

**STATE OF MINNESOTA
LE SUEUR COUNTY BOARD OF COMISSIONERS
DRAINAGE AUTHORITY FOR LE SUEUR COUNTY DITCH 49**

The matter of the Redetermination of Benefits for Le Sueur County Ditch 49

Findings and Order Adopting Redetermined Benefits

At a public hearing conducted by the Le Sueur County Board of Commissioners, Drainage Authority for Le Sueur County Ditch 49 (CD 49), on January 15, 2020; continued to April 9, 2020; further continued to June 25, 2020; and completed on July 21, 2020, Commissioner _____ moved, seconded by Commissioner _____ for adoption of the following Findings and Order:

Findings:

1. CD 49 was originally established in 1920. Original benefits for Le Sueur County Ditch 49 were determined concurrent with establishment in 1920, prior to the initiation of modern, intensive farming and drainage practices within Le Sueur County.
2. The system provides an outlet for lands in Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, and 23 Montgomery Township in Le Sueur County.
3. Benefits for CD 49 were last determined in 1920, prior to the enactment of various laws, regulations, and programs protecting wetlands.
4. The current benefits roll reflects the benefitted properties, benefitted areas and benefit values as determined by viewers based on assumptions regarding the ability of landowners to convert wetlands for agricultural purposes.
5. Additionally, since the most recent determination of benefits and damages land uses and drainage practices have changed to accelerate and increase to flow of water to the drainage system changing the nature and value of benefits accruing to lands from construction of CD 49.
6. Since the most recent determination of benefits and damages, additional lands not previously determined to be benefitted have improved drainage to take advantage of CD 49 as an outlet for drainage.
7. Since the most recent determination of benefits and damages land values have changed within the benefitted area of CD 49.

8. Based on its finding that the conditions required for the initiation of a redetermination of benefits exist, that the original benefits and damages did not reflect reasonable present day land values, and the benefitted areas had changed for CD 49, the Drainage Authority ordered a redetermination of benefits and appointed Bryan Murphy, Larry Murphy, and Shantel Hecht as viewers for the redetermination of benefits.
9. Upon taking their oath, the viewers initiated a redetermination of benefits according statutes chapter 103E.
10. Under Minnesota Statutes § 103E.491 subdivision 1, the viewers obligation is to proceed as provided for viewers and the Viewers' Report in sections 103E.311 to 103E.321. Under § 103E.311, they are obligated to determine the benefits and damages to all property affected by the drainage project and make a Viewers' Report.
11. The viewers completed their report which included a benefits and damages statement in September 2019, for all property affected by CD 49 and filed their report with the Drainage Authority.
12. The Drainage Authority noticed and held an informational hearing on a proposed redetermination of benefits for CD 49 on December 11, 2019. The informational hearing was attended by several landowners who confirmed conditions, land uses and land values on CD 49.
13. The final hearing was originally scheduled to be held on January 15, 2020.
14. The Drainage Authority prepared Property Owners' Reports and mailed them to the owners of property identified in the Viewers' Report.
15. Property Owners' Reports were mailed on November 27, 2019.
16. Notice of the hearing was mailed on November 27, 2019, to owners of properties identified in the Viewers' Report, governmental units affected by the project and the commissioner of the MDNR.
17. Notice of the hearing was posted on Le Sueur County's website on November 27, 2019.
18. Notice of the hearing was posted on December 23, 2019, at the Le Sueur County Courthouse and at the Final Hearing location (Le Sueur County Justice Center, 435 E Derrynane St., Le Center, MN) and remained through January 15, 2020.
19. Notice of the hearing was scheduled to be published in the *Le Sueur County News* a legal newspaper in general circulation in the area of CD 49 in Le Sueur County. Through no fault of the Drainage Authority, there was an error in publishing Notice in the *Le Sueur County News*.

20. Due to the publishing error, the Drainage Authority met on January 15, 2020, and the only action taken was to continue the final hearing to April 9, 2020.
21. Notice of the April 9, 2020, hearing was posted on Le Sueur County's website and at the Le Sueur County Courthouse and Le Sueur County Justice Center on March 18, 2020, and remained through April 9, 2020.
22. Notice was published in the *Le Sueur County News* on March 18, March 25, and April 1, 2020. This publication fixed the defective notice related to the originally scheduled final hearing.
23. The Drainage Authority mailed a postcard on January 6, 2020, identifying the defective notice and providing the continued final hearing date, which was April 9, 2020.
24. Due to the COVID-19 pandemic and executive orders issued by the Governor of the State of Minnesota, the hearing was once again continued and it was continued to June 25, 2020.
25. Notice of the June 25, 2020, continued hearing was mailed on March 27, 2020.
26. Due to the COVID-19 pandemic, the June 25, 2020, hearing needed to be held by virtual means.
27. Notice of the June 25, 2020, continued hearing with instructions for how to access the hearing virtually and submit comments was mailed on June 2, 2020.
28. Notice of the June 25, 2020, continued hearing with instructions for how to access the hearing virtually and submit comments was posted on Le Sueur County's website and at the Le Sueur County Courthouse on June 2, 2020.
29. Notice of the June 25, 2020, continued hearing with instructions for how to access the hearing virtually and submit comments was published once a week for three consecutive weeks beginning the week of June 1, 2020 in the *Le Sueur County News* and the *Montgomery Messenger*.
30. Evidence of all actions in this matter, including preliminary orders, appointments, oaths, affidavits of mailing, publication and posting as well as hearing agendas and presentation materials are present in the record of proceedings and are incorporated herein by reference.
31. The viewers held an informal meeting on December 11, 2019, to meet with landowners, explain the viewing process and answer landowner questions.

