

STATE OF MINNESOTA
LE SUEUR COUNTY BOARD OF COMMISSIONERS
DRAINAGE AUTHORITY FOR THE IMPROVEMENT OF COUNTY DITCH 41

The matter of the petition for the improvement of Le Sueur County Ditch 41

**FINDINGS AND FINAL ORDER:
ESTABLISHING DRAINAGE
PROJECT; ADOPTING AND
CONFIRMING THE VIEWERS'
REPORT OF IMPROVEMENT
BENEFITS AND DAMAGES; AND
DIRECTING CONSTRUCTION OF THE
PROJECT**

The Board of Commissioners of Le Sueur County, sitting as Drainage Authority for the improvement of Le Sueur County Ditch 41 met at 9:30 a.m. on February 4, 2021, for Final Hearing on the proposed improvement. The hearing was held according to Minnesota Statutes, section 103E.335. Due to the COVID 19 pandemic and the emergency declaration and associated executive orders of the Governor of the State of Minnesota, the final hearing was to be held by alternative means. The hearing was continued to the Board's regular meeting on March 23, 2021, at which meeting Commissioner _____ moved, seconded by Commissioner _____, for adoption of the following:

Findings:

1. In September, 2018, the Board of Commissioners (Board) of Le Sueur County accepted the petition for the improvement of Le Sueur County Ditch 41 (CD 41).
2. The petition was properly filed with the Board pursuant to Minnesota Statutes, section 103E.215.
3. The petition included a request that the Board consider separable maintenance as part of the proposed improvement.
4. The Board and its attorney reviewed the petition and bond to verify compliance with Statutes chapter 103E. The Board found that the petition met the requirements of section 103E.215 and that the bond met the requirements of section 103E.202.
5. The Board appointed the engineering firm of ISG, Inc., (engineer Chuck Brandel, P.E.), pursuant to section 103E.241, to perform the duties required of the project engineer.
6. After filing its oath and bond, the engineer prepared and filed a preliminary survey report (preliminary engineer's report) with the Board.

7. The Board noticed and held a preliminary hearing on November 7, 2019, at which hearing the Board reviewed a DNR preliminary advisory report, received public comment on the preliminary survey report, adopted findings and issued a Preliminary Hearing Order.
8. In its Preliminary Hearing Order, the Board:
 - a. Directed the engineer to make a detailed survey with plans and specifications for the proposed drainage project and submit a detailed survey report (final engineer's report (FER)).
 - b. Directed the engineer to address comments of the DNR commissioner, and evaluate whether changes to the proposed project are feasible to address concerns raised by the commissioner. If feasible, the engineer was directed to include changes in the final project plans.
 - c. Directed the engineer to continue to work through the processes contained in statutes section 103E.015 to ensure that environmental, land use, and multipurpose water management criteria are considered for inclusion in final project plans and the engineer include the options 2 and 3 proposals in the final design.
 - d. Directed the engineer to continue to coordinate with the soil and water conservation district, county and USDA planning authorities about potential external sources of funding and technical assistance for environmental, land use, and multipurpose water management features or alternatives.
 - e. Directed the engineer to request additional information about potential funding or technical assistance for environmental, land use, and multipurpose water management features or alternatives from the executive director of the Board of Water and Soil Resources.
9. On January 21, 2020, the Board appointed Bryan Murphy, Shantel Hecht, Larry Murphy, and Robert Conely (alternate) as viewers to perform the determination of improvement benefits and damages as well as an update to the benefits roll to reflect the improvement and other changes to drainage benefits within the watershed of the drainage system.
10. During preparation of the final engineer's report, the engineer and Drainage Authority staff investigated whether any wetlands in the watershed would be impacted by the proposed improvement. The engineer completed a level 1 wetland delineation in areas where improvements to CD 41 are proposed. The delineation included identifying potential wetland characteristics using LiDAR, soil data, historical aerials, and drone photos that showed open water areas, perennially flooded areas, wetland grasses, or other indicators of wetland hydrology. The potential wetland areas are identified on the improvement plans. Spoils will not be placed in wetland areas from open ditch excavation or side slope flattening on the open ditch. Existing wetland vegetation in the identified potential wetland areas will also remain in place. Spoils from these areas will be disposed of in upland areas.

