

BENTON COUNTY DITCH AUTHORITY
Tuesday, May 17, 2016
Benton County Board Room

The Benton County Ditch Authority met in special session on May 17, 2016 in the Benton County Board Room in Foley, MN with Board members Spencer Buerkle, Ed Popp, Jake Bauerly, Warren Peschl and Jim McMahon 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 11:41 AM.

Peschl/Popp unanimous to approve the agenda as written.

Popp/McMahon unanimous to approve the minutes of April 5, 2016 as written.

Chris Byrd, County Engineer, informed the Board that the viewers' reports for Ditch 13 and Ditch 15 have been received; no formal action on the reports is being requested today. He referenced an issue concerning the outlet fee for the private ditch that was dug connecting Ditch 13 to Ditch 15, noting that all properties upstream from that private ditch are now included as being benefactors of Ditch 15. Byrd stated that the Ditch Authority could take action to enforce the outlet fee (as the outlet has been in place for a number of years) and to order the landowner to close up the private ditch outlet. He stated that the order to close the private ditch outlet will result in moving those upstream properties back to benefactors of Ditch 13. Byrd stated the next step would be to set a public hearing to notify these landowners that they are now benefactors of the two ditches; it was suggested that the lead ditch viewer attend the June 7th meeting to provide an overview of his reports and, at that meeting, set the public hearing date (the Ditch Authority must hold the public hearing 25-50 days from formal receipt of the viewer's reports).

Referencing those properties upstream of the private ditch, Byrd clarified that there are some properties that were originally listed as benefactors of Ditch 13 and are now listed as benefactors of Ditch 15. McMahon asked if the property owners "have a say" as to which ditch they want to belong to. Byrd noted that the benefit is governed by which way the water drains. He pointed out that some parcels receive a benefit from multiple ditches; there are additional benefitted landowners to Ditch 15, not solely because of the private ditch. Byrd noted that the private ditch was dug a number of years ago without the approval of the Ditch Authority; however, the benefitted properties are still liable for that outlet fee.

Meyer clarified that the private ditch owner (Jim Kothman/KV Farms) has the option of petitioning the Ditch Authority for permission to outlet into Ditch 15, at which time the Ditch Authority would decide, after hearing input from the property owners, whether it's appropriate to maintain this private ditch or to order that the private ditch be blocked up. She pointed out that, absent a petition, the Ditch Authority could order blockage of the private ditch and payment of an outlet fee for the benefits that were received. Byrd clarified that, should the Ditch Authority grant permission to connect the private ditch to Ditch 15, it would remain a private ditch, unless the petition is to create a lateral connection. Meyer clarified that the owner of the private ditch was given the option to close the ditch prior to any enforcement action. Byrd commented that, hydraulically, it may make sense for the private ditch to remain connected to Ditch 15; however, it does require the land owner to take some action, following the statute—if he chooses not to petition, the Ditch Authority has the responsibility to enforce it and

order it to be blocked up. It was noted that private ditches are now exempt from the buffer strip requirement, which was the owner's original concern.

Byrd clarified that the outlet fee is a one-time fee; the fee varies depending on the viewers' determination of the amount of benefit received from that outlet. Meyer noted that Robert Anderson is now a contract for deed owner—both owners (Jim Kothman/KV Farms and Robert Anderson) would be liable as one has legal title and one has equitable title. Meyer noted that several letters were sent to Kothman/Anderson giving them a deadline—although she was told of their plans to close up the private ditch, this has not yet occurred; at this point, the Ditch Authority may wish to go forward with an enforcement action, hold a public hearing, and order him to close it up (in the meanwhile, the land owner could still file a petition with the Ditch Authority).

McMahon/Bauerly unanimous to set a public hearing for enforcement of the private ditch connection for June 7, 2016 (as the results of this hearing could impact the viewers' reports on redetermination of benefits, this hearing must be held prior to receiving those reports/holding a public hearing on those reports).

Chair Buerkle adjourned the meeting at 11:59 AM.

Spencer C. Buerkle, Chair
Benton County Ditch Authority

ATTEST:

Montgomery Headley
Benton County Administrator