

BENTON COUNTY DITCH AUTHORITY
Tuesday, August 18, 2020
Benton County Board Room

The Benton County Ditch Authority met in special session on August 18, 2020 in the Benton County Board Room in Foley, MN with Board members Warren Peschl, Spencer Buerkle, Steve Heinen, Jake Bauerly and Ed Popp present. Also present (some virtually) was Chris Byrd, County Engineer; Michelle Meyer, Assistant County Attorney; Monty Headley, County Administrator; and Vicki Feuling, Administrative Assistant

Call to order by Chair Buerkle was at 10:30 AM.

Peschl/Bauerly unanimous to approve the amended agenda—proceed with public hearings on County Ditch No. 14 prior to County Ditch No. 3 update.

Peschl/Popp unanimous to approve the minutes of July 7, 2020 as written.

Chair Buerkle announced that the next item on the agenda is a public hearing to receive public comment with regard to the Engineer's Report to reestablish the drainage system records, pursuant to Minn. Stat. § 103E.101, Subd. 4(a)—County Ditch 14 located in sections 2, 3, 10, 11, 14, 15, 16, 21, 22, 23 and 26 of Maywood Township.

Chris Byrd, County Engineer, explained that Houston Engineering was hired to make a survey of the ditch and provide an Engineer's Report.

Garrett Monson from Houston Engineering summarized the Engineer's Report for County Ditch No. 14:

- Drainage Authority Responsibilities (may, by order, reestablish records defining the alignment; cross-section; profile; hydraulic structure locations, materials, dimensions, and elevations; or right-of-way of the drainage system as originally constructed and subsequently improved)
- Record Reestablishment Purpose (defines where Drainage Authority can do work; defines maximum level of repair (as-built) and drainage quality; work beyond the as-built (improvement) has regulatory implications)
- Record Reestablishment Process (investigate the historical development of the system by record review; field survey; establish the "As-Constructed and Subsequently Improved Condition"; describe the right-of-way of the system; Engineer's Report)
- County Ditch 14 Location and History (Maywood Township, approximately 9 miles of open channel ditch, established in 1915, main trunk and six branches, small repair of downstream end into County Ditch 9 in 2004)
- Benefitted Area (Drains 3,340 acres; 1916 Viewers' Report identifies 1,373 benefitting acres)
- Determination of the As-Constructed Alignment (review established alignment, review construction documents, current alignment reflects As-Constructed and Subsequently Improved Condition)
- Determination of the As-Constructed Grade (soil probes identify the hard bottom of open channel ditch; field surveyed bottom of channel is compared to the design profile)
- Why are some culverts higher than As-Constructed and Subsequently Improved Condition? (some roads weren't present or in present location in 1915; over years, sediment accumulated; new or replacement culvert placed on top of existing sediment)

- Right-of-Way (damages awarded during drainage system establishment for 1) the area physically occupied by the ditch, and 2) area required to construct and maintain the drainage system; based on channel depths, visible spoil areas and topography)
- Recommendations (order the reestablishment of the public drainage system record following MS103E.101; continue with the preparation of a Repair Report consistent with MS103E)

Byrd explained that this report, if accepted today, would establish the bottom elevation of that ditch and the shape of what that ditch would look like. He stated "...that has benefits to the ditch system whether we do a cleanout next month or ten years down the road...we'll be able to go back to this document if accepted today...that's the importance of having this reestablishment of as-constructed and subsequently improved condition of the ditch..."

The public hearing was opened at 11:02 AM. Speakers included:

- David Warner (11019 – 185th Avenue NE) stated "...I live on Benton County 9...I basically own the land about 100 feet off of 23 and almost to the next intersection...this apparently affects me on three different sides...are we talking the ditch...or are we talking the river...are we talking something man-made...I requested mine to be cleaned out 35 years ago and I'm still waiting..."

Byrd replied "...County Ditch 14 is an open channel ditch that travels mostly through farmland in Maywood Township...it's not identified as a public water...so it's not necessarily the road ditch...although there is a portion of it near Highway 23 on County Road 9 that the road ditch is in the county ditch..."

