

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

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## **PROJECT NO. 77, CLAY COUNTY DITCH NO. 51-LATERAL 3 MINUTES FOR FINAL HEARING August 27, 2015**

Pursuant to Minnesota Statutes Annotated (M.S.A.) 103E.335, and any other applicable statutes, the Board of Managers, Buffalo-Red River Watershed District (BRRWD), held the Final Hearing for the development of Lateral No. 3 to Clay County Ditch (C.D.) No. 51 on Thursday, August 27, 2015, at 7:00 PM in the Moorhead City Hall Council Chambers. BRRWD Managers present were: Gerald L. Van Amburg, Peter V. Fjestad, Catherine L. Affield, Breanna L. Kobiela, Mark T. Anderson, Troy E. Larson, and John E. Hanson. Other attending included: Bruce E. Albright, BRRWD Administrator, and Erik S. Jones, District Engineer, Houston Engineering, Inc. (HEI); Rodney Knutson, Rick Battles, and Ron Ringquist, Viewers; Tami L. Norgard, Attorney, Vogel Law Firm; Zenas Baer, Attorney, Zenas Baer Law Office; Roger Minch, Attorney, Serkland Law Firm; Justin Knopf, Minnesota Department of Transportation (MNDOT); Lois Minch (Petitioner), Warren Brendemuhl, Michael Hagen, Branden Hagen, Gary Grugel, Frank Gross, and Harlan Sauter.

BRRWD Chairman Gerald L. Van Amburg called the hearing to order at 7:00 PM. He announced that the proceedings were being recorded to aid in the preparation of the minutes, and passed around a sign-up sheet to record attendance. He introduced the BRRWD Managers and staff.

BRRWD Administrator Bruce E. Albright provided a brief history of the proposed project and the project development process. The proposed project consists of establishing Lateral No. 3 to Clay C.D. No. 51. The preliminary hearing (M.S.A. 103E.261) for the proposed project was held on 01/05/15.

Roger Minch, Attorney for Minch Family LLLP, Petitioner, distributed a book outlining the project development history and the goals of Project No. 77. A petition for a similar project, Project No. 74, was filed in 2012. The cost-benefit ratio showed it was not feasible to construct the project as originally designed. Minch explained that Project No. 74 was redesigned by adding a culvert to drain adjacent property in Section 33, Kragnes Township, which brought more land into the project area and increased the benefits. This initiated Project No. 77, and Minch referred to M.S.A. 103E.341 in regards to establishing the project by the BRRWD.

Erik S. Jones, HEI, presented the detailed Engineer's Report. Using a map displayed on the overhead projector, he began by describing the existing conditions in the proposed project area. Runoff from the NW $\frac{1}{4}$  and the S $\frac{1}{2}$  of Section 28, Kragnes Township, (east of the ridge) must flow east along the north line of the SE $\frac{1}{4}$  and then northwest along the west side of the Burlington Northern/Sante Fe (BNSF) Railroad tracks. The water continues east through two 34" x 30" reinforced concrete pipes through the railroad tracks and Trunk Highway (T.H.) No. 75, then passes through a 36" dia. corrugated metal pipe (CMP) through County Road (C.R.) No. 99, where it flows east through a 60" dia. reinforced concrete pipe (RCP) through T.H. No. 75, running along the north side of C.R. No. 99, finally flowing through a 60" dia. CMP field entrance culvert into Clay C.D. No. 51-Main.

Lack of maintenance along the existing east drainage route makes conditions worse for the NW $\frac{1}{4}$  and the S $\frac{1}{2}$  of Section 28, Kragnes Township. However, even with full maintenance, drainage along this alignment is poor and continued crop loss in the NW $\frac{1}{4}$  and the S $\frac{1}{2}$  of the section would continue to be expected.

With the existing conditions, but with the field drainage fully maintained to a 0.05% slope upstream of the railroad tracks along the "east drainage alignment", flooding for the 2-year, 24-hour rainfall event would last 36 to 48 hours. It is important to note that the BRRWD views the Norby diking in the NE ¼ of Section 28 as illegal, not completed or maintained by approved BRRWD permits.

