

DRAINAGE MEETING  
DISTRICT WARREN #11  
MAY 19, 2021

The Story County Drainage District Trustees met in the Public Meeting Room of the Story County Administration Building in Nevada, IA to hear landowner concerns and comments regarding an August 2010 Preliminary Engineering Report on the condition of Drainage District Warren #11 and an update on conditions along the Warren #11 open drainage ditch today. Members present were Lisa Heddens, chair, Latifah Faisal, and Linda Murken. Also present were County Outreach and Special Projects Manager Leanne Harter, Engineer Darren Moon, Conservation Director Mike Cox, Vegetation Management Biologist Joseph Kooiker, Vegetation Management Specialist Tyler Kelley, Drainage Clerk Scott Wall, landowners Dwayne Tjelmeland, Jerry Hill, Loren Tjernagel, Phillip Ellingson, and, via Zoom, Scott Borcharding, Dennis Beckman, Joyce Cofer (Hubbard Harvest), Paul Handsaker, John Risdal, Donna, Barbara's Laptop, and several participants identified only by their telephone numbers.

Heddens called the meeting to order at 6:30 p.m. and stated that access was being provided via Zoom per Iowa Code Section 21.8.1 due to room capacity limits imposed by the ongoing COVID-19 pandemic.

Murken moved, seconded by Faisal, to approve the agenda for the meeting. Motion carried unanimously (MCU).

Wall summarized the August 2010 Preliminary Engineering Report on Warren #11 by Fox Engineering (on file in the Auditor's Office and the text of which was mailed to all district landowners). The report found that the open ditch in Warren #11 contains numerous mature trees both inside and along its banks, is meandering, the ditch banks are sloughing off into the streambed, and there is a lot of siltation in the bottom of the ditch. The engineer's recommendations were to perform a complete cleanout of the 8.5 miles of open ditch in Grant #11. The cleanout would consist of removing all trees within the ditch banks and most or all of the trees within 50' of the centerline of the ditch. Not all of the trees outside the ditch bank have to be removed but at least enough to allow access to the ditch by construction equipment have to go. The ditch will then be straightened, cleaned of silt, and the banks will be reshaped and seeded. The estimated cost of the project, in August 2010, was \$794,750. That included an estimated \$60,000 for a reclassification or reassigning benefits to drainage for each parcel of land within the district. The county does not generally recommend reclassification as it does not lead to significant changes in the way costs are assessed. If there was a large commercial development or a new interstate or a city growing into the district, anything that might alter the topography, that could merit reclassification. Because this is a rural district and predominately agricultural land it is unlikely that reclassifying would be worth the cost. The district was established in 1907 but enlarged in 1951 and there was a reclassification done then that is the basis for current assessments.

Jerry Hill asked if the landowners were expected to give up 50' of their land on either side of the ditch.

Wall said the district has an assumed easement of 40' but 50' is the modern standard. Landowners can continue to farm the land inside the easement but if the district needs access for a repair it does not have to pay crop damages inside the easement.

Wall said that over the course of two meetings on the 2010 report in January and March of 2011 the resistance of landowners to the proposed project was so great the district trustees took no action with the understanding that they were obligated to repair the ditch sooner or later and it was not going to get better, or less costly, over time.

Moon said issues that have arisen since 2010 are more frequent beaver dams and fallen trees in the ditch from the 2020 derecho. He said that during the 2011 meetings the landowners were told that the district

could not address the issues in Warren #11 piecemeal but that the ditch had to be repaired in a single, overall project. Despite that Secondary Roads and Integrated Roadside Vegetation Management (IRVM) have done smaller projects in Warren #11 but they have become increasingly uncomfortable with that approach when they know the Code of Iowa prohibits breaking large projects into smaller pieces to avoid the requirements placed on projects costing more than \$50,000.

Kooiker said IRVM created an inventory of the 65 miles of open drainage district ditches in Story County 10-12 years ago and began an in-house program to remove and control the growth of trees and brush in those ditches. They've cleaned what they could in house and are using contractors for work beyond the capabilities of their equipment. They instituted a regular herbicide application program to keep the trees from returning. They are also encouraging landowners to plant buffer strips along the ditches to prevent siltation and restore at least some wildlife habitat.

