

BUFFALO-RED RIVER WATERSHED DISTRICT

BARNESVILLE, MINNESOTA 56514

1303 4th AVENUE NE

PO BOX 341

PHONE 218-354-7710

Project No. 74, Clay County Ditch No. 51-Lateral No. 3 Preliminary Meeting Minutes June 28, 2012

In accordance with Minnesota Statutes Annotated (M. S. A.) 103E.261, and any other applicable statutes, the Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a Preliminary Hearing for Project No. 74, Clay County Ditch No. 51, Lateral No. 3, on Thursday, June 28, 2012, at 7:30 PM in the First Floor Council Chambers, City Hall, Moorhead, MN. BRRWD Managers present were: Gerald L. Van Amburg, Roger G. Ellefson, and Curtis M. Nelson. Others attending included: Bruce E. Albright, BRRWD Administrator, and Erik S. Jones, Engineer, Houston Engineering, Inc. (H.E.); Tami L. Norgard, Attorney, Vogel Law Firm; Zenas Baer, Attorney, Zenas Baer Law Office (for Robert Norby); Roger Minch and Lois Minch, Minch Family LLLP; and Jeremy Erickson, Minnesota Department of Transportation (MNDOT). Also present were landowners: Gary Grugel, Sharon Grugel, Duane Brendemuhl, Wayne Brendemuhl, Warren Brendemuhl, Patricia Carlson, Marjorie Stach Murphy, Harlen Sauter, Paul Kegel, and Peter Dunn.

BRRWD Chair Gerald L. Van Amburg called the hearing to order at 7:30 PM. He introduced the BRRWD Board and Staff. Albright explained that tonight's proceeding is a Preliminary Hearing for Project No. 74, Clay County Ditch No. 74-Lateral 3. He distributed an attendance sheet and advised the audience that the hearing was being recorded to assist in the preparation of the minutes, which will be on file in the BRRWD office. He asked that the audience state their names for the record when giving testimony.

Albright gave a brief explanation of the petition process. The Minch Family LLLP filed a petition to establish a lateral to Clay County Ditch No. 51 across Section 28, Kragnes Township, Clay County, on March 19, 2012. On 4/16/12, the Petitioner filed a \$10,000 bond to cover preliminary project expenses. BRRWD Attorney Norgard examined the project petition and determined that the petition met the requirements set forth in M.S.A. 103E.238. Following Attorney Norgard's review, the Board authorized H.E. to complete the Preliminary Engineer's Report (M.S.A. 103E.241 and 103E.245), which was filed with the BRRWD on May 29, 2012. The BRRWD scheduled tonight's Preliminary Hearing (M.S.A. 103E.261) for the Engineer to present his Report and for the Board to take testimony from ditch system landowners so that they can make a decision to move forward or dismiss the proposed project petition. If the Board decides to go forward with the proposed project, they would authorized H.E. to prepare the Detailed Survey Report (M.S.A. 103E.265) and to appoint Viewers to determine project benefits and damages (M.S.A. 103E.321, Subd.1). At the Final Hearing (M.S.A. 103E.325), the Detailed Survey Report and the Viewers' Report would be presented, and landowners will have the right to comment/testify regarding these findings. After the final hearing, if the Board decides to approve the proposed project (M.S.A. 103E.341), a 30-day appeal period would follow the Board's Final Order. Albright noted that according to M.S.A. 103E.095, individuals aggrieved by a Board Order have the right to file an appeal within the 30-day appeal period.

Jones presented the Engineer's Preliminary Report, using an overhead projector. The proposed lateral is located in a north-south direction east of the quarterline in Section 28, Kragnes Township, Clay County, starting at the line between Sections 28 and 33 (100th AVE N), proceeding northerly following the approximate alignment of the historic natural waterway across Section 28 to a point where it intersects the north line of Section 28 and passes through County Road (C.R.) No. 99. The alignment turns east along the

north ditch of C.R. No. 99, until reaching a bridge in the Burlington Northern/Sante Fe (BNSF) Railroad right-of-way (r-o-w). The proposed lateral follows the railroad r-o-w north 200 feet and passes under an existing bridge in the railroad embankment. The alignment is routed back to the north ditch of C.R. No. 99, and then east to outlet to Clay County Ditch No. 51. The proposed project will convey the 2-year rainfall event.

