

BUFFALO-RED RIVER WATERSHED DISTRICT

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BUFFALO-RED RIVER WATERSHED DISTRICT Clay County Ditch Nos. 9, 32, and 33 Incremental Implementation of Buffers/Side Inlets April 18, 2013

In accordance with Minnesota Statutes Annotated (M.S.A.) 103E.021 and any other applicable statutes, the Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a hearing on Thursday, April 18, 2013, at 7:00 PM at City Hall, Moorhead, MN, for Clay County Ditch (C.D.) Nos. 9, 32, and 33. BRRWD Managers attending were Gerald L. Van Amburg, Roger G. Ellefson, John E. Hanson, Peter V. Fjestad, Curtis M. Nelson, and Breanna L. Kobiela. Others attending included: Bruce E. Albright, BRRWD Administrator, Erik S. Jones, Engineer, and Wade S. Opsahl, Technician, Houston Engineering, Inc. (HEI); Arvid Thompson and Eddie Bernhardson, Viewers; Sara Maninga, Minnesota Department of Transportation (MNDOT); and landowners: Tim Leiseth, John Ready, Mark T. Anderson, Leland Vette, Hal Sillers, Curtis Lammers, Kathy Duval, Marc Nokken, Ralph Krabbenhoft, Kevin Krabbenhoft, James Nelson, Jimmie R. Nelson, Brian Lieseth, Roy Klinger, Marge Klinger, Jim Baker, Dave Karlstrom, Cindy Karlstrom, Mark Beedy, Dan Rosenfeldt, Mark Nyquist, Daniel Moore, Roger Ball, Orlen Valan, Jr., and Robert Nyquist.

BRRWD Chair Gerald L. Van Amburg called the hearing to order at 7:00 PM and introduced the BRRWD Managers, Staff, and Viewers. BRRWD Administrator Bruce Albright announced that the proceedings were being recorded to aid in preparation of the minutes. He asked that anyone giving testimony please state their name for the record. There was also a signup sheet circulated to record attendance. He also noted that all of the information presented at tonight's hearing (maps, etc.) can be found on the BRRWD's website at www.brrwd.org.

Albright gave a brief history of Clay C.D. Nos. 9, 32, and 33. Clay C.D. No. 9 is located along the south side of County Road (C.R.) No. 12, commonly referred to as the Convent Road. One mile south is Clay C.D. No. 32. Two miles south of that is C.D. No. 33, which is a smaller ditch that runs through the railroad tracks and conveys water west. All of these ditches have been in place since the early 1900s. At that time, most of the Red River Valley was in serious need of drainage. If someone were to look at a map of the Watershed District, they would see County Ditch systems approximately every mile, beginning at Georgetown, and continuing south. These ditches were administered by the Clay County Board of Commissioners until about the year 2000, when they transferred the ditch systems to the BRRWD. When repair or maintenance is needed on a County Ditch system, the benefitted landowners are assessed for the costs, according to the most current Viewers' Report/benefit map. The BRRWD is the drainage authority, and we administer the ditch system according to Minnesota Drainage Law, but the benefitted landowners own the ditch.

The BRRWD received a petition from the landowners on Clay C.D. No. 32 in 2011, asking for a ditch repair. It was at this time that landowners reported that the existing benefit map from the 1900s did not accurately reflect the current benefit areas. The BRRWD held a meeting regarding Clay C.D. No. 32 on 04/12/12, followed by another meeting on 05/09/12, which included all of the landowners from Clay C.D. Nos. 9, 32, and 33. At that meeting, it was unanimously decided that the BRRWD should redetermine the benefits for all three systems. They also discussed possible State funding to help with the repairs. On 05/14/12, the Board made an order to redetermine the benefits. They appointed Viewers Thompson, Peterson, and Bernhardson.

In September 2012, the BRRWD applied for a Minnesota Board of Water and Soil Resource (BWSR) Conservation Drainage Practices grant to help with the costs of repairing the ditches. In January 2013, we

received the grant for \$333,590 to fund the installation of one-rod (16.5') grassed buffer strips on the top side of the ditch to keep sediment out of the ditch. The grassed buffers reduce future repair costs and also improve water quality. The grant funding will also be used to install gated pipes at certain locations along the ditch system to reduce bank and field erosion at the inlets. The goal is to keep the soil on the farmer's fields and out of the ditch.

Erik S. Jones, Engineer, HEI, stated that they have broken down the acreages as far as the amount of new right-of-way (R/W) needed according to cropland or non-cropland. Aerial photographs helped determine how much land will be needed. Clay C.D. No. 9 has a total 84.2' of existing R/W measured from the section line. In some areas, no additional R/W is needed. In other areas, 15'-20' of additional R/W is needed. In the areas where additional R/W is needed, we have noted what is cropland and non-cropland. There is a total of 1.8 acres of non-cropland and 10.1 acres of cropland. A landowner asked if this R/W is temporary or permanent. Jones answered that this is permanent R/W that we need to install the buffer strips. There is also an extra one-rod of temporary R/W, which is additional land they will use during the construction of the one-rod (16.5') grassed buffer strips and installation of the side inlets. The needed temporary R/W is 13.6 acres.

