

WILD RICE WATERSHED DISTRICT

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Ada, MN 56510
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UPPER REACHES INFORMATIONAL MEETING

Monday September 11, 2006

APPROVED

1. An informational meeting on the possible redetermination of benefits for the Upper Reaches Project was held at 6:30 p.m. on Monday September 11, 2006, at the Twin Valley Community Center, Twin Valley, Minnesota. The meeting was called to order at 6:30 p.m. The following members were in attendance: Warren J. Seykora, Bob Wright, David Vipond, Jim Skaurud, Diane Ista and Joe Spaeth. The following members were absent: Jim Wagner Sr. In addition the following persons were in attendance: Administrator Steve Dalen, Engineer Jerry Bents, Secretary Loretta Johnson and Sandy Bjerke, Court Reporter. In addition members of the public were in attendance whose names are on file at the District office.

2. Engineer Jerry Bents gave a Power Point presentation on Redetermination of Benefits for the Upper Reaches Project.

3. Background information provided stated that the portion of the Wild Rice River within the project is 27.3 miles and 21.0 miles included in the Marsh River/J.D. #51. The project began as a federal USACE project completed in 1954 and transferred to the Wild Rice Marsh River Conservancy District in August of 1954. Project components include channel improvements and levees on the Wild Rice River; channel improvements on J.D. #51 and the Marsh River clearing and snagging of the Marsh River portion of the project.

Total benefits assessed to the Upper Reaches Project are \$117,778.73 with a range of \$.30-\$.60 cents per acre. A summary of benefits follows:

Land	41,135.40
Norman County	47,653.33
City of Ada	16,000.00
State Roads	12,000.00
BN Railroad	1,000.00

Average assessments over the past nine years were \$87,000 or about 76% of the benefits. Currently the project balance is in the deficit of (\$145,500) with an estimated \$90,000 due in assessments December of 2006. The balance of remaining 2006 anticipated work includes a slide repair of J.D. #51 on the north edge of Ada, costing \$45,000; J.D. #51 sediment removal from the Wild Rice River to T.H. #200; PL 84-99 2006 flood damage repairs; and general maintenance consisting of mowing, spraying etc.

The USACE non-federal levee program is approximately 15.3 miles of levees on the Wild Rice River. Damages in excess of \$15,000 may be eligible for an 80% federal assistance if a disaster is declared. Nine rehabilitation projects under the PL84-99 program totaling \$2,422,119 were completed from 1978-2002.

Levy limits established under 103E.705 state that in one calendar year the drainage authority may not levy an assessment for repairs or maintenance on one drainage system for:

- More than 20% of the benefits of the drainage system (approximately \$24,000)
- \$1,000 per mile of open ditch in the ditch system (approximately \$40,500)
- Or \$50,000, whichever is greater.

Except for a repair made after a disaster as provided under subdivision 7 or under the petition procedure.

An example of the benefiting assessments on four other Watershed District projects varies from \$1.15 Million to \$6.1 Million.

The following conditions are necessary to redetermine benefits and damages and the appointment of viewers under MN Statute 103E.351.

- If the drainage authority determines that the original benefits or damages determined in a drainage proceeding do not reflect reasonable present day land values or that the benefited or damaged areas have changed;
- Or if more than 50 percent of the owners of the property benefited or damaged by a drainage system petition for correction of an error that was made at the time of the proceedings that established the drainage system;
- The drainage authority may appoint three viewers to redetermine and report the benefits and damages and the benefited and damaged areas.

The original determination of benefits was completed in approximately 1954 and is outdated.

- **NEXT STEPS**

1. Due to the size of the benefiting area (approximately 800 owners) would likely need to petition to be initiated by the WRWD Board
2. Appoint viewers to determine benefits
3. Prepare Viewers Report
4. Hold a Hearing
5. Board Order
6. Appeal Period
7. Benefits Area Revised

4. Ron Ringquist, Ron's Appraisal Service, Certified General Real Property Appraiser, member of the Minnesota Viewers Association gave a Power Point presentation on the viewing practice and process.

5. The Viewers Association was established in 1858 in Chapter 73 "An act to regulate and encourage the drainage of lands with a requirement to collect a pro rata assessment on the lands to be benefited, but in no case shall any tax be levied on lands...which are not improved nor benefited by such drains. By 1883 the drainage systems had become too large for single townships and County Board became the Drainage Authority. At this time the three member viewing team was to be appointed to work with the engineer to align and design the ditches, determine benefits and damages and make a report. The majority of drainage systems in Minnesota were established between 1900 and 1920.

Review of original ditch system records indicate that the viewers generally applied benefits to lands directly drained by the construction of the system and no consideration was given to changes in the upper watershed contributing additional water.