- Jason Alderink (9296 – 185th Avenue) stated "...I appreciate what the county has done...appreciate the effort you have put into identifying the ditch bottom and I hope you move forward with it..."
- Al Donabauer (10112 – 175th Avenue NE, Oak Park) stated "...I'm on the north end of the ditch...I've got branch number 7 that goes through my land...we are talking about this elevation being set...the question I've got is what's it going to cost us as the landowners for this improvement and at what point does this improvement help me...because the land that is south of me going towards 23...if that doesn't get cleaned out...you can clean that ditch out and change the culvert and everything else and it's not going to benefit me because everything is stopped up between 23 and my place..."

Byrd explained "...today the action, if approved, would be to just accept the report...the Board is not authorizing to move forward with any excavation...or hiring a contractor at this point...so the actual estimate of the cost to clean out the ditch is still yet to be determined...that would be if the Ditch Authority ordered a repair report...we need to be cognizant that right now we are working under the repair statute... in statute, there is a definition for an improvement...we are establishing this report today so that we can repair in the future and be exempt from those regulatory agencies which would require us to replace and mitigate wetland impacts...if we were to move forward with an improvement, which is an entirely different action and has a different set of statutes...an improvement would be deepening, widening, increasing the capacity of the drainage ditch...we would be subject to regulatory agencies like the Corps of Engineers, DNR, Board of Water and Soil Resources...and may be required to replace any wetlands that are impacted...then the costs shoot through the roof...at this point, the only costs that have been incurred by the ditch system would be administrative costs to create this report...if this report is accepted, the next thing that we have on the agenda today would be to have a public hearing to have a redetermination of benefits...right now, the only assessed landowners would be the properties that were determined back in 1916 as indicated in the report...that was the last time viewers were appointed and determined the value of benefit provided by that ditch..." Bauerly stated "...to answer his question, we are not going to clean out part of the ditch...if we clean it, we'll clean the whole thing from top to bottom...your water is not going to be backed up..."

- Eric Jacobson (7808 – 175th Avenue NE) stated “...I’ve got a couple records...when I purchased the land from my parents in 1990...the south side of 52 was all beaver dammed...I worked with Bob Kozel...we went through all the board meetings...I do have records on that...at that time it did benefit me...I felt guilty at the same time because it charged everybody from where they started all the way across 23...which affected a bunch of people and neighbors that I knew...to me, it did very little benefit but, grant it, their water does run through that ditch...we removed all the beaver dams...that was not on your map...that was in 2003...then working with Bob again, I had my ditch, starting at 52, it went through my 40, actually it went through my 80, and then 9 that went to the west to my county road...township road...and then it went north again through my brother-in-law’s...my accrued costs on that, to go through my 40 was \$3,070.00...my brother-in-law’s was a little less because he doesn’t have a branch through it...Bob recommended to me to do it this way because then we didn’t have to go through and get everybody’s...assess taxes and this and that...but at the same time, when they went through...maybe it’s changed now, the way they pay for the ditches, who actually uses it...and, yes, times have changed...there are irrigation systems...or drain tiles...all of that does need to be assessed...but if we were to stop at 52...I don’t know the condition of my ditch...I think it’s fairly well...when I get a downed tree, I drag it out...I’ve got all my ditches fenced off so the cattle can’t cross them...if we go forward with Ditch 14 to the north, it will be stopped at 52...to the south of me...it does need to be cleaned...even this summer, I’ve had standing water in my ditch...I would guess over a foot because of the ditch to the south...and then when you go even further south to County Road 4, that’s where I believe there’s really no record of it being cleaned...if they are going to clean it, as far as I can see, start at 7 and 51...I believe there is records on that one...I know that there would be less money put forward to clean out my section of ditch because it was just cleaned in 2007...including my brother-in-law...so I am not sure how you would split up the funds on that...myself and my brother-in-law paid that out of our own pocket...it took us two months to get it cleaned and it was done...we hired Vern Dullinger...”

