

daleajans@gmail.com

From: Ron Z. <huntinigo@hotmail.com>
Sent: Friday, July 19, 2024 8:20 AM
To: rotarian.keith@gmail.com; 'David Olig'; daleajans@gmail.com; Chad Gabrielson; 'Roger Fenstad'; jmcarney12@gmail.com; dostals1@msn.com; Rob Campbell; Chad Gabrielson; 'Judith R J Johnson'; Cynthia Wedryk; waylonbertsch@gmail.com
Subject: Fw: Ditch 25 decision, 6/11/2024 meeting.

Good Morning BMLID members,

I've attached the chain of email communications I've been having with the Ditch Authority (aka our county commissioners). Although Kurt hasn't responded to every question I sent in my email last night, I'm hopeful they will decide they need to have a hearing with regards to their decision for repairs. If they do, I think we need to be prepared with legal representation at the hearing, if our representative from Vogel Law firm thinks our opposition has merit to pursue litigation given the MN statutes guiding the ditch authority's decision. Based on Mr. Mortenson's responses throughout the email chain, there does not appear to be any room for deviating from their decision for repairs on Ditch 25. Note also that the County Attorney, Michelle Eldien, has been cc'd on all the communication I've been having with the Ditch Authority. Mr. Mortenson wanted to include her to ensure he wasn't out-of-line with his correspondence. If you have time to read through everything, we can decide how much further we want to push the ditch authority. I feel I'm tip-toeing through statutes I may not have a clear understanding of and I just don't think we're going to get anywhere without proceeding through legal channels.

I'm hopeful that Ryan Bjerke of MNDNR and the permitting requirements, he and the TEP counsel are working on, will provide a stop to the excavation work in the wetland area south of Cty Rd 35.

Have a great weekend, talk with you soon!

Ron Zitzow

From: Kurt Mortenson <kmortenson@ottertailcounty.gov>
Sent: Friday, July 19, 2024 5:44 AM
To: Ron Z. <huntinigo@hotmail.com>; Wayne Johnson <wjohnson@ottertailcounty.gov>; Lee Rogness <leerogness@yahoo.com>; Robert Lahman <rlahman@ottertailcounty.gov>; Dan Bucholz <dbucholz@ottertailcounty.gov>
Cc: Colby Palmersheim <cpalmersheim@ottertailcounty.gov>; Michelle Eldien <meldien@ottertailcounty.gov>
Subject: RE: Ditch 25 decision, 6/11/2024 meeting.

Mr. Zitzow,

This response is not intended to address all topics raised in your most recent email. Also, unlike other responses this is not chronological. I will only address at this time your latter topic relating to statutory construction. However, this issue has implications for many of the other related topics.

Minn. Stat. Chapter 645 Interpretation of Statutes and Rules addresses the definition of words and phrases used within all Minnesota Statutes. Minn. Stat. 645.44 Subd. 16 defines the use of the word "Shall" as "Mandatory" when contained in statutory language. As mentioned in a prior email, Minn. Stat. 103E.705

directs that the Drainage Authority *shall* maintain drainage systems and provide the repairs necessary to make the drainage system efficient. The Drainage Authority's responsibility is by statute mandatory and not permissive or "may". The legislature specifically addressed the mandatory nature of this requirement. Again, this response is not exhaustive. My schedule today is such that I wanted to at least acknowledge receipt of your email and also offer a limited response.

Kurt

From: Ron Z. <huntinigo@hotmail.com>

Sent: Thursday, July 18, 2024 9:24 PM

To: Kurt Mortenson <kmortenson@ottertailcounty.gov>; Wayne Johnson <wjohnson@ottertailcounty.gov>; Lee Rogness <leerogness@yahoo.com>; Robert Lahman <rlahman@ottertailcounty.gov>; Dan Bucholz <dbucholz@ottertailcounty.gov>

Cc: Colby Palmersheim <cpalmersheim@ottertailcounty.gov>; Michelle Eldien <meldien@ottertailcounty.gov>

Subject: Re: Ditch 25 decision, 6/11/2024 meeting.