32. Based on the informal meeting with landowners, the viewers filed an amended report at the final hearing.
33. The final hearing on the viewers' redetermination of benefits was held on June 25, 2020.
34. At the hearing, the viewers appeared and presented the Viewers' Report, Benefits and Damages Statement and redetermined benefits. The viewers further provided detail of the viewing process and the information used by the viewers to: (1) verify the boundary of the watershed of the Ditch; (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 CD 49.
35. 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 CD 49.
36. No members of the public attended the hearing.
37. After calling for public comment but receiving none, the Drainage Authority adopted a motion to: close the hearing to public comment and to continue the hearing to its regular meeting on July 21, 2020 for the purpose of considering and adopting findings and an order adopting the redetermined benefits and damages.
38. The Viewers' Report, as amended, is attached as **Exhibit A**.
39. The viewers prepared a Benefits and Damages Statement outlining the basis of their benefits and damages determinations. The Benefits and Damages Statement is attached as **Exhibit B**.
40. The viewers reviewed all property within the drainage areas of the drainage system as part of the redetermination of benefits process.
41. 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 statutes section 103E.021. The viewers compared sales in the area in arriving at an average sales price used in establishing a payment rate.
42. 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.

43. 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.
44. 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.
45. Based on their detailed observations, the viewers determined benefit classifications, classified acres and assigned economic benefit on a per acre basis.
46. 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.
47. 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.
48. 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.
49. The viewers determined the amount of economic benefit to property benefited immediately by the drainage system, or for property for which the drainage system can become an outlet for drainage, make an outlet more accessible, or otherwise directly benefit the property.
50. The viewers determined that the drainage system draws off water from lower, previously assessed lands, thereby allowing drainage from unassessed lands to flow more readily and escape faster, thus preventing damage to the previously assessed lands, and such drainage constitutes a drainage benefit.
51. 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 a potential different land use.
52. Within the watershed of the drainage system, the viewers determined benefits on property that is 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.

- 53. The viewers kept an accurate account of all time engaged in viewing and examination; the nature and kind of work done performed; the days each viewer was engaged in said works; the amount charged per day by each viewer; and every item of expense incurred by the viewers in said work.
- 54. The viewers' account of work has been filed with the drainage authority.
- 55. Upon review of information provided to the Drainage Authority during the public hearing, the Drainage Authority further finds and confirms 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 benefited areas.
- 56. Based on the record before it, and the comments of those present at the hearing, the Drainage Authority determines that the redetermined benefits, as reflected in the Viewers' Report at **Exhibit A** are proper, reasonable and conform to the drainage code.

Order:

- A. The redetermined benefits on CD 49, the amended Viewers' Report and the Benefits and Damages Statement, prepared by the viewers and attached hereto as **Exhibits A and B** are hereby adopted by the Drainage Authority.
- B. The viewers are allowed payment of their account of work.
- C. The Le Sueur County Auditor-Treasurer shall ensure that the redetermined benefits replace the existing benefits previously determined for the ditch.
- D. The damages for the acquisition of the grass buffer area shall be paid and the grass buffer areas established and seeded as required by statute.
- E. The Drainage Authority staff is directed to work with the County Recorder's office to ensure that the drainage system and the grass buffer area acquisition is reflected on the property record of affected landowners.

After discussion, the Board Chair called the question. The question was on the adoption of the foregoing findings and order and there were _____ yeas, _____ nays, _____ absent, and _____ abstentions as follows:

| | Yea | Nay | Absent | Abstain |
|------------|--------------------------|--------------------------|--------------------------|--------------------------|
| GLISZINSKI | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| O'KEEFE | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| KING | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| WETZEL | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

ROHLFING

Upon vote, the Board Chair declared the Resolution passed and the findings and order adopted.

Dated this ___ day of _____, 2020.

LE SUEUR COUNTY, SEATED AS DRAINAGE
AUTHORITY UNDER STATUTES CHAPTER 103E FOR
LE SUEUR COUNTY DITCH 49.

By _____
Chairperson

* * * * *

I, Pam Simonette, Le Sueur County Auditor-Treasurer, do hereby certify that I have compared the above motion; Findings and Order with the original thereof as the same appears of record and on file with the Le Sueur County Board of Commissioners and find the same to be a true and correct transcript thereof. The above Order was filed with me, Le Sueur County Auditor-Treasurer on _____, 2020.

IN TESTIMONY WHEREOF, I hereunto set my hand this
___ day of _____, 2020.

Pam Simonette