Byrd replied “...what Mr. Jacobson is referring to is an entirely different ditch system...at County Road 52, it actually becomes County Ditch Number 9...that’s a different set of proceedings...because it’s established in the record as a separate ditch system, we’d have to do this entire process for Ditch 9...not saying we won’t or we shouldn’t...today we are focusing on County Ditch 14...it may be beneficial to continue and do the same process on Ditch 9 which is south of County Ditch 14... obviously, we are a lot further along with County Ditch 14 because we haven’t even initiated this process for County Ditch 9 as of today...”

- Randy Eilers--on behalf of Mark and Irene Eilers (16966 – 65th Street) stated “...Ditch 9...we have a pasture there...this is the first year that cattle have been able to use the pasture because it has been dry...but this ditch that’s...County Road 9...which hooks onto 52...like I said, first year ever that the cattle have been able to use it...otherwise, it’s three feet of water in there all the time...25 years ago, they could use this...I’m thinking, by cleaning Ditch 14 first, is going to cause problems our direction...it’s going to be a lot worse...I’ve talked to Chris about cleaning from 51 going north...”
- Mark Ratka (8447 – 165th Avenue) stated “...I’m on the north side of branch 1 ditch...I’m wondering how accurate their assessments are...what the elevation level and the proposed level...if you look at the charts...nothing has been done with that ditch probably ever since it was dug...there’s been cattle in that ditch for many, many years...not recently...if you look at the assessment of what they say where the bottom of the ditch and the sediment whatever, most of the spots they are showing it only looks like 8 or 10 inches coming out of there...8 or 10 inches when that ditch was dug back in 1919 or 1940 or whatever...you take a look at just the amount of decomposition...not even to consider how much the cattle worked that ditch...I don’t know what they are going off of...if they are using the culvert level and Benton County 7 and going off of that, that’s inaccurate because it seems to me whenever the county replaces a culvert, it’s too high...I would like to see it cleaned...”

everything needs to be cleaned... it's a mess out there...and by cleaning it, yes, it might create an expense for you...but it's also improving everybody else's property and the property is worth more...at least we can actually use the property then instead of hatching mosquitoes and raising frogs..."

Byrd explained "...what Garrett had presented on...they had staff go out there when they were surveying or after they surveyed, and actually use a probe and a soil auger to try to find the hard bottom...and even if some of the drawings today show that the bottom of the ditch, as it is today, is close to the as-constructed bottom, it doesn't mean that there is no work needed...this report also established the shape of the ditch... maybe today it's a "V" shape and maybe when it was constructed, it was more of a flat bottom or an upside trapezoidal shape...even if the elevation...if we can't go deeper in certain locations, there may be an opportunity where we widen that bottom out and still increase the flow of water through different locations..." Ratka inquired what time of the year borings were obtained. Monson stated it was last fall. Byrd commented "...there were culverts identified that were not at the elevation of the as-constructed profile...meaning that they were set on sediment or higher than the bottom of the ditch..." Ratka added "...up along Highway 23...look at that farmer's field there...initially, there was no ditch in there...when the State redid that highway, they put a culvert in there...they are dumping all that water to the south...there was no ditch in there...that farmer used to be able to farm that straight through years ago...now all that water is dumped across from the highway...on the north side of the highway that water is supposed to go, basically, to the west...that state ditch is supposed to take that water...there's a watershed that's going the wrong way and that affects everybody. Byrd noted that the next step in the process would be to decide whether or not to do a redetermination of benefits and the redetermination of benefits is where some of these issues get vetted out with landowner meetings; there is an opportunity to discuss which way water goes. He added "...to make sure any water which eventually drains into County Ditch 14...that land receives an appropriate amount of benefit..."

