

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

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## **MINUTES FOR HEARING TO INCLUDE LANDS Project No. 27, Clay County Ditch No. 55 March 5, 2009**

The Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a hearing on Thursday, March 5, 2009, at 7:30 PM in the Barnesville Senior Citizen Center. BRRWD Managers present were Roger G. Ellefson, Gerald L. VanAmburg, E. Robert Olson, and Curtis M. Nelson. Others attending included BRRWD Administrator Bruce E. Albright, Nathan Gannon, Engineer, Clay County Highway Department; and landowners: Freemont Pender, Lori Pender, David A. Schroeder, Ron Voller, Tom Voller, John F. Pender, David Heng, Sheila Sogge, Scott Skauge, Craig Halverson, Peter Lewis, Brian Halverson, Mike Jaeger, Merle McConnell, Howard Pender, and Bill Austin.

Chairman Ellefson called the meeting to order at 7:30 PM and introduced the BRRWD Board/staff, and agency officials. Ellefson explained that tonight's hearing had two purposes. The first is to determine if the BRRWD should add approximately 120 acres of Bill Austin's agricultural land, as requested, in the N $\frac{1}{2}$ SW $\frac{1}{4}$  and the N $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ , Section 16, Elkton Township, Clay County, to the benefiting area of Clay County Ditch No. 55, located along the south side of County State Aid Highway (CSAH) No. 10, just east of Interstate-94 (I-94) near Downer. The second topic is Austin's request to use Clay County Ditch No. 55 as an outlet for a proposed tiling project for the referenced property. He added that there are landowner drainage concerns along the north side of CSAH No. 10, which relate to Austin's request to drain water to the north ditch from his proposed tiling project, eventually draining to County Ditch No. 55 via a proposed 18" dia. culvert through CSAH No. 10.

Albright noted that the proceedings were being taped to aid in preparation of the minutes. He circulated an attendance sheet.

Albright gave a history of the issues before the group tonight. In September 2008, Bill Austin filed Permit No. 08-73 to install patterned tiling in the SW $\frac{1}{4}$ , Section 16, Elkton Township, Clay County. Initially, most of the water was going to drain north through 85<sup>th</sup> AVE S to a natural waterway in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 16, where it would eventually drain to a grassed waterway to Clay County Ditch No. 58, to which the property is currently assessed. At that time, Austin proposed that some of the water in the southwest corner of his property might have to drain south along 140<sup>th</sup> ST S to either Clay County Ditch No. 55 (south CSAH No. 10 ditch) or the north CSAH No. 10 ditch. When the tiling surveyor began his work, it became apparent that the tile would not drain north. A field meeting was held last fall to discuss draining the tile project south to Clay County Ditch No. 55, for which some of Austin's property is not assessed. Minnesota Statutes Annotated (M.S.A.) 103E.401, Subd. 2, states that "after the construction of a drainage project, the public or private drainage system that drains property not assessed for benefits for the established drainage system may not be constructed to use the ditch system." In compliance with this provision, Austin filed a petition to add the referenced property to County Ditch No. 55. In the future, if Austin is successful with his request, a part of Austin's property will have to be released from Clay County Ditch No. 58. Albright explained that the ditch system landowners have a right to comment on the proposal to add Austin land to the ditch system. At a future BRRWD meeting, the Board of Managers, BRRWD, will need to make a decision/Order regarding Austin's petition.

At the same time that the Board was working with Austin regarding his tiling project, landowners along CSAH No. 10 came forward with drainage issues/concerns about adding more water from Austin's tiling project to the ditch system. Landowners along the north CSAH No. 10 ditch felt they already have more water than they can handle, and they were concerned that Austin's tiling project would compound their flooding problems. Landowners on the south side of CSAH No. 10 were concerned about adding more water to County Ditch No. 55. After they waited nearly 10 years to realize the benefits from Project No. 27, Clay County Ditch No. 55-Improvement, the Minnesota Department of Transportation (MNDOT) finally added another culvert at a lower elevation through I-94 to improve drainage for the upstream end of the ditch system.

