

BENTON COUNTY DITCH AUTHORITY
TUESDAY, MARCH 15, 2022
BENTON COUNTY BOARDROOM

The Benton County Ditch Authority met in regular session on March 15, 2022 in the County Boardroom in Foley, MN with Board members Beth Schlangen, Scott Johnson, Steve Heinen, Jared Gapinski and Ed Popp present. Also present was Chris Byrd, County Engineer; Montgomery Headley, County Administrator; Michelle Meyer, Assistant County Attorney (virtual); and Beth Stay, Executive Assistant.

Chair Heinen called the meeting to order at 11:01 AM.

Johnson/Gapinski to approve the agenda as written. Motion carried unanimously.

Gapinski/Popp to approve the Meeting Minutes of March 1, 2022 as written. Motion carried unanimously.

Heinen requested to continue the public hearing on County Ditches (CD) 6, CD 7 and CD 9. Byrd read into the record the Findings of the Redetermination of Benefits for Benton County Ditch No. 6. The Findings are as follows:

1. Benton County Board of Commissioners is the drainage authority for **Benton County Ditch No.6**.
2. On Ditch 6 on July 7, 2020, the drainage authority adopted findings and ordered the initiation of a redetermination of benefits and damages for **Benton County Ditch No.6** pursuant to Minn. Stat. § 103E.351. Brian Murphy, Shantel Hecht, Larry Murphy were appointed as viewers and Robert Coneley as an alternate/consultant. On August 18, 2021, by order of Benton County Auditor Treasurer, Shantel Hecht was replaced by Aaron Goemann.
3. Benton County Auditor Treasurer, Nadean Inman, administered the Viewers' Oath.
4. The viewers completed their report, which included a benefits and damages statement, on January 14, 2022, for all property affected by the drainage system and filed their report with the drainage authority. Two landowner meetings were held to identify issues with the viewer's report. Corrections were made pursuant to property owner input.
5. The H2Over Viewers, LLC, under direction from the drainage authority Board, prepared property owners' reports and mailed them to the owners of property identified in the viewers' report on February 2, 2022.
6. The drainage authority, by order, set a public hearing for review of the viewers' report on March 9, 2022.
7. A printed copy of the final hearing notice was posted for at least three weeks before the date of the final hearing at the front door of the courthouse of Benton County.
8. Notice of the final hearing was published in the Sauk Rapids Herald and the Benton County News for three successive weeks prior to the hearing.
9. Within one week after the first publication of the notice, the H2Over Viewers, LLC, on behalf of the Benton County Auditor Treasurer Nadean Inman, provided notice by mail of the time and location of the final hearing to the commissioner of natural resources, all property owners, and others affected by the redetermination of benefits and listed in the viewers' report.
10. Proper notice of the redetermination hearing was made in conjunction with Minn. Stat. § 103E.351 requirements and chapters 103E. A record of the notice requirements is on file with the drainage authority.
11. Evidence of all actions in this matter, including findings and orders, appointments, oaths, affidavits of mailing, publication, and posting as well as hearing agendas, presentation materials, and recordings are present in the record of proceedings and are incorporated by reference.