Jones displayed a map of the petitioned project area on the overhead screen. The proposed establishment of Clay C.D. No. 51, Lateral No. 3, conveys approximately a 2-year flood. Establishment of the ditch would include constructing a channel to provide a grade line of 0.10% through the SE¼, Section 28, and 0.04% through the NE¼, Section 28. The constructed ditch cross section would consist of a 6' bottom width and 4H:1V side slopes. A shallow ditch with these side slopes has been shown to be stable in similar soil locations. Field elevations in the NE¼, Section 28, are low relative to the Clay C.D. No. 51 bottom elevation in the southeast corner of Section 21, Kragnes Township. The establishment of Lateral No. 3 would improve drainage for the NE¼, Section 28, by providing additional capacity at a lower elevation. Some of the lowest land in the NE¼ would be acquired as permanent easement and seeded to permanent grass.

Several of the culvert and bridge structures would be utilized along the Clay C.D. No. 51, Lateral No. 3, alignment. At the outlet of the proposed ditch, the existing 60" dia. CMP field crossing would be reset to match the proposed ditch grade. The alignment utilizes an existing 60" dia. RCP through T.H No 75. This culvert would remain in place for the purposes of establishing the proposed ditch. Runoff would pass under the railroad bridge. A 57" x 38" corrugated metal arch pipe (CMP-A) is proposed to be installed through C.R. No. 99. The furthest upstream culvert is proposed to be a 24" dia. CMP under 100<sup>th</sup> AVE N. Installation of this culvert would provide improved drainage for the NE¼, Section 33.

Jones then gave an overview of the estimated cost of the project. The total estimated costs for the establishment of Clay C.D. No. 51, Lateral No. 3, is \$159,041. Of this amount, \$74,981 is for right-of-way (r-o-w) acquisition, engineering, legal expenses, contingencies, and other miscellaneous and administrative costs. Jones went through an itemized construction cost estimate. Construction costs include excavation, stripping, top soiling, riprap, and culverts. Construction is estimated at \$84,060. Jones added that the actual project cost would be known when the project goes through the bid process. The exact value to be paid for the r-o-w is determined by the Viewers.

Gary Grugel, landowner, asked if there has been any discussion on removing the berm/dike on the west side of the railroad tracks. Jones stated it has not been part of the discussions, as it does not pertain to the current project.

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

### Benefits and Damages Statement

This report covers the determination of benefits for the construction of a lateral to the previously constructed Clay County Ditch No. 51. The basis for determining benefits and damages is based upon a comparison of the conditions that exist with the drainage system in a reasonable state of repair and those that will exist upon the completion of the proposed lateral. The proposed lateral will extend the public open ditch along the southerly side of Section 21 and into the NE¼ and SE¼ of Section 28 and into the NW¼ of Section 33, all in Kragnes Township, Clay County.

The Viewers made a physical inspection of the project area on June 12, 2015. Additional information was received during a meeting at the project engineer's office, including a copy of the detailed survey report for the proposed lateral. Benefit classification values were determined based upon the conditions observed at

the time of the inspection and historic information provided by the engineer.

Supporting documentation for the analysis and conclusions of the report are contained in our files.

The figures stated herein are based on a full and fair consideration of all pertinent facts and information that we were aware of at the time of this appraisal. The following aids were used during the viewing process.

1. Soil Survey Manuals and Maps of Clay County
2. GIS Aerial Photos and Data
3. Minnesota LIDAR
4. Yield averages and production costs taken from Minnesota State College and University Farm Management Records and local sources.
5. Sales data from the Clay County Assessor's offices
6. Visual inspection of each 40-acre tract

Land classification benefit values are based upon an increase in the anticipated change in market value of the affected properties. The benefit value for each classification was supported through evaluation of the potential for agricultural production as a result of constructing the lateral. Existing individual land management practices were not considered. All present land use was evaluated under estimated best land management practice.

**Valuation Prior To Lateral:** Beginning land use, property value, and economic productivity have been determined with the consideration that the benefited properties within the watershed currently do not have an adequate outlet for artificial drainage.

"A" --Marginal crop land, seasonally flooded crop land classification with a market value of \$1,500.00 to \$2,000.00 per acre, annual economic productivity of \$339.06, based upon average annual yield of 60% of optimum with \$398.61 production costs.

"B" --Occasionally flooded agricultural ground medium crop land classification with a market value of \$2,500.00 to \$3,000.00 per acre, annual economic productivity of \$395.92, based upon average annual yield of 70% of optimum with \$398.61 production costs.

"C" -Seasonally wet -Tillable crop land, medium to high crop land classification with a market value of \$3,000.00 to \$3,500.00 per acre, annual economic productivity of \$452.48, based upon average annual yield of 80% of optimum with \$398.61 production costs.

