

BUFFALO-RED RIVER WATERSHED DISTRICT

BARNESVILLE, MINNESOTA 56514

1303 4th AVE NE

PO BOX 341
Website: www.brrwd.org

PHONE 218-789-3100

BUFFALO-RED RIVER WATERSHED DISTRICT CLAY COUNTY DITCH NOS. 5, 10, 39, 59, AND 65 BUFFER STRIP IMPLEMENTATION HEARING March 11, 2021

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 incremental implementation of vegetated ditch buffers in accordance with the 2015 Minnesota Buffer Law (M.S.A. 103F.48), for Clay County Ditch (C.D.) Nos. 5, 10, 39, 59, and 65 on Thursday, March 11, 2021, at 6:00 PM in the BRRWD Office, 1303 4th AVE NE, Barnesville, MN. BRRWD Managers present were Peter V. Fjestad, Mark L. Hanson, John E. Hanson, and Paul G. Krabbenhoft, and online: Gerald L. Van Amburg. BRRWD Staff attending included Kristine M Altrichter, Administrator; and Wade Opsahl, Technician, Houston Engineering, Inc. (HEI). Landowners attending included: Lois Jensen, Loris Jensen, Mike Astrup, Gerald Zimmerman, Bill Dale, and Craig Hurner, and others online.

At 6:00 PM, President Fjestad called the hearing to order and informed the audience that the hearing was being recorded to aid in the preparation of minutes.

Administrator Altrichter explained that the hearing was being held to discuss right-of-way (R/W) acquisition for the Clay C.D. Nos. 5, 10, 39, 59, and 65 legal ditch systems for the implementation of buffers on the ditches in accordance with the 2015 Minnesota Buffer Law (M.S.A. 103F.48) and M.S.A. 103E.315, Subd. 8.

Opsahl gave a brief explanation of the 2015 Minnesota Buffer Law, which requires that all legal ditch systems have a permanent 16.5' (one-rod) wide grassed buffer strip. He explained that as part of this buffer installation effort, the BRRWD plans to clean up past ditch system R/W inaccuracies so that R/W can be recorded with the County Recorder. Since ditch law changes in 1977, requiring the installation of buffer strips whenever certain work was done on legal ditch systems, the BRRWD has gone through R/W acquisition for a number of systems.

Landowner Gerry Zimmerman asked about Buffer Law details. Opsahl explained the required buffer R/W dimensions for legal ditch systems. He explained that the Board authorized HEI to conduct surveys on the District ditch systems to establish the R/W. Zimmerman questioned the R/W for his property on C.D. No. 39. Opsahl pointed out that only certain portions of the ditches will need additional R/W. Zimmerman asked about the upstream end of C.D. No. 39. He thinks that since the upstream properties are draining into C.D. No. 39, they should also be assessed to the ditch system. Opsahl displayed the benefit maps for C.D. Nos. 39 and 65 and explained the ditch system redetermination of benefits process. More discussion followed about unassessed drainage entering the legal ditches. Fjestad noted that the BRRWD staff should investigate this issue.

Zimmerman also questioned the R/W easement rate on his property. Opsahl explained how the rates were determined. Where new easement acreage is outside of the top of the ditch, in order to establish the minimum 16.5' wide ditch buffer, the BRRWD will pay the current county estimated market value per acre. Where additional ditch easement is required within the existing ditch, landowners will receive payment at 10% of the County's estimated market value per acre. No payment will be made for areas that are already

in the existing right-of-way easement. All existing easement and new easement areas will be seeded by the ditch system.

Bill Dale asked why the BRRWD was paying for the buffer R/W. Opsahl explained that when the Buffer Law was enacted, the ditch system landowners were ultimately responsible for the buffer installation and seeding. As the drainage authority, the BRRWD decided to assume that responsibility and install the buffers/seeding to assist the landowners and assure R/W continuity. This way the entire benefit area helps pay for the buffer implementation, and the burden is taken off the individual landowners. Dale thought the individual landowners should handle the buffer work. Van Amburg noted that by assuming responsibility for the buffer installation, the Board was trying to help the landowners. He explained that the BRRWD and the County SWCDs received state funding for buffer implementation that helps defray the landowners' costs.

Zimmerman commented on the lack of ditch maintenance (mowing and spraying) on C.D. Nos. 5 and 39. Opsahl noted that the BRRWD sprays for cattails and trees on the ditch systems and other noxious weeds. If landowners have particularly severe weed infestations, they should contact the BRRWD. He pointed out that the BRRWD has 400 miles of ditches to maintain. Zimmerman thought the BRRWD should reimburse the landowners to maintain the buffers.

Mike Astrup asked why the land values for the proposed project south of Glyndon had a higher valuation than the property along the ditch systems under discussion tonight. There was an extended discussion regarding the land valuation process. Zimmerman felt that it wasn't equitable for one area's R/W valuation to be different from another.

Dale asked about the BRRWD's plan to address buffers along the road on C.D. No. 10. Opsahl explained that the road R/W will not be altered. Dale questioned the BRRWD's benefit in taking the R/W. Fjestad pointed out the landowners who pay ditch system taxes are the owners of the ditch. Their taxes are held in a financial account designated to pay for their ditch system expenses. The buffer R/W is paid for by the benefited property's ditch taxes and owned by the ditch system landowners. He explained that the landowners are paying themselves for the buffer easement, so the value makes no difference to the Board. There was a discussion regarding landowner questions about ditch maintenance and easement acquisition.

Zimmerman commented that ditch system expenses are paid for by taxes from the entire benefit area, which reduces costs for individuals along the ditch. His concerns were with the easement values and unassessed upstream drainage.

Dale commented on the fairness of the proposed 10% payment for land within the ditch system to reestablish the buffer. He discussed slope damages he claims were caused by recent C.D. No. 10 repair. Opsahl noted the BRRWD is planning repairs this summer for a couple of sites where the slope has sloughed into this ditch. The BRRWD conducts ditch inspections every year to plan repairs, but also relies on landowners to report problem areas. The group also discussed past and future R/W enforcement policies and R/W staking.

Opsahl explained that the BRRWD is acquiring the R/W as required under the process prescribed in M.S.A. 103E.021, Subd. 6, Incremental establishment; vegetated buffer strips and side inlet controls. The buffers are required under Minnesota Law. The Watershed District is not required to install the buffers, but as a service to the landowners, the Board decided to take on that responsibility. After the Board makes the Order, there is a 30-day appeal period where anyone who objects to the Board's decision can contact an attorney to file an appeal.

Zimmerman had a question about Section 31, Morken Township, along C.D. No. 39, where there is an old section line and a newly established line. Opsahl explained that the existing R/W was acquired based on

the old section line, and the new R/W will be based on the Judicial section line. Zimmerman had concerns about the ongoing issues with the condition of the ditch in this area. Opsahl suggested that the Board could consider options to address Zimmerman's concerns in their Order.

Fjestad asked if there were any online attendees who wished to add testimony. No one commented.

There being no further comments or questions, Fjestad adjourned the meeting at 7:26 PM.

Respectfully submitted,

John E. Hanson, Secretary