

BUFFALO-RED RIVER WATERSHED DISTRICT

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**CLAY COUNTY DITCH NOS. 36, 40 &60
MINUTES FOR REDETERMINATION OF BENEFITS HEARING
March 22, 2011**

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 (C.D.) Nos. 36, 40, and 60, including right-of-way (R/W) acquisition per M.S.A. 103E.021 on Tuesday, March 22, 2011, in the Comstock Community Center at 8:00 PM. BRRWD Managers attending were Gerald L. Van Amburg, Roger G. Ellefson, Curtis M. Nelson, and Breanna L. Paradeis Kobiela. Others attending included Bruce Albright, BRRWD Administrator, Erik S. Jones, Engineer, Wade S. Opsahl, Technician, and Justin Johnson, Technician, Houston Engineering, Inc. (HEI), and landowners: Kevin Olsgaard, Mark Anderson, Darcy Brandt, Robert Askegaard, Robert Brandt, Dean Nelson, Mark Askegaard, Darrin Brandt, and Brian Leiseth.

BRRWD Chairman Gerald L. Van Amburg called the hearing to order at 8:00 PM. He introduced the BRRWD Board, Viewers, and staff. He noted this hearing is a continuation of the redetermination process that was started on February 1, 2005.

Albright explained that most redetermination proceedings result in a continuation. If the Board elects to continue the hearing, the Comstock Community Center is available on Tuesday, April 05, 2011, at 8:00 PM. This would be an opportunity to address the concerns of any individuals who did not travel due to tonight's weather. The BRRWD would mail notifications to all pertinent landowners if this would happen. Albright commented that the current Viewers, Arvid Thompson, Lauren Peterson, and Eddie Bernhardson, are the same Viewers that started the redetermination process on February 01, 2005. Albright explained that Bernhardson and Peterson were unable to attend due to the inclement weather, and Thompson was unable to attend due to health issues. Albright stated he would present the Appraisers' report tonight, and the benefit maps were displayed around the room.

Albright noted that the meeting was being recorded to aid in the preparation of minutes, and that a sign-up sheet was available to record attendance.

Albright gave a brief history on the area drainage patterns around Clay C.D. Nos. 36, 40, and 60. He explained the BRRWD is aware of the drainage issues associated with the Sabin Coulee. Albright said there have been historical changes which have also influenced the drainage into the coulee. Albright said various ditch systems have been constructed to direct water to the west, outletting into the Wolverton Coulee or directly into the Red River of the North. Approximately 6-7 years ago, the BRRWD began receiving complaints about C.D. No. 36. Albright explained C.D. No. 36 was built around 1936 and that the benefits have never been redetermined. Albright was unsure of why the benefits were assessed as they were at that time. One example he gave was when work had been completed on C.D. No. 36, and the Board assessed a levy. Landowners that lived a mile north of Clay C.D. No. 11 questioned why they were being assessed for C.D. No. 36. Albright could not give them an answer other than it was how the benefits were determined at the time of construction. He mentioned that C.D. No. 11 was constructed around 1906 and Clay C.D. No. 40 around 1917. Albright explained it is not an easy task to determine area drainage patterns, but he feels the Viewers have done a good job. The goal tonight is to discuss landowner concerns regarding the area drainage patterns and the redetermination of benefits.

Albright presented the Viewers Report in accordance with M.S.A. 103D.315, and any other applicable statutes.

Lauren Peterson, Eddie Bernhardson, and Arvid Thompson were appointed as Viewers to redetermine benefits for Clay C.D. Nos. 11, 36, 40, and 60 by the Board of Managers, BRRWD, on August 12, 2002. We held our first meeting on April 9, 2003, at the Watershed office in Barnesville and took our Oath of Office. During April and May 2003, we held six more meetings at which time we extensively field reviewed the entire area in question. For our work, we looked at two different types of benefits: drainage and protection. Our first task was to define the outside boundary of the watershed, or that area that uses a particular ditch system as an outlet for drainage. Lands with drainage benefits can also be assessed for protection, as if a particular ditch intercepts flow that would naturally drain in a given direction, lands downstream of that point could be found to be protected. Our work also included defining a damage value for additional lands needed in the R/W acquisition process as defined by Minnesota Drainage Law, which states that all ditches must have a one-rod grassed bufferstrip.