Clay C.D. No. 32 was improved in 1953. This ditch has a total of 33.0' of existing road R/W measured from the section line. In some areas, the R/W carries from 66.0'-122.6'. There is 0.8 of an acre of non-cropland and 0.1 of an acre of cropland, for a total of 0.9 acres of new R/W needed. We will also need the temporary R/W to level the spoil and install inlets, totaling 12.4 acres. James Nelson asked if the numbers were approximate or exact. Jones answered that they should be exact. There are a few areas where we already have enough R/W, that just needs to be reseeded. The minimum buffer requirement is 16.5' as measured from the top of the slope towards the field.

Clay C.D. No. 33 has between 0'-38.9' of existing R/W as measured from the section line. In some areas, 33'-75' of additional R/W is needed. There are 8.5 acres of non-cropland and 5.3 acres of cropland, for a total of 13.8 acres. The needed temporary R/W totals 6.9 acres. Van Amburg asked if any of the land referred to as 'non-cropland' was being farmed now. Jones clarified that 'non-cropland' is land that is not being farmed, it is grass or part of the ditch. We are just trying to get what is required by statute – the one-rod (16.5') grassed buffer strips at the top of the ditch. He noted that everything is referenced off the section line. The land will still be for private use, the easement's prescriptive use is for drainage.

Albright asked if there were any questions at this time. He added that all the information tonight is available on the BRRWD's website, as referenced earlier. No questions were noted.

Viewer Eddie Bernhardson presented the Viewers' Report summary.

In accordance with M.S.A. 103E.021, and any other applicable statutes, we herewith submit the following Viewers' Report:

Damages Statement

This report covers the determination of damages for the incremental implementation of vegetated ditch buffer strips and side inlet controls for the referenced drainage systems, which is being completed by BRRWD in accordance with Minnesota Drainage Law. Our current assignment was to determine damages for the project, in accordance with the R/W acreage listed in the reports filed by HEI. As noted back on 5/09/12, the BRRWD held an informational meeting to discuss the pending ditch system repairs. Landowners noted problems with the benefit areas. Also discussed at the time was the possibility of obtaining a BWSR grant to assist with installing the one-rod (16.5') grassed buffer strips that are required by law when a redetermination is done. We were appointed to perform our duties by the BRRWD on 5/14/12 in accordance with M.S.A. 103E.305, 103E.311, 103E.315, and 103E.321.

These three systems are the last of a series of legal drainage systems south of Moorhead that have not had their benefits brought current since they were originally built, or subsequently revised, and are outdated.

We (Lauren Peterson, Arvid Thompson, and I, Eddie Bernhardson) were appointed by the BRRWD to determine the benefits and damages for the proposed project. We took our Oath of Office and held our first meeting on September 6, 2012. We filed our reports for damages (R/W) with the Board of Managers, BRRWD, (drainage authority) on March 25, 2013.

Keep in mind, this is a two-step process, due to the BWSR grant. The first step will be acquisition of the necessary R/W for the required one-rod (16.5') grassed buffer strips. We were informed that after this is completed, the R/W will be staked, so the repairs can be hopefully completed this summer. We will continue our work on the redetermination of benefits and will come back this fall to complete that process.

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. LiDAR data
5. Sales data from the Clay County Assessor's Office
6. Visual inspections of the project properties
7. Market values as determined by the Clay County Assessor's Office

As already noted, the R/W tables that we were furnished for each individual system have a breakdown of the R/W needed on a per 40 acre parcel basis. Their information includes a column showing the existing ditch R/W, the additional R/W needed to install the one-rod (16.5') grassed buffer strips, with this area broken into two categories for cropland and non-cropland. Their tables also include acreages needed for a 2013 crop year (temporary) R/W needed for construction. On all ditch systems, a second one-rod strip (16.5') of additional R/W will be acquired/used for the 2013 construction season. On one side of the ditch, this amounts to 0.5 acres per 40 acre parcel, or two acres per mile.

We propose three different damage rates for acquiring this R/W. For the area, where the ditch has expanded beyond the permanent R/W on record, this area currently being used by the ditch, and is not cropped, we propose a damage/payment amount \$1,000 per acre. In most cases, this area has been taken over by the ditch, maybe even over the past 100 years, and this is common with most legal drainage systems. Erosion, past repairs, sloping, etc., may have widened these ditches beyond the R/W of record.