12. The drainage authority held a public hearing on the redetermination of benefits on March 9, 2022 at 8:30 a.m. at Henry's Event Center in Foley, MN, the hearing was continued until March 15, 2022 at the regular meeting of the Benton County Board of Commissioners, acting as the drainage authority.
13. At the public hearing, Aaron Goemann one of the duly appointed viewers, presented the viewers' report and explained the process of completing the viewers' report. Aaron Goemann further provided detail of the viewing process and the information used by the viewers to: (1) verify the boundary of the watershed of the drainage system; (2) verify and confirm the existence of drainage benefit; and (3) determine the economic benefit to lands deriving a drainage benefit from the construction of **Benton County Ditch No.6**.
14. The viewers reviewed all property within the drainage areas of the drainage system as part of the redetermination of benefits process. The viewers determined the amount of damages to be paid for the acquisition of property for the establishment of best management practices, including grass strips, necessary to control erosion, sedimentation, improve water quality, or maintain the efficiency of the drainage system as required under Minn. Stat. § 103E.021. The viewers compared sales in the area in arriving at an average sales price used in establishing a payment rate.
15. The viewers used maps, LiDAR data, and other information, along with visual inspection of the watershed of the drainage system, to determine the boundaries of the benefiting area.
16. Within the watershed of the drainage system, the viewers paid particular attention to altered land use and drainage alterations which facilitate the removal of water from property directing it to the drainage system.
17. To determine the economic benefit to lands deriving a drainage benefit from the drainage system, the viewers conducted a condition comparison comparing the expected, pre-ditch, unaltered state of the watershed to the existing, altered, and improved condition of the watershed. The viewers used this comparison in determining the increased market value of the properties receiving a direct drainage benefit.
18. Based on their detailed observations, the viewers determined benefit classifications, classified acres, and assigned economic benefit on a per acre basis.
19. The viewers determined that some acres within the watershed of the drainage system, i.e. existing wetlands and non-contributing basins, received no benefit from the drainage system.
20. The viewers accounted for the efficiency of the drainage system, as designed, and the proximity of lands to and the elevations of lands above the ditch.
21. The viewers applied an economic analysis using sales and income approaches to determine the increased value to each classification acre based on the drainage benefit provided by the drainage system.
22. The viewers determined the amount of economic benefit to property benefited immediately by the drainage system.
23. The viewers determined economic benefits based on: (1) an increase in the current market value of the property as a result of constructing the project; (2) an increase in the potential for agricultural production as a result of constructing the project; or (3) an increased value of the property as a result of potential different land use.
24. Within the watershed of the drainage system, the viewers determined benefits on property that are responsible for increased drainage system maintenance, or increased drainage system capacity because the natural drainage on the property has been altered or modified to accelerate the drainage of water from the property.
25. The original benefitted acreage was 439 acres with total benefits of \$8,134.50. The viewers determined that the total acreage benefitted now is 1,680.08 acres with total benefits of \$1,042,870.21. Damages for perennial vegetation strips were determined to be \$35,817.11.

26. The viewers kept an accurate account of all time engaged in viewing and examination; the nature and kind of work performed; the days each viewer was engaged in said work; the amount charged per day by each viewer; and every item of expense incurred by the viewers in said work.
27. The viewers' account of work has been filed with the drainage authority.
28. The viewers included, in their determinations, the amount of damages necessary to acquire and establish a one-rod grass buffer strip along all reaches of open ditch on **Benton County Ditch No. 6**.
29. Upon review of information provided to the Board during the public hearing, the Board further finds and confirms its earlier findings that the benefits and damages determined in the original proceedings, as well as the benefited and damaged areas determined in the original proceedings, do not reflect current, existing, actual benefits and benefitted areas.
30. The viewers' report and benefits and damages statement is attached as **Exhibit A**.
31. During the public hearing portion of the proceedings, the following persons appeared and provided comment (the Board's response is indicated in italics following each comment):
 - a. Duane Brenny, 13072 55th Ave. N., Rice, MN 56367:
Indicated that culverts would need to be lowered and wondered if that would be added to the repair bill for the drainage system. He also had concerns about water coming from adjoining neighbors' land. He also inquired about whether or not COVID relief funds could be used for the repairs.

Chris Byrd, Public Works Director, responded that the culverts would be addressed in a different proceeding and not a part of the redetermination proceeding.

Aaron Goemann, Viewer, responded that the redetermination process only evaluates the burden put on the drainage system. It does not address neighbors draining water on another neighbor's property.

Monty Headley, County Administrator indicated that ARPA funds could not be used for private interests.
32. At the close of the public comment hearing, Commissioner Popp moved to direct staff to prepare Findings and an Order consistent with the proceedings, including all comments received through the public comment process; that the draft Findings and Order be written to confirm the redetermined benefits and damages as reported by the viewers, affect the acquisition of the proposed grass buffer areas, confirm the damages as presented, direct payments of the damages, and direct recording of the Order to reflect the acquisition; and that the Board recess the hearing to the Board's regular meeting on March 15, 2022 at which meeting the Board will consider Findings and Order Approving the Redetermination of Benefits, Acquiring Grass Buffer, Confirming Damages, and Directing Payment. Commissioner Gapinski seconded, and the motion carried.
33. Based on the proceedings herein, the evidence presented during the pendency of these proceedings, the testimony of the viewers, and the public comments received, the Board finds:
 - a. that the viewers' report has been made and other proceedings have been completed under Minnesota Statutes, chapter 103E;
 - b. that the viewers' report is complete and correct;
 - c. that no evidence was presented in opposition to the benefits and damages determined by the viewers in the viewers' report;

- d. that the redetermined benefits and damages, as reflected in the viewers' report and as described in the benefits and damages statement as **Exhibit A**, are proper, reasonable, and conform to the drainage code; and
- e. that the acquisition of grass buffer strips as reported as damages in the viewers' report is necessary under Minn. Stat. § 103E.021.