Albright discussed the negotiations that took place last fall regarding Austin's proposed project/petition. The main concern was the adequacy of the outlet on the north side of CSAH No. 10 for the water to go west through I-94 to County Ditch No. 55. The culvert in I-94 on the downstream end of the CSAH No. 10 north ditch is set too high and does not convey normal/low flows. The Clay County Highway Department conducted an elevation survey for the ditch on the north side of CSAH No. 10. The survey results showed that the north ditch should be cleaned. By the time we were ready to start the ditch cleaning, the weather became an issue and conditions were too wet to do any work. On 11/03/08, at a special BRRWD meeting, landowners talked about options for addressing the area's problems. Last winter, H.E. prepared a drainage plan that would address the outlet adequacy issue. Their plan is to install an 18" dia. culvert/flapgate west of Craig Halverson's driveway through CSAH No. 10. The ditch grade in this location limits the possible inlet culvert elevation to only about 0.8' lower than the existing north ditch of CSAH No. 10. The north ditch would be cleaned east from this culvert to 140<sup>th</sup> ST S. The Skauge driveway/culvert would be set on grade, but the rest of the 24" dia. driveway culverts will not be changed for now. The landowners have agreed to this plan.

Albright suggested that the group should discuss the issue of Austin's petition to add land to County Ditch No. 55 first. Austin already owns some property that is assessed to County Ditch No. 55 at the rate of \$30/acre. This benefit rate would also be applied to the additional land. Ellefson asked for comments from the audience regarding this issue.

David Schroeder asked how many acres Austin planned to add to County Ditch No. 55. Austin said it was between 110 and 120 acres. Schroeder noted that Austin just wants to add water from the drain tile, but surface water drainage will not change. Ellefson agreed that the surface drainage will still go north, and the tiling might even draw down some of the surface water. He noted that tiled land sometimes will have more capacity to absorb more water over time.

Sheila Sogge asked where the water in County Ditch No. 55 flows, and where the overflow water goes. She questioned how much water the ditch could handle. Ellefson said that County Ditch No. 55 was built to carry the 5-year event. He added that most of the ditch systems in the BRRWD are limited to this capacity because of cost considerations.

Merle McConnell didn't think that there would be more standing water after rainfall events because of the tiling drainage from Austin's land. Ellefson agreed that a 12" tile outlet shouldn't add a lot of water to the ditch system. He compared tiling to open ditch drainage methods. He thought that tiling has a metering effect on drainage that an open ditch can't provide.

Lori Pender questioned if Elmwood Township will be assessed for the CSAH No. 10 road ditch cleaning/culvert boring. Ellefson said that the ditch system benefit area will pay for the culvert work as a ditch system expense, and the north CSAH No. 10 ditch cleaning will be borne by the landowners owning

property along the ditch. Since Elmwood Township pays benefits to County Ditch No. 55, they would pay their share of the culvert costs in accordance with the Viewers' Report.

Dave Heng questioned the size of the proposed culvert. He questioned the purpose of boring a culvert under CSAH No. 10 at the proposed elevation. He didn't think it would provide much drainage. Albright explained that the culverts in I-94 north of the proposed culvert installation are set too high to drain water back to the west to County Ditch No. 55. At the 11/03/08 meeting, MNDOT representatives indicated that they would not lower the I-94 centerline culverts near the north line of Section 20, Elkton Township. Heng still questioned the cost effectiveness of the proposal to bore a culvert through CSAH No. 10 because it will be too high to do any good. Ellefson explained that the proposed culvert will be designed to carry the low flow/seepage water from Austin's drain tile through CSAH No. 10 instead of impacting the Voller property on the downstream end of the project. Heng thought that cleaning the ditch on the north side of CSAH No. 10 should solve the whole problem. He didn't see the benefit of boring a pipe through CSAH No. 10 in that location. Ellefson explained that the culvert will provide an outlet for the tile drainage to County Ditch No. 55 and will protect the Voller property for increased flows from Austin's drainage. Heng commented that in his opinion this proposal illustrates the drainage philosophy, "First water on, and last water off". The property on higher ground benefits more and pays less.