- Roland Schafer (10454 – 175th Avenue NE) stated "...on repairing that...is everybody on that ditch going to be charged their fair share...because it's farmer owned...and the last time us guys to the north, we got charged... but I was told the guys down south didn't have to pay...they should pay too because they got the water taken away...that's a big deal...the last time they did some work on the ditch was 2004...I'm not sure on the dates...I just went ahead and paid it so the county didn't have to monkey with the tax burden...why do us guys on the north have to pay...this is farmer-owned and everybody should pay...I'm thinking the fair way of doing this would be that Benton County takes over the whole ditch system and pays for what has to be done...and done it right...right where I live there is a 40 there...there's four new homes in there...and they're in the flood plain...with people building out of town, this totally changes the whole dynamics...and it's not going to get better...it's going to get worse because there's more people wanting to build out there...and they took one 40 out of production...part of it...if the county took over, they could control it...everybody in the county would pay a little bit more because the whole county is benefitting with the tax system and all these new houses going up...and you'd be spreading it out...not just the people that have the ditch..."

With no one else wishing to address the County Board, the public hearing was closed at 11:28 AM.

Byrd read two letters into the record at this time:

- Leon and Julie Goenner (17746 – 75th Street NE, Oak Park), "...our section of the ditch has been previously cleaned out and we also fenced it off...we do not feel we should be charged for cleaning of our section of ditch at this time...as we see it, the problem lies further south of our property..."
- Stanley and Susan Andresen (8120 – 165th Avenue NE, Oak Park) "...we purchased our property in 1997...our property exists at the confluence of branches 1 and 2 of ditch #14...any reasonable

person would not see a drainage ditch...would see a wetland or more colloquially, a swamp...when we approached county officials in 1997 with plans to build on the eastern side of the property, up on the hill...we were told that we may not build a driveway to cross the wetland to reach that location...since we were required to confine ourselves to a very small buildable site, our plans needed to be redrawn at a substantial cost to incorporate a second story and not a basement...we have been living on a less-desirable site for over 22 years because we were not allowed to cross a wetland...in the early 2000s...we were told that the ditch had not been maintained in over 40 years and that, for all practical purposes, it had been abandoned...through the years...have worked with the Benton SWCD/NRCS to plant a small riparian buffer strip...also have enrolled land in CRP...would lose income if these lands are drained due to Swampbuster rules...we are not in favor of reestablishing this ditch unless there can be some reparations for the damages we have suffered and the future damages we and the environment will incur by draining these well-established wetlands..."

Bauerly noted that this process is set up by the State of Minnesota and the County has no authority to change this process. He added "...Benton County needs drainage terribly...in the presentation, it showed the value improvement of farmland by improving drainage...it's for the greater public good that we follow this process...we need to get at it...this process was set up a century ago to help improve Benton County farmland...if Ditch No. 9 needs to be cleaned, we should put that next on the list..." Byrd stated that the ditches are supposed to be inspected every five years, adding "...we not only have a responsibility...it's a statutory obligation that if there is an established ditch, we have to maintain it by State law..." Peschl pointed out "...we went through a lot of these issues with Ditch 13 and Ditch 15 that we cleaned...we got it to flow..." Heinen stated the need to keep moving forward with the next ditch system in order to make this process work.

Peschl/Bauerly unanimous to accept the Engineer's Report to reestablish the drainage records—County Ditch No. 14.

Chair Buerkle announced that the next item on the agenda is a public hearing to receive public comment and to consider whether or not to order a Redetermination of Benefits and Damages, pursuant to Minn. Stat. § 103E.351, Subd. 1(a)—County Ditch No. 14 located in Sections 2, 3, 10, 11,14, 15, 16, 21, 22, 23 and 26 of Maywood Township.

Byrd pointed out that, in the process to reestablish the drainage records, it was noted that there are a lot of additional acres that are draining into County Ditch No. 14 than were originally assessed when the ditch was established. He stated that, by today's statutes and standards, anybody that has water that falls on their property that drains into a drainage system does receive a benefit. Byrd added "...to determine the value of the benefit would be to initiate proceedings called a Redetermination of Benefits...at this point, viewers would be appointed and the viewers are the ones who actually look at the land and the drainage system and determine the value of each parcel that it receives from that ditch...this process does not establish what the cost would be to repair the ditch...all that it is establishing is the value received... depending on what each parcel's percentage of the total benefits provided by that ditch system...that's how we determine a parcel's apportionment of the total repair costs or the cost to maintain that system...I think it would be in the Ditch Authority's best interest to move forward with this redetermination process... that way we can determine everybody is included and captured that is receiving a benefit...we will have an opportunity to look at where the water flows and how it is flowing...these viewers are independent viewers...they don't have any stake or own any land in Benton County...their process looks at topography, soil types, commodity prices, and crop

rotation...and determine the value that land receives from the ditch...they try to look at what the value of that property would be if that ditch did not exist and then the difference in value because that ditch is there and draining water away from it...what's the increase in value..."

