

BUFFALO-RED RIVER WATERSHED DISTRICT

BARNESVILLE, MINNESOTA 56514

1303 4th AVE NE

PHONE 218-789-3100

Website: www.brrwd.org

BECKER COUNTY DITCH NO. 5 PETITION HEARING MINUTES June 21, 2011

In accordance with Minnesota Statutes Annotated (M.S.A.) 103E.227, and any other applicable statutes, the Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a hearing concerning a petition for impounding drainage system waters on Becker County Ditch (C.D.) No. 5 on Tuesday, June 21, 2011, at 8:00 PM in the Community Center, Audubon, MN. BRRWD Managers present were Gerald L. Van Amburg, Roger G. Ellefson, Curtis M. Nelson, and John E. Hanson. Others attending included Bruce E. Albright, BRRWD Administrator; Erik S. Jones, Engineer, Houston Engineering, Inc. (HEI); John Voz, Ducks Unlimited (DU); Shawn May, United States Fish and Wildlife Services (USFWS); and landowners: Barrett Sharp, Clifford Alder, Jake Hein, Josh Prussia, Bruce and Jean Hein, Terry Kohler, and Philip Kinney.

BRRWD Chairman Gerald L. Van Amburg called the hearing to order at 8:00 PM and introduced the BRRWD Board and Staff. He explained that tonight's hearing was for a petition filed by the Detroit Lakes Wetland Management District (WMD)/USFWS to restore a drained wetland basin on Becker C.D. No. 5 in Sections 21, 22, 27, and 28, Audubon Township, Becker County.

BRRWD Administrator Bruce Albright distributed a sign-up sheet and advised the audience that the meeting was being recorded to aid in the preparation of minutes. He noted that members of the audience having questions should state their name for the record.

Albright gave a brief history of Becker C.D. No. 5. He explained the State of Minnesota recognizes this as a legal drainage system in accordance with Minnesota Drainage Law, Chapter 103E. The benefitting landowners are the actual owners of the ditch system. The BRRWD acts as the ditch administrator, meaning they manage/maintain the ditch for the benefitting landowners. Albright noted that the benefit area was enlarged in 1989 after a redetermination of benefits was completed.

Albright explained the petition process when a request is filed with the BRRWD. The Board of Managers authorized Erik Jones, Engineer, HEI, to evaluate possible impacts, if any, that the proposed project might have on the ditch system. The BRRWD conducts a hearing once the Engineer's Report has been filed. When deciding whether to move forward with the project, the Board considers all testimony presented at the hearing. Once a decision has been reached, there is a 30-day appeal period, in which any landowner who opposes the project can appeal to the District Court.

Jones presented the Engineer's Report. He described the location of the proposed project while referring to a map displayed overhead. He explained that Jay Lake, which has a 12" diameter (dia.) outlet to control water flow, is located nearby and upstream of the proposed structure. Jones noted that at the location of the proposed impoundment, there is approximately 3 square miles (sq. mi.) of drainage into Becker C.D. No. 5. He explained the proposed impoundment would be more effective for wetland enhancement versus flood control. There is a dam approximately 800' downstream from the proposed structure, located on Todd Branden's property, which would be more effective for flood control, especially during larger flood events. Jones explained there are two options for constructing the spillway: an earthen embankment or a sheet pile wall. The spillway would be 10' wide with 3H:1V side

slopes. The top of the dam will be at elevation 1343 with the spillway crest at elevation 1340. The sheet pile notch option will need to have riprap installed in a plunge pool area on the downstream side of the notch.

Landowner Terry Kohler questioned how the water would flow into the impoundment area. Jones explained in more detail the water flow in this area. Since it provides little flood control, Kohler asked the purpose of the proposed structure. Jones explained that the USFWS is trying to improve the wildlife habitat and biodiversity by increasing the wetland pool approximately 2'. Shawn May, USFWS, confirmed that the wetland is too shallow and completely overtaken by cattails and rushes. He said increasing the water elevation would help enhance the wetland for wildlife.

Jones asked May if they were still considering the sheet pile option rather than the earthen embankment. May confirmed that they will likely choose the sheet pile option, since there will be water on both sides.

Manager Roger Ellefson asked Jones if there were any USFWS's lands located around the proposed structure. Jones stated it is all privately owned land. Albright noted that the USFWS has already obtained the required easements from the four landowners: Todd Branden, Jay and Patricia Meacham, Bruce and Jean Hein, and Kohl Skalin.