Then, Byrd read into the record the Order of County Ditch No. 6:

Order:

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.6**, hereby orders as follows:

- A. The redetermined benefits of **Benton County Ditch No. 6**, the viewers' report and the benefits and damages statement attached hereto as **Exhibit A** are hereby adopted by the Board and shall be used in place of the original benefits and damages in all subsequent proceedings.
- B. The viewers are allowed payment of their account of work.
- C. The County Auditor Treasurer shall ensure that the redetermined benefits replace the existing benefits previously determined for **Benton County Ditch No.6**.
- D. The damages for the acquisition of the perennial vegetation area shall be paid and the perennial vegetation area established as required by statute.
- E. The effective date of the acquisition of the grass strip shall be April 18, 2022.
- F. The Board's staff is directed to work with the County Recorder to ensure that the drainage system and the grass buffer area acquisition is reflected on the property records of affected landowners.

Schlangen requested clarification on the location of the grass buffer strips and Byrd replied saying "the grass buffer strips are defined as 1 rod width which is 16.5 feet as measured from the top of the bank out from the ditch". Byrd stated that they wanted to have an effective date listed (April 18, 2022) because it would be beneficial for the landowners to know to leave an area for the grass buffer strip before they put their crops in. Johnson then requested clarification on the damages rewarded and Byrd stated that it will be a cost to the Drainage System for the damages and in his opinion, the landowners are owed that money now, and at a later date, they will have to pay in assessments for it. Byrd added that we don't receive assessments until the project is complete, and we will have to track this on the accounting side per ditch, and the ditch will have a negative balance until we receive the assessments back. Johnson requested clarification on if the assessments are cash up front, a deferred loan for 7 to 10 years with a low-interest rate, etc., and when that is determined. Byrd stated that once the repair is complete and we have an actual cost for the repair, then we can do the assessments on the landowners. Johnson asked if it was still in the plan to have a discussion with each landowner on what will happen to their property and Byrd stated "that is still the plan..." however the Drainage Authority hasn't ordered that process yet. Tim Thaemart of 6605 Mayhew Lake Rd had questions about CD 10. Byrd stated we are currently discussing CD 6 which has its own ditch system, own redetermination report, and its own group of owners. Popp stated that "we do not need to have a conversation about other ditches because the landowners will be able to comment individually when we get to that point and we "can't have your thoughts affecting the people that want CD 6 done..." Heinen stated that he gave Mr. Thaemart a date and time (April 11, 2022 at 8:30 AM at Henry's Event Center in Foley, MN) for the next public hearing regarding CD 10 where he can address the engineers and other staff that are working on the Redetermination of Benefits. Gapinski added that "we need his (Mr. Thaemart's) voice down at the State because we are being directed by the State to do all of this..." Byrd then asked if the Board was in agreeance with the Findings and the Orders. Motion by Popp and seconded by Gapinski to adopt the foregoing Findings and Order of CD 6. Motion carried unanimously per roll call vote.

Next, Byrd discussed the Findings and Order of CD 7. These are the Findings of CD 7:

Findings:

1. Benton County Board of Commissioners is the drainage authority for **Benton County Ditch No.7**.
2. On **Benton County Ditch No.7** on December 14, 2020, the drainage authority adopted findings and ordered the initiation of a redetermination of benefits and damages for **Benton County Ditch No.7** pursuant to Minn. Stat. § 103E.351. Brian Murphy, Shantel Hecht, Larry Murphy were appointed as viewers and Robert Coneley as an alternate/consultant. On August 18, 2021, by order of Benton County Auditor Treasurer, Shantel Hecht was replaced by Aaron Goemann.
3. Benton County Auditor Treasurer, Nadean Inman, administered the Viewers' Oath.
4. The viewers completed their report, which included a benefits and damages statement, on January 14, 2022, for all property affected by the drainage system and filed their report with the drainage authority. Two landowner meetings were held to identify issues with the viewer's report. Corrections were made pursuant to property owner input.
5. The H2Over Viewers, LLC, under direction from the drainage authority Board, prepared property owners' reports and mailed them to the owners of property identified in the viewers' report on February 2, 2022.
6. The drainage authority, by order, set a public hearing for review of the viewers' report on March 9, 2022.
7. A printed copy of the final hearing notice was posted for at least three weeks before the date of the final hearing at the front door of the courthouse of Benton County.
8. Notice of the final hearing was published in the Sauk Rapids Herald and the Benton County News for three successive weeks prior to the hearing.
9. Within one week after the first publication of the notice, the H2Over Viewers, LLC, on behalf of the Benton County Auditor Treasurer Nadean Inman, provided notice by mail of the time and location of the final hearing to the commissioner of natural resources, all property owners, and others affected by the redetermination of benefits and listed in the viewers' report.
10. Proper notice of the redetermination hearing was made in conjunction with Minn. Stat. § 103E.351 requirements and chapters 103E. A record of the notice requirements is on file with the drainage authority.
11. Evidence of all actions in this matter, including findings and orders, appointments, oaths, affidavits of mailing, publication, and posting as well as hearing agendas, presentation materials, and recordings are present in the record of proceedings and are incorporated by reference.
12. The drainage authority held a public hearing on the redetermination of benefits on March 9, 2022 at 8:30 a.m. at Henry's Event Center in Foley, MN, the hearing was continued until March 15, 2022 at the regular meeting of the Benton County Board of Commissioners, acting as the drainage authority.
13. At the public hearing, Aaron Goemann one of the duly appointed viewers, presented the viewers' report and explained the process of completing the viewers' report. Aaron Goemann further provided detail of the viewing process and the information used by the viewers to: (1) verify the boundary of the watershed of the drainage system; (2) verify and confirm the existence of drainage benefit; and (3) determine the economic benefit to lands deriving a drainage benefit from the construction of **Benton County Ditch No.7**.
14. The viewers reviewed all property within the drainage areas of the drainage system as part of the redetermination of benefits process. The viewers determined the amount of damages to be paid for the acquisition of property for the establishment of best management practices, including grass strips, necessary to control erosion, sedimentation, improve water quality, or maintain the efficiency of the drainage system as required under Minn. Stat. § 103E.021. The viewers compared sales in the area in arriving at an average sales price used in establishing a payment rate.
15. The viewers used maps, LiDAR data, and other information, along with visual inspection of the watershed of the drainage system, to determine the boundaries of the benefiting area.

16. Within the watershed of the drainage system, the viewers paid particular attention to altered land use and drainage alterations which facilitate the removal of water from property directing it to the drainage system.
17. To determine the economic benefit to lands deriving a drainage benefit from the drainage system, the viewers conducted a condition comparison comparing the expected, pre-ditch, unaltered state of the watershed to the existing, altered and improved condition of the watershed. The viewers used this comparison in determining the increased market value of the properties receiving a direct drainage benefit.
18. Based on their detailed observations, the viewers determined benefit classifications, classified acres, and assigned economic benefit on a per acre basis.
19. The viewers determined that some acres within the watershed of the drainage system, i.e. existing wetlands and non-contributing basins, received no benefit from the drainage system.
20. The viewers accounted for the efficiency of the drainage system, as designed, and the proximity of lands to and the elevations of lands above the ditch.
21. The viewers applied an economic analysis using sales and income approaches to determine the increased value to each classification acre based on the drainage benefit provided by the drainage system.
22. The viewers determined the amount of economic benefit to property benefited immediately by the drainage system.
23. The viewers determined economic benefits based on: (1) an increase in the current market value of the property as a result of constructing the project; (2) an increase in the potential for agricultural production as a result of constructing the project; or (3) an increased value of the property as a result of potential different land use.
24. Within the watershed of the drainage system, the viewers determined benefits on property that are responsible for increased drainage system maintenance, or increased drainage system capacity because the natural drainage on the property has been altered or modified to accelerate the drainage of water from the property.
25. The original benefitted acreage was 3,196 acres with total benefits of \$293,911.05. The viewers determined that the total acreage benefited now is 2,910.36 acres with total benefits of \$2,078,776.33. Damages for perennial vegetation strips were determined to be \$61,641.87.
26. The viewers kept an accurate account of all time engaged in viewing and examination; the nature and kind of work performed; the days each viewer was engaged in said work; the amount charged per day by each viewer; and every item of expense incurred by the viewers in said work.
27. The viewers' account of work has been filed with the drainage authority.
28. The viewers included, in their determinations, the amount of damages necessary to acquire and establish a one-rod grass buffer strip along all reaches of open ditch on **Benton County Ditch No. 7**.
29. Upon review of information provided to the Board during the public hearing, the Board further finds and confirms its earlier findings that the benefits and damages determined in the original proceedings, as well as the benefitted and damaged areas determined in the original proceedings, do not reflect current, existing, actual benefits and benefitted areas.
30. The viewers' report and benefits and damages statement is attached as **Exhibit A**.
31. During the public hearing portion of the proceedings, the following persons appeared and provided comment (the Board's response is indicated in italics following each comment):
 - a. Duane Brenny, 13072 55th Ave. N., Rice, MN 56367:
 - i. Indicated that culverts needed to be replaced on 45th.
 - ii. *Chris Byrd*, Public Works Director, indicated there currently is no routine inspection report. The culvert will be repaired the culvert on CD7 prior to ditch cleaning.