Ellefson suggested that the group focus the discussion on the issue of Austin's petition to add land to Clay County Ditch No. 55. He felt the pipe boring/ditch cleaning were separate issues. He asked if anyone was opposed to Austin's petition. Albright explained that Drainage Law requires land that uses a ditch must pay benefits to the ditch system. Water from Austin's tiling project will enter County Ditch No. 55 either through the proposed culvert in CSAH No. 10 or via the I-94 culverts (too high) on the downstream end of the north CSAH No. 10 ditch.

Brian Halverson suggested that a trap be installed on the south end of the proposed CSAH No. 10 culvert. Albright agreed that a flapgate would be needed to keep the water in County Ditch No. 55. He explained that County Ditch No. 55 would have to be nearly empty before the low flow from the north ditch would drain through the pipe.

Lori Pender asked what the project was estimated to cost. Albright said to bore the culvert through CSAH No. 10 will cost approximately \$20,000. Pender said that the landowners in her area will have to pay for a project they aren't going to benefit from. They'll have more water in Elmwood Township, and they'll have to pay for it. She said the project isn't an improvement for her area. She said currently at the downstream end of the ditch system, township roads have been frequently overtopped.

Albright mentioned that Ronald Johnk called the office regarding the proposal. His property is located near the ditch system outlet. He asked when the Board was going to quit draining more water down on him.

Craig Halverson asked about the referenced surveys. Albright said that H.E. and Clay County had surveyed the north CSAH No. 10 ditch in regards to the ditch cleaning/culvert boring, and the tiling company had done the survey that showed Austin's property wouldn't drain north to Clay County Ditch No. 58. Halverson questioned why the property wouldn't drain north. Howard Pender, Jr., explained the property is flat. Halverson felt that if Austin's surface drainage goes north to Clay County Ditch No. 58, so should the tile water.

Brian Halverson noted that approximately 35 years ago, the water from Austin's land flowed straight west in the township road ditch one mile north of CSAH No. 10. Ellefson said that the Board has discussed a proposal to clean the township road ditch (90<sup>th</sup> AVE S) west to Clay County Ditch No. 55 to provide an outlet for Austin's project. He noted the area contains a series of wetlands that could pose a drainage

problem. Also, Vollers are already experiencing drainage problems on the west end of their property, east of I-94, because the two lines of 51" x 31" x 168' reinforced concrete pipe arch (RCP-A) are set too high.

Tom Voller noted that he and his brother are not opposed to Austin's petition/tiling project. Voller explained that they pay benefits to Clay County Ditch No. 55, and he feels that the benefit his property in the N½, Section 20, Elkton Township, receives from County Ditch No. 55 is limited because the I-94 culverts at Station (Sta.) 00+44 are set too high. Water just stands on their land and cannot get to County Ditch No. 55. He felt that something should be done to help address the drainage problems for their property.

Tom Voller explained that when high flows are draining west, water won't take a 90 degree turn and go south in the proposed 18" dia. culvert through CSAH No. 10. Water will still stand on their property because the I-94 culverts 0.5 miles north of County Ditch No. 55 are 2' too high. However, they might be able to get some of the standing water along CSAH No. 10 to drain south via the proposed culvert to County Ditch No. 55, providing some relief for their property. Ellefson agreed that the purpose of the proposed pipe is to drain low flows. Voller also agreed that the proposed culvert should take care of Austin's tile drainage. He felt that without a culvert that is lower than the I-94 centerline culverts at Sta. 0+44, there would be nowhere for the low flow tile drainage to go. Ellefson felt that the tile line could stop seeping in time when the water table is lowered on Austin's land.

Ellefson explained that the culvert installation is a viable proposal if Austin's petition to add land is approved. He said that as hard as we may try, benefit/damage determinations will never be 100% fair. He added that any decision the Board of Managers makes has a 30-day appeal period. Appeals can be filed with the BRRWD and District Court for a Judge's review/decision, if needed.

Ellefson noted that there didn't seem to be much landowner opposition to Austin adding his land to the ditch system. He called for final comments regarding this issue. Following discussion, he announced that there would be a brief recess so landowners could review the revised benefit map to see how the proposed change would affect their property.

