

**STATE OF MINNESOTA
LE SUEUR COUNTY BOARD OF COMISSIONERS
DRAINAGE AUTHORITY FOR LE SUEUR COUNTY DITCH 6**

The matter of the Redetermination of Benefits
for Le Sueur County Ditch 23

**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 23 (CD 23), on June 16, 2021; continued to August 3, 2021; and further continued to August 17, 2021, Commissioner __ moved, seconded by Commissioner __ for adoption of the following Findings and Order:

Findings

1. Le Sueur County Ditch 23 was established in 1904. Original benefits for Le Sueur County Ditch 23 were determined concurrent with establishment in 1904, and updated as part of an improvement project in 1967, prior to the initiation of modern, intensive farming and drainage practices within Le Sueur County.
2. The CD 23 system provides an outlet for lands in Sections 7, 18, 19, 30, 31 of Montgomery Township (T111N-R23W) and Sections 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 35, 36 of Lexington Township (T111N-R24W), both in Le Sueur County.
3. The CD 23 system also provides an outlet for Le Sueur County Ditches (CD) 6 and 21. CD 6 provides an outlet for lands in Sections 7, 8, 16, 17, 18, 19, 20, 21, 29, 30 of Montgomery Township (T111N-R23W) and Section 12, 13, 24, 25 of Lexington Township (T111N-R24W), both in Le Sueur County. CD 21 provides an outlet for lands in Sections 3, 4, 5, 9 of Cordova Township (T110N-R24W) and Sections 26, 27, 28, 32, 33, 34, 35 of Lexington Township (T111N-R24W), both in Le Sueur County.
4. The current benefits roll, pre-redetermination, reflects the benefitted properties, benefitted areas, and benefit values as determined by viewers based on assumptions regarding the future use and drainage of said properties. The current benefits roll also reflects outlet charges established at the time of original construction.
5. Since the original establishment of Le Sueur County Ditch 23 and the original determination of benefits and damages, land uses and drainage practices have changed to accelerate and increase the flow of water to the drainage system changing the nature and value of benefits accruing to lands and outletting drainage systems from construction of Le Sueur County Ditch 23.

6. Since the original determination of benefits and damages, land values have changed within the benefitted area of Le Sueur County Ditch 23.
7. The Drainage Authority noticed and held an informational hearing on the proposed redetermination of benefits for Le Sueur County Ditch 23 on November 7, 2019. The informational hearing was attended by landowners who confirmed certain conditions related to benefits on the drainage system.
8. Following the informational hearing, the Drainage Authority found that the conditions required for the initiation of a redetermination of benefits existed; that the original benefits and damages did not reflect reasonable present-day land values, and the benefitted areas had changed.
9. The Drainage Authority adopted findings and an order initiating a redetermination of benefits for CD 23 and appointing viewers to perform that task.
10. In addition to the findings supporting the Drainage Authority's initiation of these proceedings, the Drainage Authority finds that land uses and drainage practices have changed to accelerate and increase the flow of water to the drainage system changing the nature and value of benefits accruing to lands from construction of CD 23; additional lands not previously determined to be benefitted have improved drainage to take advantage of CD 236 as an outlet for drainage; and land values have changed within the benefitted area of CD 23.
11. The same findings, as made above, apply to the drainage area of CDs 6 and 21 which flow to and uses CD 23 as an outlet. The value of the outlet provided to CDs 6 and 21 are also being considered herein.
12. Upon taking their oath, the viewers initiated a redetermination of benefits according to statutes chapter 103E.
13. Under Minnesota Statutes § 103E.351 subdivision 2, the viewers obligation is to proceed as provided for viewers and the Viewers' Report in sections 103E.311 to 103E.335. 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.
14. The viewers completed their reports, as amended, which included a benefits and damages statement and consideration of an outlet charge to CDs 6 and 21, for all property affected by CD 23 and filed their reports with the Drainage Authority.
15. The Drainage Authority prepared Property Owners' Reports and mailed them to the owners of property identified in the Viewers' Report.

16. The Drainage Authority prepared a notice for the final hearing and (1) mailed it to owners of properties identified in the Viewers' Report, governmental units affected by the project and the commissioner of the MDNR; (2) posted it on the County's website; (3) posted it at the Le Sueur County Courthouse; and (4) published it in a newspaper in general circulation in the area of CD 23 in Le Sueur County. The timing and duration of notices were consistent with the requirements of statutes section 103E.325.
17. The notice included notice of the consideration of the outlet charge to CDs 6 and 21 and special, mailed notice was provided to the owners of property benefitted by CDs 6 and 21 of the consideration of the outlet charge.
18. 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.
19. Following the mailing of the owners' reports, the viewers were made available to meet with individual landowners, explain the viewing process and answer landowner questions.
20. 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 23.
21. 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 23.
22. The viewers included, in their reports, a determination of outlet benefit/charge to CDs 6 and 21 for use of CD 23 as an outlet.
23. Members of the public attended the hearing and asked questions or made comments regarding the redetermination of benefits.
24. The viewers, the Board, or their staff responded to other questions as appropriate during the hearing. The Board noted and considered all comments as part of the proceedings.
25. Specific comments were received and considered from the owners of property in section 30 of Montgomery Township (Charles Leary) and section 28 of Lexington

Township (Ronald Witter). Both comments called into question the viewers' determination of drainage benefit.

