

BENTON COUNTY DITCH AUTHORITY
TUESDAY, MAY 3, 2022
BENTON COUNTY BOARDROOM

The Benton County Ditch Authority met in regular session on May 3, 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); Aaron Goemann of H2Overviewers; Bryan Murphy of H2Overviewers (virtual); and Beth Stay, Executive Assistant.

Chair Heinen called the meeting to order at 10:07 AM.

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

Gapinski/Popp to approve the Meeting Minutes of April 11, 2022 as written. Motion carried unanimously.

Johnson/Popp to approve the Meeting Minutes of April 19, 2022 as written. Motion carried unanimously.

On March 9, 2022, the Drainage Authority opened a Public Hearing for CD 3. A presentation was heard from Aaron Goemann of H2Overviewers, one of the Viewers appointed to the Redetermination of Benefits project. After the presentation, the Drainage Authority opened the meeting for public testimony. Testimony was heard as reflected in the minutes of this meeting. It was noted during the presentation, that the Viewers had only recently received new information about how the City of St. Cloud storm sewer drains into the ditch. This required additional review from the Viewers. The Hearing for CD 3 was continued to May 3, 2022. A memo from Houston Engineering concluded an estimate of the proportional runoff contribution of every parcel within the CD 3 watershed. A composite CN was computed for each parcel and used to predict the amount of runoff volume produced by each one. Results are presented in this summary and will be considered by H2Overviewers during the development of their Viewer's Report for the Redetermination of Benefits on CD 3.

Assistant County Attorney Michelle Meyer discussed the Redeterminations of Benefits and Damages on CD 3. Meyer stated that once the ditch system is established, the order creating it constitutes a judgment in rem. The Res or subject matter of the order is the watercourse and all lands determined to be damaged or benefited by it. Thereafter, every owner of land who has recovered damages or been assessed for benefits has a property right in the maintenance of the ditch in the same condition as it was when originally established. Such a property right cannot be divested or damaged without due process of law. Meyer stated that the majority of the original benefits and damages were determined in the early 1900's, therefore they do not reflect reasonable present day land values, and the benefited or damaged areas may have changed. Meyer stated that the statutory authority for a redetermination upon action of the Drainage Authority: 103E.351, Subd. 1(a) states benefits or damages of record determined in a drainage proceeding do not reflect reasonable present-day land values OR the benefited or damaged areas have changed. Meyer noted the petition of 26% of the owners of the property: 103E.351, Subd. 1(b) stated that benefits or damages of record determined in a drainage proceeding do not reflect reasonable present-day land values OR the benefited or damaged areas have changed. Meyer added that it is important that all property benefitting from a drainage system bear the

cost of the drainage system and that everyone should pay their fair share. Meyer added that if the cost of a repair to a drainage system exceeds the original benefits, then the drainage authority may be precluded from repairing that ditch system. Meyer stated that if there is a routine inspection of a County Ditch, a repair would be ordered if the drainage inspection report indicates repairs are necessary; in one calendar year, the drainage authority may not levy an assessment for repairs or maintenance on one drainage system for more than 20 percent of the benefits of the drainage system, \$1,000 per mile of open ditch in the ditch system, or the dollar amount requiring the solicitation of sealed bids under section 471.345, subdivision 3, whichever is greater. Meyer stated that a Repair will be ordered if the repairs recommended are necessary for the best interests of the affected property owners; and the cost of the repair will not exceed the total benefits determined in the original drainage system proceeding. The current benefits prior to redetermination of benefits are:

- CD 3: \$2,738.00
- CD 4: \$2,738.00
- CD 5: \$7,255.00
- CD 6: \$8,134.50
- CD 7: \$293,911.05
- CD 9: \$12,602.26
- CD 10: \$12,665.82
- CD 11: \$9,045.00
- CD 12: \$7,817.00
- CD 14: \$17,839.75

Meyer added that if the cost to repair exceeds the original benefits, the drainage authority may not order the repair. In the instance of CD 6, the estimated repair cost is approximately \$422,400 to \$512,400. With that said, If the benefits had not been redetermined, the Drainage Authority would be precluded from ordering the repair on CD 6.