To ALL members of the Ditch Authority,

Mr. Mortenson, at the meeting in Vergas on June 3rd, I and others in attendance did hear Mr. Kunska comment over the microphone that he wished there was some way we could work or get together to come up with solutions. Mr. Palmersheim must not have heard or remembered that comment. I'll take responsibility for suggesting a committee because when I heard Mr. Kunska say that, I thought of the Ditch Authority to form a committee with representatives of all the stakeholders to try and resolve the issues. During my career with the U. S. Fish and Wildlife Service, I collaborated on many occasions with federal, state, and local agencies, with landowners, special interest groups, etc., in committee settings working towards resolution on resource issues. Also, regarding your statement of giving "great weight to recommendations of qualified professionals", do you consider my recommendations and the recommendations of other professionals (engineers, PhD's, medical professionals, etc.) as carrying less weight? Just an FYI, though retired, I worked for the U.S. Fish & Wildlife Service (FWS) and the North Dakota Game and Fish Department from 1981 to 2011. During my career I worked in labs and the field collecting samples and performing water quality analysis using instrumentation requiring routine calibration before each use. Although the Garmen 76S may not provide the accuracy you refer to, it does provide some idea of differences in elevation of water levels in the drainage.

To all members of the Ditch Authority, I respect the engineers' efforts to gather data, research findings, and suggest courses of action to mitigate a problem. Their expertise can be vital to the decision-making process. However, throughout my career, I collaborated with engineers from the private sector and from governmental agencies (Army COE, BOR, FWS) on many projects to review their reports of findings and suggestions, to make well-informed decisions. Based on the recent actions for Ditch 25, the lack of transparency of the process for making your decision shows no consideration for people who are passionate for protection of the natural resources they value, which is more than just using the ditch as a "pipeline" to drain water from agricultural and pasture land (non-point sources of pollution), into public use waters, specifically Big McDonald Lake. Contrary to the Houston Engineering report stating the repair south of Cty Rd 35 and north of Big McDonald Lake "*...is anticipated to reduce flooding concerns.*" is wrong. Any attempt to expedite the drainage through the wetland areas of Ditch 25 north of Big McDonald Lake, would increase flooding concerns for property owners along Big McDonald Lane and downstream. Retention in basins has been a concept for reducing flood potential in the Red River Valley and other areas as well.

Minimizing rather than expediting the flow through that wetland basin maximizes the ability of the wetland to remove suspended solids, nitrogen, phosphorus, and other impurities that would otherwise end up in Big McDonald Lake and contribute to algal blooms (including blue-green algae), lower D.O.'s, and other problems that would be detrimental to the Big McDonald Lake ecosystem. That wetland basin serves as a buffer between what's been concentrated and coming down the drainage, before flowing into Big McDonald Lake. Protecting the environment of Big McDonald Lake to maintain and improve the resource is very important to all who utilize the resource for recreational activities (swimmers, boaters, bird watchers, fisherman, kayakers, resort owners, etc.). As elected officials, you should be considerate of all individuals, that utilize natural resources impacted by your decisions, not just the farmers. You should especially be considerate of the stakeholders who have a vested interest in the drainage, those who own property in and those who vote. Although Mr. Mortenson in his last email stated "*Public positions on the Ditch 25 repair were considered...*", I don't see that the most important concerns are addressed.

I understand the authority and responsibility you are entrusted with for maintaining the drainage as spelled out in the Minnesota statutes, but it is not an obligation nor is it mandatory. The word "shall" in Minn. Stat, 103E.705, has the same meaning as "will" or "may". It doesn't carry the same weight as the word "must", which would indicate it is mandatory. Those definitions with regards to legal writings, were defined by the US Supreme Court. I have seen the word "must" used in other MN Statutes, so I'm guessing those definitions were used in updating the MN Statutes. Your authority is also defined in another statute:

103E.011 DRAINAGE AUTHORITY POWERS.

Subdivision 1. Generally. The drainage authority *may* make orders to:

- (1) construct and maintain drainage systems;

Which gives you authority to make decisions, but it is not mandatory.

However, the point I'm trying to make is you chose not to include the comments or concerns of all the stakeholders and that is a decision you can make. You chose to hold an informational meeting for which notices were mailed to all landowners in the drainage, and although you say it was a clerical error, the landowners were led to believe they could provide comments and ask questions that would be considered in the decision process. You made no attempt to correct that error at that meeting (Vergas June 3rd), but instead told members of the audience not to worry, they would have another chance to provide input at the next meeting on June 11th, but then at that June 11th meeting you told the attendees you would not receive any more comments or questions.