The public hearing was opened at 11:40 AM. Speakers included:

- Randy Eilers—on behalf of Mark and Irene Eilers (16966 – 65th Street) stating "...if you clean Ditch 14 before Ditch 9, you guys are going to need a barge in our pasture...that's how bad it is...there are other people in this room who feel the same way..."
- Nick Schumacher (7510 – 95th Avenue NE, Foley) stating "...I have a couple properties over there... mainly our home farm...a question on this...before we approve all this...if we approve this Engineer's Report...does that say we clean two inches...that's kind of a crucial aspect of it...do we determine the elevation later...if I want to build a house..."

Byrd explained "...the actions taken today does not authorize the Ditch Authority to hire a contractor to remove any cubic foot of dirt yet...the Ditch Authority may conclude the Redetermination of Benefits process and determine the value of all the parcels that would be benefitted...and then, at that point, the Ditch Authority, if they so choose, could say...well, let's not move forward with an actual repair project just yet...lets consider the systems downstream...we'd have to complete an engineering set of drawings that shows exactly elevation changes, volumes of sediment removed, and those kinds of things...that has not been authorized as of yet...today we are saying if we wanted to move forward with a repair project, the report that was just adopted says that you can clean back to these elevations and not have to face any additional regulatory restrictions...the next step is determining who is all going to help pay for any future repair projects..."

- David Warner (11019 – 185th Avenue NE) stated "...first farmer basically on Benton County 9...I do have a tile running into that...you're telling me I'm going to pay taxes on it then, correct...with the water running off my land into the ditch...it's been there 40-some years...it's time to be replaced or repaired... it's not working like it used to be...now you are going to tell me I am going to pay taxes on it...when I bought my farm, it was \$285.00 a year...now it's \$4,000.00..."

Byrd explained "...103E talks about...the value of the benefits is not determined by the County Board...it's not determined by the County Ditch Engineer...it's determined by these viewers who, if approved to move forward, would be appointed today...there are three independent viewers who look at the drainage system...they consider a number of factors...topography...soil types...commodity prices...crop rotation... there will be an opportunity to have property owner meetings...before we accept the report, there would be another public hearing...the process gives the landowner an opportunity to discuss what's happening with their land...that's very beneficial...drain tile locations...how much is draining into the ditch...the viewers will come up with a number that each property is valued at...each property is looked at differently...not everybody is going to see the same amount of benefit from the ditch...not everybody is going to pay the same proportionate value toward the maintenance costs..."

- Ed Lafore (18283 – 85th St NE, Foley), stated "...two ditches go through my property...everything is flooded now...I lost my pasture and part of my field...I talked to Chris Byrd a few years back and he told me there was money in a fund to clean this ditch, but they took it out and put it someplace else...well, let's take it from that someplace else and put it back...it was put there for a purpose..."

With no one else wishing to address the County Board, the public hearing was closed at 11:49 AM.

Byrd referenced the two letters which were read into the record as part of the previous public hearing.

Popp stated "...we've heard several comments on Ditch 9...that if we clean out Ditch 14, Ditch 9 is going to be flooded...I like that we have the authority to look at that and not go forward until we do that...can