Our next area is land that is currently cropped and is needed to install the required one-rod (16.5') grassed buffer strips beyond the existing ditch R/W. For these cropland areas, we contacted the Clay County Assessor's Office, who keeps a record of all County land sales. For Kurtz Township, between the years of

2009-2012, there were 11 recorded transactions, ranging from a low of \$3,534 per acre to a high of \$5,814 per acre. For the new permanent R/W that will no longer be able to be farmed, we propose a fair damage rate of \$5,000/acre. We understand that stakes denoting these areas will be placed so the bufferstrips are kept in place, and this "permanent" R/W will not be available in the future for cultivation.

The last damage rate pertains to the "temporary" R/W, which after tonight if ordered by the Board, will be used during the 2013 construction/growing season, to allow the contractor to do the required ditch cleaning, side inlet installations, placement of spoil, spoil leveling, and seeding. We set a rate of \$250/acre for these areas. After 2013 construction, these areas will revert back to cropland, and contractors are to restore this area so it can be used for future crop production with normal tillage equipment. Our rate is based on an average annual rental rate.

We would urge the Board and affected landowners to proceed with this part of the process. The BWSR grant funds will offset direct landowner costs to get something done with these ditches that may/would have become mandatory at some point in time. The ditch system should take advantage of this opportunity.

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.

Albright clarified the area showing the existing R/W on a map, measured from the section line, is what the BRRWD has acquired at in the past. He explained that the ditch is now using more land than the system had acquired. This land is non-crop, and is valued at \$1,000/acre. The project will clean up these discrepancies. The new area is the land that needs to be acquired for the one-rod (16.5') grassed buffer strips. They are figuring that to be valued as cropland at \$5,000/acre. And then we have to take another temporary one-rod (16.5') for construction for this season only, that goes back to the landowner's use when construction is done, and the value for that land is \$250/acre.

Sara Maninga, MNDOT, asked what the \$1,000/acre non-cropland value is based on. Viewer Bernhardson answered that this land was not farmable by either design or erosion, and the BRRWD felt that the landowners should be paid something for this land. The \$1,000 amount is an arbitrary value that needed to be placed on this unfarmable land. It's part of the ditch right now, and we do not know how long the ditch has used it. Van Amburg added that the value for this land is arbitrary. Bernhardson added that, excluding the last five years, land values have stayed rather consistent in this area for some time. Not knowing how long this land has been part of the ditch, it is difficult to determine when it was actually acquired by the drainage system.

An audience member asked if the landowners would receive 1099s with the payments. Albright answered that he does not know what their tax rate is, but he did confirm that the landowners would get 1099s. When the new R/W is in place, the landowners should check with their County Assessor to have their taxes adjusted to reflect that this is ditch R/W now and not cropland. The landowner questioned if we did that automatically. Albright noted from past experience that they do not automatically adjust the tax rates. Marc Nokken reiterated that it is the assessor that you have to speak to, because you still own the same acreage, but they will assess it as having a different value.

Roger Ball asked Jones if there will be quite a bit of dirt to remove. Jones answered only from the ditch bottom. Nothing will be done to the side slopes. Ball asked about the extra one-rod that would be used for one year. He questioned if they were going to pile the dirt on that area until the year is up. Ball asked if one-rod is enough room to spread the spoil. Wade Opsahl, Technician, stated that most of that spoil will be used to cover the inlet culverts. Ball mentioned that it seems awful tight to him. Opsahl said that they will actually have 33' to work with (16.5' + 16.5').

Opsahl said that they would clean the entire ditch back to the original clay grade and install inlet pipes to reduce erosion and to keep the water in the ditch when it rains. Albright added that not every drain may have an inlet pipe, as some areas are too big, and some are too shallow. Opsahl added that they have to make that call when they are out in the field. Tim Leiseth added that in the past, it was up to the landowners where the pipes should be. Opsahl added that they would like to see pipes in wherever they fit because they help reduce erosion and breakouts. Albright stated that if landowners have comments regarding where they would like to have inlet pipes installed, now would be the time to let us know. During installation, we will also have a field inspector, that will meet with each landowner regarding your inlet needs.

Daniel Moore asked about lowering the railroad bridge on Clay C.D. No. 33. Albright said that will be handled through a separate process. It may be considered a repair. Grant funds cannot be used for this work.

Van Amburg asked if there were any other questions. There were none. Albright said that the next step would be for the Board to make the Order to move forward with the project, which includes the R/W acquisition and landowners' payments.

Bob Nyquist asked a question regarding who would be responsible for accidents that occurred on easement land. Manager Ellefson answered that farm liability would cover that because the land is still the landowner's property. It has a ditch easement on it, but it is still their property.

Motion by Nelson to adopt the Damages Viewers' Report and proceed with project development. **Seconded** by Ellefson. **Approved.**

At 8:00 PM, Chair Van Amburg adjourned the hearing.

Respectfully prepared and submitted by,

John E. Hanson, BRRWD Secretary