The first hearings were held by the BRRWD on February 1, 2005. After these hearings, there were a number of areas we were asked to review. For a variety of reasons, including workload, emergencies, and floods, the BRRWD has not gotten back to finishing up these proceedings until tonight. In the interim, the BRRWD was petitioned for an improvement project on C.D. No. 11, and hearings to deal with that system were held in 2009, which finished that project.

The basis for our work is defined in Minnesota Drainage Law, M.S.A. 103E.315. Benefits may be assessed on state land, government property, public roads, railway, and other utilities. Statutes stated that Viewers shall determine the amount of benefits to all property within the watershed, whether the property is benefited immediately by the drainage project or can become an outlet for drainage, makes an outlet more accessible, or otherwise directly benefits the property. Benefits are based on 1.) an increase in the current market value of property as a result of the project; 2.) an increase in the potential of agricultural production as a result of the project; or 3.) an increased value of the property as a result of a potential land use. Benefits may be assessed only against the property for the exclusive use of the surface of the property. If a drainage system furnishes an outlet to existing drainage and benefits a property drained by an existing system, the job of the Viewers is to equitably determine and assess 1.) the benefits of the proposed drainage project to each tract or lot drained by the system; 2.) a single amount as an outlet benefit to the existing drainage system; or 3.) benefits on a watershed acre basis.

The area in question has a long history of agricultural production. As indicated by Albright, most of the ditches were built back in the early 1900s. Some have undergone repairs since then, but a redetermination of benefits, which looks at all of the ditch systems in question, has not been completed until now. For damages, as determined by the project engineer to install the required one-rod grassed bufferstrips, we used a payment rate of \$2,000/acre for all systems. While this may not reflect current market values, we considered the fact that the calculations include payment as measured from the existing R/W line, which partially includes land currently being used by the ditch system.

We feel it is important to note how drainage works in this area. Pre-settlement water from the area drained north (Sabin Coulee) into what is now the City of Moorhead. As the area developed, various ditch systems were installed, most in the early 1900s, to improve agricultural production. As those individual drainage systems were developed, they did not take into account what a neighboring system might have for benefits. In 2004, the BRRWD and landowners realized that the existing benefit areas/rates were not fair, thus prompting the redetermination.

One of the first systems affecting the area is along County Road (C.R.) No. 30 (Wolverton Road) and is called Wilkin C.D. No. 22. This ditch was improved in 1980. The next system (2 miles north) is Wilkin C.D. No. 5A, which was repaired and redetermined in 1987. Overflow water from that area can go north to Clay/Wilkin Judicial Ditch (J.D.) No.1 (0.5 miles south of the Comstock Road). J.D. No. 1 was improved in 1979, and the banks on the north side of the ditch are kept high enough to try to prevent overflow to the north. One mile north of the Comstock Road is Clay C.D. No. 53, which was improved by the BRRWD in 2001. This system does a good job directing water west, but includes benefits on the "Sabin Coulee", north to Clay C.D. No. 40 (5 miles).

Our guiding principles when we started this process were that all lands within the area, whether they are assessed to one or multiple ditch systems, all end up being relatively equal in terms of total benefits. We tried to keep everything between \$100 per acre to \$150 per acre. This was a difficult task, as some of the noted systems had benefits established before we started our work.

As we discuss each individual drainage system, we will give a more specific report for that system.

Clay C.D. No. 60. This is the smallest system of the four ditches for which we redetermined benefits. C.D. No. 60 begins at Wolverton Coulee in Section 16, Holy Cross Township. It then runs easterly for approximately 1.5 miles where it ends in the northeast corner of Section 15, Holy Cross Township. This drainage system does not handle water from the coulee area to the east. We used proposed benefit rates of \$100/acre, \$75/acre, and \$30/acre. Lands south of the ditch system also pay protection benefits to Clay C.D. No. 53. We found damages of \$19,220.00 for 9.61 acres of permanent R/W. We found 2,165.85 acres of private lands being benefited by \$140,710.00 as shown on Exhibit 1. We found \$90 in benefits for railroads as shown on Exhibit 2, and we found \$3,115.00 in benefits for state, county, and township roads as shown on Exhibit 3. The total benefits shown on Exhibits 1, 2, and 3, are \$143,915.00. Buildings were assessed benefits by using the County's market value. We then took one-half of 1% of that market value and multiplied it by the corresponding per acre benefit rate.