26. Mr. Leary asserted that his property receives no economic benefit from CD 23 because the majority of his property drains to an outlet other than CD 23 – a natural watercourse. Additionally, Mr. Leary asserted that there has been no farm related drainage tile added to his farmland for over 30 years and that my farmable land is in CRP and will remain so for at least 15 more years. Finally, Mr. Leary asserted that his property is damaged by CD 23.
27. On the basis of Mr. Leary's comments, the Board directed the viewer to re-view and provide additional information regarding Mr. Leary's property to the Board. After considering Mr. Leary's comments and the further investigation of the viewers, the Board finds as follows:
 - a. Mr. Leary correct that only a portion of his property outlets and discharges to CD 23. However, the viewers' determination reflects this condition. The viewers, using the delineated watershed of CD 23, has only included those portions of Mr. Leary's property actually discharging to CD 23 – approximately 8 of the 24 total acres.
 - b. The majority of Mr. Leary's benefitted property is enrolled in CRP. However, CRP is an income producing program and eligibility for the program is based on an established cropping history. The cropping history on Mr. Leary's property was enabled by the construction of CD 23 providing an outlet for drainage from Mr. Leary's CRP lands. Moreover, because CRP is a temporary program, Mr. Leary or a successor in interest will be able to return the property to agricultural production or remain the in program as a future management option. Under the program requirements, land coming out of the program may be returned to its pre-program condition, including repairing or improving drainage to achieve those conditions.
 - c. The damage claimed by Mr. Leary is in the CRP-enrolled acreage and the natural watercourse downstream of the CD 23 channel. The viewers, upon reexamination, did observe erosion of the stream bank at the ditch outlet but were unable to determine whether the erosion was caused by deterioration of the CD 23 outlet or just natural processes. Within the CRP acreage there are wet areas, but as discussed above, those areas will be able to be re-drained when and if CRP is discontinued.
 - d. Based the reexamination, the Board finds no reason to adjust or change benefits or damages to the Leary property and accepts the viewers' determination of benefits.
28. Mr. Witter also claim to have no or reduced benefits to his property. He complained of water backing up on his property from the City of Le Center and noted that his land is enrolled in CRP.

29. On the basis of Mr. Witter's comments, the Board directed the viewer to re-view and provide additional information regarding Mr. Witter's property to the Board. After considering Mr. Witter's comments and the further investigation of the viewers, the Board finds as follows:
- a. Water backing up onto Mr. Witter's property from other areas is ultimately carried away by CD 23. Without CD 23 to remove this water, Mr. Witter would experience more frequent and sustained flow over this property. Additionally, this water is, apparently, entering ground currently enrolled in CRP. The CRP enrollment prevents Mr. Witter from taking any steps to improve drainage and protect the ground. The viewers, in their benefits determination to the Witter and other properties, reduced benefit values by an amount reasonably reflecting the cost to make such improvements.
 - b. The area of Mr. Witter's for which he commented is enrolled in CRP. As discussed regarding the Leary property, CRP is an income producing program and eligibility for the program is based on an established cropping history. The cropping history on Mr. Witter's property was enabled by the construction of CD 23 providing an outlet for drainage from Mr. Witter's CRP lands. Moreover, because CRP is a temporary program, Mr. Witter or a successor in interest will be able to return the property to agricultural production or remain in program as a future management option. Under the program requirements, land coming out of the program may be returned to its pre-program condition, including repairing or improving drainage to achieve those conditions.
 - c. Based on the reexamination, the Board finds no reason to adjust or change benefits or damages to the Leary property and accepts the viewers' determination of benefits.
30. No additional comments or other evidence was received calling into question the work performed or determinations made by the viewers.
31. At the conclusion of public comment during the hearing, the Drainage Authority adopted a motion to: close the hearing to public comment, to direct reexamination of the Leary and Witter properties and to continue the hearing to its regular meeting on August 3, 2021 for the purpose of receiving and considering the viewers' report of reexamination.
32. After receiving and reviewing the viewers' report of reexamination, the Board further continued the hearing to its regular meeting on August 17, 2021, for the purpose of reviewing and adopting findings and an order accepting the redetermined benefits as recommended by the viewers.
33. The Viewers' Report, as amended, is attached as **Exhibit A**.

34. 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**.
35. The viewers reviewed all property within the drainage areas of the drainage system as part of the redetermination of benefits process.
36. 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.
37. 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.
38. 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.
39. 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.
40. Based on their detailed observations, the viewers determined benefit classifications, classified acres and assigned economic benefit on a per acre basis.
41. 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.
42. 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.
43. 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.
44. 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.

45. 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.
46. 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.
47. 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.
48. The viewers determined an outlet charge for CDs 6 and 21 based on the percent of the total drainage area of CDs 6 and 21 (volume) and how much of CD 23's capacity is required by the discharge from CDs 6 and 21 (capacity). Volume and capacity helped the viewers create a baseline to which other factors could be taken into account, such as benefitted lands in each system, bodies of water which may act as holding areas, and the reach of CDs 6 and 21 before entering CD 23.
49. The Board finds that the method used by the viewers to determine the outlet charges are reasonable and directly related to the burden, and costs of such burden, placed on CD 23 by CD 6 and 21.
50. Notice was given to each landowner on CDs 6 and 23 of the outlet charge determination and an opportunity to comment on the outlet charge determination was provided during the hearing.
51. 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.
52. The viewers' account of work has been filed with the Drainage Authority.
53. 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 benefitted and damaged

areas determined in the original proceedings, do not reflect current, existing, actual benefits and benefited areas.

54. 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 23, 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	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

Dated this 17th day of August, 2021.

LE SUEUR COUNTY, SEATED AS DRAINAGE
AUTHORITY UNDER STATUTES CHAPTER 103E FOR
LE SUEUR COUNTY DITCH 23.

By _____
Chairperson

* * * * *

I, Danielle Blaschko, 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 August 17, 2021.

IN TESTIMONY WHEREOF, I hereunto set my hand this
17th day of August, 2021.

Danielle Blaschko