

BUFFALO-RED RIVER WATERSHED DISTRICT

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CLAY COUNTY DITCH NO. 49 MINUTES FOR REDETERMINATION OF BENEFITS HEARING March 17, 2009

In accordance with Minnesota Statutes Annotated (M. S. A.) 103E.351, and any other applicable statutes, the Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a hearing for the redetermination of benefits for Clay County Ditch No. 49 on Tuesday, March 17, 2009, at the First Floor Council Chambers, Moorhead City Hall, at 7:30 PM. BRRWD Managers present were: Roger G. Ellefson, Curtis M. Nelson, John E. Hanson, Gerald L. VanAmburg, and E. Robert Olson. Viewers Eddie Bernhardson and Arvid Thompson were also present. Others attending included: Bruce E. Albright, BRRWD Administrator and Houston Engineering, Inc. (H.E.); Erik S. Jones, Engineer, H.E.; David L. Overbo, Engineer, Clay County Highway Department; and landowners: Ronald Tang, Wayne Tang, Curt Borgen, Wayne Brendemuhl, Terry Eidem, Darin Klein, Brad Pake, Harlan Souter, L. Charles Brendemuhl, Keith Brendemuhl, Duane Brendemuhl, and Curt Brendemuhl.

BRRWD Chairman Roger G. Ellefson called the hearing to order at 7:35 PM. He introduced the BRRWD Board, Viewers, and staff. He noted that the hearing was being taped to aid in the preparations of minutes.

Albright circulated a tablet to record attendance. He then gave a history of the Clay County Ditch No. 49 ditch system. The BRRWD assumed jurisdiction of Clay County Ditch No. 49 from Clay County in the late 1980s, according to a provision in Watershed Law regarding the transfer of ditch systems. County Ditch No. 49 begins at North Buffalo Church where it enters the Buffalo River and extends east for about 4.5 miles. When the ditch was built in about 1949, Viewers were appointed to determine benefits and damages. Ditch system expenses are assessed back to the benefiting area. In approximately 2007, Albright met with landowners regarding the replacement/sizing of ditch system culverts. Upon examining the current benefit map, the landowners found discrepancies in the benefit areas. Under Drainage Law (M.S.A. 103E.351), if the Drainage Authority determines that the original benefits or damages do not reflect reasonable present day land values, or that benefited or damaged areas have changed, the Drainage Authority may appoint three Viewers to redetermine and report the benefits and damages for the new benefited areas. After the Viewers file their Report, the Drainage Authority must hold a hearing to discuss the Viewers' findings with the ditch system landowners. Albright noted that the new benefit maps are displayed on the walls around the room. Landowner questions and concerns are taken under advisement and if necessary, the Hearing could be recessed, and the Viewers can take a second look at certain areas where landowners don't agree with their determination. Once the Viewers Report is adopted, the Board will file it with the Clay County Auditor and assessments for County Ditch No. 49 will be made according to the new rates/areas. All costs pertaining to a ditch system are paid for by those who use it, according to the rates determined by the Viewers. He explained how costs are calculated: project cost divided by the total project benefits multiplied by the benefits. The Board reviews each ditch system's financial status and levies an assessment if necessary at their annual budget hearing in September. Assessments are only levied if money is needed for repairs, maintenance, etc.

Albright explained that the purpose of tonight's hearing is to review the Viewers' work and to take comments, questions, and testimony regarding that work. He noted that there are several ditch systems in

this general area: Clay County Ditch Nos. 49, 59, and 10. It is not uncommon for a property to pay benefits to more than one ditch system. The Viewers try to take into account the other ditch benefits to keep everyone's assessments somewhat equal.

The Viewers use two criteria to determine benefit rates. The first is drainage benefits: the property outlets or drains to the ditch system. The second is protection benefits: the ditch system protects the property from flooding. The Viewers calculate the benefit rate by estimating how much the property market value is increased on a per acre basis because of the project.