Clay C.D. No. 36. This ditch system does not handle water from the coulee area. The ditch begins at Wolverton Creek in Section 8, Holy Cross Township, and runs easterly for a distance of 3.5 miles, ending in the northeast corner of Section 11, Holy Cross Township. There's a ridge located in Section 12, Holy Cross Township, which prevents the Sabin coulee water from draining west. For this ditch, we used proposed benefit rates of \$100/acre, \$75/acre, and \$30/acre. A \$100/acre rate was used primarily for lands that drain directly into the system, \$75/acre for peripheral lands that utilize the system for drainage, and \$30/acre for lands that receive protection benefits and are probably also assessed to drain north into C.D. No. 11. We used the County's taxable market value times one-half of 1% times the benefit rate to establish benefits for all buildings. We found damages of \$19,660.00 for 9.83 acres of permanent R/W. The total damages are \$11,796.00. We found 3,361.35 acres of private lands being benefited by \$189,595.50 as shown on Exhibit 1. We found \$660 in benefits for railroads as shown on Exhibit 2, and we found \$7,180.00 in state, county, and township roads as shown on Exhibit 3. The total benefits shown on Exhibits 1, 2, and 3, are \$197,436.50.

Clay C.D. No. 40. We found R/W damages in the amount of \$24,940 for 12.47 acres of permanent R/W. We also found 11,228.89 acres of private lands being benefited, totaling \$529,708.30. We found \$660 in benefits for railroads, and \$9,137.75 in benefits for state, county, and township roads. Total benefits as proposed on Exhibit Nos. 1, 2, and 3 are \$539,506.05. The proposed benefit rates for C.D. No. 40 are \$100/acre (yellow), \$35/acre (green), \$30/acre (purple), and \$15/acre (gray). The area or watershed that drains into C.D. No. 40 includes the area identified as the Sabin Coulee, which starts to the south and ends at C.D. No. 40, where C.D. No. 40 intercepts this water and takes it directly west. It should be noted that C.D. No. 11N also takes some of the coulee water directly

west. There are culverts in 100th AVE that do allow some water to drain back to the south and into C.D. No. 40. The main drainage benefit is \$100/acre. Some lands to the north of 100th AVE are also assessed protection benefits at the rate of \$30/acre. Lands along the coulee, which are also assessed to C.D. No. 11 and C.D. No. 53, are at the rates of \$15, \$30, and \$35/acre. Buildings were assessed benefits by using the County's market value. We then took one-half of 1% of that market value and multiplied it by the corresponding per acre benefit rate. Some lands north of C.D. No. 40 could also be paying benefits to C.D. No. 33, which is located one mile north of C.D. No. 40

We would be happy to try to answer any questions that you may have regarding our work. If there are questions that arise from tonight's hearings and, if we are directed by the Board of Managers, BRRWD, we'd be glad to come out and either meet with you or field review your area again this spring to verify our determinations."

Chairman Van Amburg opened the floor for audience questions or comments, requesting that landowners who have questions should state their name for the record.

Clay C.D. No. 60: Albright noted that landowners Darcy and Harold Brandt stopped in at the BRRWD office to review the benefits map. They had concerns with 80 acres in the SE $\frac{1}{4}$, Section 9, Holy Cross Township, at the outlet of C.D. No. 60. Drainage from this area flows southwest directly into the Sabin Coulee. The Brandts propose to have this parcel removed from the C.D. No. 60 benefit area. The Brandts also have 80 acres in the E $\frac{1}{2}$ SE $\frac{1}{4}$, Section 9, Holy Cross Township, in which the benefit rate should be changed from \$30/acre to \$100/acre, reflecting the fact that the land drains directly into C.D. No. 60.

