

BENTON COUNTY DITCH AUTHORITY
Tuesday, August 16, 2016
Benton County Board Room

The Benton County Ditch Authority met in special session on August 16, 2016 in the Benton County Board Room in Foley, MN with Board members Warren Peschl, Jim McMahon, Spencer Buerkle, Ed Popp and Jake Bauerly present. Also present was Chris Byrd, County Engineer; Michelle Meyer, Assistant County Attorney; Monty Headley, County Administrator; and Vicki Feuling, Administrative Assistant.

Call to order by Chair Spencer Buerkle was at 11:12 AM.

Popp/Bauerly unanimous to approve the agenda as written.

Peschl/McMahon unanimous to approve the minutes of July 12, 2016 and July 19, 2016 as written.

A public hearing to receive public input on the viewers' report of redetermination of benefits for County Ditch 13 was opened at 11:15 AM. Chris Byrd, County Engineer, explained that the viewers who performed the work are present at today's meeting; the viewers' report was received at the July 12th meeting of the Ditch Authority. Byrd noted that the property owners' reports were mailed to each individual land owner that is receiving a benefit from Ditch 13.

Ron Ringquist of the MN Viewers Association stated his intent to review the redetermination process at this time. He referenced the Board's previous determination that the benefits of record did not reflect current market values and/or there were properties within the watershed of the ditch systems that contributed to the need for the ditch, or otherwise benefitted from the ditch, that were not included or assessed benefits from that ditch system. Ringquist stated that a redetermination is a revaluing or updating of the values and the use of the existing ditch system, with the assumption that the ditch system is in a reasonable state of repair. He stated that the redetermination process involves going out in the field and looking at all the changes, including market values, which have occurred within the watersheds of these two ditch systems since their original construction. Ringquist pointed out that Ditch 13 and Ditch 15 were originally constructed in the early 1900's and he is not aware of any subsequent improvements to those ditch systems; the assumption is that these ditch systems would be reconstructed or maintained back to that original constructed configuration.

Ringquist stated that, on a redetermination, the basis for determining benefits and damages is based upon a comparison of what the conditions/values would have been if the ditch systems had never been constructed versus what conditions/values exist with the ditch system in a reasonable state of repair. He noted a number of aids used during the viewing process, including soil survey manuals and maps of Benton County, GIS aerial photos and data, MN LIDAR, and a visual inspection of each 40-acre parcel or portion of a 40-acre parcel within the overall watershed.

Ringquist indicated that two approaches are used in valuing these properties—market value approach and income approach; this includes increased potential for agricultural production as a result of constructing the drainage project and contribution of accelerated runoff causing an increase in drainage system capacity and maintenance. He stated that land use, property value, and economic productivity are determined considering the benefitted properties within the watershed prior to drainage (generally four classifications are established when the viewers are in the field); land use, property value, and

economic productivity are then determined considering the benefited properties within the watershed after public and private drainage have been installed (generally five classifications are established).

Ringquist restated that an income analysis is performed as part of the redetermination; benefit adjustments include hydrologic inefficiency and access/proximity adjustments. He explained that potential benefit values were determined for the system based upon a 25-year effective life with proper maintenance, private improvement cost depreciated over the same 25-year period, and an allowance of 0.5% return on the system investment. Ringquist stated that the report also considers maintenance costs; damages have been given for the easement acquisition for the area required to establish the one-rod seeding area adjacent to the channel required by MN Statute. He pointed out that roads go through the same type of mass classification for assessing road benefits.

Ringquist stated that the redetermination process followed for Ditch 13 was the same for Ditch 15. He noted that, at the time of their field investigation of the Ditch 15 system, the upper reach of the original constructed Ditch 13 had been diverted through construction of a private ditch system south and outletted into Ditch 15; this upper reach has been included as draining into Ditch 15 within the current submitted reports.

Ringquist referenced the Viewers' Report for County Ditch 13:

Total Land Benefits	\$448,589.08
Total Road Benefits	<u>32,185.19</u>
Total Benefits	\$480,774.26

He pointed out that the report also addressed a potential outlet benefit and outlet fee to these properties on the upper reach if they were going to continue to outlet into Ditch 15 because they were not a part of the original Ditch 15 watershed.

Ringquist referenced the Viewers' Report for County Ditch 15 (which includes the upper reach of the original constructed Ditch 13):

Total Land Benefits	\$1,581,624.00
Total Road Benefits	<u>109,018.00</u>
Total Benefits	\$1,690,642.00

Ringquist explained that subsequent to the submittal of the viewers' reports or sometime between their field work investigation and completion of the reports, the private ditch was obstructed and refilled back in. He stated that at the time of the informational meeting held last week (August 10th), the feeling upon leaving that meeting was that it was probably in the best interest of those individuals in the upper reach of Ditch 13 to maintain the accessibility and the current rights that Ditch 13 provides; once it becomes private, there is no access to the properties that are not owned by that individual and the public right to do maintenance of the ditch system would have been lost. Ringquist stated that, at this time, he is representing the desire of those individuals to leave the upper part of Ditch 13 as a part of Ditch 13 and transfer those benefits from Ditch 15 back into the Ditch 13 report.