Albright introduced Eddie Bernhardson, who presented the Viewers' Statement. Albright suggested that following Bernhardson's report, Chairman Ellefson could open up the hearing for discussion. He noted that landowners who have questions regarding the redetermination should state their name for the record.

In accordance with M.S.A. 103E.351, and any other applicable statutes, we herewith submit the following Viewers' Report:

Benefits and Damages Statement

This report covers the determination of benefits and damages for the redetermination of benefits for Clay County Ditch No. 49, which is being completed by the BRRWD in accordance with Minnesota Drainage Law. We did determine damages for the project, in accordance with the right-of-way (r-o-w) acreage listed in the report filed by Houston Engineering, Inc., dated 5/24/07. The basis for determining our benefits is based upon a comparison of the conditions expected with the existing ditch in relationship with no County Ditch No. 49 ever having been constructed.

Historically, this area has had a drainage problem, which is evidenced by the number of legal drainage systems in this portion of Clay County. The drainage area for County Ditch No. 49 is bordered to the north by County Ditch No. 10 and to the south by County Ditch No. 59.

We (Lauren Peterson, Arvid Thompson, and I, Eddie Bernhardson) were appointed by the BRRWD to determine the benefits for the proposed project. We took our Oath of Office and held our first meeting on June 19, 2007. On that same date, we toured the project area. We conducted a second review of the area on May 1, 2008. We filed our report with the Board of Managers, BRRWD, (drainage authority) on February 9, 2009. Supporting documentation for our analysis and conclusions of the Report are contained in our files and are available for inspection.

The figures stated within our Report are based on a full and fair consideration of all pertinent facts and information that we were aware of at the time of our work. The following aids were used during our review process:

1. Clay County soil survey manuals and maps
2. FSA aerial photographs
3. USGS topographical maps
4. Sales data from the Clay County Assessor's Office
5. Visual inspections of the project properties
6. Market values as determined by the Clay County Assessor's Office
7. Benefit maps for Clay County Ditch Nos. 10 and 59.

In our report, we found new total benefits of \$515,243.10. We used four different benefit rate levels of \$100, \$80, \$65, and \$50 per acre. The highest benefits were placed on lands that drain

directly into the ditch system, both on the south and north sides of 120th AVE North. The lowest level of benefits were placed on lands that are protected by the ditch system, and in all cases, these lands also pay drainage benefits to Clay County Ditch No. 10. Our tasks also included assigning values for damages (r-o-w) acquisition. For permanent r-o-w, we used a rate of \$2,000/acre and the permanent r-o-w includes the required 16.5' grassed buffer strip. If our recommendations are adopted, the BRRWD intends to stake the one-rod grassed bufferstrips this spring before field planting, so a contractor can seed the bufferstrips in 2009.

Land classification benefit values are based upon an increase in the potential for agricultural production as a result of the drainage project and reconciled with sales value increases. Existing individual land management practices were not considered. All present land use was evaluated under estimated best land management practices. Special consideration was given to areas that were considered to be in a native/non-converted condition or identified as wetlands under wetlands inventory and restricted from drainage by state or federal regulations.

No benefits have been determined to undrained protected waters identified by the Minnesota Department of Natural Resources, wetlands, and other areas not currently considered under cultivation or having an agricultural use. Areas identified as wetlands under the USDA-NRCS wetland inventory and restricted from additional drainage by state or federal regulations were given separate consideration.

Road benefits were determined with consideration of the reduced construction and maintenance costs that will be realized with the ditch system in place. The benefits were calculated by taking the road r-o-w acreage times the adjacent land benefit rate. When, and if, road centerline structures are ever replaced, road authorities will be responsible for these costs in accordance with M.S.A. 103E.525.

We would be happy to answer any questions you may have regarding our work or findings, and we are pleased to be of service to the Board in this regard.