Jones discussed the Preliminary Plans, which include the ditch configuration and the required grassed buffer strip (one rod/16.5'), recommended sideslopes (4:1) with a 6' wide ditch bottom, and centerline and field inlet culvert requirements. Jones noted that the proposed lateral will have a relatively flat grade because the ditch in the N $\frac{1}{2}$, Section 28, is at elevation 885-886 (based on NAVD 1988 datum) while the bottom of the outlet (Clay County Ditch No. 51) is at elevation 883. Jones stated that County Ditch No. 51 would be an adequate outlet for the project. He discussed the details of the project cost estimate. The Opinion of Probable Cost is \$171,898. Albright noted that the Viewers would set the actual permanent and temporary r-o-w values. Jones recommended that Clay County Ditch No. 51, Lateral No. 3, should be developed and constructed in accordance with the alignment, bottom widths, and side slopes as shown on the preliminary plans, including the acquisition of r-o-w for the establishment of one-rod grassed bufferstrips, the installation of the referenced drainage structures, and that the benefitting lands should be assessed accordingly for the local costs of the project.

Roger Minch, who represents the Petitioner, Minch Family LLLP, introduced his mother, Lois, who is the principal owner of the property involved with the petitioned project. He gave testimony regarding his version of the past drainage issues/disputes in Section 28, Kragnes Township, and presented 14 items to be included as part of the record. Minch maintained that the dikes on the west and south sides of the Norby property in the NE $\frac{1}{4}$, Section 28, were illegally constructed and added to over a number of years. He discussed the survey he commissioned which concluded that the proposed petition would be the best alternative to address the drainage problems Norby created with his dikes in the S $\frac{1}{2}$, Section 28, Kragnes Township. All of the Minch documentation is available for public inspection in the BRRWD's office.

Zenas Baer, Attorney, representing landowner Robert Norby, gave testimony regarding his version of the drainage issues/disputes involving dikes constructed on the Norby property in Section 28, which he claims were installed by landowner agreement in the 1950s. He introduced a survey conducted by Moore Engineering (10/22/09), recommending that water could adequately drain by cleaning an east/west ditch on the Minch property to convey water east through two culverts in the railroad embankment to the west Trunk Highway (T.H.) No. 75 road ditch. He commented that the Project No. 74, Preliminary Engineer's Report was deficient because it did not address the alternative of the Minch Family maintaining their existing field ditch. He referenced 1981 litigation with Harlan Sauter concerning drainage issues in Sections 28/33, Kragnes Township. Baer asked that the Board table the proposed project because there already is an adequate drainage outlet in place for the Minch property. Baer's documents were also filed with the Board as part of the hearing record and are available for public review.

Landowner Harlan Sauter commented on the 1981 litigation regarding a drainage dispute he had with A. R. Minch involving his property in Section 33, Kragnes Township. He said that a similar project was proposed in 1981, but at that time, A.R. Minch opposed it. The BRRWD built Lateral No. 1 to Clay County Ditch No. 51 on the Sauter property along C.R. No. 96 in an effort to provide drainage for the E $\frac{1}{2}$ of Section 33 to County Ditch No. 51, which A. R. Minch had blocked with a couple loads of dirt, north of 100th AVE N.

Duane Brendemuhl commented on the condition of the east/west quarterline field ditch on the Minch Family property. He claimed their renters told him they are not allowed to clean this ditch. Brendemuhl asserted that he could provide adequate drainage for the Minch property with his tractor and scraper in a few hours just by maintaining the field ditch. He added that the Sorby property in the NW $\frac{1}{4}$, Section 28,

can't drain either because the Minch field ditch isn't maintained. This work could be done for minimal cost compared to the estimated \$170,000 for the proposed project. Brendemuhl felt that the Minch Family wasn't going to pay enough in project benefits. He encouraged that Board to conduct a field review of the east-west field ditch to see what could be done without incurring the expense of a legal lateral project.

Jeremy Erickson, MNDOT, commented that he had attended the hearing to become more informed regarding the proposed project to be sure their structures in the intersection of T.H. No. 75 and C.R. No. 99 would be adequate. He discussed Norby's contention that the Minch field ditch should be cleaned. He was concerned about draining water into the T.H. No. 75 ditch and r-o-w if there hasn't been drainage coming from Section 28 into their road ditch for several decades. Erickson stated that the BRRWD would have to consider a new drainage route adjacent to the railroad r-o-w to keep the water out of the MNDOT ditch. Brendemuhl pointed out that it has only been in about the last 10-15 years since the field ditch has needed maintenance. Erickson said MNDOT would need to see evidence that the ditch did drain to T.H. No. 75 in the recent past, or MNDOT might be opposed to that route.

Peter Dunn stated that he lives on property he purchased from Robert Sorby in 2001, which is located on a ridge with no drainage problems. He doesn't feel that his property will benefit from the proposed lateral. He commented with the dry weather last year, the Minch property was also dry.