The proposed redetermined benefits from H2Overviewers is:

- CD 3: \$295,240.00
- CD 4: \$569,674.31
- CD 5: \$569,674.31
- CD 6: \$1,042,870.21
- CD 7: \$2,078,776.33
- CD 9: \$1,364,551.01
- CD 10: \$8,100,390.84
- CD 11: \$2,262,888.29
- CD 12: \$452,920.59
- CD 14: \$1,109,878.02
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Meyer concluded the next steps would be repair reports and drainage inspection reports, and the reports may indicate repairs are necessary. The repairs will only return the ditches to its as constructed and subsequently improved condition. Repair may include re-sloping of ditches, leveling of spoil banks, removal of abstractions, incidental straightening, and replacement of tiles one size larger if original tile

size not available. Repairs will not increase hydraulic capacity. Repairs will not widen ditches. Repairs will not lower culverts.

Aaron Goemann, Benton County's Viewer from H2Overviewers provided some information regarding CD 3 stating per Minn. Stat. §103E regarding drainage: Minn. Stat. §103E.015 Subdivision 2 Determining Public Utility, Benefit, or Welfare stated "in any proceeding to establish a drainage project, or in the construction or repair of... a public drainage system... the Drainage Authority... having jurisdiction over the proceeding must give proper consideration to... public interests affected... as provided by law in determining whether the project will be of public utility, benefit, or welfare"; MN Stat §103E.705 Subd. 1 states: "The Drainage Authority shall inspect and maintain the efficiency of the drainage system. In an effort to maintain efficiency of the drainage system, the Drainage Authority must make sure those lands utilizing the drainage system pay for the maintenance and repairs of the system in a fair and equitable way. This is a requirement by MN Drainage Law." MN Stat. §103E.315 Subd. 5 states: "The Viewers shall determine the amount of benefits to all property within the watershed, whether the property is benefited immediately by the construction of the proposed drainage project or the proposed drainage project can become an outlet for drainage, makes an outlet more accessible, or otherwise directly benefits the property". Minn. Stat. §103E.315 Subd.6 C. 2 states: "within the watershed that drains to the area where a project is located, the viewers may assess outlet benefits on property that is responsible for increased drainage system maintenance or increased drainage system capacity." Goemann stated that the current number of acres in CD 3 is 328 and H2Overviewers is now proposing there are 780.51 acres, and of those acres, 775.22 acres would benefit. The cities that would also receive a benefit from CD 3 are St. Cloud (19%) and Sauk Rapids (68%). The current benefits are \$2,738.00 and H2Overviewers is now proposing \$295,240.00 in total benefits, with the buffer damages at \$1,346.01.

The public hearing for CD 3 opened at 10:31 AM. Clarence Tadych of 1480 10th Ave NE Sauk Rapids, MN 56379 stated that he had provided the County Board with maps of his property. Tadych added that H2Overviewers came to his property to evaluate when they had over two feet of snow on the ground. Tadych stated that they couldn't see what he has done to his property to keep the water on his property. Tadych added that he has created three holding ponds for the rainfall on his property. The public storm water ponds are full of trees and weeds. A new park was put in by Sauk Rapids that raised the low land. Tadych then raised his low land. Tadych stated the water from his property does not go past buildings on his property. Tadych added that he does not deposit any water into the drainage system, therefore Tadych does not believe he benefits from CD 3. Popp asked what his elevation was compared to the wetland. Popp stated that even if his property is retaining water, it is still draining into the wetland under the surface and drains to the ditch. County Engineer Chris Byrd added that the entire watershed is evaluated, and if the water eventually gets into the system, it benefits. Goemann explained the classification of property and how water permeates the ground. Goemann stated he is treating Tadych's property as an actual swamp, which is as low as you can go as contributing to the drainage system. Goemann added that Tadych has a larger property versus other property in the system. Goemann stated that it is clear that Tadych's property meets the classification by having buildings on the property and the property does drain into the wetland.