Chairman Ellefson suggested that Albright hand out copies of the benefit map to the audience. He commented that most of the landowners want to know what the project cost will be. Ellefson added that no matter how carefully the Viewers do their work, there are always going to be some small discrepancies regarding the benefit rates. This hearing is the landowners' chance to comment on the Viewers' work and the property assessments. Albright explained that building benefits are calculated by taking 0.5% of the market value of the buildings multiplied by the area benefit rate for the specific property.

Wayne Brendemuhl questioned if the Board would be discussing the resizing of the centerline culverts on the ditch system at tonight's hearing. Ellefson said that before any changes are made to the ditch system, the redetermination proceeding should be finalized, so that the new benefit areas will pay for any new work. Brendemuhl understood that there is a plan already in place to replace the existing centerline structures along the ditch system. He questioned if the Board planned to discuss this issue tonight. Ellefson said the group could discuss the culvert changes if that's what they wanted, but the reason for the hearing is to discuss the redetermination of benefits. Albright pointed out that the proposed structure changes are a separate issue from the redetermination hearing. Brendemuhl asked if there would be a separate hearing regarding the culvert changes. Albright said that the Board is not required by Drainage Law to hold another hearing to discuss the culvert changes, but they could hold a meeting if necessary.

In order to clarify the issue, Albright gave a brief history of the proposed ditch system structure changes. In January 2000, the BRRWD received a letter from John A. Cousins, Engineer, Clay County Highway

Department, with a request that his office had received to do a hydraulic analysis of the centerline culverts on Clay County Ditch No. 49. The Board authorized H.E. to prepare a hydraulic analysis on the culverts as a ditch system expense. H.E. filed their report on 2/26/01, and a revised report was filed on 12/04/01. The culvert through County State Aid Highway (CSAH) No. 5 on the outlet end of County Ditch No. 49 adjacent to Keith Brendemuhl's property was the primary reason for prompting the hydraulic analysis. Albright displayed a map showing all the proposed culvert locations/sizings. On 5/21/01, the Board held a hearing regarding the proposed culvert changes in accordance with M.S.A. 103E.721, Subd. 3. Albright had a copy of the minutes from that hearing that is available for review. Following the hearing, and according to Drainage Law, the BRRWD made an Order on 5/29/01 to adopt H.E.'s structure recommendations to make the proposed culvert changes. The 5/29/01 Order was subject to a 30-day appeal period. The culvert in CSAH No. 5 was changed, but no other work was done with the proposed culvert changes until 2007, when Albright met with a group of landowners at the Morken Town Hall, who felt it was time to finish the project. This was the meeting referenced earlier this evening where it was discovered that the benefit areas for County Ditch No. 49 needed to be redetermined. It was agreed that before any more culverts were changed, the Board would conduct a redetermination of benefits hearing to correct the ditch system benefit area.

Keith Brendemuhl had a question about the Property Owners' Statements and the bufferstrip installation. He thought that the culvert changes were a "done deal", as the project costs and r-o-w are shown on the statement. Albright explained that the Property Owners' Statements show an example for calculation purposes only of a hypothetical project costing \$50,000 to show the landowners what their possible costs would be. Albright also explained that the State mandates the one-rod grassed bufferstrips when Viewers are assigned to redetermine ditch systems benefits. The Property Owners' Statements reference \$2,000/acre to buy r-o-w necessary for the grassed bufferstrip. Brendemuhl questioned how the r-o-w value was determined. Albright explained that the Viewers considered sale values from the County Assessor's Office and a recent Minnesota Board of Water and Soil Resources (BWSR) report regarding the estimated market values for Kragnes and Morken Townships. Brendemuhl noted that landowners involved with the CSAH No. 11 road project are receiving \$3,000 per acre for similar r-o-w acquisition. He felt that r-o-w values should be the same for all area property/projects. Albright pointed out that the purpose of tonight's hearing is to discuss just this type of question regarding benefit rates/values, etc., in the proposed Viewers' Report. Albright offered to take a look at Brendemuhl's r-o-w, as it was a complicated tract to calculate. Brendemuhl also criticized the proposed culvert changes. He feels that larger culverts will just drain water to the river faster, creating more flooding problems. He thought that the BRRWD should be interested in retaining water in the upstream areas. Albright noted he has taken several phone calls from area landowners who have similar concerns about the proposed culvert changes. However, he pointed out that the issue before the Board tonight is the redetermination of benefits. Albright suggested that the group refocus their discussion to the issue at hand and leave the structure changes until later in the hearing, or a separate meeting.