Kelley said IRVM has gone through all the ditches they are able to clear in-house. What is left are large projects like Warren #11. IRVM can add these ditches to their spraying program but they do not have the resources to remove several miles of mature trees or to clean and straighten the ditches. They've received five or six complaints in Warren #11 in the last 8 years that they have not been able to address and the conditions along the open ditch are definitely getting worse. They had a contractor bid the tree removal for just the north section of the Warren #11 ditch and his costs were well over \$50,000.

Kelley shared photos he'd taken of the current condition of the open ditch.

Wall said that in an earlier meeting Kelley and Kooiker had mentioned that not all of the complaints they've received have concerned the north part of the ditch. They've been approached by landowners from the central and southern portions of the ditch as well.

Kooiker said small projects aren't cutting it in this district plus they shouldn't be doing them anyway. It's time to take a broader view of what to do with this ditch.

Murken said she'd driven around Story County with Kooiker and Kelley in 2019 and one of their stops was along County Road E18 where an open ditch had some very large trees in it. Is that part of the area we are talking about this evening?

Kooiker confirmed that it was.

Jerry Hill asked if there was federal money (FEMA) available to take care of the trees toppled by the derecho last year. There was plenty of money available for cities to clean up. What about rural areas?

Heddens asked if FEMA money can be used in a drainage district.

Wall said there was FEMA funding for a couple of drainage districts following the floods of 1993.

Murken asked if FEMA would even be taking claims this long after the derecho. That deadline has probably passed but we can check into it.

Dwayne Tjelmeland owns land at the top end of the district. There are seven beaver dams and five or six large trees that should have been removed when IRVM's contractor was working in that area and weren't.

Faisal said perhaps those were some of the trees that were too large for IRVM's equipment.

John Risdal owns 400 acres east of Roland along E18. He owns land in a drainage district in Hamilton County and they tore up his CRP land on that farm during a drainage district project and did not repair the

damage. He was told that was his responsibility. Will that happen to his CRP land in Story County if the Warren #11 ditch is cleaned out? He doesn't believe the way benefits to drainage are apportioned is fair. In 2011 he would have paid about \$100,000 on 400 acres out of 8,500 acres in the district. This project is going to cost a lot more than it would have in 2011. Have the cost estimates been updated?

Murken said no. The trustees wanted landowner input on Warren #11 before they spend any more of the landowners' money and any cost estimate would be part of a new engineering report on the district. She said that in her time as a trustee the costs of reseeding damaged CRP lands has been part of any project.

Risdal said he understands there are some problems on the ditch but he has 5% of the land in the district and pays 13% of any project and just doesn't see how that can be fair. Most landowners who've had a problem with the ditch on their land have just taken care of it themselves.

Moon said Risdal's share of the project in 2011 would have been almost exactly \$100,000. Bolton and Menk does a really good job of explaining the classification of drainage benefits if we get to that point in Warren #11.

Risdal said he does not have any problems with the open ditch or with drainage on his property right now and is not in favor of this project.

Randy Hill said they also pay a large share of any drainage assessment but own a relatively small area. When the district was originally classified there was very little private tile and it was labor intensive to install tile. Most ag land is now extensively tiled and the Hills have to wait for the high ground to drain before their land can drain and the high ground pays less for its drainage. He does not want to see anything done in Warren #11 until the costs of any work can be assessed more fairly. He talked to David Deyoe about this last week and Deyoe is willing to re-introduce legislation he proposed in 2011 in 2022 to change drainage district assessments to a per acre benefit so everyone in the district pays the same. In 2010 the Iowa Drainage District Association, which he can guarantee is made up of large, wealthy farm operators, killed the bill because they don't want to pay their fair share. The people on the ditch have to take everyone's water and their debris such as cornstalks before their tile and their land can drain. When Deyoe reintroduces his bill next year the landowners and supervisors need to lobby the legislature to let them know the IDDA is trying to stop it to protect their greed at the expense of small landowners on the ditches and the law needs to be changed.

Jerry Hill said he's fought the way Warren #11 is assessed for 40 years now without success. He is not opposed to repairs. He is opposed to the cost of those repairs to his property compared to what his neighbors are charged.