11. The engineer filed its final engineer's report with the Board. Concurrent with the filing, on or about December 15, 2020, the engineer provided a copy of the final engineer's report to the Commissioner of Natural Resources, through her designated hydrologist and regional environmental assessment ecologist by electronic correspondence, and by email to the designated email address for the DNR related to Region 4.
12. The engineer considered the effects of the proposed improvement on water quality; the effects of the proposed improvement on fish and wildlife resources; the effects of the proposed improvement on shallow groundwater availability, distribution, and use; and the overall environmental impact of the proposed improvement. Based on the engineer's analysis, the comments presented at the final hearing and the Board's own judgment, the Board finds that the proposed improvement will not create any negative impact on water quality; fish and wildlife; or shallow groundwater.
13. The Commissioner of Natural Resources, through her designee, Jim Sehl, DNR Southern Region, EWR North District Manager, provided the DNR's final advisory report dated January 15, 2021. The final advisory report and the comments therein were read during the final hearing. The comment, and the Board's responses (in italics) are listed below and are incorporated into these findings:

Alternative Measures and Compatibility with Local Plans: The reported alternative measures findings are insufficient compared to the full context of the Le Sueur County Water Plan, particularly "Objective 18: Apply watershed-based principles to drainage system management". Furthermore, other state level strategies and plans such as the MN Nutrient Reduction Strategy were not consulted. Of particular note, wetland restorations as a long-term storage and flow mitigating option are not included. We suggest this alternative be considered instead of a highly engineered and expensive dry/surge storage pond that provides no wildlife or water quality benefits.

The Board has considered this comment after reviewing its Water Plan and the state's Nutrient Reduction Strategy. Though the Board agrees with the aspirational goals of each of these plans, it is, in these proceedings, attempting to balance the needs of agricultural drainage conveyance with ecological considerations as required by statutes section 103E.015. To this end, the Board is including in-channel storage as part of the improvement plan in order to provide both water quality and sediment removal benefits. While wetland restorations are preferred for long term storage and multiple benefits, wetlands are not always feasible to be directly implemented within the drainage system improvement. Storage ponds allow for water holding capacity and water quality benefits. Wetland restorations may be considered on an individual landowner basis offline of the drainage system.

Flooding and Adequacy of Outlet: The project proposes to increase the drainage coefficient at the tile outlet by roughly five times. The tile then flows into the ditch that

will be deepened and widened, increasing the drainage capacity (although the existing and proposed drainage coefficients of the improvement are not provided). The modeling that was provided by email to the DNR upon request (attached) shows that the “no storage” alternative will increase the 2-year peak flow at the downstream end of CD41 by 79% and the flow within Le Sueur Creek, a public watercourse, by 8%. These increases are substantial and may require a public waters work permit. We encourage the Drainage Authority to consider alternative forms of storage that can offset drainage improvements while offering multiple benefits including cover crops, wetland restorations, or other BMPs. **Further consultation with the DNR should occur if the drainage authority does not order a storage option.**

The engineer recommended and the Board intends to implement storage with the improvement project. With the implementation of storage and maintaining or reduction of peak flows to Le Sueur Creek, the Board believes the DNR’s concern has been addressed. The Main tile outlet increases drainage capacities to achieve a 0.50 in/day drainage coefficient by increasing the tile size to a 24-inch tile. The tile outlets into the proposed storage pond. The pond is controlled by a 12-inch pipe outlet control that restricts flow. The drainage coefficient for the 12-inch pond pipe outlet is 0.10 in/day. While there is increased drainage, there are design components in place for flowrate control.