So, I have a couple of questions with regards to another statute, MN Statute 103E.715:

103E.715 REPAIR BY PETITION.

Subdivision 1. Repair petition. An individual or an entity interested in or affected by a drainage system may file a petition to repair the drainage system. The petition must state that the drainage system needs repair. The auditor shall present the petition to the board at its next meeting or, for a joint county drainage system, to the drainage authority within ten days after the petition is filed.

Subd. 2. **Engineer's repair report.** If the drainage authority determines that the drainage system needs repair, the drainage authority shall appoint an engineer to examine the drainage system and make a repair report. The report must show the necessary repairs, the estimated cost of the repairs, and all details, plans, and specifications necessary to prepare and award a contract for the repairs. The drainage authority may give notice and order a hearing on the petition before appointing the engineer.

Subd. 3. Notice of hearing. *When the repair report is filed, the auditor shall promptly notify the drainage authority. The drainage authority in consultation with the auditor shall set a time, by order, not more than 30 days after the date of the order for a hearing on the repair report. At least ten days before the hearing, the auditor shall give notice by mail of the time and location of the hearing to the petitioners, owners of property, and political subdivisions likely to be affected by the repair in the repair report.*

Subd. 4. **Hearing on repair report.** (a) The drainage authority shall make findings and order the repair to be made if:

(1) the drainage authority determines from the repair report and the evidence presented that the repairs recommended are necessary for the best interests of the affected property owners; or

(2) *the repair petition is signed by the owners of at least 26 percent of the property area affected by and assessed for the original construction of the drainage system, and the drainage authority determines that the drainage system is in need of repair so that it no longer serves its original purpose and the cost of the repair will not exceed the total benefits determined in the original drainage system proceeding.*

I don't remember getting any notification of a hearing. Was there a hearing and if so, when did that hearing occur? Where can I get a copy of the minutes or proceedings?

Can you provide me a copy of the petition showing the signatures of at least 26 percent of the property area in the drainage?

Also, can you clarify why the costs are being spread out to all the landowners in the drainage for all the repairs? Is there a statute that authorizes all repair costs are to be shared by the landowners in the drainage? I've read further into the statute Mr. Mortenson referred to me regarding maintaining efficient flows through the ditch and I am wondering, shouldn't some of those repairs be the responsibility of the landowner if they didn't maintain the part of the ditch going through their property? Shouldn't the ditch inspector have issued a compliance order to the landowner? As I read the statute, the drainage authority isn't given the authority to spread the cost out to everyone in the drainage, it states the landowners are responsible for maintaining the ditch through their property:

103E.705 REPAIR PROCEDURE.

Subdivision 1. Inspection. After the construction of a drainage system has been completed, the drainage authority shall maintain the drainage system that is located in its jurisdiction, including the permanent strips of perennial vegetation under section [103E.021](#), and provide the repairs necessary to make the drainage system efficient. The drainage authority shall have the drainage system inspected on a regular basis by an inspection committee of the drainage authority or a drainage inspector appointed by the drainage authority. Open drainage ditches shall be inspected at a minimum of every five years when no violation of section [103E.021](#) is found and annually when a violation of section [103E.021](#) is found, until one year after the violation is corrected.

Subd. 2. **Perennial vegetation; inspection and compliance notice.** (a) The drainage authority having jurisdiction over a drainage system must inspect the drainage system for violations of section [103E.021](#). If an inspection committee of the drainage authority or a drainage inspector determines that permanent strips of perennial vegetation are not being maintained in compliance with section [103E.021](#), a compliance notice must be sent to the property owner.

(b) The notice must state:

(1) the date the ditch was inspected;

(2) the persons making the inspection;

(3) that spoil banks are to be spread in a manner consistent with the plan and function of the drainage system and that the drainage system has acquired a permanent strip of perennial vegetation, according to section [103E.021](#);

(4) the violations of section [103E.021](#);

(5) the measures that must be taken by the property owner to comply with section [103E.021](#) and the date when the property must be in compliance; and

(6) that if the property owner does not comply by the date specified, the drainage authority will perform the work necessary to bring the area into compliance with section [103E.021](#) and charge the cost of the work to the property owner.