Kohler questioned if the proposed project would increase water levels on Jay Lake. Jones stated there is enough difference in elevation from Jay Lake to the impoundment that there should be no effect on the lake. Kohler commented that during spring flooding, it backs all the way up from this area to Jay Lake. Jones reassured Kohler that with an elevation difference of approximately 8', the project site should be low enough not to affect the lake.

Van Amburg asked if there were any further questions.

Jones presented his findings and recommendations as follows:

- 1) The principal/emergency spillway for the structure will consist of either a rock channel or a notch in a sheet pile wall. A rock channel spillway would consist of a 10' wide bottom width and 3H:1V side slopes. The crest of the spillway will be at elevation 1340. The spillway should be constructed in excavated ground and should not be constructed on fill. If a sheet pile wall is used instead of an earthen embankment, a 10' wide notch with 3H:1V side slopes should be provided in the sheet pile wall, and rock riprap should be provided at this location on the downstream side of the notch.
- 2) The embankment or sheet pile wall should be constructed with a top elevation of 1343.
- 3) The Branden Dam structure located downstream has a riser with stop logs. The stop logs should be removed during construction to allow drier conditions during the construction of the proposed structure.
- 4) USFWS should construct the embankment with clay material. All organic soil should be removed from the footprint of the proposed embankment prior to dam construction. A geotechnical review of the site has not been conducted and an embankment design for the structure has not been completed.
- 5) The USFWS should obtain easements for land that may be affected by the wetland restorations.
- 6) Anticipated reductions in peak discharges as a result of this project are expected to be small. Outflows from the proposed site are already largely controlled by the downstream dam. During larger flood events, the Branden Dam exerts greater control on discharges in the ditch system.
- 7) Based on the current design, the project should not impair the utility ditch system. The downstream existing impoundment structure exerts control on the system for large flood events.

Van Amburg asked if there were any questions.

Landowner Bruce Hein owns property that would be affected in the northwest corner of the impoundment site. His first concern was about a road along his property which allows access into the impoundment site. He explained this road is over a half-mile long, and his family has been maintaining this roadway for over 60 years. However, it seems everyone (State Agencies, BRRWD, etc.) uses this road for access to the privately owned dams in the area. He is concerned because it is a significant financial burden to repair the road, and no one has offered to help with these costs, even though they are using the roadway. This roadway is the only way for Hein to access his crops, which is difficult if the road is in poor condition. Hein asked that the BRRWD and other agencies needing access to these dams find an alternate route.

Secondly, Hein requested that the dams be cleaned regularly, otherwise, the water backs up at least 8'-10' into his field, causing damages. He also noted that there were no easements when the dam was originally built, or when it was rebuilt. He said there have been damages to his family's crops since the construction of these dams.

The third concern was about the dam on Marshall Lake. The Marshall Lake dam needs to be cleaned regularly otherwise it flows over the dam and washes out the shoreline along his property. Hein also noted a concern regarding the phosphorus content in St. Clair Lake.

Albright noted Hein's concerns. He will notify Wade Opsahl, HEI, and Roger Lundberg, BRRWD beaver trapper, to park and walk to the dam. This would eliminate the BRRWD from using the road; however, this would not keep other agencies from using it. Albright explained that he would request Opsahl to complete periodic inspections of the dams. He was not sure who would be accountable for cleaning the dams when needed, but he thought it would likely be the responsibility of the person who built it. Albright said that he would need to review the Marshall Lake Dam maintenance agreement. He is unsure of the BRRWD's role.

Van Amburg questioned the size of the Marshall Lake outlet. Jones stated it is a 24" corrugated metal pipe riser with a 15" outlet pipe. Albright noted that the United States Department of Agriculture and the Becker Soil and Water Conservation District (SWCD) designed the Marshall Lake dam in 1966. This dam is large enough that it is recognized by the Minnesota Department of Natural Resources (DNR), which means there should be annual inspections. Van Amburg suggested further research to determine who is responsible to complete the inspections for this dam. Albright commented that the DNR should have jurisdiction and needs to be notified if landowners are manipulating lake levels for their benefit.