Pat Carlson, who owns a business in the City of Kragnes, said that she and her neighbors living in Kragnes are opposed to the petition because they won't benefit from the project. The BRRWD just completed a ringdike project for Kragnes so their property is protected. They are still paying special assessments for the dike project, and they don't want to pay any more assessments. Carlson said the neighbors all agree that the proposed project would only benefit the Minch property.

Wayne Brendemuhl asked Jones to explain what was meant by the 600 acre "drainage area" shown on the Engineer's Report maps. Jones explained that the Viewers would determine a benefit area that may or may not be similar to the drainage area as detailed on his maps. Albright commented that it would be premature to speculate on what the Viewers will find for project drainage/protection benefits, which would be addressed in a separate hearing if the Board decides to move forward with the project.

Duane Brendemuhl asked if the County Ditch No. 51 landowners would have an opportunity to testify again if the Board decides to go forward with the project. Albright said that all landowners on County Ditch No. 51 would have another chance to give testimony at the final.

Wayne Brendemuhl asked if the Board would consider alternatives for the proposed project or do they have to decide if the current project as described in the petition moves forward. Albright explained that the Board is required to consider only the project as petitioned for in this proceeding. It would be up to the Petitioner if they are interested in asking the Board to look at project alternatives.

Zenas Baer responded to Jeremy Erickson's concerns about drainage from the east-west ditch entering the T.H. No. 75 road ditch. He pointed out that there has been testimony that the drainage system, including the quarterline ditch to T.H. No. 75, worked fine until 2001 with no effect on the road ditch. He noted that the proposed project would provide for a 2-year event and asked if Jones knew what the existing drainage facilities provided. He asked the Board how they could make a decision regarding need for the project if they didn't know what existing drainage alternatives could provide if maintained.

Roger Minch commented on various attendees' testimony by listing his father's (A.R. Minch) efforts to provide adequate drainage and flood protection for the City of Kragnes and the surrounding area. He discussed the County Ditch No. 51 Improvement Project, which he felt provided flood protection for the City, which his father was the sole petitioner for.

Minch talked about the east-west field ditch maintenance. He pointed out that his family doesn't control the entire stretch of the ditch. Once the water passes through the railroad embankment culverts, it has to travel on railroad/T.H. No. 75 r-o-w north to C.R. No. 99. In his experience, it can be very difficult to work with BNSF and MNDOT regarding the use of their r-o-w for drainage. Minch claimed that the reason Norby wants water to drain east is so he can continue to farm the BNSF r-o-w on the west side of the tracks.

Minch said that his father gave testimony three months before he died, stating that before 2000-2001, there was nothing built in Section 28 that impeded the natural drainage route. He noted that the reason there hadn't been any drainage problems prior to 2000-2001 wasn't because the field ditch was open and functioning, but because up until 1993, we had been in a dry weather cycle. After 1993, a wet cycle started and by 2001, Norby built or added to the dike on his property. Minch referenced photos showing the dike washout in the spring of 2001 that was caused because he had built the dike so late in the fall of 2000 that the cover crop didn't grow. Minch refuted the statement that his property was dry last year. He said that aerial photographs show 60 acres of drowned-out soybeans. He has a copy of a check paid to their renters for crop they couldn't harvest because of water damage, and a report from their land manager, who measured the crop loss to calculate the amount of the check.

Minch discussed the natural drainage patterns. He questioned why BNSF built a trestle bridge one mile north of Kragnes over the drainage way if water flows east naturally. Minch referenced the alleged 1950s "gentleman's agreement" for the installation of a dike on Norby's property. He said that even if an agreement existed, it's not valid if it's not in writing, and isn't relevant regarding the current petition. Minch speculated about the reason for Norby to build the dike, which could possibly be to impede Minch's profitable use of his property. He noted that the petition is worded so that if neighboring landowners wish to drain their property into the lateral, culverts can be installed (100th AVE N) to allow access. He told his neighbors that someone notified the Natural Resources Conservation Service (NRCS) that this project might drain a wetland, so now the project will be delayed until NRCS can conduct a wetland determination. He said that they should be careful that they don't get into the same situation with their property. Minch stated that this is a good time for the BRRWD to deal with these drainage issues and to restore the natural drainage. He added that he doesn't plan to change his petition to include any other alternative, and urged the Board to order the project to continue as the petition states.

Marjorie Stach Murphy stated that she has lived in the Kragnes area since 1973, and they haven't had significant flood relief until the 2009 ringdike project when the BRRWD installed gated culverts to protect Kragnes from water backing up from the north. She thanked the Board for their efforts.

Chairman Van Amburg called for additional questions and comments. He stated the Board would take the testimony from tonight's hearing under advisement and would make a decision in the near future regarding the future of the proposed project. He adjourned the hearing at 9:15 PM.

Respectfully Prepared and Submitted by,

Bruce E. Albright, BRRWD Administrator