

BUFFALO-RED RIVER WATERSHED DISTRICT

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WILKIN COUNTY DITCH NOS. 40, 42, 42, 43, AND 44 BUFFER AND SIDE INLET INSTALLATIONS MINUTES FOR HEARING September 26, 2017

In accordance with 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 a hearing regarding the incremental installation of buffer strips and side inlets, right-of-way (R/W) acquisition, the removal/addition of properties and the redetermination of benefits for certain parcels for Wilkin County Ditches (C.D.) Nos. 40, 41, 42, 43, and 44, on Tuesday, September 26, 2017, at 7:00 PM in the BRRWD office, 1303 4th AVE NE, Barnesville, Minnesota. BRRWD Managers present were: Peter V. Fjestad, John E. Hanson, Catherine L. Affield, Troy E. Larson, and Mark T. Anderson. Others attending included: Bruce E. Albright, BRRWD Administrator, Erik Jones, Engineer, and Wade Opsahl, Technician, Houston Engineering, Inc. (HEI); Bill Austin, Arvid Thompson, and Eddie Bernhardson, Viewers; and landowners: David Kollar, Cary Danielson, Lyle Hovland, David Osten, Philip Shulstad, Don Tollerud, Bryant Haugrud, Gary Haugrud, Doug Danielson, Darwin Danielson, John Danielson, James Jennen, Brent Ellefson, Dan Solum, Dan Froslic, Cliff Froslic, Wes Balken, Lora (Benhardus) Balken, Douglas Nelson, Charlotte Nelson, Ivan Nelson, Matt Conzemius, Ron Conzemius, Kristi Pfungsten, Dan Pfungsten, Michael Hough, Robert Hovland, Peter Thompson, John Thompson, and Steven Thompson.

BRRWD Vice Chair Peter Fjestad called the hearing to order at 7:00 PM and announced that the hearing was being recorded to aid in the preparation of hearing minutes. A sign-up sheet was circulated for the audience to record their attendance.

BRRWD Administrator Bruce E. Albright discussed the history of Wilkin C.D. Nos. 40, 41, 42, 43, and 44. Benefit maps for all five ditch systems were displayed around the room for landowner inspection. He explained the process of determining the ditch benefits, which took place when the ditches were first built in the early 1900s. All the ditch systems had the benefits redetermined in the 1988, which Albright noted, is now nearly 30 years ago. Albright discussed the fact that all the various drainage systems, both private and public, are interdependent, and the referenced county ditches are the outlets for all the tile and surface drainage, eventually conveying the agricultural drainage to natural waterways flowing through this area. He explained the benefit redetermination process for the ditch systems in 1988 and how to determine the benefit/cost ratio for a given project. Albright also explained that the BRRWD manages the construction and maintenance of the ditch systems, while landowners own and pay for ditch construction and maintenance via their property taxes in accordance with the individual ditch system benefit areas and rates.

Albright discussed the location and history of each of the ditch systems. He explained that the hearing tonight is not about the current benefit areas or rates. Those rates were set in 1988, and to change them would require another redetermination of benefits proceeding. Tonight's hearing is to consider the proposed incremental installation of bufferstrips (one rod or 16.5' wide) and side inlets for the ditch systems in accordance with the 2015 Buffer Law. In 2013, the BRRWD received a Minnesota Board of Water and Soil Resources (BWSR) Clean Water Fund (CWF) grant for work on the South Branch of the Buffalo River, which must be expended by 12/31/17. Since all the referenced ditch systems eventually drain into the South Branch, BWSR approved the use of the remaining CWF funding (approximately

\$150,000) for the proposed repairs. Albright discussed the existing problems regarding the sedimentation/flooding on the South Branch of the Buffalo River. The BRRWD is currently working on retention/channel restoration upstream of Trunk Highway (T.H.) No. 9 in the upper reaches of the South Branch watershed. Working downstream, future subsequent project phases will be implemented to address downstream channel sedimentation/flooding.

Using the overhead monitors, Erik Jones, Engineer, HEI, explained the details of the proposed work. A survey was conducted to provide a cross section of each ditch to be used to measure where the 16.5 buffer would be located from the section line, and then they attempted to establish a relatively straight line for the buffer widths along the ditch per parcel. Jones used the wall maps to show the audience the location and alignment of each ditch system. He noted that the buffers are one-rod, or 16.5' wide. He also explained the proposed locations for new side inlet culvert installations. Jones also discussed the proposed work for the first 0.5 miles of Wilkin C.D. No. 43 along County State Aid Highway (CSAH) No. 30 west of County Road (C.R.) No. 52, which should also be eligible for the CWF funding. The ditch slope is very steep in this area and poses a public safety road hazard. The plan is to add rock drop structures in this section so that the ditch bottom can be stabilized and the slopes flattened within the existing ditch R/W.