Landowner Josh Prussia questioned if the dam on the east side of County Road (C.R.) No. 11 is on Mark Green's property. Jones confirmed that it is. Prussia asked if the water flow to the Waterfowl Production Area (WPA) in Section 15, Audubon Township, Becker County, would be affected/inhibited by this potential retention site. May explained where the feed is for the WPA. He noted the retention site would not affect the water flow to the WPA.

Van Amburg asked if there were any further questions or comments.

Kohler questioned whose responsibility it was to clear a beaver dam located on Jean Brown's property. Albright explained that the BRRWD is responsible for maintenance, as an expense to the ditch/project, if the beaver dam is located on a Watershed District ditch/project. Albright will notify Opsahl regarding the concern.

Van Amburg stated that there have been some concerns noted for further evaluation, but there has been no testimony against the project. He questioned the other Board members to see if this was their understanding as well. They confirmed that to be correct.

Kohler commented that he thought there is enough wildlife and water. He has land adjacent to the WPA, and he feels the USFWS have been difficult to work with. Kohler is concerned because they keep backing more water onto his property.

Van Amburg asked again if there were any further questions or comments.

Ellefson questioned if the USFWS would repair Hein's road, if they use this roadway during project construction. May said the USFWS would repair the road prior to beginning construction. They would prefer to find an alternate road to the area, especially while transporting the heavy equipment. However, Hein's road may be the only way to go. Ellefson asked Hein if he knew of an alternate route to enter the project area. Hein stated he is not worried about the use of the road during construction, since the USFWS will repair it first. His concern is with the continual use of the road in the future. To date, no one has offered to contribute to the cost of the repairs. Hein feels that Todd Branden should supply an access to the area since the project is on his property.

Albright noted that the BRRWD could access the area via the right-of-way (R/W) along Becker C.D. No. 5. He said this route is not ideal due to the wet, low land and because it is not the most direct route, but it would be feasible. Hein stated there is a lot of water flowing through C.D. No. 5, which was channelized along his road. The ditch is getting deeper (10'-12') below the surface of the road and will most likely cause significant issues at some point. Albright stated the road needs to be evaluated with Hein to determine if the ditch is causing a problem. The ditch system would be responsible for the cost of repairs if it were impacting the road.

Van Amburg asked if there were any further questions/concerns.

A landowner came to the meeting near the end. Jones summarized what had been discussed while referring to the map displayed overhead.

Van Amburg asked again if there were any questions/comments.

Landowner Amer Froyland questioned if the USFWS would be responsible for the project construction and maintenance costs. Van Amburg confirmed this to be correct. Froyland then asked where they get the funding to construct projects of this nature. May stated the USFWS receives Federal funds to complete these types of projects.

Van Amburg asked once again if there were any questions.

A landowner asked what the process was to install the new structure. Van Amburg stated the stop logs would be removed from Branden's dam to decrease water levels at the construction site. Jones confirmed this and explained sheet pile would be driven into the ground. The sheet pile would have a notch for flow into the spillway. The spillway would act as the principal and emergency spillway. Van Amburg commented that this would set the spillway elevations. Albright noted some benefits of sheet piling: it would last longer, and it is less prone to beaver dam obstructions. The landowner asked if there was a product that could be applied to increase the longevity of the sheet piling. Jones confirmed there is a product that could be applied once the sheet pile is in place.

Van Amburg asked if there were any more questions or comments. He then asked how the Board would like to proceed. He acknowledged there are some issues to address, but no one has stated that they are completely against the project. Ellefson was satisfied by the agreement concerning Hein's road. He would be ready to make a motion in favor of the project. Kohler stated he was not in favor of the project. He restated that he felt there is enough water and wildlife. He is frustrated with the water continually backing onto his land, causing crop loss. He commented that he is constantly moving water on his land with a scraper. Van Amburg commented that the project would be creating a little more wetland area, but that the project should not inhibit the ditch's function.

Froysland asked who would pay for the road repair. Van Amburg said the USFWS would pay for the repairs of the road during the project construction.

Albright noted that one BRRWD Manager was not in attendance. He felt it would be best to update her on tonight's meeting before making a motion. Van Amburg confirmed they would wait until the BRRWD meeting on Monday, June 27, 2011, at 7:00 PM, before moving forward.

Van Amburg asked if there were any further questions or comments. Being none, he adjourned the hearing at 9:05 PM.

Respectfully prepared and submitted by

Bruce E. Albright, BRRWD Administrator