Wetlands and Shallow Groundwater: Historically, the project area was dominated by wetlands. Today, the National Wetland Inventory documents that wetlands still exist. Furthermore, the adjacent sub-watershed to the east (and at a slightly higher elevation) contains wetlands and appears to be hydrologically connected to this system. Improved drainage, by its nature, removes shallow groundwater that contributes to wetland areas. This project may impact wetlands within and adjacent the CD41 system. Because of this, the project should consult the WCA TEP to ensure no impacts to wetlands are incurred.

Drainage tile that is proposed throughout this improvement is specified to be non-perforated tile with watertight connections. The installation of the county tile branches will only serve as a conduit for drainage. The county tile branches will not directly drain saturated soils or effect shallow groundwater. The addition of perforated private tiles by private landowners that would reduce saturated soils are to follow the Wetland Conservation Act (WCA) and review by the Technical Evaluation Panel (TEP).

Water Quality, Fish and Wildlife: The outlet for this project, Le Sueur Creek, is impaired for sediment and aquatic life. The stressors causing the aquatic life impairment include nutrients, degraded habitat, and altered hydrology. Unmitigated drainage is contributing to all of these issues, and as such, the project will further contribute to these downstream impacts and impairments. This project proposes to remove 1.6 acres of trees. This factor in combination to the increases in flow, nutrients, and sediment likely caused by this project means will result in a net loss of fish and wildlife habitat.

The Board asked its engineer to evaluate the merits of this comment, based on the engineer's analysis and report, the Board finds that the project will not contribute higher peak flows to Le Sueur Creek. From the hydrologic and hydraulic model, events models maintain or reduce peak flow rates throughout the system. Reduced flow rates in the open ditch will create less erosive conditions for the ditch reducing sediment transport to Le Sueur Creek. In turn, impacts to aquatic life will be negligible. Further modifications like tree removal adjacent to the ditch within the watershed will, likewise, have no significant impact. Trees along ditch banks provide shade and cover that prevents growth of grasses and other native plants. Native grasses and perennial cover are the preferred vegetation along the ditch banks providing deep, extensive root system for bank stabilization and provides filtering of overland flow. Additionally, access to the ditch with construction equipment is needed in order to maintain the ditches. Additional BMPs such as cover crops, crop rotations, residue management, and other soil health practices are encouraged through local water plans and supported by Le Sueur County SWCD, but are outside the jurisdiction of the Drainage Authority. If landowners wish to implement soil health practices, please contact Mike Shultz, Le Sueur County District Manager, for additional information for implementation and cost share opportunities.

14. The engineer addressed the DNR comments during the final hearing and has provided a revised plan for the improvement that incorporates all feasible recommendations of the DNR within the Board's authority. At the hearing, the Board and engineer encouraged individual landowner practices consistent with the DNR comments.
15. The findings herein, as well as the responses found above (in italics) shall serve as the Drainage Authority's response to the DNR comments.
16. The viewers completed and filed their Viewers' Reports of improvement benefits along with a benefits and damages statement, as amended (improvement reports).
17. The Drainage Authority prepared Property Owners' Reports and mailed them to the owners of property identified in the Viewers' Reports.
18. Notice of the final hearing on the improvement was provided by publication, posting, and mail as required by statute.
19. 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.
20. The viewers were made available to meet with individual property owners for the purpose of addressing individual concerns and to gain better information regarding the unique

features, if any, of an individual property. The viewers' availability for individual meetings was contained in the notice of informal meeting mailed by the Drainage Authority staff.

21. The Drainage Authority met at 9:30 a.m. on February 4, 2021, for Final Hearing on the petition for improvement of CD 41.
22. The hearing was conducted according to Minnesota Statutes, section 103E.335.
23. In order to allow for maximum public participation in light of the COVID 19 pandemic, the Board provided and authorized expanded and alternative means of participation as reflected in the hearing notice:

Please Take Notice: The Board of Commissioners of Le Sueur County, Minnesota, Drainage Authority for Le Sueur County Ditch (CD) 41 will hold a final hearing on the petitioned improvement of CD 41 and the redetermination of benefits for CD 41. The detailed survey report for the petitioned improvement was filed with the Drainage Authority on December 15th, 2020. The viewers' reports of improvement benefits and damages and for the redetermination of benefits were filed with the Drainage Authority on December 22nd, 2020. The reports, along with amendments, if any, are available for inspection at Le Sueur County by contacting Dani Blaschko, Le Sueur County Ditch Manager, by email or phone (drainage@co.le-sueur.mn.us or (507) 357-8285). The hearings on the redetermined benefits and in the improvement, proceedings will be held on February 4, 2021, at 9:30 a.m., by alternative means.

