

BUFFALO-RED RIVER WATERSHED DISTRICT

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Clay County Ditch No. 16 Redetermination of Benefits Hearing August 15, 2018

In accordance with Minnesota Statutes Annotated (M.S.A.) 103E.351 and any other applicable statutes, the Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a redetermination of benefits hearing on Wednesday, August 15, 2018, at 7:00 PM in the Community Center, Hawley, Minnesota, for Clay County Ditch (C.D.) No. 16. BRRWD Managers attending were Jay A. Leitch, John E. Hanson, Peter V. Fjestad, and Mark T. Anderson. Others attending included: Bruce E. Albright, BRRWD Administrator, Wade Opsahl, Technician, Houston Engineering, Inc. (HEI); Dennis Olsen, Bill Austin, and Eddie Bernhardson, Viewers; and landowners: Charles Risbrudt, Mark Anderson, and Jayne Malakowsky Lyon.

BRRWD President Leitch called the meeting to order at 7:00 PM. Bruce Albright, BRRWD Administrator made an introduction of the BRRWD Managers and Viewers. There was a sign-up sheet circulated to record attendance. Albright announced that the hearing was being recorded to aid in preparation of the minutes. Albright gave a brief history of the project. According to records, in November of 2004, landowner Chuck Carlson suggested a redetermination of benefits for Clay C.D. No. 16. Albright distributed a map showing the current benefit area. Since C.D. No. 16. was built in the early 1900s, there have not been any changes to the original benefit area. In November of 2009, the BRRWD Board approved a motion to move forward with a redetermination of benefits. Arvid Thompson, Lauren Peterson, and Eddie Bernhardson were appointed as Viewers. Viewers Thompson and Peterson have since been replaced by Dennis Olsen and Bill Austin.

Albright handed out the new proposed benefit map for C.D. No. 16. He emphasized the importance of the outside boundary lines. The new boundaries are different primarily to the north where lands have been draining into C.D. No. 16, but those landowners have not paid to help maintain the ditch system. The revised boundary map is divided into parcels that can be officially defined and described. The parcels are divided into three percentage categories (5%, 7.5%, and 10%), representing a percentage of the county's assessed market value for the property. The County's valuation does take into consideration that wetland areas should not be assessed for the drainage benefits. Only tillable lands in each parcel were assessed. Albright pointed out areas along C.D. No. 16 belonging to the Minnesota Department of Natural Resources (DNR) and the United States Fish and Wildlife Service (USFWS). No benefits were placed on any state or federal lands.

For C.D. No. 16, the proposed benefits total \$615,649.35. The landowners who were assessed 10% of market value have the highest benefit rate. This area is primarily east of Trunk Highway (T.H.) No. 32 and contains the manmade portion of the ditch with evident spoil on both sides of the system. The land with the 7.5% rate lies west of T.H. No. 32, and some of this land was in the original ditch system. Water flows to the natural waterway here, and the land probably had some drainage before C.D. No. 16 was built. Construction of the ditch system ended at 43rd AVE N. Roughly two miles south from the ditch outlet, water enters a natural waterway that eventually flows to the Buffalo River. Most of the newly added benefit area to the north was assessed at 5%. This land is much higher in elevation than C.D. No. 16, but uses the system as an outlet. Minnesota drainage law states if the ditch is used as an outlet and manmade improvements have been made on the property, the landowner could be taxed into the system. A property owner's statement and hearing notice were mailed to every landowner in the proposed benefiting area. Albright explained the statement is based on an assumed \$10,000 assessment, and the amount listed is the estimated tax to the landowner based on the redetermination.

Albright stated that ditch assessments are only levied when work is completed on the ditch. The BRRWD authorizes minor maintenance and repairs and the work is paid for from the ditch system account. The Board will allow a ditch system to carry a negative balance, but an assessment can be levied if the balance gets too high. At the annual budget hearing, all ditches and projects are reviewed, and the Board decides if a tax assessment is needed. If that decision is made, the County Auditor calculates the tax amount, and landowners see it on their following year's tax statement. Any major repair projects would only be completed by landowner request. The repair request would be investigated to decide if the repairs are needed. If the decision to proceed is made, construction estimates would be solicited, and all other necessary steps taken before going to the Board for final approval.

