to his, the benefit rate was not fair. He added that he thought the project should be built, but he didn't understand the benefit rate calculation.

Albright pointed out that the farmers are also paying benefits for their building sites. Ellefson noted that if we changed the formula so that the benefit rate is only calculated on acreage, the costs would be higher for everyone. He explained that if the total project benefits are lowered, the cost/benefit ratio goes up and everyone pays a higher rate. If the ditch didn't exist, the building sites probably wouldn't be located where they are now because of flooding, and the cropland wouldn't be as productive without the ditch. Farmers also feel that a small acreage tract with buildings is worth approximately the same as a quarter of bare farmland. If values are equal, then why shouldn't the benefits also be similar.

Mark Anderson commented that the school tax works the opposite way. The farmers pay more because their land value is higher. He noted that it may not be fair, but that was just the way it is.

Thingvold didn't feel the project would help his house. Lauren Peterson noted that if the ditch wasn't there, his buildings would flood, and in fact, his buildings would have probably never even been built. A ringdike could cost just as much, or more than his current benefits. Thingvold still felt his rate was unfair.

Bernhardson went over how the cost of a project is related to the overall benefits the project provides. Ellefson explained that the project is designed to protect all the property located within the ditch system. He added that most of the ditch systems are designed to handle the 5-10 year runoff events, and not the 100-year floods.

Bill Bye asked if there was anything the BRRWD could do to make the ditches open more quickly in the spring. Ellefson noted that at the 4/12/09 BRRWD meeting, we received many complaints from landowners who objected to the BRRWD opening the ditches this spring with a backhoe. He said there is always someone downstream who doesn't want more water. If we help one person, we could be hurting someone else. The BRRWD's policy is only to open the ditch systems if someone's building site is in jeopardy.

At 9:15 PM, Ellefson noted that the discussion tonight has been wide-ranging and that we were able to hear from most of the landowners, and the majority seems to feel that the project is worth doing. He briefly discussed the bidding process, which Clay County will handle with their road project. If all the bids are over 130% of the Engineer's project estimate, the project will need to be reviewed and rebid. Nathan Gannon, Clay County Highway Department, commented that contractors are looking for work this spring, and he expects bids to be competitive. Ellefson noted that contractors were very interested in bidding on our Grove Lake project last fall.

Ellefson asked if everyone who wished to speak had had a chance. **Motion** by VanAmburg to make the Order to construct Project No. 61, Clay County Ditch No. 11-Improvement. **Seconded** by Nelson. **Approved.** This action starts the 30-day appeal period. Ellefson noted that if there are appeals, the BRRWD would deal with them on a case by case basis. The BRRWD will work with Clay County to bid both projects as one, with the same contractor for both the ditch and road work.

There being no further discussion to come before the Board at tonight's hearing, Chairman Ellefson adjourned the hearing at 9:20 PM.

Respectfully prepared and submitted by

Bruce E. Albright, BRRWD Administrator