Wayne Brendemuhl said he was willing to wait for a discussion regarding the structure changes, as long as the Board agrees that they will give landowners a chance to voice their opinions prior to installation of larger culverts on the ditch system. Ellefson said that if a permit application is filed for a culvert change, the Board could hold a meeting to discuss the request.

In response to Keith Brendemuhl's question about r-o-w values, Ellefson explained that according to Drainage Law, if the Board does adopt the new benefit area we are required to install the one-rod grassed bufferstrip along the ditch system. He added that if the value of the bufferstrip r-o-w is raised, all the ditch system landowners will have to pay more in assessments, since everyone on the ditch system pays for the ditch system expenses. He discussed various land values/rates.

Wayne Brendemuhl agreed to not to discuss the structure changes as long as the Board agreed to notify landowners and hold an informational meeting if a culvert is going to be replaced. Ellefson assured Brendemuhl that the Board is aware of the landowner concerns regarding this issue, and we would prefer to hold an informational meeting prior to making any decisions regarding structure changes.

Since the Board is aware of the concerns regarding the structures, Duane Brendemuhl requested that they commit tonight to meet with landowners prior to any changes. Wayne Brendemuhl also asked if the Board would hold another meeting regarding the culvert changes so that we could move forward with tonight's agenda. Ellefson thought the Board would be willing to meet again on the structure issues.

Keith Brendemuhl didn't feel it was fair that the landowners who must sacrifice property for the bufferstrip should take less for their land just to keep the taxes lower for the rest of the benefited land in the ditch system. Ellefson said that the Viewers appraised the land for permanent r-o-w at \$2,000/acre. If the Board makes an Order to accept the Viewers' Report, that Board action is subject to a 30-day appeal period. If landowners feel that they are not receiving just compensation for their property, they can appeal the Board's decision to District Court. Brendemuhl thought that the County would pay for court/appeal costs for the landowners. Dave Overbo, Clay County Engineer, explained that the County r-o-w acquisition is completely different than the BRRWD r-o-w process. Albright noted that the Viewers weren't aware of the County's recent land appraisal for the CSAH No. 11 project. However, they didn't just use an arbitrary value. They used an average for the land values supplied by the Clay County Assessor's office and estimated 2008 market values for cropland in the entire Red River Valley from BWSR. Jones added that in most cases, a portion of the r-o-w we need to buy for the bufferstrips is land that is already part of the ditch by attrition from previous ditch cleanouts/erosion, and only part of the acreage will require the actual acquisition of new farmland. Keith Brendemuhl said that regardless of what we're acquiring the land for, it should be the same value as what the County recently paid. He talked about the County project valuations. Ellefson noted that the bufferstrip values are negotiable. The Board would prefer to work with the landowners and avoid any appeals.

Bernhardson said that they used the land values from the County Assessor for recent sales for Morken and Kragnes Townships, and they averaged the prices to come up with their value. They also considered that the land right next to the ditch is not always the most desirable land, but on the other hand, the acquisition is not a "willing" sale. Both criteria would affect the land value, and in this case, they offset each other. Albright went back over the redetermination and appeal process. He added that the Board and Viewers will consider Keith Brendemuhl's concerns about land values. His case is different because the land we need to acquire for the bufferstrips on his property is all cropland and could be valued differently.

At 8:35 PM, Chairman Ellefson recessed the hearing to allow the landowners to review the new benefit area maps. At 8:50 PM, Ellefson reconvened the hearing.