Next, Trevor McConnell of 1993 2nd St SE St. Cloud, MN 56304 stated that the watershed was determined prior to the highway being put in and water is still coming in south of County Road 75. McConnell believes the watershed is greater than determined and there are more benefiting properties. McConnell asked, “what makes Tadych’s holding ponds different from other holding ponds?” Goemann stated he has explained watershed differences, and Houston Engineering’s redline watershed does omit some of the structures that would prevent flowage of water. The worst rain event has also been considered in Houston’s report. Goemann stated that the viewer’s report considers general rain events and considers impacting structures, and with that being said, there is not enough water flowing north to expand the watershed. The viewer’s report evaluates the benefit to the property regarding the as constructed and subsequently improved drainage system. The benefitted acres have been substantially increased. Popp asked Goemann if they inspected the City’s holding ponds and Goemann replied saying that they did not evaluate the City’s ponds. Byrd stated disrepair of a holding pond does not reduce benefits, and you have to assume it is functioning as it should be when assessing benefits. Byrd added that there are establishing documents for this ditch. There is further sedimentation downstream where cleaning would help CD 3 function. There are large culverts under major roadways that cannot be lowered. When roads are designed, you go through a hydraulic risk assessment when sizing culverts. There is significant sedimentation and simply cleaning that would help the flow of the ditch. Bryan Murphy, owner of H2Overviewers, stated that repairing the ditch will not allow additional water to come from outside. It does not increase the watershed, and they need evidence to show that a property owner is benefitted. Houston Engineering came up with both watersheds, and the bigger watershed did not consider the culvert under Highway 10 in the bigger watershed and considered the worst type of water event. H2Overviewer’s watershed is most accurate because they had boots on the ground and considered all structures that impacted the water flow.

Mike Ebnert of 1800 35th Ave NE Sauk Rapids, MN 56379 brought up Potter’s Creek.

The public hearing for CD 3 closed at 11:31 AM.

After hearing the testimony from the public, Heinen asked what the added costs would be to conduct another redetermination of benefits. Murphy stated they would assess at a higher level, and he has done this before in the past, and the cost has been tremendous, typically adding \$10,000 to \$20,000 to the landowners on top of the \$180,000 that is being assessed for the cleaning. Goemann stated that in the past, the end result of doing another redetermination of benefits did not make a significant change to the outcome.

Byrd provided the Findings of CD 3 and they are as follows:

Findings:

1. Benton County Board of Commissioners is the drainage authority for **Benton County Ditch No.3**.
2. On June 1, 2021, the drainage authority adopted findings and ordered the initiation of a redetermination of benefits and damages for **Benton County Ditch No. 3** 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 September 8, 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. The public hearing was continued until April 11, 2022 at 8:30 a.m. due to defective notice issues. Pursuant to Minn. Stat. 103E.035, new notice was sent to the impacted property owners that did not originally get notice of the March 9, 2022 hearing.
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, and the hearing was continued until April 11, 2022 at 8:30 a.m. at Henry's Event Center in Foley, MN. The hearing was again continued until May 3, 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. 3**.
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 perennial vegetation buffer 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, or otherwise directly benefit the property.
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 328 acres with total benefits of \$2,738.00. The viewers determined that the total acreage benefited now is 709.30 acres with total benefits of \$295,240.00. Damages for perennial vegetation strips were determined to be \$1,346.01.
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 perennial vegetation buffer strip along all reaches of open ditch on **Benton County Ditch No. 3**.
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. Steve Ertl, 565 14th Ave NE St. Cloud:

He stated that he filed paperwork almost two years ago and this has been a slow process. He asked whether or not he needed to obtain legal counsel for the damages done to his property over the last 25 years. He said he has concrete and his detached garage that is settling down.

Commissioner Heinen stated the Board plans on getting the ditches done as soon as possible.
 - b. Clarence Tadych of 1480 10th Ave NE Sauk Rapids, MN 56379.

He stated that this has been going on since February, and on February 24, 2022, Goemann came to his property to inspect his land and discussed the elevations of his property, that the elevations were all estimates and not what the elevations actually were. Tadych also

shared his concerns about delaying this process until May 3, 2022. Tadych added that he provided the County Board with maps of his property. Tadych added that H2Overviewers came to his property to evaluate when they had over two feet of snow on the ground. Tadych stated that they couldn't see what he has done to his property to keep the water on his property. Tadych added that he has created three holding ponds for the rainfall on his property. The public storm water ponds are full of trees and weeds. A new park was put in by Sauk Rapids that raised the low land. He in turn raised his low land. He stated the water from his property does not go past buildings on his property. He does not deposit any water into the drainage system. He does not believe he benefits from Ditch No. 3.

Commissioner Heinen stated he shares the same opinion that this has been going on "way too long..." and "we need to do a better job of getting out there..."

Commissioner Popp asked what his elevation was compared to the wetland. Even if his property is retaining water, it is still draining into the wetland under the surface and drains to the ditch.

Chris Byrd stated that Commissioner Popp addressed the issue. He also stated the entire watershed is evaluated. If the water eventually gets into the system, it benefits.