Tjelmeland said there is land in Hardin County draining into Story County and Warren #11. Why doesn't the district go into Hardin County and make those people pay their share.

Murken asked when the drainage district trustees last ordered work done in this district.

Wall said there was a cleanout of the ditch in 1951. The ditch was extended into Richland Township at that time and the district was expanded to the south along the ditch. The district was reclassified as part of that project so the 1951 reclassification is what we are using today to determine benefits.

Murken asked about Tjelmeland's comment on charging properties in Hardin County for drainage.

Wall replied that there is a provision in the Code that allows drainage districts to annex lands that are found to benefit from the district facilities. There was a request in another drainage district, Grant #5, from a landowner in the district to look at annexing additional land. There was an engineer's report

prepared which was then amended twice and Grant #5 recently lost a lawsuit brought by several landowners fighting annexation. To date \$320,000 has been spent and all Grant #5 has to show for it is an engineer's report. While annexation is an option, Wall cautions that it is a time consuming and expensive process and the district will likely be sued as part of any annexation. The trustees would likely want a petition from a large number of landowners in the existing district before they would even consider an annexation.

Tjernagel said the biggest complaint ten years ago was the unfair distribution of project costs and that has not changed.

Murken asked if that was a request for a reclassification.

Tjernagel said yes, to an equal area assessment schedule.

Heddens said a reclassification would fall under the current code and would not be an equal area assessment.

Murken said the trustees are obligated by law to maintain the district to its original design capacity. Only the state legislature can change the law. This repair has been put off for over ten years already and the open ditch has been in poor condition for longer than that. At some point the trustees will have to act.

Risdal said if a reclassification is done under the current law it will not materially change anything.

Murken agreed that it might not.

Risdal said there needs to be a state law change, not a reclassification, and he is shocked that there aren't other drainage districts raising the same issue.

Heddens said that is why the landowners need to talk to their representatives in the state legislature. They should know that Deyoe can sponsor legislation but it has to go through both 100 members in the House and 50 in the Senate and the Governor's office before it can become law.

Joyce Cofer, Hubbard Harvest LLC, asked how did Warren #11 get established in the first place. Was it the landowners that asked for it?

Wall said the county was petitioned by landowners in the area requesting that a drainage district be established. The county hired an engineer to survey the area and the engineer returned with the recommendation that the establishment of a district would be beneficial for the public good and for the intended use of the land by its owners. The trustees then hired a contractor who installed the district facilities which then became the property of the landowners in Warren #11 and is managed, for their benefit, by the County Supervisors acting as Drainage District Trustees.

Cofer said since the district was established through landowners' requests and now is an impediment to the landowners can the landowners dissolve the district? What are the ramifications of that. Can we set up a new district? Can the owners agree to maintain the facilities on their land?

Murken said you can dissolve a district if more than half the landowners controlling more than 60% of the land petition to dissolve it. If that happens her understanding is that everyone is pretty much on their own.

Wall said if the district is dissolved any district facilities become the property of the landowner whose lands they cross. They become part of that owner's private tile. We already see that to some extent today

with landowners like Mr. Risdal who keeps his part of the open ditch clean while other landowners let their part of the ditch go and never complain or ask to have it cleaned.

Murken mentioned that districts can elect their own trustees and take control away from the supervisors but the new trustees are still obligated to follow State Code.

Randy Hill said he circulated a petition to dissolve Warren #11 in 2011 and they had a majority of the landowners sign on but they fell short of the required 60% of the land in the district because some of the bigger landowners wouldn't sign. He did 90% of the work to get the signatures 10 years ago and is willing to try again if other landowners are interested. He thinks dissolving the district is the way to go.

Risdal said he is willing to help any way he can to get the district dissolved.

Faisal said that is why we are meeting tonight. The trustees want to let the landowners know what their options are and get a feeling for what the landowners want.

Jerry Hill said he doesn't care if a project is large or small he simply wants to pay a fair share and that isn't happening now.

Murken said she understands Jerry Hill's concerns but the landowners need to understand the trustees are constrained by state law and have to work within its limitations.

Heddens repeated that this is why landowners need to approach their state representatives. Deyoe can sponsor his legislation from 2011 again in the 2022 session but there are no guarantees that it will pass.

