

BENTON COUNTY DITCH AUTHORITY
Tuesday, July 7, 2020
Benton County Board Room

The Benton County Ditch Authority met in special session on July 7, 2020 in the Benton County Board Room in Foley, MN with Board members Ed Popp, Warren Peschl, Spencer Buerkle, Steve Heinen and Jake Bauerly present. Also present (some virtually) was Chris Byrd, County Engineer; Michelle Meyer, Assistant County Attorney; Nadean Inman, Auditor-Treasurer; Monty Headley, County Administrator; and Vicki Feuling, Administrative Assistant.

Call to order by Chair Buerkle was at 10:12 AM.

Peschl/Heinen unanimous to approve the agenda as written.

Bauerly/Popp unanimous to approve the minutes of June 2, 2020 as written.

The next item of business was a public hearing to consider ordering a redetermination of benefits for County Ditch No. 6, located in Sections 25, 26, 27 and 28 in Graham Township. Chris Byrd, County Engineer, explained that, over the years, the highway department has received multiple complaints as to the condition of this ditch; when staff began investigating, there became the possibility that the ditch had been altered from its originally-constructed alignment (under MN Ditch Law, a repair is only allowed back to the original alignment and ditch bottom). Byrd noted that the investigation led to the reestablishment of ditch records process. He stated that the county's hired consultant performed field survey work, reviewed old establishment documents, took cores and probed the ditch bottom to find where the hard bottom of the ditch was, and looked at aerial photographs; that process determined the as-constructed, and subsequently improved, condition. Byrd stated that the process also proved that that condition matched up well with the current alignment; the as-constructed, and subsequently improved, condition is significant because any future repair project will be allowed to go back to that condition.

Byrd added that the process also determined the drainage area of Ditch 6, commenting "...when you look at the drainage area compared to the originally-assessed tracts of land, you see that the drainage area is much larger than the originally-assessed tracts of land...back then, as they do today, they looked at quarter-quarter sections...40-acre tracts of land...and assessed benefits to those tracts of land..." He explained that a snapshot of the original viewers' report identified only 439 acres receiving a benefit from County Ditch 6; a reestablishment of drainage records identified a drainage area of 1,805 acres. Byrd commented "...by today's standards...is to look at that whole drainage area as possibly receiving a benefit from that ditch...a value of that benefit is assessed to those acres...the original viewers' report established a total value of benefits of those 439 acres of only \$8,134.50...that doesn't match up with today's land values...and we could be bound by future repair projects of only being able to expend that much...or not to exceed that value in a given year..."

Byrd reported that because the reestablishment of drainage records process determined the drainage area to be a lot larger than the originally-assessed lands, and that land values have increased since the original determination of benefits in 1905, he is recommending that the public hearing be held today to receive public testimony, and then consider ordering a redetermination of benefits.

Byrd stated that, after the public hearing is closed, he recommends ordering a redetermination and appointing viewers. He added "...the way the alignment is today...that is the as-constructed, and subsequently improved, condition...we also determined that the bottom of the ditch today, in places, is higher...meaning there is some room or some areas that we do need to repair and we can excavate back to the original ditch bottom...we don't have to cut through fields today to move the ditch...we can stay where the open ditch is today...but there may be areas where we can excavate and repair that ditch..."

The public hearing was opened at 10:19 AM.

Duane Brenny, Section 26 of Graham Township (13072 – 55th Avenue NE, Rice) stated "...definitely I would gain a benefit of drainage by improving it...the section across the road from me...there is some blockage there that needs to get removed so the water can drain...it gets assessed to the landowners, but that's public waters...shouldn't some of that be public funds available to offset the costs...I agree that us, as landowners, need to be assessed part of the cost, but if the DNR controls it...I definitely would like to see something done..."

With no one else wishing to address the County Board, the public hearing was closed at 10:22 AM.

There were no emails, letters or other correspondence to be read into the record.

Byrd explained that "public water" does have a definition in statute; there are specific maps used to determine public waters that date back to 1991—if it was deemed to be a public water, there would be some extra steps to go through to communicate with our regulatory agencies, BWSR and DNR. Byrd stated that he did not believe that this county ditch was identified on that original public waters map. He added "...as to the question regarding public funding, there sometimes is a belief that if it was a public water, we could get funding...that's not always the case either...there may be some grants that are available, but usually those types of grants are highly competitive and the chances of receiving outside funding aren't always that great..." Byrd reminded the group that these county ditch systems are owned by those assessed owners; the county is just the administrator of those ditches—it's paid for by those receiving a benefit. He pointed out that, by going through the redetermination process, those costs will be spread over 1,805 acres as opposed to the original 439 acres. Popp commented "...over the course of the last 1-1/2 to 2 years, I've probably had requests from at least a handful of people on that list...when are you going to get to this ditch...it's been a long process since the initial...the process takes a while because of the lack of things that were done over the course of the last hundred years..." Byrd stated "...now that we've completed this process to date, in the future we can do things much more efficiently as far as repairing and maintaining the ditch..."

Popp/Bauerly unanimous to adopt the Findings and Order to redetermine the benefits and damages for Benton County Ditch No. 6 and appoint ditch viewers, and authorize the Chair to sign the Findings and Order.

The next item of business was consideration of an order for reestablishment of drainage system records for County Ditch No. 14.

Byrd explained that the highway department has received complaints about this ditch over the years, although no formal petition was received; investigation by staff showed that there are no good as-built drawings or records to show the condition of the ditch immediately after constructed; therefore, there is a need to know what the as-constructed, and subsequently improved, condition is. Byrd stated that

he would like the Board to consider initiating the process to reestablish the drainage records to determine the constructed alignment and the elevation of the ditch bottom; this would be accomplished by adopting the findings and order initiating the reestablishment of drainage system records (creates documentation for future repair projects). He noted that this findings and order would appoint himself as the County Ditch Engineer and give him authority to oversee Houston Engineering in completing the preliminary engineering report.

Peschl/Heinen unanimous to adopt the Findings and Order initiating the reestablishment of drainage system records for County Ditch No. 14, appointing Chris Byrd to serve as the engineer for the investigation and preparation of the engineer's report, and authorize the Chair to sign the Findings and Order. Popp inquired if County Ditch No. 9 will be impacted. Byrd responded "...initial discussion with Houston Engineering...once we get to the southern parts of that ditch, it does seem to be gaining quite a bit of fall...we think that we can move forward with a future repair project and not be a detriment to County Ditch 9...I wouldn't be surprised if once we complete the repair on Ditch 14, we see more requests from Ditch 9..."

Bauerly/Popp unanimous to adopt the Findings and Order accepting the report to reestablish the public drainage system records for County Ditch No. 14 and set a public hearing for August 18, 2020 at 10:00 AM to reestablish records, and authorize the Chair to sign the Findings and Order.

Popp/Heinen unanimous to hold a public hearing on August 18, 2020 at 10:30 AM to determine whether or not to order the redetermination of benefits and damages for County Ditch No. 14.

Chair Buerkle adjourned the meeting at 10:38 AM.

Spencer C. Buerkle, Chair
Benton County Ditch Authority

ATTEST:

Montgomery Headley
Benton County Administrator