Aaron Goemann explained the classification of property. Water permeates the ground. Barring treating Mr. Tadych's property as an actual swamp, he is being treated as low as can go as contributing to the drainage system. He has a larger property versus other property in the system. It is clear the property meets the classification. He does have buildings on the property. The property does drain into the wetland.

c. Trevor McConnell of 1993 2nd St SE St. Cloud, MN 56304

He questioned why the south side of the railroad tracks were eliminated on County Road (CR 1) because the land by the railroad east of CR 1 drains on the south side of the track and the road and it comes through his property. The watershed was determined prior to the highway being put in. Water is still coming in south of County Road 75. He believes watershed is greater than determined and there are more benefitting properties. What makes Tadych's holding ponds different from other holding ponds?

Aaron Goemann stated that he is aware of McConnell's concerns and will go over the detailed maps after the meeting. The city's holding ponds still going to the drainage system and will be assessed benefits. He has explained the watershed differences. Houston Engineering redline watershed does omit some of the structures that would prevent flowage of water. It has considered the worst rain event. Whereas viewer's report considers general rain events and considers impacting structures. There is not enough water flowing north to expand the watershed. Viewer's report evaluates the benefit to the property regarding the as constructed and subsequently improved drainage system. The benefitted acres have been substantially increased.

Commissioner Popp asked with Aaron Goemann if they inspected the City's holding ponds. Mr. Goemann did not evaluate the City's ponds.

Chris Byrd stated disrepair of a holding pond does not reduce benefits. You have to assume it is functioning as it should be when assessing benefits. There are establishing documents for this ditch. There is further sedimentation downstream where cleaning would help Ditch 3 function. Realistically there are large culverts under major roadways that cannot be lowered. When roads are designed, you go through a hydraulic risk assessment when sizing culverts. There is significant sedimentation and simply cleaning that out would help flow of the ditch.

Bryan Murphy, viewer, repairing the ditch will not allow additional water to come from outside. It does not increase the watershed. Need evidence to show that a property owner is benefitted. Houston came up with both watersheds. The bigger watershed did not consider the culvert under Highway 10 in the bigger watershed and considered the

worst type of event. H2Oviewers watershed is most accurate because they had boots on the ground and considered all structures that impacted the water flow. Commissioner Gapinski asked if a newly benefited landowner would want to join after the ditch is cleaned.

- d. Mike Ebnet, of 1800 35th Ave NE, Sauk Rapids, MN 56379
Brought up Potter's Creek.

32. 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 perennial vegetation buffer strips as reported as damages in the viewers' report is necessary under Minn. Stat. § 103E.021

Motion by Gapinski and seconded by Heinen to Order:

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. 3**, hereby orders as follows:

- A. The redetermined benefits of **Benton County Ditch No. 3**, 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. 3**.
- D. The damages for the acquisition of the perennial vegetation buffer area shall be paid and the perennial vegetation buffer areas established as required by statute.
- E. The effective date of the acquisition of the perennial vegetation buffer strip shall be June 4, 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.

Motion carried unanimously per roll call vote with Commissioner Schlangen, Johnson, Heinen, Gapinski and Popp voting "aye".

Next, Byrd requested to set the date, time, and place of the public hearing for the Repair Report for CD 6. Byrd stated that Minn. Stat. §103#.715 Subd. 3 dictates that once the Repair Report is filed with the Auditor, the hearing must be held not more than 30 days later. It is recommended to hold a Public Hearing at the regularly scheduled Meeting on June 7, 2022. To ensure compliance with statute, the Repair Report will be filed with the Auditor not more than 30 days before this date. Byrd added that the Statute also states, "at least ten days before the hearing, the Auditor shall give notice by mail of the time and location of the hearing to the petitioners, owners of property, and political subdivisions likely to be affected by the repair in the repair report." Byrd was instructed to contact the Auditor-Treasurer's Office to request assistance with the mailings getting out in a timely matter. Motion by Johnson to set

the public hearing on Tuesday, June 7th at 10:00 AM at the County Boardroom in Foley, MN. Seconded by Popp. Motion carried unanimously.

Motion by Gapinski and seconded by Heinen to adjourn at 12:10 PM. Motion carried unanimously.

Steven J. Heinen, Chair
Benton County Ditch Authority

ATTEST:

Montgomery Headley
Benton County Administrator