Lyle Hovland noted a few sites on Wilkin C.D. No. 41, Branch 5, that could use some repair. Jones explained that the current project will only address buffer and side inlet culvert installations. Albright commented that after the meeting, landowners who are aware of sites needing repairs, could mark those areas on the maps for future reference. Another landowner mentioned that there is a slumping site along Wilkin C.D. No. 43 further downstream of the proposed repair site. Jones noted that the BRRWD plans to work with the Wilkin County Highway Department on this issue in the next couple of years when the County has funding available.

Jones explained that bids for the culvert/flapgate installations were solicited from area contractors for each ditch to provide a basis to estimate the total project costs. The following estimates include a 10% contingency: C.D. No. 40-\$15,559.50 (no new R/W needed); C.D. No. 41-\$146,456.12 (R/W acquisition-\$124,997.12); C.D. No. 42-\$9,148 (R/W acquisition-\$8,946.82); C.D. No. 43-\$164,676, (R/W acquisition-\$32,002.67 and the slope/grade control repairs-\$108,508); C.D. No. 44-\$52,414 (R/W acquisition-\$45,223.60). Total estimated project cost is \$388,255.71 with construction costs at \$177,085 and the R/W acquisition at \$211,170.21. The BWSR CWF grant will be used to cover approximately \$150,000 of the total construction costs. The R/W is needed to get the full 16.5' ditch system easement as measured from the top edge of the ditch. To date, no construction contracts have been awarded. The BRRWD will work with the Wilkin Soil and Water Conservation District (SWCD) to complete the seeding in 2018. There will be 37.07 acres of new seeding for the buffer R/W. Jones noted that any easement acreage that is already in approved vegetation will not be disturbed.

Albright explained that the 2015 Buffer Law placed the burden of completing the buffer seeding on the landowners. However, the Board felt it made more sense for the BRRWD, who is the legal drainage authority, to take over the responsibility of helping with buffer installation. The Board decided to take this opportunity to get the ditch system R/W current by acquiring the necessary easements in accordance with Drainage Law. He explained the process used to determine the amount of R/W we needed. Albright added that land under easement should be eligible for a reduced property tax rate by the Assessor's Office. Another benefit gained by this effort is that the ditch easement records will all be made current as of 2018. Albright also explained the process the Board uses to determine the annual ditch tax levy, which is based on the current project's year-end financial account balance and potential maintenance costs for the upcoming year.

BRRWD 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. The BRRWD has secured a grant through the BWSR to assist with installing the one-rod grassed buffer strips that are required by law and side inlets where necessary. We were appointed to perform our duties by the BRRWD in accordance with M.S.A. 103E.305, 103E.311, 103E.315, and 103E.321.

These noted systems are a series of legal drainage systems south of Barnesville in Wilkin County that had their benefits redetermined around 1988, and the one-rod grassed buffers were not installed at that time. Now, Minnesota Drainage Law and the new 2015 Buffer Law both require the filter strips.

We (Bill Austin, Arvid Thompson, and I, Eddie Bernhardson) were appointed by the BRRWD to determine the damages for the proposed project. We took our Oath of Office and held our first meeting on August 10, 2017. We filed our reports for damages with the Board of Managers, BRRWD, (drainage authority) on August 14, 2017.

The first step will be acquisition of the necessary R/W for the required one-rod grassed buffer strips. We were informed that after this is completed, the R/W will be staked, so the repairs can be completed yet this fall.

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. Wilkin County soil survey manuals and maps
2. FSA aerial photographs
3. USGS topographical maps
4. LiDAR data
5. Sales data from the Wilkin County Assessor's Office
6. Visual inspections of the project properties
7. Market values as determined by the Wilkin County Assessor's Office

As already noted, the R/W tables, which HEI furnished for each individual system, have a breakdown of the R/W 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 grassed buffer strips, with this area broken into two categories for cropland and non-cropland.

On all ditch systems, we propose two different damage rates for 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 of 10% of the County's assessed value for cropland on that parcel. 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 grassed buffer strips beyond the existing ditch R/W of record. For these cropland areas, we contacted the Wilkin County Assessor's Office. For the new permanent R/W, which will no longer be able to be farmed, we propose a fair damage rate of the County's assessed market value for that particular parcel on a per acre basis. 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.

We would urge the Board and affected landowners to proceed with this process. The BWSR grant funds will help offset direct landowner costs to get something done with these ditches that may/would have become mandatory as of November 1, 2018. The ditch systems should take advantage of this opportunity.