The group then discussed the acquisition of right-of way (R/W). Minnesota Drainage Law requires a one-rod (16.5') grassed bufferstrip along the ditch as measured from the top of the crown. The 2015 State Legislature reiterated the need for bufferstrips to improve water quality, stating all ditch system buffers should be in place by November 1, 2018. Albright explained that once the hearing process is completed, the Board will make a decision regarding an Order to adopt the redetermination. If adopted, a 30-day appeal period will begin. Following the appeal period, if no appeals are filed, the new benefit area will go into effect. R/W checks will be mailed to landowners based on the fair market value of their property as determined by the county. For C.D. No. 16 to be compliant with the new Buffer Rule, the BRRWD needed to acquire 1.8 acres of R/W with damages totaling \$5,869.

Landowner Wayne Lepper was at the Watershed Meeting on Monday, August 13, 2018, and he had a concern about why C.D. No. 16 stops at 43rd AVE N instead of continuing to the Buffalo River. Since the project was built in the early 1900s, at this point, unfortunately, no one has a good answer to that question. In order to secure an adequate outlet for C.D. No. 16, Ditch Law states that the BRRWD can clean up to one mile downstream of the outlet. The problem is that C.D. No. 16 stops two miles north of the Buffalo River. If Lepper feels strongly enough and believes excess water is draining to his land, he has the right to petition to extend C.D. No. 16 to the Buffalo River. This would be a separate process from the current redetermination of benefits proceeding but is an option.

Albright opened the floor to questions. Landowner Mark Anderson asked when the ditch was last cleaned. Albright estimated at least 20 years, and Wade Opsahl confirmed it was the early 2000s. There was an extended discussion about how much of the ditch was cleaned at that time. Albright stated it often takes a hard rain for a ditch to be truly tested and to discover where repairs are needed. He mentioned the need for maintenance work at the 43rd AVE crossing where the road frequently washes out. Albright recalled when Stanley Sandman, who was a Highland Grove Township Supervisor, wanted to install larger culverts at this location, but Lepper, who was also on the Township Board, would not allow it. Lepper believed it would allow water to drain faster onto his property downstream. The BRRWD's response was to evaluate what culvert sizing was in place at other locations on the system. Letting the road wash out every time there is major runoff event creates a safety hazard and eliminates any control over the water flow. This presents the opportunity for an increased risk of liability and future problems if nothing is done to correct a known problem. At the Watershed Meeting, Lepper also stated that over time, gravel has washed off the road and a blockage has formed at the south end of the pipes. Another landowner said a 50' portion of the ditch was recently cleaned, and the channel is now open and will continue to flow south.

Albright mentioned the small amount of work needed to maintain this ditch compared to larger ditches further west. The BRRWD will continue to ensure the functionality of the system. This redetermination of benefits could be in place for a long time, so all efforts were made to keep the assessments fair. The Viewers followed the idea that if you use the ditch, you should help pay to maintain it. Landowner Anderson was surprised he was not already paying an assessment to C.D. No. 16 after his tiling project was installed, which outlets to the ditch. He asked if as a landowner, he was allowed to clean or repair areas in the ditch. Albright answered that the Board has the final repair approval, but his best answer is to use common sense. Manager Anderson

recommended a good guide is to only remove black dirt and to stop before reaching the clay. Landowner Anderson said he was referring to silt blocks. Albright mentioned that the 16.5' buffers are intended to reduce those issues but felt cleaning out the block was a reasonable landowner repair. Albright gave an example of a landowner using a backhoe to deepen a ditch, unaware it may have 60 square miles of water flowing through it. If too much dirt is removed, or the work left uncompleted, a torrential rain could flood downstream areas or washout the ditch completely, requiring more extensive repairs. This is the type of work that should only be done through the BRRWD's permitting process and Minnesota Drainage Law procedures.

Jayne Malakowsky Lyon asked if landowners are responsible for installing the bufferstrips. Albright explained the BRRWD will complete the installation. Acquisition payments will be mailed with a letter explaining the R/W acquisition and the timeframe for staking and seeding the noted areas. The BRRWD will be responsible for future R/W maintenance and any costs incurred will be paid by the benefitting area according to the new Viewers' Report.