32. At the close of the public comment hearing, Commissioner Jared Gapinski moved to direct staff to prepare Findings and an Order consistent with the proceedings, including all comments received through the public comment process; that the draft Findings and Order be written to confirm the redetermined benefits and damages as reported by the viewers, affect the acquisition of the proposed grass buffer areas, confirm the damages as presented, direct payments of the damages, and direct recording of the Order to reflect the acquisition; and that the Board recess the hearing to the Board's regular meeting on March 15, 2022 at which meeting the Board will consider Findings and Order Approving the Redetermination of Benefits, Acquiring Grass Buffer, Confirming Damages, and Directing Payment. Commissioner Steven Heinen seconded, and the motion carried.
33. Based on the proceedings herein, the evidence presented during the pendency of these proceedings, the testimony of the viewers, and the public comments received, the Board finds:
- f. that the viewers' report has been made and other proceedings have been completed under Minnesota Statutes, chapter 103E;
 - g. that the viewers' report is complete and correct;
 - h. that no evidence was presented in opposition to the benefits and damages determined by the viewers in the viewers' report;
 - i. that the redetermined benefits and damages, as reflected in the viewers' report and as described in the benefits and damages statement as **Exhibit A**, are proper, reasonable, and conform to the drainage code; and
 - j. that the acquisition of grass buffer strips as reported as damages in the viewers' report is necessary under Minn. Stat. § 103E.021.

Then, Byrd proceeded to read the Order of CD 7 into the record:

Order:

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.7**, hereby orders as follows:

- A. The redetermined benefits of **Benton County Ditch No.7** the viewers' report and the benefits and damages statement attached hereto as **Exhibit A** are hereby adopted by the Board and shall be used in place of the original benefits and damages in all subsequent proceedings.
- B. The viewers are allowed payment of their account of work.
- C. The County Auditor Treasurer shall ensure that the redetermined benefits replace the existing benefits previously determined for **Benton County Ditch No.7**.
- D. The damages for the acquisition of the perennial vegetation area shall be paid and the perennial vegetation area established as required by statute.
- E. The effective date of the acquisition of the grass strip shall be April 18, 2022.

The Board's staff is directed to work with the County Recorder to ensure that the drainage system and the grass buffer area acquisition is reflected on the property records of affected landowners.

Motion by Gapinski and seconded by Popp to adopt the foregoing Findings and Order of CD 7. Motion carried unanimously per roll call vote.

Next, Byrd discussed the Findings and Order approving the Redetermination of Benefits, Acquiring Grass Buffer, Confirming Damages, and Directing Payment. These are the Findings for CD 9:

Findings:

1. Benton County Board of Commissioners is the drainage authority for **Benton County Ditch No.9**.
2. On **Benton County Ditch No.9** on September 1, 2020, the drainage authority adopted findings and ordered the initiation of a redetermination of benefits and damages for **Benton County Ditch No.9** pursuant to Minn. Stat. §§ 103E.351 and 103E.741. Brian Murphy, Shantel Hecht, Larry Murphy were appointed as viewers and Robert Coneley as an alternate/consultant. On August 19, 2021, by order of Benton County Auditor Treasurer, Shantel Hecht was replaced by Aaron Goemann.
3. Benton County Auditor Treasurer, Nadean Inman, administered the Viewers' Oath.
4. The viewers completed their report, which included a benefits and damages statement, on January 14, 2022, for all property affected by the drainage system and filed their report with the drainage authority. Two landowner meetings were held to identify issues with the viewer's report.
5. The H2Over Viewers, LLC, under direction from the drainage authority Board, prepared property owners' reports and mailed them to the owners of property identified in the viewers' report on February 2, 2022.
6. The drainage authority, by order, set a public hearing for review of the viewers' report on March 9, 2022.
7. A printed copy of the final hearing notice was posted for at least three weeks before the date of the final hearing at the front door of the courthouse of Benton County.
8. Notice of the final hearing was published in the Sauk Rapids Herald and the Benton County News for three successive weeks prior to the hearing.
9. Within one week after the first publication of the notice, the H2Over Viewers, LLC, on behalf of the Benton County Auditor Treasurer Nadean Inman, provided notice by mail of the time and location of the final hearing to the commissioner of natural resources, all property owners, and others affected by the redetermination of benefits and listed in the viewers' report.
10. Proper notice of the redetermination hearing was made in conjunction with Minn. Stat. § 103E.351 requirements and chapters 103E. A record of the notice requirements is on file with the drainage authority.
11. Evidence of all actions in this matter, including findings and orders, appointments, oaths, affidavits of mailing, publication, and posting as well as hearing agendas, presentation materials, and recordings are present in the record of proceedings and are incorporated by reference.
12. The drainage authority held a public hearing on the redetermination of benefits on March 9, 2022 at 8:30 a.m. at Henry's Event Center in Foley, MN, the hearing was continued until March 15, 2022 at the regular meeting of the Benton County Board of Commissioners, acting as the drainage authority.
13. At the public hearing, Aaron Goemann one of the duly appointed viewers, presented the viewers' report and explained the process of completing the viewers' report. Aaron Goemann further provided detail of the viewing process and the information used by the viewers to: (1) verify the boundary of the watershed of the drainage system; (2) verify and confirm the existence of drainage benefit; and (3) determine the economic benefit to lands deriving a drainage benefit from the construction of **Benton County Ditch No.9**.
14. The viewers reviewed all property within the drainage areas of the drainage system as part of the redetermination of benefits process. The viewers determined the amount of damages to be paid for the acquisition of property for the establishment of best management practices, including grass strips, necessary to control erosion, sedimentation, improve water quality, or maintain the efficiency of the drainage system as required under Minn. Stat. § 103E.021. The viewers compared sales in the area in arriving at an average sales price used in establishing a payment rate.
15. The viewers used maps, LiDAR data, and other information, along with visual inspection of the watershed of the drainage system, to determine the boundaries of the benefiting area.

16. Within the watershed of the drainage system, the viewers paid particular attention to altered land use and drainage alterations which facilitate the removal of water from property directing it to the drainage system.
17. To determine the economic benefit to lands deriving a drainage benefit from the drainage system, the viewers conducted a condition comparison comparing the expected, pre-ditch, unaltered state of the watershed to the existing, altered and improved condition of the watershed. The viewers used this comparison in determining the increased market value of the properties receiving a direct drainage benefit.
18. Based on their detailed observations, the viewers determined benefit classifications, classified acres, and assigned economic benefit on a per acre basis.
19. The viewers determined that some acres within the watershed of the drainage system, i.e. existing wetlands and non-contributing basins, received no benefit from the drainage system.
20. The viewers accounted for the efficiency of the drainage system, as designed, and the proximity of lands to and the elevations of lands above the ditch.
21. The viewers applied an economic analysis using sales and income approaches to determine the increased value to each classification acre based on the drainage benefit provided by the drainage system.
22. The viewers determined the amount of economic benefit to property benefited immediately by the drainage system.
23. The viewers determined economic benefits based on: (1) an increase in the current market value of the property as a result of constructing the project; (2) an increase in the potential for agricultural production as a result of constructing the project; or (3) an increased value of the property as a result of potential different land use.
24. Within the watershed of the drainage system, the viewers determined benefits on property that are responsible for increased drainage system maintenance, or increased drainage system capacity because the natural drainage on the property has been altered or modified to accelerate the drainage of water from the property.
25. The original benefitted acreage was 572.50 acres with total benefits of \$12,602.26. The viewers determined that the total acreage benefited now is 2,637.93 acres with total benefits of \$1,364,551.01. Damages for perennial vegetation strips were determined to be \$22,326.79.
26. The viewers kept an accurate account of all time engaged in viewing and examination; the nature and kind of work performed; the days each viewer was engaged in said work; the amount charged per day by each viewer; and every item of expense incurred by the viewers in said work.
27. The viewers' account of work has been filed with the drainage authority.
28. The viewers included, in their determinations, the amount of damages necessary to acquire and establish a one-rod grass buffer strip along all reaches of open ditch on **Benton County Ditch No.9**.
29. Upon review of information provided to the Board during the public hearing, the Board further finds and confirms its earlier findings that the benefits and damages determined in the original proceedings, as well as the benefitted and damaged areas determined in the original proceedings, do not reflect current, existing, actual benefits and benefitted areas.
30. The viewers' report and benefits and damages statement is attached as **Exhibit A**.
31. During the public hearing portion of the proceedings, the following persons appeared and provided comment (the Board's response is indicated in italics following each comment):

