

## **PROCEEDINGS OF THE ROSEAU COUNTY BOARD OF COMMISSIONERS**

August 21, 2006

The Board of Commissioners of Roseau County, Minnesota met in the courthouse in the City of Roseau, Minnesota on Monday, August 21, 2006, at 1:00 p.m. for a Public Hearing on a State Ditch No. 69 Petition. Commissioners present were Orris Rasmussen, Mark Foldesi, Jack Swanson, and Russell Walker. Commissioner Alan Johnston was excused. Also present were the following citizens: Joseph and Anita Laurin; Melford Nelson, Brach Svoboda; Floyd Haugen; Brent Haugen; Gordon Broten, Mayo and Carol Gregerson; Curt Hukee; Steve Lee; Robert and Barbara Holum; and Marlin Lindland. County Engineer Brian Ketring was also in attendance.

The meeting was called to order at 1:00 p.m. by County Board Chair Orris Rasmussen. A motion was made by Commissioner Foldesi, seconded by Commissioner Swanson, and carried by unanimous vote to approve the agenda as written.

Ditch Attorney Kurt Deter, of Rinke Noonan, reviewed Minnesota Statutes 103E.401 and gave an overview of the petition before the Board and the intention of the hearing. Mr. Deter advised the Board that the public hearing had been called today as a result of ten land owners who have petitioned to be part of the benefited area of SD No. 69. Mr. Deter noted that the main purpose today is to hear testimony as to the capacity of State Ditch System No. 69 to handle the additional flow of water that would occur if the Board approved the petition. Mr. Deter informed the Board that they have the ability under statute to appoint an engineer to assess the system and make a capacity determination and recommendation to the Board. Mr. Deter advised the Board that if they denied the petition today, the process would be done. Mr. Deter further advised the Board that if they determine that the system does have the capacity to handle the water, the next step would be to determine benefits and then to bring the land into the assessed area and place it on the assessment sheet.

Commissioner Swanson asked for clarification regarding responsibility for the cost associated with hiring an engineer to assess capacity. Mr. Deter explained that the law is not clear on this topic and that the Board may either pay the full cost or share it with the ditch system.

Chair Rasmussen called for a presentation of written public comment. Mr. Deter read into record written correspondences that were received from Jeff Ballard, Earl Wellen and Blair and Martina Johnson.

Chair Rasmussen opened the meeting to comment from the audience.

Floyd Haugen addressed the Board and Mr. Deter. Mr. Haugen introduced a number of copies of photographs and correspondence that he wanted included with the hearing materials including photographs taken of State Ditch No. 69 in Section 10, Moose Township; photographs of culverts that are damaged on east side of section going through #139; correspondence from the Roseau River Watershed to Joe Laurin dated October 8, 1998 regarding a dry crossing that was installed by Mayo Gregerson in the N ½ of the NE ¼ Section 10 Moose Township; correspondence from the Moose Township Board to Mr. Gregerson regarding the dry crossing noted above dated November 13, 1998; correspondence to the Roseau County Auditor from the Moose Township Board dated March 26, 1999 regarding the dry culvert installed by Mayo Gregerson and their removal of that crossing; correspondence from the Roseau County Auditor dated November 2, 1999 regarding certification of unpaid reimbursement expenses to be placed