(c) If a property owner does not bring an area into compliance with section [103E.021](#) as provided in the compliance notice, the inspection committee or drainage inspector must notify the drainage authority.

(d) This subdivision applies to property acquired under section [103E.021](#).

Throughout all of the correspondence preceding this email, I've provided ideas and alternatives to you to bring some transparency to what you do and open the doors for better communication, coordination, and cooperation with the contentious issues you have been faced with in the operation and maintenance of Ditch 25, and essentially the only response I seem to get is no, we've made our decision and we're "obligated" by MN statutes to maintain the ditch. I think I've presented substantial arguments (which can be and are reinforced by other professionals involved with drainage issues) and found/observed procedural inconsistencies to question the decisions rendered by the Ditch Authority on June 11th, yet you seem to ignore it.

Since the inception of Ditch 25 in around 1907, the demographics have changed for the people living and owning property within the drainage area. The original intent of the ditch and statutes to maintain it were to increase agricultural opportunities for the settlers and farmers in the area. However, now there needs to be an equally great emphasis on the importance of protecting and maintaining Big McDonald Lake for recreational activities, and the economic impact that resource has to the area and county. For you to give more weight to the agricultural implications in your decision doesn't show respect and consideration for all interests, especially when repairs are not necessary and will not have an impact to water levels in upper part of the drainage (where the farmers want and are expecting relief).

I do not claim to be a legal expert, but from what I read of the MN Statutes, and the process the ditch authority has followed, I believe there is enough compelling information and data to be considered, making litigation a real possibility, and you seem to be forcing the issue in that direction for potential resolution.

Protection of our natural resources may come at a higher cost but, I think there are enough people willing to pay the additional price for the protection of the resource that's important to them, Big McDonald Lake.

I am hopeful you can reverse your decision and bring representatives from all the stakeholders together to present issues and try to work towards reasonable solutions that will have benefits to all. I don't see anything in the MN statutes that prevent you from doing this and working with all stakeholders to make a well-informed decision.

Respectfully submitted,

Ron Zitzow

From: Kurt Mortenson <kmortenson@ottertailcounty.gov>

Sent: Wednesday, July 10, 2024 9:34 PM

To: Ron Z. <huntinigo@hotmail.com>

Cc: Wayne Johnson <wjohnson@ottertailcounty.gov>; Lee Rogness <leerogness@yahoo.com>; Robert Lahman <rlahman@ottertailcounty.gov>; Dan Bucholz <dbucholz@ottertailcounty.gov>; Colby Palmersheim <cpalmersheim@ottertailcounty.gov>; Michelle Eldien <meldien@ottertailcounty.gov>

Subject: RE: Ditch 25 decision, 6/11/2024 meeting.

Mr. Zitzow,

Thank you for your patience is the timing of this response. Again, I will address your questions in the order of your email.

- **Public positions of issue of repair.** Public positions on the Ditch 25 repair were considered that in part has impacted the timing of the repair. Public positions served also as a factor that reduced the repair area from at one time spanned from Wendt Lake to Big McDonald, to the area currently addressed in the Houston Engineering technical memo.
- **Cost and effects of repair.** In terms of the anticipated costs and resulting impact, the Houston Engineering Report provides, "Cleaning the portion of ditch south of CSAH 35 will likely have a minimal effect of static water levels, due to the height of the culverts under Big McDonald Lane. However, maintaining this portion of CD25 will provide some restoration in the efficiency of flow in CD25 particularly for smaller rainfall events. This will reduce the water level (bounce) upstream of CSAH 35 for these rainfall events, compared to current conditions." Currently, after rain events or snow melt, flooding occurs in this area. The repair, though likely to have minimal effect to regular static levels, is anticipated to reduce flooding concerns. In response to the reference to public waters 56-1332 and 56-1638, both public waters have their own controls for water elevation and will remain unaffected by maintenance further south.
- **Water levels north of County Rd. 35.** Regarding the suggestion relating to water levels north of County Rd. 35, the Ditch Authority contracted with a professional engineer for recommendations to alleviate flooding issues. Accordingly, great weight is given to recommendations of qualified professionals.
- **Reported elevations of other lakes.** In response to reported elevations of Heart Lake, Wendt Lake, Hwy 35, and Big McDonald Lake, as measure by a Garmin 76, the accuracy of this measuring device is not relied on for engineering purposes. I am informed that a Garmin 76 has an accuracy of 10-39 ft. when properly calibrated as compared to engineering equipment that measures to millimeter accuracy. I further understand that Heart Lake does not flow in to Wendt Lake. Also, Wendt Lake constitutes a small amount of the watershed that flows toward Ditch 25.
- **Suggestion of committee/work group.** In terms of the suggestion for a committee/work group, Mr. Palmersheim recalls no mention by Matt Kunsu to the topic of forming a committee. Mr. Palmersheim recalls