Due to the COVID 19 pandemic and the emergency declaration and associated executive orders of the Governor of the State of Minnesota, the final hearing will be held by alternative means. The viewers' reports, presentation materials and other information to be considered at the hearing are available by contacting Dani Blaschko by email or phone (drainage@co.le-sueur.mn.us or (507) 357-8285). Written comments may be directed to Dani Blaschko by email (drainage@co.le-sueur.mn.us) or by U.S. Mail to Le Sueur County, Attn: Dani Blaschko, 88 S Park Avenue, Le Center, MN 56057.

Members of the public interested in presenting comment by telephone or video conference at the public hearing, or otherwise attending the meeting virtually, are asked to contact Dani Blaschko by email or phone (drainage@co.le-sueur.mn.us or (507) 357-8285) by 4:30 p.m. on or before February 3, 2021, to be placed on the participation list and to receive required access codes and instructions for the hearing.

At the final hearing, the drainage authority will accept public comment regarding the viewers' reports. Any party having an interest in the proceedings may appear and provide comment per the instructions above. Written comments will be accepted through close of business on February 3, 2021, by email or by U.S. Mail to the Le Sueur County Auditor's office (drainage@co.le-sueur.mn.us or Le Sueur County, Attn: Dani Blaschko, 88 S Park Avenue, Le Center, MN 56057).

24. The Drainage Authority's attorney presented the history of the proceedings through the final hearing and summarized the requirements of the drainage code and the decision standard for the Board.
25. At the final hearing, the engineer presented the final engineer's report and details of the project, including its analysis of the necessity and feasibility of the proposed improvement in light of the environmental and land use criteria contained in statute. The engineer further provided an explanation of the need for repair on portions of the system proposed to be improved and the allocation of separable maintenance costs on the system.
26. The engineer discussed the portion of its final report addressing water quality, rate and volume control features to be incorporated into the project.
27. The engineer concluded and the Board agrees that additional wetland restorations and enhancement within the watershed of the improvement would require voluntary participation of landowners and substantial financial assistance to be practicable for the project.
28. The engineer performed hydraulic modeling of the drainage system watershed and outlet downstream of the drainage system to determine the impact of the project on the outlet of the system. Based on the modeling, the engineer concluded that the outlet was adequate to handle the proposed improvement.
29. The engineer evaluated the portion of CD 41 proposed to be improved in order to determine whether the application of separable maintenance was appropriate for the project. The engineer reviewed past maintenance records on the system, notes from the system survey and technical information related to the cost of repairing the in-place system. The engineer noted an increase in maintenance and repair requests on the system in recent years. Based on the engineer's review of the system, it prepared a list of maintenance requirements that will be avoided by the proposed improvement and estimated the costs of the avoided repairs for the Board's consideration. Based on the engineer's review and opinion of the need to repair portions of the existing system, the engineer recommended application of separable maintenance to the project.
30. The viewers appeared and presented amended improvement reports based on landowner meetings. 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; (3) determine the economic benefit to lands deriving a drainage benefit from the proposed improvement; and (4) determine the value of damages for the grass buffer areas required in these proceedings. (determination of improvement benefits and damages).

31. Several members of the public attended the hearing, either virtually or by submitting written comments, and asked questions or made comments regarding the project or determination of improvement benefits as outlined below. The comments have been noted and preserved in the record of proceedings. The comments were not substantive in nature and were addressed during the proceedings as reflected in the minutes.
32. At the conclusion of public comment, the Drainage Authority: closed the hearing to public comment; continued the hearing to the regular meeting of the Board of Managers on March 23, 2021 at 11:00 a.m. at the Le Sueur County Courthouse in order to consider and adopt findings and a final order in the proceedings.