on Mayo Gregerson's real estate taxes; correspondence from the Moose Township Board dated July 29, 2004 to Mayo Gregerson regarding a road ditch obstruction; correspondence presented to the Roseau County Board on August 10, 2004 by Mayo Gregerson entitled, Brief History of Culvert Through County Road 139; Roseau River Watershed Permit application dated December 15, 2005, completed by the Moose Township Board, requesting permission to install one or more culverts in the township road between sections 23 and 24 to provide outlet for excess surface water flooding east of the road; FEMA Project Worksheet #17 to grade and shape 18,050 lineal feet of the ditch bottom of both banks of SD No. 20 that were damaged as a result of flood event DR-128, and a FEMA Project Revision of Scope Worksheet that reduced the eligibility from 18,050 lineal feet to 1,800 lineal feet. Mr. Deter received the material for the record. Mr. Haugen stated he would appreciate it if Mr. Deter would review the information and familiarize himself with the history of the situation so that he can make an informed recommendation to the County Board. Mr. Haugen stated that he is surprised that landowners within SD No. 69 are in favor of this petition given the long standing drainage issues that exist. Mr. Haugen stated that by allowing this culvert to remain open, water flows from one ditch system into another. This undermines the natural functioning of two ditch systems. Mr. Haugen stated that in this situation, by allowing the culvert along CR 139 in Section 10 of Moose Township to remain open (in the spring), it takes pressure off the ditch that is supposed to drain north to the river. Without the pressure of the water, it increases the amount of time it takes the ditch to thaw and flow north by as much as 21 days. This has a substantial impact on overland flooding because by the time the water begins to flow north; the river level has risen dramatically and is less able to accommodate the water. Mr. Haugen stated that he is surprised that the Roseau River Watershed Board has put up with this situation. Mr. Haugen acknowledged that the water concerns of landowners in this part of the county are more complex than just this culvert issue. He stated that another situation in this area that has caused water problems for the landowners occurred when the county put in CR 16 and CR 10 and at the end of CR 16 at the NW ¼ of Section 9 they dropped the water to the east when they should have dropped it to the west.

Mayo Gregerson addressed the Board and Mr. Deter. Mr. Gregerson asked Mr. Deter if it is legal for water from Ditch No. 51 (Roseau River) to drain into SD No. 69. Mr. Deter advised Mr. Gregerson that the law provides that a system that pre-dates another system can legally drain into that system. He noted that in this case the ditch number determines the age of the ditch system so Ditch No. 51 pre-dates Ditch No. 69. Mr. Gregerson noted that since the construction of WD-3, the water volume coming into the corner in discussion where the culvert is located has more than doubled. Mr. Gregerson stated that his property flooded so frequently that in 1988 he gave up and put his farm in CRP for ten years. He noted that Mr. Haugen has lost crops on his property in nine out of ten years. Mr. Gregerson stated that something needs to be done to resolve this water situation and help the farmers who are being harmed.

Mr. Gregerson asked Mr. Deter if it is legal to declare a burrow pit a legal drain. Mr. Deter noted that he could not fully answer that question without more information but that in general, a ditch can outlet anywhere.

Mr. Deter clarified the issue before the Board. He stated that landowners from WD No. 3 have petitioned into SD No. 69. In order for water to get from WS Ditch No. 3 into SD No. 69 it must go through a culvert. If the petition is approved, the culvert that is in place will remain open as it has for over twenty years. If the Board denies the petition, the culvert will be trapped or removed. In order for the board to approve or deny the petition, they need to determine whether or not SD System No. 69 can handle the water. Mr. Deter recommended that the Board hire an engineer to provide an educated and unbiased opinion on this matter.

Mr. Gregerson noted that he is the most effected by this culvert with Mr. Haugen being the second most effected. He urged the Board to trap or remove the culvert.

Brach Svoboda addressed the Board. He noted that there is some cleaning in the ditch system that needs to be done that might solve everyone's problem by allowing the water to flow west as it is intended to do. He added that the Roseau River is the underlying problem.

Mr. Deter reminded the audience that the purpose of the meeting is to take public comment, but noted that the best outcome would be to find a resolution that would be win-win for as many landowners as possible.

Commissioner Foldesi asked the audience for their feedback regarding utilizing Ditch No 20 as a partial outlet.

Mr. Gregerson informed the Board that several years ago he asked the Roseau River Watershed to do a feasibility study on developing a ditch from CR139 at the east end of section 10 of Moose west 2 miles on the north side of sections 9 and 10 of Moose up to CR10 and then under CR10 and then west 1.4 miles on the south side of sections 5 and 6 of Moose. The estimated cost was of \$257,532.00.

Curtis Hueke addressed the Board. He signed the petition because he was under the understanding that there would be an adequate outlet so it would not do any damage to the property.

Brent Haugen addressed the Board. There is no outlet whatsoever for this water and it should be shut off or removed. Mr. Haugen noted that the appropriate place for the water to go is north along County Road No. 139 and then west along County Road No. 10

Joseph Laurin addressed the Board. Mr. Laurin noted that he had initiated the petition as a means to get action. He stated that good ideas had been presented and he is not opposed to exploring alternate ideas. He stated that the Board needs to take into consideration the fact that the culvert has been open for over twenty years.