Mr. Kunsu noting that farmers are losing acres as a result of rain events and discussion about limitations on chemical herbicides and pesticides.

Under Minn. Stat, 103E.705, the Drainage Authority *shall* maintain the drainage system and provide the repairs necessary to make the drainage system efficient. Here, the Drainage Authority contracted with a qualified engineering firm who made recommendations for the necessary repairs with data supporting the repair recommendations. The Drainage Authority has a statutory responsibility in addressing the Ditch 25 repairs. Lastly, the Minnesota DNR is currently reviewing to determine if permitting is necessary and has been submitted to the Technical Evaluation Panel (TEP) of other agencies.

I have attempted to address your identified concerns. Thank you for your inquiries.
Kurt

From: Ron Z. <huntinigo@hotmail.com>
Sent: Tuesday, July 9, 2024 10:03 AM
To: Kurt Mortenson <kmortenson@ottertailcounty.gov>
Cc: Wayne Johnson <wjohnson@ottertailcounty.gov>; Lee Rogness <leerogness@yahoo.com>; Robert Lahman <rlahman@ottertailcounty.gov>; Dan Bucholz <dbucholz@ottertailcounty.gov>; Colby Palmersheim <cpalmersheim@ottertailcounty.gov>; Michelle Eldien <meldien@ottertailcounty.gov>
Subject: Re: Ditch 25 decision, 6/11/2024 meeting.

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Mr. Mortenson,

Can I please get responses to a couple of questions I asked in the early part of these emails:

"At what time would the commissioners take into consideration the public's comments when it comes to the decision process on matters such as repairs to Ditch 25? It seems this decision was made before going to the rest of the landowners along Ditch 25 and I don't recall seeing any request for input from the general public regarding the issue." (highlighted below).

Also, could you respond to an earlier question (also highlighted below):

4. How do you justify spending \$12,000 to \$15,000 (which I think is a low estimate) or more to do a repair that will probably not affect the water levels of concern in the upper areas of the drainage that are impacting the farmers (as stated by the engineering group you hired to prepare the report)?

On page 3, under the section titled "EFFECTS OF REPAIRS" of the Houston Engineering Report (see attached EXCERPT Houston Eng Rprt), there are statements in the first and second paragraphs that clearly question the effectiveness of the proposed repair: ***"Cleaning the portion of ditch south of CSAH 35 will likely have a minimal effect of static water levels, due to the height of the culverts under Big McDonald Lane."*** and, ***"Public waters #56-1332 and #56-1638 have runout elevations well above the current sediment elevation in the ditch downstream of CSAH 35 and thus will be unaffected by the maintenance."***

Take a close look at the elevations shown in the Houston Engineering report. If the recommendation were to dig the ditch deeper, wider, and line it with concrete in the area between County Rd 35 and Big McDonald Lake, it would still have no effect on the elevation of water levels north of County Rd 35. So, in essence, you could take a drive on County Rd 35 and when you come to Ditch 25, toss \$12,000 to \$15,000 to the south side of the highway, and it will have the same effect as bringing in an excavator. Does the Ditch Authority not see

that this is wasteful spending as it won't resolve the issue the landowners are having with high water levels in the upper part of the drainage?

Using my Garmin 76, I took some elevation readings of the surface water along various points of Ditch 25 in the upper parts of the drainage:

1385 ft. - Heart Lake

1377 ft. - Wendt Lake

1370 ft. - Cty Rd 35

1370 ft. - Big McDonald Lane

The water level at Wendt Lake is about 7 ft higher, and at Heart Lake it is about 15 ft higher than the water level at Cty Rd 35. What impact are the elevations of water in those larger bodies of water (Heart Lake and Wendt Lake) having on the elevation of water in the wetlands in the upper part of the drainage affecting farming operations? Why isn't there more of an effort to look at the upper drainage problems to determine if Wendt Lake and Heart Lake are contributing to the issues of the farmers in the upper part of the drainage?