Faisal said we need to know what can be done right now so we are prepared for what the legislature does or doesn't do in 2022.

Murken said we are talking about two different things – dissolving the district and/or changing the law. The landowners need to decide which route to take.

Cofer asked can't the landowners get together and agree to take care of the district facilities if the district is dissolved? Do the landowners have to have a formal district to maintain the facilities on their own?

Murken said if the district is dissolved the landowners can do what they like with the former district facilities but getting 90-100 landowners to cooperate is challenging.

A landowner implied that someone is trying to push this ditch repair on the district.

Heddens said that was not the case at all. There have been several complaints about the condition of the open ditch going back to before the 2010 Engineer's Report and this meeting is to gather input from the landowners in Warren #11 as to what should be done to address the deterioration of that ditch.

Tjelmeland said if work in the district damages a culvert shouldn't that damage have been repaired.

Wall said yes.

Tjelmeland said there was a beaver dam removed from the ditch on his property and the contractor bent a tile emptying into the ditch so it points upwards and cannot drain and they never came back to fix it.

Kooiker said he thinks the meeting is getting off track from the big picture of what to do about the open ditch. He will call Tjelmeland the next morning about the damaged tile.

Tjernagel asked if the trustees could do repairs on the ditch up to \$50,000 and see how far that gets them.

Murken said the district has already spent around \$50,000 since 2011 which is why the trustees were holding this meeting. There have been spot repairs done over the last 10-11 years but they are not addressing the problems in the open ditch as a whole.

Wall said IRVM and the Engineer's Office were becoming increasingly uncomfortable with doing the small repairs, knowing that the entire ditch needs to be addressed.

Moon said it was more than that. If they spend money in one or two places but can't afford to make repairs anywhere else it puts them in the position of picking winners and losers for repairs but everyone has to pay the costs.

Heddens reiterated that this is why we are having this meeting. Small repairs are not sufficient to address the problems in Warren #11 and the longer the overall repairs are delayed the more the costs continue to rise. The small repairs are addressing parts of the needed larger project and the law prohibits breaking large projects into smaller pieces to avoid the \$50,000 maximum. It does not allow the trustees to spend \$49,000 to try to fix pieces of a \$800,000 project and then just not do anything more. They have an obligation to fix the entire open ditch.

Murken said the landowners can attempt to dissolve the district again but what happens if they succeed. It isn't that the current situation is great but once it is dissolved there is no longer any mechanism to ensure that the former district facilities are maintained. If the trustees felt like there was a will to get this project done they could hire an engineer to draft a new report and move forward.

Risdal asked if the trustees could look into FEMA funding for the trees the derecho knocked down or some of the COVID recovery funds that are available right now?

Heddens said yes but if there is funding available it would only apply to damage caused by the derecho.

Murken said even if there is funding available the existence of the 2010 report could work against the district since it shows there were problems 11 years ago that were never addressed.

Heddens asked do the landowners want the trustees to get a new engineer's report with a new cost estimate or do they want to dissolve the district or do they want to wait a year and try to change the law during that time? What do the landowners want the trustees to do?

Cofer asked how much the district has in engineering fees already before we hire another engineer and add to those costs without having any work done to show for it?

Wall said he did not have those figures available tonight but the money that was spent on the 2010 report was the last money spent on engineering fees in Warren #11.

Jerry Hill has a 13-acre wildlife area that would be wiped out if everything is cleared back to 50' on either side of the ditch. He has a half mile of ditch on his land and he thinks it will be worse after the repair than it is now.

Heddens said the law does not allow the trustees to do nothing.

Murken said if the landowners want to pursue some options the trustees can wait a while longer but they can't ignore the problems in Warren #11 forever. There has already been over 10 years of inaction.

Scott Borcharding manages a little bit of land in Warren #11. Can we talk to the drainage engineer and see if he has a feeling about how a reclassification might change the assessment schedule?

Moon said we've had that conversation in the past and our experience is that you don't typically see large changes with a reclassification. A district can be split into sub-districts which changes how much landowners pay for work done in different areas of the district but because everyone uses the open ditch the allocation of costs for work there will probably not change very much.