Wayne Brendemuhl questioned the \$100/acre benefit rate on a strip of land along the ditch in the SW $\frac{1}{4}$, Section 13, Kragnes Township. Albright explained that this property is not assessed to County Ditch No. 10, so all of its benefits go to County Ditch No. 49. Brendemuhl also has a culvert that drains through 120th AVE N directly into County Ditch No. 49.

Ronnie Tang questioned the \$50/acre benefit rate for SE $\frac{1}{4}$, Section 16, Morken Township. Tang felt that since the ditch stops at CSAH No. 11, the parcels on the north side of 120th AVE N don't receive protection benefits, as all the water from the area drains north to County Ditch No. 10. Ellefson suggested that the Viewers should take a second look at this concern. Tang also questioned the \$80/acre benefit rate in the N $\frac{1}{2}$, Section 21, Morken Township. The group discussed the benefit rates on this land for the other area ditch systems. Bernhardson pointed out that there are culverts through CSAH No. 11 to the west of

Tang's property. Tang questioned if they should have to pay \$80/acre, if his land also pays to County Ditch No. 10. Albright thought that the Viewers could look at that area as well.

Curt Borgen questioned the \$80/acre benefit rate in the SE¼, Section 18, Morken Township. He asked why the property one mile south is in at the lower rate of \$65/acre. He is also paying into County Ditch No. 10. Albright questioned where the culverts were in that quarter. Borgen said that they have two culverts in the southeast corner of the quarter to drain the building site. Albright explained that because of the culverts in the SE¼, part of the water will flow to County Ditch No. 49, while the N½, Section 18, all has to drain north to County Ditch No. 10. The Viewers will also review their work in this area.

Ellefson asked if anyone in the audience was opposed to completing the redetermination of benefits. Borgen noted that everyone needs drainage, but we have to be careful not to over extend the capacity of the Buffalo River with larger ditch system culverts. Ellefson commented that he was not comfortable with the proposed land values in relationship to what the County recently paid for r-o-w for their CSAH No. 11 road project. Keith Brendemuhl felt it was not fair that he should have to take less for his r-o-w so that the assessments for the ditch system will be lower. Ellefson explained that the county road project is different from the BRRWD ditch system project, as the two agencies don't have the same processes. Brendemuhl felt that the payment rates should be similar when the property is only a couple of miles apart. Ellefson explained that not all of the land has a similar value along the ditch system. He noted that Brendemuhl's property may be more valuable than other land that is already being used as part of the ditch system.

Tang asked about the original benefit rates for County Ditch No. 49. Albright explained that two quarters of land in Section 28, Morken Township, were removed from the benefiting area through the redetermination process. The 50-year old rates (\$0.50/acre to \$4/acre) needed to change to reflect increased property values. Albright felt that if the ditch system landowners have the opportunity to update their benefit areas, it should be done. If the rates are not redetermined, the current benefited property will still be responsible for ditch system expenses. They will also have to pay the costs to date for the redetermination of benefits process, if for some reason the process is now stopped without adopting the new benefit areas/rates. Albright felt that the landowners of the two quarters that will be taken out would be upset if the new benefit area is not adopted. He discussed other ditches in the BRRWD that have outdated benefit areas as well. Tang felt that the benefit area for the land north of County Ditch No. 59 should also be looked at. Manager Nelson noted that Ellefson was right when he said that this process is never going to be perfect. Ellefson commented that the way benefit areas are determined hasn't changed significantly over the years.

Chairman Ellefson asked if there was any more testimony to come before the Board. He noted that the culvert change issue will be address at future meeting.

Wayne Brendemuhl questioned his Property Owner's Report. Albright will check into his concern.

Chairman Ellefson asked a second time if there were any more comments or questions to come before the Board. He noted that Manager Gerald VanAmburg arrived at 9:00 PM.

There being no more testimony to come before the Board of Managers, BRRWD, Chairman Ellefson adjourned the hearing at 9:15 PM.

Respectfully submitted and prepared by,

Bruce E. Albright, BRRWD Administrator