To show transparency, I recommend the Ditch Authority reverse their decision on the repair work of Ditch 25 in the area of the wetland basin between Cty Rd 35 and Big McDonald Lane. I suggest the Ditch Authority form a committee/work group with individuals representative of all the landowners affected by Ditch 25 (as recommended by Matt Kunsu at the June 3rd meeting), a representative of Houston Engineering, and the Ditch Inspector, to review the issues and engineering reports from the past to come up with recommendations for repairs and the operations of Ditch 25. These issues shouldn't result in litigation, let's keep the money going towards solutions.

Ron Zitzow

From: Kurt Mortenson <kmortenson@ottertailcounty.gov>

Sent: Wednesday, June 26, 2024 8:15 AM

To: Ron Z. <huntinigo@hotmail.com>

Cc: Wayne Johnson <wjohnson@ottertailcounty.gov>; Lee Rogness <leerogness@yahoo.com>; Robert Lahman <rlahman@ottertailcounty.gov>; Dan Bucholz <dbucholz@ottertailcounty.gov>; Colby Palmersheim <cpalmersheim@ottertailcounty.gov>; Michelle Eldien <meldien@ottertailcounty.gov>

Subject: RE: Ditch 25 decision, 6/11/2024 meeting.

Mr. Zitzow,

This morning I spoke with Otter Tail County Ditch Inspector Colby Palmersheim about questions 4 and 5. In regard to the anticipated cost for repair, Mr. Palmersheim estimates the costs in the range of \$7,000-\$10,000 for a section of approximately 700' ft of the Ditch 25, that includes addressing conditions caused by beaver dams. These estimates are based on information currently available and historical costs of similar repairs in other ditches.

In response to your inquiry about notification of agencies, both the Minnesota DNR and Otter Tail County Land and Resource were notified at the initial stage of the repair efforts. As I understand, Minnesota DNR offered no response until after the Drainage Authority approved the repair. Notice to Otter Tail County Land and Resource related to the

Wetland Conservation Act. I'm informed that the U.S. Army Corp of Engineers is an exempt from notification requirements for county ditch repair of this nature.

Again, thank you for your questions. I will be in meetings the majority of the day with my last ending after 6:00 p.m. I mention this only to explain my unavailability the remainder of today.

Kurt

From: Ron Z. <huntinigo@hotmail.com>

Sent: Tuesday, June 25, 2024 9:01 PM

To: Kurt Mortenson <kmortenson@ottertailcounty.gov>

Cc: Wayne Johnson <wjohnson@ottertailcounty.gov>; Lee Rogness <leerogness@yahoo.com>; Robert Lahman <rlahman@ottertailcounty.gov>; Dan Bucholz <dbucholz@ottertailcounty.gov>; Colby Palmersheim <cpalmersheim@ottertailcounty.gov>; Michelle Eldien <meldien@ottertailcounty.gov>

Subject: Re: Ditch 25 decision, 6/11/2024 meeting.

Mr. Mortenson,

Thank you for your responses to some of the questions, pertaining to public hearings, informational meetings, etc. I'm not sure why you decided to include the county attorney in our exchanges, hopefully you don't feel threatened. I'm guessing you don't feel you have any obligation to answer the other questions in my email. However, I do have one more question with regards to procedures. At what time would the commissioners take into consideration the public's comments when it comes to the decision process on matters such as repairs to Ditch 25? It seems this decision was made before going to the rest of the landowners along Ditch 25 and I don't recall seeing any request for input from the general public regarding the issue.

Ron Zitzow

From: Kurt Mortenson <kmortenson@ottertailcounty.gov>

Sent: Tuesday, June 25, 2024 5:51 PM

To: Ron Z. <huntinigo@hotmail.com>

Cc: Wayne Johnson <wjohnson@ottertailcounty.gov>; Lee Rogness <leerogness@yahoo.com>; Robert Lahman <rlahman@ottertailcounty.gov>; Dan Bucholz <dbucholz@ottertailcounty.gov>; Colby Palmersheim <cpalmersheim@ottertailcounty.gov>; Michelle Eldien <meldien@ottertailcounty.gov>

Subject: RE: Ditch 25 decision, 6/11/2024 meeting.