Changes to the drainage statutes began:

- 1955 - when boards were mandated to give consideration to conservation of soils, water, forests, wild animals and related natural resources
- 1959 - the first buffer strip requirements were established
- 1977 - viewers were to view state lands for the purposes of which they were held
- 1985 – recodification of Section 106 to 106A
- 1987 –
 - 103E.305 Subd. 1 Viewers are residents of the state, not just the county in which a project is located
 - 103E.315 Subd 5. Extent and basis of benefits (2) an increase in the potential for agricultural production as a result of constructing the project
 - 103E.315 Subd. 6. Benefits for proposed drainage project as outlet. © [properties] 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 sedimentation in downstream areas of the watershed; and
 - Property that is responsible for the 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.

Current viewing practice of the members of the Minnesota Viewers Association is to consider all properties within a project watershed for benefits and damages although not all properties necessarily benefit. Benefits are determined through a mass appraisal process, (USPAP Standard 6), where benefit classifications are established. Those properties having characteristics consistent with a class are determined to be potentially benefited similar to all properties within that benefit classification. General agricultural classes determined nondisturbed conditions are

- Standing water or wetland not useable for agricultural purposes
- Seasonally flooded/pasture ground
- Normally farmable without drainage but improves in productivity with surface or subsurface drainage
- Lands not needing artificial drainage or optimum production but contributing accelerated runoff or benefiting from improved farmability.

Various other indicators used to determine the need for drainage and potential benefits include soils types, aerial photography, an efficiency rate worksheet used to assist the viewers in determining the potential benefit of the system during specific rainfall events, and a Minnesota Viewers Association Optimum Yield Estimate Guidance Document.

In accordance with Minnesota Statute 103E.315 a Viewers Report and a property owners report is prepared by the viewers and presented to the Board of Managers at which time a hearing date is scheduled.

6. Questions from the audience were taken. Jerry Bitker asked how the City of Ada would be assessed stating that he felt they were the major beneficiary. Ringquist replied they would be assessed according to the value of protection the system provides; and the same concept is used for roads which do not generate income. Wayne Lee asked if Ringquist charged a fee of 10% of the benefits to which he replied he charges a per acre fee (approximately .50-.75 cents per acre) and the larger the watershed, the less per acre. Curt Jacobson asked if the redetermination is supposed to return the project to the way it performed in 1954. Ringquist stated that from the beginning to the end of the project the viewers determine benefits; viewers do not analyze the system. Ron Rasmusson asked how Norman County can be assessed \$47,000 for the system over the entire county if this is not double assessment. Ringquist replied that special ditch assessments are not double taxation. Rasmusson also asked if property contributing waters shouldn't be assessed. Ringquist said that as included in the previous PowerPoint presentation, contributing waters can be assessed and would be assessed. Jerry Bitker asked for a clarification of how contributing waters not previously brought into the system can now be assessed. Ringquist stated that language in the drainage law states that if property naturally drains into the system; if is in its native state and if the land use has changed and this change includes anything that drains water from the land there is a great potential that the land would be assessed a value but he cannot at this time determine what the value can be. Ringquist stated that historically the benefits to ditch systems has moved out away from the system. Curt Jacobson stated that if the system can't handle the water and is not in good condition, is it possible that the redetermination of benefits can show that there are no benefits. Ringquist stated it may be possible but it has never happened.

Charles Pazdernik asked if restored natural wetlands could be removed from the project. Ringquist stated that there is a process to petition the removal of land from a project. Wayne Lee asked how long it would take to redetermine the benefits. Ringquist stated anywhere from 18-24 months. There is a need to look at every acre of land; however it is his understanding that the Watershed District has good mapping and more information available than other districts. Steve Jacobson asked when the drainage law changed giving the ability to include contributing waters. Ringquist stated in 1987. Bitker asked if property owners could go backwards to 1987 and collect damages and why the District didn't access this law until now. Ringquist stated that typically Watershed District Boards do not spend the money and initiate a redetermination of benefits due to the cost, until repairs are needed and there aren't enough funds to cover them. It wasn't until 1996 when the law was challenged and it made it to the courts to prove that contributing property could be assessed. He stated that the court challenge resulted as a result of a committed board and some very committed landowners who were willing to take the time and funds in this long process to make things happen. Jim Olson asked how many acres the redetermination could encompass and Ringquist stated possibly up to 3-400,000 acres of land. Engineer Bents stated that if the District had the capability of assessing \$200,000 over the past 10 years there would not have been a need to redetermine the benefits. Steve Jacobson stated that no matter how much tax revenue you get the project will fail. Ron Rasmussen questioned how long before the Board will make a decision. Manager Seykora stated he didn't think that the Board had a timeline for that. Engineer Bents stated that if 50% of property owners brought a petition to the Board, it would force a redetermination.

David Volkerding asked what would happen if property owners did not want the additional assessment. Attorney Hanson said there is a 30 day period when property owners can appeal the decision of the board. Steve Jacobson asked if there would be additional meetings. Attorney Hanson stated that this meeting is an informational meeting, additional meetings could be held but at the end of the process the law mandates a hearing. Jerry Biker asked if Ringquist could look at additional maps and information and provide a tighter estimate for the process than the \$200,000. Ringquist stated that is how he arrived at the figure by looking at maps and information that the District provided.

There being no further discussion the meeting was adjourned at 8:45 p.m.



Diane Ista, Secretary