- a. Gary Held, 6765 175th Ave., Oak Park, MN 56357:

Mr. Held wanted to know who keeps up the ditches, removes sediment, and removes trees.

Chris Byrd, Public Works Director, indicates that there is a petition on this hearing and repair report will address the issues raised; however, those issues are not a part

of today's hearing. A public hearing will be held on that repair report at a later date. Specifically, regarding tree removal, he stated that if a tree is a blockage then it will need to be removed, but otherwise it will depend on the what is recommended in the repair report.

- b. There was a general question by an anonymous constituent in the audience, asked about if the redetermination of benefits process determines that the watershed size is substantially larger than previously determined, how do we account for that additional pressure to the system.

Aaron Goemann stated that "it that would be something the engineer would determine. And now all the acres are included, but in the case that it's not, there is statute does allow for additional expansion of the ditch under repair proceedings, and has to be a conversation with the engineer and the Board..."

Chris Byrd added they will review the repair report, but he is confident the ditch would be able to drain about the same as how it did when it was established 100 years ago, even if the watershed is larger now.

- c. The next question by a constituent in the audience was regarding the assessment of the buffer strip and who is responsible for payment.

Aaron Goemann stated the ditch and the buffer strip is owned by the landowner, therefore the land owner would be responsible for the assessment.

32. At the close of the public comment hearing, Commissioner Johnson moved to direct staff to prepare Findings and an Order consistent with the proceedings, including all comments received through the public comment process; that the draft Findings and Order be written to confirm the redetermined benefits and damages as reported by the viewers, affect the acquisition of the proposed grass buffer areas, confirm the damages as presented, direct payments of the damages, and direct recording of the Order to reflect the acquisition; and that the Board recess the hearing to the Board's regular meeting on March 15, 2022 at which meeting the Board will consider Findings and Order Approving the Redetermination of Benefits, Acquiring Grass Buffer, Confirming Damages, and Directing Payment. Commissioner Gapinski seconded, and the motion carried.
33. Based on the proceedings herein, the evidence presented during the pendency of these proceedings, the testimony of the viewers, and the public comments received, the Board finds:
 - a. that the viewers' report has been made and other proceedings have been completed under Minnesota Statutes, chapter 103E;
 - b. that the viewers' report is complete and correct;
 - c. that no evidence was presented in opposition to the benefits and damages determined by the viewers in the viewers' report;
 - d. that the redetermined benefits and damages, as reflected in the viewers' report and as described in the benefits and damages statement as **Exhibit A**, are proper, reasonable, and conform to the drainage code; and
 - e. that the acquisition of grass buffer strips as reported as damages in the viewers' report is necessary under Minn. Stat. § 103E.021.

Byrd stated that he wanted to clarify his statement in 31 b. where he is quoted saying "Chris Byrd added they will review the repair report, but he is confident the ditch would be able to drain about the same as

how it did when it was established 100 years ago, even if the watershed is larger now”. Byrd stated that the watershed is still the same size, but now all the acres are being considered. Assistant County Attorney Michelle Meyer stated that she will modify 31 b. to state: “Chris Byrd added they will review the repair report, but he is confident the ditch would be able to drain about the same as how it did when it was established 100 years ago. The watershed is the same size, but now the whole watershed is taken into consideration”.