Mr. Zitzow,

I will respond in the order of your emailed questions. In the response to your first question, attendees at the County Board meeting of June 11, 2024, were not allowed an opportunity to address the board because the June 11th meeting was not noticed as a Public Hearing for Ditch 25. In other words, the meeting notice did not serve to notify the public of an opportunity to offer verbal comments to the board, whether in support or in opposition to the repair. For this reason, the board would not hear and could not receive comments related to any position. The denial of the board to receive public comment at the June 11th county board meeting is consistent with past practice.

The second question involves an explanation of a clerical error in the Notice of the Public Information Meeting for the Ditch 25. The notice for the Information Meeting included the language that you referenced in your email regarding submission of written statements for a ten day period following the meeting. This language has, in the past, been included for notice of Public Hearings, but not for Information Meetings. The June 3rd meeting was an Information Meeting, not required by statute, but rather offered as a courtesy to inform the public of the drainage authority's statutory duty to repair and also provide history regarding the ditch and the engineers recommendations. As such, the June 3rd meeting was not a Public Hearing where records are maintained. The June 3rd was informational in nature even though the public was afforded an opportunity to comment. The inclusion of the "10 day" language was unfortunate and does not apply to Information Meetings where there exists no record to supplement. I apologize for this inadvertent inclusion in the notice for the Information Meeting.

Lastly, I am not aware of any scheduled or anticipated scheduled hearing for further discussion of the drainage authority's decision in this matter. Thank you for reaching out with your questions.

Kurt

From: Ron Z. <huntinigo@hotmail.com>

Sent: Tuesday, June 25, 2024 2:22 PM

To: Kurt Mortenson <kmortenson@ottertailcounty.gov>; Wayne Johnson <wjohnson@ottertailcounty.gov>; Robert Lahman <rlahman@ottertailcounty.gov>; Lee Rogness <leerogness@yahoo.com>

Cc: Dan Bucholz <dbucholz@ottertailcounty.gov>

Subject: Re: Ditch 25 decision, 6/11/2024 meeting.

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Mr. Mortenson,

Thank you for your response and the opportunity to ask additional questions:

1. Why were attendees at the June 11th meeting denied the opportunity to provide additional comments or ask questions about the repairs to Ditch 25?
2. Will the commissioners' decision on June 11th be revoked as their decision preceded the final date for receiving comments?
3. Will there be a hearing for any further discussion regarding the commissioners decision?

At the June 3rd meeting (and on the meeting announcement), it was stated ***"Written statements and other exhibits in place of, or in addition to, oral statements will be accepted at this meeting and for a ten (10) day period following the meeting and will be made part of the meeting summary."*** (see attached June 3rd mtg announcement). My understanding of that statement is that the comment period would end after June 13th, and the ditch authority would render a decision after the comment period. Also at the June 3rd meeting, a couple of commissioners stated to the audience there would be opportunity to provide additional comments at the next meeting, June 11th, before a decision would be rendered and one of the commissioners also stated that a public hearing would occur after the decision for any further discussion regarding the decision.

Some of the comments/questions that were to be presented at the June 11th meeting pertain to the proposed repair to 500 ft. of ditch within the wetland basin between CTY35 and Big McDonald Lake:

4. How do you justify spending \$12,000 to \$15,000 (which I think is a low estimate) or more to do a repair that will probably not affect the water levels of concern in the upper areas of the drainage that are impacting the farmers (as stated by the engineering group you hired to prepare the report)?

On page 3, under the section titled "EFFECTS OF REPAIRS" of the Houston Engineering Report (see attached EXCERPT Houston Eng Rprt), there are statements in the first and second paragraphs that clearly question the effectiveness of the proposed repair: ***"Cleaning the portion of ditch south of CSAH 35 will likely have a minimal effect of static water levels, due to the height of the culverts under Big McDonald Lane."*** and, ***"Public waters #56-1332 and #56-1638 have runoff elevations well above the current sediment elevation in the ditch downstream of CSAH 35 and thus will be unaffected by the maintenance."***

5. Were agencies contacted for their input or permits (Minnesota DNR and U.S Army Corp of Engineers) for approval or comments to the repair work outlined for Ditch 25 within the wetland basin between CTY 35 and Big McDonald Lake?