Howard Pender, Jr., asked if the property benefits would change for other properties due to the proposed 18" dia. culvert installation. Ellefson explained that the hearing wasn't being held to deal with a complete redetermination of benefits. This issue would be handled by a different process. If ditch system landowners feel that benefits should be redetermined, they could file a petition in that regard.

Brian Halverson noted that for 13 years, the upstream end of County Ditch No. 55 didn't receive the drainage benefits they should have because of the I-94 culvert that was set too high on the south side of CSAH No. 10. Ellefson agreed that situation illustrates that benefits are not always distributed equally, even though we try.

At 8:15 PM, Chairman Ellefson recessed the hearing to allow time for the landowners to review the ditch benefit maps.

At 8:30 PM, Chairman Ellefson called the hearing back to order. There was a discussion regarding individual ditch benefits. Total current project benefits are \$426,639.22. Albright reviewed how ditch system repair costs are distributed in accordance with the Viewers' Report. In the 1995 Viewers' Report, Elmwood Township has total benefits of \$2,110. If the 18" dia. pipe boring costs \$20,000, Elmwood Township's assessment for this work would be \$91.22.

Albright pointed out that the BRRWD will pay to install the proposed 18" dia. culvert through CSAH No. 10 as a ditch system expense, but we can't pay for the north ditch cleaning, as it is not part of the ditch system.

Albright gave a brief history of the proposal to clean the north CSAH No. 10 ditch. Last fall, after the 11/03/08 meeting, H.E. was authorized to prepare a plan for the ditch cleanout. The ditch would be cleaned to grade. The Skauge culvert would be reset and extended. The cost estimate for the work is approximately \$32,380. The BRRWD will pay \$20,000 of that amount for the boring the 18" dia. culvert through CSAH No. 10 as a ditch system expense. The County has agreed to provide staking, site inspection, and hauling of the spoil material. Margo Brady has offered to take the spoil. The remaining costs (approximately \$8,000) will have to be paid for by the adjacent landowners on the north side of CSAH No. 10. The work will start by the Voller property. Scott Skauge, Mike Jaeger, Margo Brady, and the Schroeder property would all benefit from the ditch cleanout. In the interest of starting the discussion, Albright suggested the following cost split based on the distance the ditch runs along their property. Vollers have 1,800' of ditch, which makes up 45% of its length; Skauge has 200', or 5%; Mike and Carol Jaeger have 1,250', or 30%, and Margo Brady has 725', or 20%. The Schroeder property (east of 140<sup>th</sup> ST) could pay 25% of the costs. Bill Austin agreed to pay 50% of Schroeders' share.

Ellefson commented that it would cost more to reset all of the driveway culverts than it would to clean a segment of the ditch along the properties. Maybe the criteria could be adjusted to reflect the actual benefit the landowner receives. Albright felt that it should be one of tonight's goals to reach an agreement about the north ditch project, including the pipe installation and cost sharing. An extended discussion followed.

Mike Jaeger suggested that the BRRWD could install the 18" dia. culvert and gate through CSAH No. 10, and wait with the ditch cleanout to see how the culvert functions.

Ron Voller stated that he and his brother would accept Albright's cost-share proposal. They would like to see the culvert in CSAH No. 10 set as low as possible. Tom Voller concurred, noting that since they were paying the largest percentage of the cleanout costs, he also wanted to see the culvert set as low as possible to get as much benefit as they can from the culvert.

Bill Austin and Dave Schroeder also agreed to the proposed split.

Scott Skauge agreed to Albright's proposal, but questioned who would get the most benefits from the proposed work.

Mike Jaeger agreed with reservations, saying that he hoped the plan would work.

Albright noted that Margo Brady was not present tonight, but the office mailed copies of the meeting information to her, and she is aware of the proposed cost sharing. Ellefson noted that Brady would have significant benefits from the ditch cleanout. Albright commented that some of Brady's outbuildings were built in low areas, and added that the previous owners also had water problems in this area.

Chairman Ellefson asked if there were any further questions or comments to come before tonight's hearing. There being none, he adjourned the hearing at 8:50 PM.

Respectfully submitted,

Bruce E. Albright, BRRWD Administrator