At this time, Chair Buerkle requested that the record show that the testimony provided by Ron Ringquist with regard to Ditch 13 also applies to Ditch 15.

The public hearing to receive public input on the viewers' report of redetermination of benefits for County Ditch 13 continued:

Speaking in favor of the report was Peter Hemberger, an attorney representing Robert Anderson and Aaron Anderson, landowners. Hemberger referenced the upper reach properties of Ditch 13 and Ringquist's statement regarding the private ditch and how that's impacting and changing the owners who are going to need to be served with notice of the County Ditch 13 proceedings. He noted that there has also been discussion with Mr. Ringquist about his clients' concerns related to some property in Sections 22 and 23—it is believed the watershed line may encompass some properties owned by them and other individuals. Hemberger pointed out that there may be a need to re-notice related to that issue. Referencing both the Ditch 13 and Ditch 15 systems, Hemberger commented that he had the opportunity to meet with the Andersons' early this spring (February/March as the water started to run) to view the culverts, ditches; his impression is that there were ditches, in some cases, "unrecognizable" as ditches, let alone drainage ditches. He stated his belief that the ditches are in dire need of repair and that this redetermination is the first step in that process to get to those repairs. Hemberger stated the basic concept in ditch repair law with systems of this type is that there needs to be enough benefits assessed to that system or to owners in that system to allow for the repairs to happen. He commented that the cost of the repairs in this case, given the nature of the current state of the ditches, is going to be pretty high; and with the old assessed benefits, there would likely not be enough assessment if it's to allow for those drastic repairs. Hemberger encouraged the Board to "move along with this process" as it's the first step in bringing about those needed repairs. He pointed out that if there are changes that need to be made and new notices need to be issued, there is a statutory process for that.

With no one else present to speak in support or in opposition to the viewers' report of redetermination of benefits for County Ditch 13, Chair Buerkle announced that the public hearing will be closed (at 11:42 AM). Ron Ringquist explained that, with the comments received today and at the informational meeting, and the likelihood of having to re-notice individuals if they are going to remain in Ditch 13 rather than in Ditch 15, he would suggest not closing the public hearing if additional information is going to be received after re-noticing individuals. Ringquist stated his recommendation would be to continue the public hearing to a specific date and time, leave it open for discussion, and allow the notice to go to those 35 parcels that are in the upper reach that were being considered to be drained into Ditch 15, but now are going to be put back into Ditch 13 (because they were not given notice of the potential benefit from Ditch 13).

Michelle Meyer, Assistant County Attorney, explained that the Board does have the option to close the public hearing and make motions and discuss, and re-open the public hearing to receive additional public testimony. She stated that, at this point, she would recommend making a motion to continue the hearing and provide notice to those individuals so that there may be a proper discussion on the benefits and damages. Meyer stated that the information would be resubmitted to the viewers and to the engineer for re-examination (to include in the motion). She clarified that those individuals in the upper reach of Ditch 13 were notified that they were going to be part of Ditch 15 instead of Ditch 13; the recommendation now, based on that change of circumstance, is to put them back in Ditch 13.

Motion by Bauerly to continue this hearing on County Ditch 13 to September 6, 2016 at 1:00 PM and direct the engineer or viewers or both to re-examine the property benefitted or damaged by the system due to watershed changes/resubmit new data/findings and come up with a new redetermination. Second by Peschl. Motion carried unanimously.

A public hearing to receive public input on the viewers' report of redetermination of benefits for County Ditch 15 was opened at 11:51 AM. Chair Buerkle noted that the previous testimony provided by Ron Ringquist with regard to the viewers' report for County Ditch 15 has been entered into the record. Chris

Byrd, County Engineer, stated that his staff report as provided at the County Ditch 13 public hearing would apply to County Ditch 15 as well.

Speaking in favor of the report was Peter Hemberger, an attorney representing Robert Anderson and Aaron Anderson, landowners (Attorney with *Knutson & Casey*, 196 St. Andrews Drive, Mankato). There was no one else speaking in support or in opposition.

Ron Ringquist stated the intent to remove those properties in the upper portion of Ditch 13 from Ditch 15; it will not change the benefit value of those remaining properties on Ditch 15, but it may affect how the costs are ultimately distributed. He added that the Board's obligation in the viewing process is to determine the increase in market value because the project exists; based on that, the costs are distributed based on what share of the total benefit you have. Ringquist referenced the properties that were pointed out by Mr. Hemberger that, with the flatness of the ditch, the computer determined that the water went east and it actually does drain back to the west, in Sections 22 and 23; re-notice of those additional properties will be included in Ditch 15. He indicated that the individuals in the upper reach of Ditch 13 will receive notice that they will remain a part of Ditch 13 based on final Board action.

Motion by Bauerly to continue this hearing on County Ditch 15 to September 6, 2016 at 1:00 PM and direct the engineer or viewers or both to re-examine the property benefitted or damaged by the system due to watershed changes/resubmit new data/findings and come up with a new redetermination. Second by Popp. Motion carried unanimously.

McMahon/Peschl unanimous to adjourn at 11:55 AM.

Spencer C. Buerkle, Chair
Benton County Ditch Authority

ATTEST:

Montgomery Headley
Benton County Administrator