Next, Byrd read the Orders for CD 9:

Order:

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.9**, hereby orders as follows:

- A. The redetermined benefits of **Benton County Ditch No.9**, the viewers’ report and the benefits and damages statement attached hereto as **Exhibit A** are hereby adopted by the Board and shall be used in place of the original benefits and damages in all subsequent proceedings.
- B. The viewers are allowed payment of their account of work.
- C. The County Auditor Treasurer shall ensure that the redetermined benefits replace the existing benefits previously determined for **Benton County Ditch No.9**.
- D. The damages for the acquisition of the perennial vegetation area shall be paid and the perennial vegetation area established as required by statute.
- E. The effective date of the acquisition of the grass strip shall be April 18, 2022.
- F. The Board’s staff is directed to work with the County Recorder to ensure that the drainage system and the grass buffer area acquisition is reflected on the property records of affected landowners.

Johnson questioned “who is physically notifying the landowners?” Byrd responded saying “it is the responsibility of the Drainage Authority”. Then, Heinen stated that the “biggest concern from the landowners is that not all of them were getting the mailings... and how are we going to address that?” Byrd stated, “that will fall on my office... or someone’s office...” and Byrd felt the best solution would be to send all the notices out via Certified Mail. Meyer added that any additional fees would put a cost on the system and be assessed back onto the landowners and added that the landowners should have the proper address listed. Headley stated that “we can’t use public money for any costs associated with the ditches... it gets assessed”. There was a consensus by the County Board to send the landowner notices via Certified Mail. Then, Heinen motioned to adopt the foregoing Findings and Order of CD 9. Seconded by Gapinski. Motion carried unanimously per roll call vote.

Heinen requested to discuss the Repair of CD 6. Byrd went into a brief history on what led us to the repair of CD 6 and stated that “we don’t have an actual repair petition in place” on CD 6. On March 16, 2016 they received a letter from a landowner to have the ditch inspected and repaired. A subsequent inspection ensued. On March 6, 2018, an update to the Drainage Authority stated that a field inspection was concluded, and it was noted that a redetermination of benefits may be needed because they are still relying on a report from 1905 for value of benefits. We have also become aware that the current ditch alignment may have been altered since its original construction. A repair may force the Drainage Authority to put the ditch back to its original location. This is not ideal because it could cut through productive crop land. This work leads to a Reestablishment of Drainage Records and Drainage System Correction due to the altered alignment from the 1905 construction plans. The purpose of this report is to provide a description and analysis of repair alternatives, including hydrologic and hydraulic analyses and a preliminary opinion of probable cost for the recommended repairs. Byrd stated to restore the function of CD 6, there is a recommendation that the County complete a repair of the CD 6 open channel to the As-Constructed condition. Byrd stated the total estimate of the cost to repair is about \$479,000, and since

we don't have an actual repair petition, Byrd stated "we would feel more comfortable if we did have a repair petition in place." The benefit of just completing the Redetermination of Benefits is that the Road Authority is included in the beneficiaries and would receive a benefit from the ditch... and (the Road Authority) is an interested party..." according to Byrd. Then, Byrd stated that Benton County, being the Road Authority, could petition Benton County as the Drainage Authority for a repair. Byrd has a repair petition prepared as the Road Authority, being the interested party in the CD 6 system, to petition for repair. Johnson stated he would feel more comfortable with a landowner petitioning for repair than us. Byrd stated he felt by having the Ditch Authority sign the petition, it would save us time, and by having a landowner petition, it would extend the process a few more weeks. Popp stated "he's not concerned about the time frame because he doesn't feel we would find anybody to complete this this year... and we should hold off on letting out the bids and try to hold off until next winter because we may get a better bid... and we could save some money that way... the time frame that we need to get this done is beyond this year..." Popp also stated he agrees that this would be better if the petition for repair came from a landowner. Johnson asked Meyer if it would be appropriate for an informal get together with landowners to talk about a repair petition to which Meyer stated it would be appropriate to do so. There was a consensus to have Popp and Byrd speak to landowners to petition for repair. Also, there was a consensus by the County Board that there will be no public hearing set at this time. A public hearing will be set once we have received a petition for repair from a landowner.

Motion by Johnson and seconded by Popp to adjourn at 11:55 AM. Motion carried unanimously.

Steven J. Heinen, Chair
Benton County Ditch Authority

ATTEST:

Montgomery Headley
Benton County Administrator