Tjernagel wants the trustees to investigate the availability of FEMA funding for the derecho damage. The conditions in the ditch are 10 times worse than before the derecho.

Murken said remember that there is a 2010 report recommending almost \$800,000 in repairs and nothing was done. The federal government will question why the district should get emergency funds to repair damages that may not have occurred if the ditch had been cleaned out in 2011. Even with emergency funding there are undamaged trees that should be removed, there is siltation in the ditch, the ditch is meandering, and there are damaged tile outlets into the ditch.

Heddens said we can investigate FEMA funding but do the landowners want to work with David Deyoe and/or prepare a petition to dissolve the district at the same time?

Jerry Hill would like to wait on Deyoe's proposed legislation to get a fair, equal area assessment before doing anything else.

Randy Hill said all the landowners he has spoken to do not want more money spent on an engineer. The landowners will talk to Deyoe and/or look into dissolving the district. They will need some time for either of those options.

Murken said landowners should be aware that if this is pushed back another year the trustees cannot repair any small problems in Warren #11 in the interim. They've already spent more than the letter of the law allows. We are here tonight because of how many small projects have already been done in the ditch since 2010.

Wall said the 2010 report addresses problems with the open ditch. If someone has a broken district tile on their land the district can repair those but we can't do anything more within the confines of the open ditch.

Moon said he agreed with Wall that problems outside of the ditch do not fall within the parameters of the 2010 report and can be addressed.

Murken asked what happens if the trustees do nothing this evening and next week nine landowners show up demanding that the ditch be cleaned? There are 4 landowners here in person tonight and 17 people, including staff, attending remotely but there are over 90 landowners in the ditch. The trustees have a legal obligation to maintain the district and landowners can bring legal action if they believe the trustees are not meeting their obligations.

Randy Hill said if landowners couldn't take the time to attend this meeting why should they get a say in what happens. Dissolve the district.

Murken said personally she can accept waiting another year but no longer than that.

Heddens said the landowners should pursue legislation and dissolution. If they wait to see if the law can be changed without pursuing dissolution and the law does not change they'll have lost a year. If they have

enough to dissolve the district they can wait to see what the legislature does and be ready to push for dissolution if the legislation fails. You may not know the outcome of the legislation until the legislative session ends.

Risdal said can't the petition for dissolution state that it shall be considered only if legislation to change the way drainage districts are assessed passes? He doesn't want to see the district dissolved if there is a chance to change the law. He sees a value to keeping the district but there is not a value if the way it is structured cannot be changed.

Wall said if the landowners can get enough signatures to dissolve the district they do not have to submit their petition by any certain time. They can have it ready to go and only submit it if the legislature does not change the law. His only caution would be that if the signatures are gathered early on there is a chance that a landowner could sell their land, invalidating their signature.

Heddens said if the petition is ready early on the landowners will probably want to contact the signers a second time before submitting it.

Cofer asked if there were any outstanding claims to be paid before the district can be dissolved.

Wall said not at this time.

A landowner asked if other drainage districts have been dissolved.

Wall said there was a small district that was mostly within the City of Cambridge and had its own trustees. They dissolved it in the late 1990's.

Murken said the trustees can wait a year. Should there be a motion on when to meet again?

Wall said with or without a motion the decision to delay will be a part of the minutes.

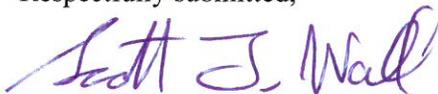
Randy Hill said June is a better time for a meeting for farmers than April and May.

The trustees were comfortable with a decision to meet in June 2022 without making a specific motion to do that.

Kooiker said he wanted to be sure that landowners understand there is nothing he and Kelley can do in the way of repairs to Warren #11 between now and the next meeting.

Murken moved, seconded by Faisal, to adjourn. MCU. Meeting adjourned at 8:15 p.m.

Respectfully submitted,



Scott T. Wall

*Note: Moon checked (05/20/2021) on the FEMA deadline for derecho funding and it was September 17, 2020. His opinion is that it was unlikely funding would have been approved for a poorly maintained district in any case and even then, it would only have been for trees damaged by the derecho and not for issues existing prior to 2020.*