Commissioner Swanson asked why the landowners to the west would be in favor of the petition. Mr. Laurin stated that they signed the petition because while they understood that it may not be the best thing to do, they believed it was the right thing to do.

Steve Lee stated that west drainage is needed. He stated the Board needs to take whatever action it can that will have the most benefit with the least amount of damage.

Melford Nelson addressed the Board. Mr. Nelson stated that he is in support of the petition. Melford Nelson added that he has no problem paying for the drainage benefit; he just wants to have drainage.

Marlin Lindland addressed the Board. He stated the he believed the best solution would be a lateral going west away from SD No. 51 (Roseau River).

Commissioner Rasmussen stated that he agreed that something needs to be done and that he agreed that drainage that ran parallel to the Roseau River would be the best solution.

Mr. Deter stated that he has provided council to Roseau County and to Roseau River Watershed for over fifteen years and issues between SD No. 69 and WD No. 3 have been coming up since that time. Mr. Deter recommended that since SD No. 69 is under the authority of the Roseau County Board and that WD No. 3 is under the authority of the Roseau River Watershed, that the two agencies work together to find a resolution to the problem. He advised that the two agencies jointly hire an independent engineer to do the following:

1. Review the existing ditch records and obtain as much history as possible on the culverts along County Road No. 139, why they were placed and why one of them does not have a trap on it.
2. Assess and determine the capacity of SD No. 69 system to handle the water coming through the culvert from Watershed District No. 3 property.
3. Review the entire area and recommend drainage solutions that would be the most beneficial to the landowners in this area.

Mr. Deter recommended the Board table the petition that is before the Board until the engineer has completed the assessment and presented recommendations.

Roseau River Watershed District Manager Todd Miller addressed the Board. He informed the Board that the Roseau River Watershed is on the same page as the Board and would be willing to work together on this problem.

Mr. Gregerson addressed the Board. Mr. Gregerson asked the Board if they would consider blocking the culvert until the matter is resolved.

Mr. Deter stated that he understood why Mr. Gregerson and Mr. Haugen would make this request but advised the Board against trapping the culvert at this time as such action would not be defensible in court.

A motion was made by Commissioner Swanson, seconded by Commissioner Walker, and carried by unanimous vote to adopt the following resolution:

2006-08-05

BE IT RESOLVED, that the Board does hereby agree to TABLE the petition that has been put forward by landowners Gordon Broten, Steven, Justin and Allison Brower, Curtis Hukee, Barry Kukowski, Joseph and Anita Laurin, Melford Nelson, David Rinde, and Brach Svoboda to receive drainage benefits in the State Ditch No. 69 System.

BE IT FURTHER RESOLVED, that the Board does hereby agree to collaborate with the Roseau River Watershed District Advisory Board in resolving the long standing drainage issues in the State Ditch No. 69 and Watershed District No. 3 systems.

BE IT FURTHER RESOLVED, that the Board agrees to jointly hire an independent engineer jointly with the Roseau River Watershed Board to study the history of State Ditch No. 69, assess the capacity of the system to handle the additional water from the petitions, and determine possible solutions to the drainage problems in the State Ditch No. 69 and Water Shed Ditch No. 3 Systems and return to the Roseau County Board and the Roseau River Watershed Board with recommendations.

BE IT FURTHER RESOLVED, that the Board, upon receipt of the engineer's report and recommendations, will call a public hearing to present the findings and to re-consider the Petition.

BE IT FURTHER RESOLVED, that Commissioners Rasmussen and Foldesi and Coordinator Harren are appointed to coordinate the Roseau County Board's collaboration with the Roseau River Watershed Board on this matter.

Upon motion carried, Chairman Orris Rasmussen adjourned the meeting at 2:15 p.m. The Board will convene its next regular meeting at 8:30 a.m. on August 29, 2006.

Attest:

Date: \_\_\_\_\_

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Teresa Harren  
County Coordinator

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Orris Rasmussen  
Board Chairman