"D" --Higher areas not needing additional drainage but irregular in shape and intermixed with wetter soils. Medium to high cropland classification with a market value of \$3,500.00 to \$4,500.00 per acre, annual economic productivity of \$509.04 based upon average annual yield of 90% of optimum with \$398.61 production costs.

**Valuation with Lateral:** Potential land use, property value, and economic productivity, after public and private drainage have been installed and with the restrictive existing tile drainage system in a reasonable state of repair, using current crop rotation, income, and expense:

" A " -Medium crop land, seasonally flooded crop land classification with a market value of \$3,500.00 to \$4,000.00 per acre, annual economic productivity of \$452.48, based upon average annual yield of 80% of optimum with \$398.61 production costs.

"B" --Rarely flooded agricultural ground. Medium to high cropland classification with a market value range of \$4,000.00 to \$4,500.00 per acre, economic productivity of \$480.76 based upon average annual yield of 85% of optimum with \$398.61 production costs.

"C" -Surface drained. Highly tillable cropland classification with a market value range of \$4,500.00 to \$5,000.00 per acre, annual economic productivity of \$509.04 based upon average annual yield of 90% of optimum with \$398.61 production costs.

"D" --Upland areas not needing additional drainage but irregular in shape and intermixed with wetter soils. Highest cropland classification with a market value range of \$ 4,000.00 to \$5,000.00 per acre, annual economic productivity of \$537.32 based upon average annual yield of 95% of optimum with \$398.61 production costs.

No additional Road benefits were determined between the existing condition and the conditions that will exist with the construction of the proposed lateral.

Utilizing these productive values, potential benefit values were determined for the system based upon a 25-year effective project life. The potential benefit for each class reflects an additional potential increase in production for installation of private subsurface drain tile to meet the optimum yields. Return on investment in the drainage system has an allowance of 3.0% return for the life of the project. Benefit values were rounded off to an even percentage benefit increase for ease of computation.

Examples: "C" Benefits per Acre

Potential productivity Value	\$565.60
Adjustment for 90% yield	\$509.04
Production Cost	\$-398.61
Pre-project income Value	\$-110.43
Change in Productivity Value	\$56.56
Private Improvement (in place) (Waterway or tile)	\$-0.00
Annual Benefit Value	\$56.56

$\$56.56 \times 25 \text{ years, discounted @ } 3.0\% = \$984.89$

Rounded to \$980.00

The net benefit provided by the proposed lateral is determined by the potential benefit value, being applied to the number of acres determined to be in each class per tract, accumulating the sum of these benefit values, and then applying the efficiency rate. The application of the efficiency rates reflect the Viewer's determination of that portion of the potential benefit being provided by the proposed lateral with consideration of the current outlet capacity and a parcel's proximity to the lateral.

Damages have been given for the easement acquisition for the area required to establish open ditch and the one-rod seeding area adjacent to the channel required by M.S.A. 103E.021. Damages have also been given for the construction easement r-o-w necessary for the construction of the lateral. The damage value in our opinion is the difference between the current land value, the loss of production during construction, and the value of the same lands with the easement in place. Damages awarded to Clay County Highway Department are for the installation of the road crossing and future culvert replacement.

Van Amburg opened the floor to questions/comments from the audience.

Zenas Baer, Attorney, and representative of Robert Norby, stated he would like his statements from the 08/24/15 BRRWD meeting to be included as part of his statement tonight. The 08/24/15 minutes read as follows: "The Board heard a request from Attorney Zenas Baer, representing Robert Norby, to continue the

final hearing to a later date. Attorney Baer submitted an emergency petition on 08/13/15 to continue the final hearing. His expert witness, who works for Moore Engineering, Inc., can no longer represent his client in light of a conflict of interest (business relationship) with HEI and their watershed work in Minnesota, which did not exist in 2009 when the engineer was first retained. Baer wants additional time to find a new witness. He distributed an affidavit to the Board and made an extended statement regarding the project's petition process. The Board questioned why Mr. Baer was bringing up this concern now, when he knew as early as July 2, 2015, that his witness had resigned. The Board agreed to move forward with the project hearing, as scheduled."