Landowner Anderson asked for clarification on when the ditch is assessed. Albright said the new bufferstrips and seeding will be assessed for the next several years. Albright also disclosed the C.D. No. 16 account currently has a negative \$40,000 balance. The decision to redetermine benefits was made in 2009, but the BRRWD has not assessed the ditch until 2018 (\$10,000). Charles Risbrudt asked if the current \$40,000 balance is a combination of past bills, repairs, etc. that have accumulated over the years. He asked if taxes are currently being paid on C.D. No. 16. Albright explained the plan was for the balance to be assessed after the redetermination hearing. A portion of the balance could be levied at the Annual Budget Hearing on August 27, 2018. The tax receipts will be allocated to the C.D. No. 16 financial account to help zero out the negative balance. If the account has a surplus, the money will earn interest. If the account has a negative balance, interest will be charged. All ditch system financial information is public. Risbrudt then asked how long it took for the balance to reach the current amount. Albright stated on December 31, 2015, the C.D. No. 16 account had a \$4,000 surplus, and by February of 2016, the balance was negative \$10,000. Albright did say he could provide Risbrudt a detailed breakdown of the expenses. Risbrudt questioned how future expenses would be charged. It was explained that all future expenses would be assessed in accordance with the new benefit rates shown on the ditch benefit map from the time the Order is adopted.

President Leitch opened the floor to any other questions or concerns. Risbrudt asked if landowners in the newly added benefit area will be responsible for part or all of the \$40,000 balance. Albright said drainage law states that redetermination costs should be assessed to the new benefit area. The Board can look at the expenses on C.D. No. 16 and determine what is related to the previous benefit area and what was spent on the redetermination. An order could be made to add a one-year cleanup of old costs to be assessed only to the old benefit area. For tax purposes, the County Assessor could use both maps (old and new) for the 2019 tax year.

Risbrudt discussed the drainage patterns on his land. He felt the Viewers should have been able to see that his field drains into a contained basin in Section 22. He asked if he could outlet a tile project for this field to C.D. No. 16 if he was not assessed to the ditch. Albright said the tile system designer would first decide if a pump is needed, eliminating the concern about tile grade. If the decision was made to tile part of his acreage, he would need a permit from the BRRWD to install the tile. The next question would be where his water outlets. If it drains to C.D. No. 16, Drainage Law states that legally he cannot drain to a ditch for which he is not assessed. If he does not wish to be added to the ditch system benefit area, then the permit would have to be denied. If a property drains to a ditch system, then you must pay to have those benefits if you wish to use the ditch for drainage. The group had a discussion of Risbrudt's previous experience with the BRRWD involving permits.

Landowner Anderson asked if he would need a permit to replace an existing section of broken tile. Albright says that would be considered maintenance and a permit would not be needed. Manager Anderson agreed,

noting if area is expanded or the size of the tile is changed, then a permit would be needed. He also recommended checking with the County Highway Department to see if a permit is needed for work along a county road. Albright gave some background on when BRRWD began their permit system and an example of the issues that can arise if work is done incorrectly or without a BRRWD permit.

President Leitch asked if there was anything more the audience wanted to address. Risbrudt asked how often the BRRWD Board meets. Albright replied they meet the second and fourth Monday of each month, and the meetings are open to the public. He gave directions and the address of the Barnesville office. Risbrudt asked if meeting attendance is necessary to stay informed of upcoming projects. Albright advised all project information, agenda, minutes, etc. is available on the BRRWD website. Manager Fjestad noted that certain newspapers print minutes after the meetings. Albright corrected Fjestad, stating it is a press release or summary of what occurred at the meeting, but not the actual minutes. Landowner Anderson asked if Viewers determine how the ditch is functioning. Albright explained that the Viewers determine ditch benefits, meaning the property's value with the ditch vs. without the ditch. The difference in value should equal the benefit. The Viewers do not determine if the ditch is functioning. Manager Anderson noted that the BRRWD relies on those who live on the ditch systems to notify the office if there are issues. Landowner Anderson asked if there have been any requests to clean C.D. No. 16. Albright replied the only request has been the south side of 43rd AVE where there is an obvious blockage in the ditch from water washing over the road. That area could also have liability issues and should be addressed by Highland Grove Township.

President Leitch asked if there was any other testimony to come before the Board. There being none, Leitch adjourned the hearing at 7:45 PM.

Respectfully prepared and submitted by,

John E. Hanson, BRRWD Secretary