BUFFALO-RED RIVER WATERSHED DISTRICT

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CLAY COUNTY DITCH NOS. 20, 22, 23, 28, AND 51
REDETERMINATION OF BENEFITS HEARING MINUTES
March 5, 2020

Pursuant to Minnesota Statutes Annotated (M.S.A.) 103E.021, Subd.6, and any other applicable statutes, the Board of Managers, Buffalo-Red River Watershed District (BRRWD), held hearings for the redetermination of benefits for Clay County Ditch (C.D.) Nos. 20, 22, 23, 28, and 51 on Thursday, March 5, 2020, at 7:00 PM in the BRRWD Office, 1303 4th AVE NE, Barnesville, MN. BRRWD Managers present were Jay A. Leitch, Peter V. Fjestad, and John E. Hanson. BRRWD Staff attending included Bruce E. Albright, Administrator; Kathleen K. Fenger, Assistant Administrator; Erik S. Jones, Engineer; and Wade Opsahl, Technician, Houston Engineering, Inc. (HEI). Others attending included: Jenny Mongeau, Clay County Commissioner; and landowners Jason Kotrba, Tamara Ross, Jon Ross, Wayne Brendemuhl, Greg Iverson, Dan Oberg, Richard Gilbery, Duane Brendemuhl, David Swanson, Alex Swanson, Noah Swanson, Tim Brendemuhl, Charles Swanson, Mark Rheault, Karman Rheault, Teresa Ferrie, Hilary Kinicki, James Klinicke, Ryan Swanson, and Carmela Milz.

President Jay A. Leitch called the meeting to order at 7:00 PM. He introduced the BRRWD Managers and Staff. He announced that the proceedings were being recorded to aid in the preparation of the minutes, and an attendance sheet was circulated.

Albright explained that Clay C.D. Nos. 20, 22, 23, and 28 are legal county ditch systems north of Moorhead that flow into the Red River of the North, and Clay C.D. No. 51 is a ditch system in the same vicinity that flows into the Buffalo River. All of these ditch systems provide drainage to agricultural lands. He explained that Minnesota Drainage Law (M.S.A. 103E, Drainage) has the following key characteristics:

1. The law enables multiple landowners to collectively construct, improve and repair drainage systems across property boundaries and governmental boundaries.
2. These drainage systems can be open ditches and/or subsurface tile.
3. Chapter 103E drainage systems are administered in accordance with Minnesota drainage law by a public drainage authority, which can be a County Board of Commissioners, a Joint County Board of Commissioners, or a Watershed District Board of Managers.
4. The statute is substantially prescriptive and does not include associated rules. State courts have determined that drainage authorities must follow drainage law carefully.
5. Drainage proceedings under the law are predominantly petition-based.
6. Drainage law includes due process through petition requirements, public hearings, associated notification of interested property owners and the general public, and appeal processes.

Albright explained that provisions in Drainage Law state that certain events prompt the installation of the one-rod (16.5-foot) grassed buffer strip. In 2015, there was an effort by former Minnesota Governor Mark Dayton to accelerate that process. The Minnesota Buffer Law was signed into law in 2015 and amended in 2016 and 2017. This law states that buffers of perennially rooted vegetation or alternate water quality practices must be in place on applicable parcels adjacent to designated Public Waters by November 1, 2017, and designated Public Ditches by November 1, 2018.
Albright explained to the group that the purpose of the hearing was to complete the legal process for buffer installation. He commented that the BRRWD will not disturb any established buffer strips along landowners' property if it meets the requirements of the law. He explained the process to calculate the required right-of-way (R/W) to develop the buffer, which consists of determining the amount of R/W established when the ditch was originally constructed, how much land area it is currently using, and the amount of additional R/W needed to establish the required buffer. A payment rate of 10% of the property's per acre land market value will be paid to landowners where the additional R/W purchased is already being used by the ditch system. A rate of the full per acre land market value will be paid to landowners to purchase any additional R/W needed to establish the buffer beyond the top of the channel slope. Albright clarified that the Watershed District is only acquiring an easement, so the property is still owned by the landowner. In addition, the easement is prescriptive, meaning it can only be used for ditch system purposes.

The BRRWD is systematically working across the Watershed District to bring all their ditch systems into compliance with the 2015 Buffer Law. Buffer Law requires the BRRWD to conduct ditch inspections to ensure the buffer stays in grass. Albright explained that it is the landowner's responsibility to maintain the buffer once the grass is established. Otherwise, the BRRWD could hire a contractor to restore the buffers, and those expenses would be charged back to the landowner.

Landowner Greg Iverson asked if this would affect the field drainage ditches. Albright commented that the seeding would go through the field ditch, and the BRRWD would work with the landowner to install side inlet culvert(s) in these locations at the ditch system's expense to help control runoff.

Erik Jones, HEL, explained to the group that there are benefit maps of each ditch system posted around the room for the landowners to review. He also displayed a map on the overhead monitors showing the location of each ditch system within the BRRWD.