Baer stated the Viewers' Report and Engineer's Report contradict each other. The Viewers' Report reflects a 10-year design, whereas the Engineer's Report is a 2-year design. He believes the Engineer's Report is inaccurate based on this contradiction. He also mentioned a letter composed by Minch in 2012 that stated the project would never contain a "Z" shaped drain. Baer refers to the alternatives in the Engineer's Report and stated this "Z" shaped drainage, which he feels is more efficient, was never presented as an option. Jones replied that he covered this in the Engineer's Report presented tonight. Jones restated that the drainage would be more efficient flowing northerly in the direction it would have historically flowed (natural waterway). He also stated the drainage going easterly in the field ditch on the south side of Norby's illegal dike, would not have the same performance as the proposed project, even if the culverts through the railroad tracks were removed. Baer continued with an extended testimony on items he felt were inconsistencies in the Engineer's Report. He also believes it is not necessary to move forward with a \$160,000 project, when there is already a perfectly good drainage system to the east which only requires cleaning.

Michael Hagen, located at 9074 Oakport ST N in Section 33, asked how much of the proposed project costs his family would have to pay since the 24" dia. x 50' culvert would be placed between Sections 28 and 33. Albright stated that since the Viewers' Report shows there is no benefit to him, he would incur no costs.

Harlan Sauter stated if the water only needs to get 2' deep in Clay C.D. No. 51 before it starts backing up, it would then begin to back up on his property in Section 33. Van Amburg thought if the water were to back up that far, it would already be doing it with the current conditions. Sauter also thought he was going to pay for a large part of the project. He went on to mention many people in the Village of Kragnes are not in support of the project. Minch stated that Sauter's portion of the project costs would be 26.33%. Albright pointed out that nearly 100 hearing notices were mailed to landowners along Clay C.D. No. 51 and a notice was also published in the official Clay County newspaper, The Extra. This hearing is the public's opportunity to give testimony regarding the Engineer's and Viewers' Reports. All testimony is being recorded and hearing minutes will be prepared. The Board will analyze tonight's testimony and make a decision regarding the fate of this proposed project. Van Amburg stated the Board would take Sauter's concerns into consideration, and asked if anyone else had any testimony to come before the Board.

Minch stated he would like to speak on the record once everyone else was done only because the meeting is being recorded and minutes will be prepared, and he expects his petition will be appealed. Van Amburg asked once more if anyone else wanted to speak.

Minch proceeded with a 12 point statement:

1. He stated he had no notice of the BRRWD August 24, 2015 Board meeting discussion with Zenas Baer and felt it was unfair.
2. He presented the taxation breakdown for each landowner: Wayne & Diane Brendemuhl 1.38%, Robert Norby 13.1%, Richard Sorby 8.02%, Minch Family LLLP 49.91%, Harlan Sauter 26.33%, and the Clay County Highway Department 1.34%
3. He stated M.S.A. 103E.341 requirements have been met for this petition to be approved.
4. He strongly feels that Jones is a reputable engineer working for a reputable company, HEI.

Albright is also an employee of HEI.

5. Jeremy Erickson, MNDOT, had stated during the Project No. 74 preliminary hearing for his first petition that MNDOT did not want the drainage flowing easterly to the T.H. No. 75 road ditch.
6. Norby's dikes are illegal/not permitted.
7. No written agreements have ever been recorded between Roger Minch's father and Chester Norby or anybody else on how the drainage should work in this area.
8. Minch noted he retains his father's signed affidavit testimony noting there were no dikes present in Section 28, Kragnes Township, before 2000.
9. In regards to other landowners' concerns about losing 11 acres of cropland, Minch stated that they would receive compensation for easements and improved drainage will provide for more productive cropland.
10. A private drainage system on Norby's property is not a reasonable solution.
11. The engineer should not need to re-evaluate a project which meets the requirements of the law.
12. The proposed lateral restores the natural drainage way. It will be a benefit to everyone involved.

Albright mentioned that Duane Brendemuhl delivered a letter to the BRRWD office today that he wanted entered into the record. Albright distributed a copy to each Board member and additional copies were also available for audience members.

Van Amburg asked if anyone else wanted to make a statement.

Justin Knopf, MNDOT, stated for the record that he was present to represent MNDOT interests.

Van Amburg stated he was not sure when the Board will make a decision regarding the project's final order, but would not be before the next Board meeting and might even be after that. The Board is obligated to look at all the testimony and take it all under advisement.

There being no further testimony to come before the Board of Managers, BRRWD, Chair Van Amburg adjourned the hearing at 9:10 PM.

Respectfully submitted,

John E. Hanson, Secretary