Findings Specific to the Determination of Improvement Benefits and Damages:

33. The viewers reviewed all property within the drainage area of the proposed improvement to determine the improvement benefits and damages.
34. To determine the economic benefit to lands deriving a drainage benefit from the proposed improvement, the viewers conducted a condition comparison comparing the current efficiency of the drainage system with the improvement efficiency. The viewers used this comparison in determining the increased market value of the properties receiving a direct drainage benefit.
35. Based on their detailed observations, the viewers determined benefit classifications, classified acres and assigned economic benefit on a per acre basis.
36. The viewers determined that some acres within the watershed of the proposed improvement, i.e. existing wetlands and non-contributing basins, received no benefit from the proposed improvement.
37. 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.
38. The viewers determined the amount of economic benefit to property benefited immediately by the proposed improvement, or for property for which the proposed improvement can become an outlet for drainage, make an outlet more accessible, or otherwise directly benefit the property.
39. 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.
40. Within the watershed of the drainage system, the viewers determined outlet 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.

41. Among other considerations, the viewers considered yield, crop prices, rental rates, land sales and conservation program payment rates in making their determination of value.
42. The viewers determined road benefits based on accelerated drainage from road surfaces and based on the reduced cost of road maintenance and construction because the ditch provides an outlet for drainage from the road and adjacent road ditches.
43. Temporary damages will be awarded for reduced crop productivity in the areas disturbed by the improvement.
44. The viewers prepared three reports, as amended, which (1) describe how improvement benefits and damages were determined (“Benefits and Damages Statement”); identify and list the lands, land classes and value of benefits and damages by parcel and owner (“Viewers’ Report”), and depict the distribution of benefitted land classes. All of which are attached and included as part of **Exhibit A** of these findings.

Total Benefits and Damages for the Improvement:

45. The viewers determined improvement benefits of \$365,803.60.
46. The viewers determined the total damages attributable to the improvement as temporary damages totaling \$13,904.80.

Improvement Costs and Separable Maintenance:

47. The engineer’s estimate of the cost of construction of the improvement is \$618,628.00.
48. The engineer’s estimate of the portion of the cost of improvement attributable to separable maintenance is \$299,646.
49. The separable maintenance cost is less than the current total benefits on CD 41 based on the most recent redetermined benefits. Therefore, separable maintenance may be applied to this project because the separable maintenance cost is less than the redetermined benefits of the system.
50. Subtracting separable maintenance costs (\$299,646) from the engineer’s estimated cost of improvement (\$618,628) yields a total improvement cost of \$319,983.00.
51. The total improvement benefits less damages (\$365,803.60 - \$13,904.80 = \$351,898.8) exceed the net improvement cost (\$319,983.00).

Costs of Proceedings:

52. 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.
53. The engineer kept an accurate account of all time engaged in analysis and preparation of reports and every item of expense incurred by the engineer in said work.
54. The Board's attorney kept an accurate account of all time engaged in assisting the Board in the proceedings and every item of expense incurred by the county attorney in said work. The petitioners' attorney has kept an accurate account of his assistance to the petitioners in these proceedings.
55. The viewers', engineer's, and attorneys' accounts of work have been filed with the Board.

General Findings:

56. The detailed survey report and Viewers' Reports have been made and other proceedings have been completed as required by Minnesota Statutes, chapter 103E.
57. All reports made or amended in these proceedings are complete and correct.
58. The damages and benefits for the improvement of CD 41 have been properly determined.
59. The improvement benefits are greater than the total, estimated improvement cost, including damages after applying separable maintenance.
60. The proposed improvement of CD 41 will be of public utility and benefit, and will promote the public health and welfare.
61. The proposed improvement of CD 41 is practicable.
62. As part of its review, the engineer presented alternatives to the improvement requested in the petition. The Board, having considered those alternatives as well as the County's Water Plan and other, relevant documents, finds that the proposed project is consistent with each of the plans and presents the best alternative considering private and public benefits; the costs of the proposed project; conservation, allocation, and use of drainage waters for agriculture, stream flow augmentation, or other beneficial uses; reduction of

downstream peak flows and flooding; drainage system capacity requirements; reduction of erosion and sedimentation; and protection or improvement of water quality.