we go forward with Ditch 9 without somebody petitioning a cleaning...” Byrd clarified “...there’s two main ways under the repair statute...you can do it because somebody who has an interest, or receives a benefit from that ditch, requests that...we call that a petition...or just by the action of the Ditch Authority under their normal authority of inspecting and maintaining it...once again, just like all of our ditch systems, the only official drawings we have are when it was established...we may be best served by doing a full survey, probing the bottom of the ditch and finding that hard bottom, and reestablishing what that ditch should look like...to make sure we clean it correctly...” Peschl commented “...it would be good if somebody from Ditch 9 would come in and petition to get that cleaned so we can move forward...it doesn’t make sense to clean one and not the other one...” Byrd reiterated that the Ditch Authority may do that under its normal authority. Popp stated “...I don’t want to see the people along Ditch 14 assessed for something they are not going to get any benefit from because it’s plugged up downstream...I’ve heard the concerns several times...either we need to find somebody to quick get a petition in to move forward...I’d feel more comfortable if somebody would petition from Ditch 9...we’ve been through the Redetermination of Benefits on three different ditches now...every time we’ve done that, the area has grown...of benefitted acres...your cost probably goes down...”

Motion by Popp to order a Redetermination of Benefits—County Ditch No. 14. Second by Heinen. Michelle Meyer, Assistant County Attorney, asked the Ditch Authority to identify who they are appointing as viewers. Heinen identified the following individuals as appointed ditch viewers: Bryan Murphy, Shantel Hecht, and Larry Murphy (Robert Coneley—alternate/consultant). Popp amended his motion to include the appointment of the following ditch viewers: Bryan Murphy, Shantel Hecht, and Larry Murphy (Robert Coneley—alternate/consultant). This was agreeable to the second (Heinen). Meyer requested that the motion include language to designate the Auditor to comply with their duties. Following brief discussion, Popp amended his amended motion was to include the following (which was agreeable to Heinen, the second):

Based on the foregoing Findings and the entire record of proceedings before the Board, the Board, acting as the drainage authority for Benton County Ditch No. 14, hereby orders as follows:

- A. A redetermination of benefits and damages for Benton County Ditch No. 14.
- B. The following persons are appointed as ditch viewers in accord with Minnesota Statute §103E.305 who shall determine the benefits to all property and entities benefitted by the original construction of the drainage system and not assessed for benefits arising from its construction: Bryan Murphy, Shantel Hecht, Larry Murphy, and Robert Coneley—alternate/consultant.
- C. The viewers shall make a viewers’ repair report to the drainage authority as provided by Minnesota Statute §103E.315.
- D. The Benton County Auditor/Treasurer shall designate the time and location for the first meeting of the viewers and shall issue a copy to the viewers of the auditor’s order and a certified copy of the order appointing the viewers.
- E. At the first meeting and before beginning their duties, the viewers shall subscribe to an oath to faithfully perform their duties. If an appointed viewer does not qualify for any reason, the auditor shall designate another qualified person to take the disqualified viewer’s place.
- F. After the viewer’s report is filed, the Benton County Auditor/Treasurer shall send notice of a hearing as is required by Minnesota Statute §103E.325. The Ditch Authority shall hear all interested parties and determine benefits to the property and entities benefitted by the original construction of the drainage ditch and not assessed for benefits.

A roll call vote showed Buerkle, Peschl, Popp, Heinen and Bauerly all voting yea.

Byrd proceeded with an update on County Ditch No. 3. He stated that, after receiving a valid repair petition in February 2020, the Public Works Department issued a Request for Proposals (RFP) to find a

reputable consultant that can perform the surveying and engineering work required to properly respond to the repair petition. He pointed out that the RFP outlined the requirement for submitting a proposal and established the expectations of the selected consultant; Quality Based Selection criteria was used to choose the consultant. Byrd added that the score of a consultant's proposal was based 25% on Specialized Experience, 25% on experience with similar projects, 20% based on their proposed schedule, and 30% based on the proposal's price. He stated that four proposals were received; based on independent scoring by the County Engineer and Assistant County Engineer, *Housing Engineering, Inc.* scored the highest. Bauerly/Peschl unanimous to enter into a professional services agreement with *Houston Engineering, Inc.* for County Ditch No. 3 and authorize the Chair to sign.

Bauerly/Heinen unanimous to adjourn at 12:02 PM.

Spencer C. Buerkle, Chair
Benton County Ditch Authority

ATTEST:

Montgomery Headley
Benton County Administrator