Bernhardson noted that the Viewers would be happy to answer any questions regarding their work or findings.

Albright summarized that when the Viewers considered the damages, they realized that land values vary significantly across the southern part of the BRRWD, so they decided to use the County's values per parcel for the new land acquisition under cultivation. For the land that has gradually been taken up by the ditch and is not currently under cultivation, they agreed to pay 10% of the estimated taxable market value of the adjacent cropland.

David Kollar asked if the original edge of the ditch was moved due to cleaning, etc., would the new R/W be measured from the changed ditch edge or the original edge. Jones explained that the BRRWD is required to use the existing ditch bank edge to measure the one-rod buffer. Bernhardson reiterated that in this situation, the BRRWD proposes to pay the landowner 10% of the market value for current non-cropped ditch R/W that was not part of the original ditch easement and for which the landowners haven't previously been paid.

Lyle Hovland asked if there is any conflict between the new Buffer Law and Minnesota Drainage Law regarding buffer widths. A discussion followed, and it was noted that public waters (rivers, creeks, lakes, etc.) are required to have 50' buffers, while legal drainage systems must have the one-rod (16.5') buffers. The local SWCDs will work with landowners regarding the buffers on public waters.

Albright thought that the proposed project is a "good deal" for the ditch systems. The ditch R/W will be updated, which is required by both Drainage Law and the 2015 Buffer Law. The BWSR grant will pay for nearly half the project costs, which would otherwise be a total cost to the landowners. The landowners will be compensated for the land taken out of production for the buffers. Manager Fjestad also pointed out that landowners can contact the County Assessor to request a lower tax rate on the new easement acreage.

Doug Danielson asked if the assessment for the project costs will be levied all at once, or over a period of years. Albright thought that the Board would probably spread the project costs out over a few years. He explained that the landowners won't see the costs for the proposed project on their tax statements until 2019 and beyond because the Board already levied for 2018 at their budget hearing in August.

Cary Danielson asked if each of the ditch systems has a financial account with a running balance. Albright explained that all the systems have an account with either a positive or negative balance. Albright noted that the current account balances don't reflect the 2nd half 2017 tax payments, which are payable in November.

There was a brief discussion about using ditch funds to address beaver control. Albright explained that, according to Drainage Law, the BRRWD can go up to one mile downstream of the ditch system to ensure an adequate outlet. So, if beavers are active within a one-mile stretch of the ditch outlet, the BRRWD can have the beavers removed, as a ditch system expense. No work can be performed upstream of a legal ditch system ending point. Albright added that if landowners are aware of problems on a ditch, or if there is a concern about the proposed side inlet culvert placement, they should mark the site on the ditch maps displayed on the meeting room walls.

Albright discussed some proposed modifications to the benefit areas for Wilkin C.D. Nos. 40, 41, 42, and 43 because of recent tiling projects. He explained that if a piece of land is not assessed to drain to a particular ditch system, the only way to use that ditch as a tile outlet is to petition to add the land to the benefit area, which requires a ditch system hearing. The Board wanted to use tonight's meeting to clean up a few items in this regard. The BRRWD received petitions in accordance with M.S.A. 103E.401 and 103E.805, to remove the W $\frac{1}{2}$ NW $\frac{1}{4}$, Section 13, Atherton Township, Wilkin County, from Wilkin C.D. No. 41 and to add this land to Wilkin C.D. No. 42 for tile drainage at the current benefit rate. A request was also submitted to add 587 acres in the W $\frac{1}{2}$ and the SE $\frac{1}{4}$, Section 31, Prairie View Township, and the N $\frac{1}{2}$, Section 6, Tanberg Township, to the benefit area for Wilkin C.D. No. 43 at the rate of \$20 per acre for tile drainage. The land will remain in Wilkin C.D. No. 40 for drainage benefits at the rate of \$20 per acre for surface drainage. Govt. Lot 1 of Section 31, Prairie View Township, is currently taxed to Wilkin C.D. No. 40. This property surface drains and is tiled to drain north to Wilkin C.D. No. 43, and it should be assessed to that system at the rate of \$40 per acre. None of the landowners objected to the proposed changes. The group had a brief discussion about the BRRWD Rules and permitting process.

Albright explained that as crops are harvested, the contractor will come in to do the side inlets. The Wilkin SWCD will seed the buffers and follow up with a one-year maintenance plan, which includes possible reseeding where necessary and mowing. The R/W checks will be mailed in the next few weeks.

Vice Chair Fjestad asked if there was any other questions or comments, there being none, he adjourned the hearing at 8:08 PM.

Respectfully submitted,

John E. Hanson, Secretary