Albright asked if there were any further concerns with C.D. No. 60. Van Amburg added now is the time to address any concerns to the BRRWD so they can address them for the next meeting.

Clay C.D. No. 36: Albright referred to the current benefits map while explaining some benefits as they exist today. The Brandts' 80 acres in the SE $\frac{1}{4}$, Section 9, Holy Cross Township, should also be removed from the benefit area of C.D. No. 36 since it drains directly into the Sabin Coulee. The Brandts currently have a benefit rate of \$100/acre on C.D. No. 36. This rate could be changed to the protection rate of \$30/acre since it drains south into C.D. No. 60.

Albright asked if anyone else had any concerns. Landowner Kevin Olsgaard had a concern with his benefit rates since there is an overlap of the various drainage systems. Opsahl documented the concern for further evaluation.

Albright mentioned there will be a map available at the next hearing that will show landowners all the ditch systems they would be assessed for and the benefit rate for each. The group continued to discuss the overlapping of the various drainage systems.

A landowner asked if the Viewers try to keep a sense of equivalency regarding total ditch assessments on individual parcels. Albright stated the goal is to keep the drainage and protection benefits relatively equal between landowners. Opsahl mentioned it is common for the Appraisers to use an estimated drainage benefit rate of \$100/acre and a protection benefit rate between \$20-\$40/acre. He said in many situations a landowner will be assessed for both drainage and protection.

Van Amburg asked which sections needed to be re-evaluated due to the overlapping benefits. Albright identified Sections 2, 3 and 4, Holy Cross Township. He said the Viewers need to look at the rates landowners are being assessed on C.D. Nos. 11 and 36.

Van Amburg asked if there were any further questions or concerns with C.D. No. 36. There was nothing further at this time.

Clay C.D. No. 40: Van Amburg asked if there were concerns pertaining to C.D. No. 40. Landowner Mark Anderson asked if the BRRWD has jurisdiction over the Sabin Coulee or if it is a private ditch. Albright stated it is a private ditch and believes it is also Minnesota Department of Natural Resources (DNR) public waters. A landowner asked Albright to explain what DNR public waters meant. Albright stated a DNR permit is required in order to do anything within the Sabin Coulee. Van Amburg mentioned there are more restrictions when it is DNR public waters. Anderson asked if the buffer strips are included for the Sabin Coulee or just the ditches. Van Amburg confirmed it is just the ditches.

Van Amburg asked if there were any further concerns.

Landowner Darrin Brandt asked if the R/W rate remained the same from 2005 when the redetermination process for these ditches first began. Albright stated this was discussed, and the Viewers were cognizant of the land sale values. Albright stated the original R/W for these ditches was never allocated properly. Erosion and ditch maintenance over time has increased the width of these ditches to the point that the R/W is now in the middle of the ditch. Van Amburg stated the R/W being set now is for the buffer strips plus the minimal remaining R/W which had been purchased in the past. Albright mentioned the concern will be noted and addressed with the Viewers.

Van Amburg asked if there were any additional concerns.

Albright stated the hearing will reconvene on Tuesday, April 5, 2011, at the Comstock Community Center at 8:00 PM. A reminder postcard will be mailed to notify landowners of the continuation hearing.

Van Amburg mentioned there will not be a final order until after the next Board meeting. He also stated there is a 30-day appeal period after the final hearing.

Anderson asked when he could expect the seeding to be completed as he noticed last year it was staked but never seeded. Opsahl stated the plan is to re-stake and seed this spring before farmers are in the fields.

Van Amburg asked if there were any more questions on the process.

Olsgaard stated he has 80 acres that does not drain into C.D. No. 40. His cousins, Brian and Tim, also have a parcel that drains similar to his. Albright noted that he will have the Viewers re-evaluate this as well.

Van Amburg asked if there were any more concerns. There being none, Ellefson made a **motion** to continue the hearing on 04/05/11. **Seconded** by Paradeis Kobiela. **Approved.**

Chairman Van Amburg adjourned the hearing at 9:00 PM.

Respectfully prepared and submitted by,

Bruce E. Albright, BRRWD Administrator