I've attached a copy that shows the wetland basin is part of the National Wetland Inventory (see attached WetlandAREA). Although Ditch 25 was established over 100 years ago, very little maintenance was performed through the wetland areas and there have been laws established to protect wetlands, especially those that are identified in the National Wetland Inventory. Minnesota has defined wetlands and provided guidance on what can or cannot be done to them (see attached MNwetlandDEF).

Finally, I don't think Mr. Osterman had a very good argument for cleaning out the ditch through the wetland area to prevent erosion from a catastrophic rain event is old logic that he may have gotten from some old publications from back in the 50's, 60's, or 70's. I think the MNDNR and USACOE would agree, attempting to channelize water through soils found in a wetland basin would actually increase the potential for erosion of soils and silt from the banks and outside the banks of the ditch to flow downstream and into Big McDonald Lake during a major rain event. The best way to prevent erosion and settle out suspended solids is to slow the water down and have the flow run into a flat, lagoon type setting. Isn't that the logic behind construction of sewage lagoons? Having vegetation in the wetland basin (as it currently has) also helps in the removal of other dissolved nutrients (nitrogen and phosphorous) that would come down the drainage from above CTY35.

My recommendation would be to not do the repair recommended for the ditch in the wetland basin between CTY35 and Big McDonald Lake. Leave it alone and let the natural environment that has been established in that area over the last 100 yrs. or more, continue to do what it has been doing, removing suspended solids and nutrients from the upper parts of the drainage.

Respectfully submitted for your consideration,

Ron Zitzow

P.S. Dan Bucholz did try to call me earlier today and left me a message that he doesn't do emails. Please share this information with him, I prefer written responses to my questions not verbal ones over the phone. Also, if Dan doesn't do emails, I suggest the email address be removed from his contact list on the county website.

From: Kurt Mortenson <kmortenson@ottertailcounty.gov>

Sent: Monday, June 24, 2024 9:10 PM

To: Ron Z. <huntinigo@hotmail.com>; Wayne Johnson <wjohnson@ottertailcounty.gov>; Robert Lahman <rlahman@ottertailcounty.gov>; Lee Rogness <leerogness@yahoo.com>

Cc: Dan Bucholz <dbucholz@ottertailcounty.gov>

Subject: Re: Ditch 25 decision, 6/11/2024 meeting.

Mr. Zitzow,

Thank you for your question and for attending the meeting in Vergas. The Drainage Authority did approve the repair consistent with advice of counsel. Costs for the repair will be incurred by landowners in the Ditch 25 catchment area. Please reach out if you have additional questions.

Kurt

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Ron Z. <huntinigo@hotmail.com>

Sent: Monday, June 24, 2024 7:34:08 PM

To: Kurt Mortenson <kmortenson@ottertailcounty.gov>; Wayne Johnson <wjohnson@ottertailcounty.gov>; Robert Lahman <rlahman@ottertailcounty.gov>; Lee Rogness <leerogness@yahoo.com>

Cc: Dan Bucholz <dbucholz@ottertailcounty.gov>

Subject: Fw: Ditch 25 decision, 6/11/2024 meeting.

Some people who received this message don't often get email from huntinigo@hotmail.com. [Learn why this is important](#)

Last week I sent an email to Commissioner Dan Bucholz and have not heard back. Can someone please respond to my questions in that email (see below)? More than one of you responded at the June 3rd meeting in Vergas, that if we don't get a response from our commissioner, try contacting one of the others. Thank you.

Ron Zitzow

From: Ron Z. <huntinigo@hotmail.com>

Sent: Wednesday, June 19, 2024 11:49 AM

To: dbucholz@ottertailcounty.gov <dbucholz@ottertailcounty.gov>

Subject: Ditch 25 decision, 6/11/2024 meeting.

Hi Dan,

I'm wondering what decision the Ditch 25 authority came to with regards to the recommended repairs outlined in the Houston Engineering Report? Can I expect any charges associated with repair work on the ditch? I'm a resident of Edna township and received notice and attended the meeting in Vergas on Monday, June 3rd but was not able to attend the meeting in Fergus Falls on 6/11 to provide more comments.

Ron Zitzow

Sent from my iPhone