A landowner asked if sediment would be cleaned from the ditches. Jones commented that the purpose of this hearing is to discuss the establishment of the buffer and the re-establishment of the ditch R/W.

Referring to a drawing on the white board, Jones explained how the buffer strips would be established, and he clarified where the differences in R/W payments would occur. The permanent strips of perennial vegetation will be a minimum of 16.5' wide measured outward from the top edge of the constructed channel, or to the crown of the leveled spoil bank, whichever is greater.

Landowner Jason Kotrba asked who determines if the buffer complies with the buffer law. Jones commented that the engineer has identified the required buffer area based on the survey and LiDAR data.

A landowner asked if the grassed buffer strips are inspected when flooding occurs, and if the grass will be reseeded. Jones stated that the grass should grow back after the water recedes. Albright commented that the ditches are inspected every year and noted that the 2015 Buffer Law states that the Soil and Water Conservation Districts (SWCD) will assist the Watershed District with these inspections.

While displaying a map on the overhead monitors that exhibited the width of each ditch system, Jones explained how much R/W would be needed along each ditch to establish the buffer.

Kotrba asked if the goal was to leave the established vegetation in the buffer area undisturbed. Jones explained that only areas without vegetation would be seeded. Landowner Dan Oberg asked who would be responsible for seeding these areas. Jones explained that the BRRWD will hire a contractor to complete the seeding.
Kotrba questioned if the BRRWD easement being acquired is permanent. Jones explained that it is a permanent easement and is only to be used for ditch system maintenance. It would not be open to the public for hunting, etc.

Landowner Wayne Brendemuhl asked if metal R/W posts were going to be installed. Opsahl explained that posts would not be installed if the buffer is not disturbed, but if the grass buffer area is encroached upon by farming or other activities then posts would be placed.

Landowner David Swanson asked if Watershed Districts across Minnesota are acquiring easements to be compliant with the buffer law. Albright commented that all the Minnesota county ditch systems are being buffered.

Alex Swanson, Oak Mound Cemetery Association Board member, asked if it would be considered a problem if graves and headstones were placed in the buffer area that extends into the cemetery. Jones stated that this would not be a problem.

A landowner asked about the source of the easement acquisition funding. Albright explained the ditch system benefit area is assessed to maintain the ditch and to acquire the buffer easements. When the State Legislature approved the 2015 Buffer Law, some funding was allocated to the BRRWD as the ditch authority through Clay County’s State Allotment to help complete the work. The amount Clay County received will be divided equally per mile of ditch. Expenses over this amount would be assessed to the benefit area of each respective ditch system.

Kotrba asked what kind of studies determined the 2015 Buffer Law. Jones explained that the requirement for buffers was put into Drainage Law in 1977, and the 2015 Buffer Law simply established the completion date for buffer installation. Albright commented there are several studies showing a permanent buffer strip improves water quality and prevents the direct movement of soil into streams and ditches.

Swanson asked if the easement payment will be less if a buffer is already established, but it has been tilled. Jones explained that any land that is not R/W will get paid 10% of the per acre market value if it is within the ditch. The easement will be paid at full per acre market value for those portions of the easement outside the top slope where additional footage is needed to reach the required 16.5’ buffer width.

A landowner asked how the easement property was going to be taxed. Albright explained that the easement may be taxed at a different rate than the remaining farmland and suggested landowners contact the Clay County Assessor’s office to make sure it gets assessed accordingly.

Oberg stated that he has a sod farm along C.D. No. 23 and wanted to know if he would be paid crop damages, since he will be unable to harvest the sod. Opsahl explained that the land purchased for the easement would be required to remain a grassed buffer strip. Jones noted that about 0.96 acres would become the grass buffer strip along the ditch.

Albright explained that when the Board makes an order to acquire the land, there is a 30-day appeal period. A landowner asked when the 30-day period would start. Albright explained that the Board will take testimony from landowners, then a Board Order would likely be presented at the next regular BRRWD meeting. Landowners can contact the BRRWD office, check the website, or read the press releases to see if the Order was approved.

Jones displayed the ditch system benefit maps on the overhead monitors, as Albright explained that the different colors on each map indicate the benefit rates for each area. Albright referred to the SE¼, Section 17, Kragnes Township, on the displayed map. This location has been petitioned to be removed from C.D. No. 28. He explained that M.S.A. 103E.805, Removing Property from Drainage System, allows an owner
of benefited property to petition the drainage authority to remove property from the drainage system. Albright explained that if the landowners didn't have any issues with the petition, the Board would approve an Order to remove the land from the benefit area.

Albright summarized the proposed work for the above referenced ditch systems and opened the floor for landowner questions.

Albright explained that landowners could direct their concerns to the BRRWD Board, otherwise the Board will make an Order and the 30-day appeal period will begin. The easement payments will be calculated, and payments added to the bill list for approval at a subsequent BRRWD meeting. HEI will stake the areas to be seeded for the contractor, and the landowners should only plant on the outside edge of the stakes.

There being no further comments or questions, Leitch adjourned the meeting at 8:25 PM.

Respectfully submitted,

John E. Hanson, Secretary