63. As part of the evaluation of alternatives, the Board considered whether any external programs or resources could be applied to an alternative in order to achieve additional benefits within the proposed improvement. After consideration, the Board finds, because of the nature of the proposed improvement and resources within the project area, that such alternatives are not feasible and that no external sources of funding or technical assistance are available to implement such alternatives if feasible as part of this project. The Board notes, however, that technical assistance funds and cost share funds are available to private landowners to implement many of the suggestions and alternatives identified by the engineer and commented on by the DNR in its advisory report. The Board encourages private landowners to consider implementing such practices.
64. The proposed improvement is consistent with the present and anticipated land use within the project area and is consistent with the County's land use ordinance.
65. The proposed improvement will further the public health benefits created by the original ditch establishment and will improve the public health by reducing flood and other deleterious conditions within the drainage area of the project.
66. The engineer evaluated the current and potential flooding characteristics of property within project area and evaluated the downstream outlet of the proposed improvement. The evaluation included consideration of 2-, 5-, 10-, 25-, 50-, and 100-year run-off events. Based on the engineer's analysis, the Board finds that the proposed improvement will not increase flood potential and will provide relief from flood conditions within the project area. The Board further finds that the outlet is adequate for the proposed improvement.
67. Based on the record and findings herein, the Board finds that proper consideration of conservation of soil, water, wetlands, forests, wild animals, and related natural resources, and to other public interests affected, together with other material matters as provided by law has been made in determining that the proposed improvement will be of public utility, benefit and welfare.
68. Based on the foregoing findings, the Board enters the following:

Order:

- A. The Le Sueur County Board of Commissioners, Drainage Authority for the improvement of Le Sueur County Ditch 41, hereby establishes and orders said improvement according to the final engineer's report.

- B. Further, the Board directs the engineer to prepare detailed plans and specifications and other necessary documents to allow for bidding on the project.
- C. Further, the Board directs its staff, in conjunction with the Le Sueur County Auditor, to take all necessary actions for the construction of said improvement and authorizes staff to proceed as necessary, reserving to itself only those matters that the Board, by vote, must authorize.
- D. Upon completion of the project, the drainage system record shall be updated with the as-built alignment and conditions of the improvement.
- E. The viewers' determination of improvement benefits and damages contained in the Viewers' Report, as amended, and the benefits and damages statement, (See **Exhibit A** of these findings) are hereby confirmed and adopted by the Drainage Authority.
- F. The viewers, engineer, and attorneys are allowed payment of their accounts of work.
- G. County staff is directed to provide a copy of these findings to the DNR in response to the comments contained in the DNR's final advisory report and as requested by the DNR.
- H. The Board reserves to itself, by future order, the decision to bond for the proposed improvement and to determine the term and other conditions of assessment for the proposed improvement and the separable maintenance portion of costs.

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

	<u>Yea</u>	<u>Nay</u>	<u>Absent</u>	<u>Abstain</u>
GLISZINSKI	<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"/>
O'KEEFE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ROHLFING	<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"/>

Upon vote, the Chairman declared the motion Passed.

Steve Rohlifing, Chairman

Dated: March 23, 2021

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I, Pam Simonette, the Le Sueur County Auditor-Treasurer, do hereby certify that I have compared the above Findings and Order with the original thereof as the same appears of record and on file with the District and find the same to be a true and correct transcript thereof. The above Findings and Order was filed with me, Le Sueur County Auditor-Treasurer, on _____, 2021.

IN TESTIMONY WHEREOF, I have hereunto set my hand this ____day of _____, 2021.

Pam Simonette, County Auditor-Treasurer