

DRAINAGE DISTRICT MINUTES
DISTRICTS RICHLAND #20 & #20A
AUGUST 19, 2015

The Story County Drainage District Trustees met in the Public Meeting Room of the Administration Building in Nevada, IA to present an Engineer's Report to landowners in Drainage District Richland #20, gather feedback from those landowners, and consider moving forward with design plans and specifications for repairs and/or improvements in the district. Members present were Rick Sanders, chair, Paul Toot, and Wayne Clinton. Also present were County Engineer Darren Moon, County Attorney Stephen Holmes with two members of his staff, Jessica Reynolds and Ethan Anderson, and Kent Rode and Kirk Frederiksen of I & S Group, plus 20 landowners in the district (see attached sign-in sheet).

Sanders called the meeting to order at 6:30 p.m. and asked Rode to explain how we got to this point and to present the Engineer's Report.

Rode said the primary reason for having the Engineering Report done was the partial collapse and blockage of the 22" main tile under the Union Pacific railroad. Since it was apparent that the repair of that tile alone would exceed \$50,000 the Code of Iowa mandates that an Engineer's Report shall be prepared.

In preparing the report it became apparent that there were other issues needing to be addressed in the district. The district is split into an east and west branch but is assessed under a single schedule meaning people on the east branch pay for repairs to the west branch and vice versa. The tile is undersized by current standards using a 1/8" drainage coefficient when 1/2" is more desirable. The coefficient of drainage is the amount of water the district can drain from its surface in 24 hours. Finally, LIDAR data indicates there are about 200 acres draining into the district that are not currently part of the assessment schedule and which should be annexed into the district.

Rode went through the report (on file in the County Auditor's Office) until he reached the options for repair or improvement and their estimated costs. Briefly, option one simply replaces the crushed tile and cleans and straightens the open ditch at the bottom of the district, option two replaces the crushed tile with an 84" culvert cleans and straightens the open ditch and extends that ditch north to the new culvert and another 100' to the west of the RR, and option three does everything in option two and replaces all the tile in the district to reach a 1/2" coefficient across the whole district.

The estimated costs of the options are: Option One - \$583,485, Option Two - \$593,610 (of which the railroad is assumed to be liable for the \$101,725 cost of the culvert), Option Three - \$3,169,305. I & S Group recommends option two which will raise the drainage coefficient from the railroad south to 1/2" and save the district more than \$100,000 over option one if the railroad pays for the culvert.

Toot said he is pessimistic about getting the railroad to pay for the culvert. If the district ends up in court trying to collect from the railroad how much of the county attorney's time will that take or if the district hires outside counsel how much will that cost the district? The railroad is not going to just acquiesce and write a \$100,000 check.

Rode said that under Section 468.109-111 of the Code of Iowa the railroad is liable for the construction and maintenance of culverts but they do not have to pay for maintenance and repair of drainage tile in their ROW.

Sanders said who pays for the work under the railroad should not be the primary issue here. The important issue is what is best for the district? It appears that if the district ends up paying for the culvert

in option two the cost difference between it and option one is a wash and option two will give the district better drainage.

Sanders noted that the report gives an average cost per acre for each option. He emphasized the term “average” because some landowners will pay less than that and some will pay more, possibly a lot more. Rode said the average cost was presented as a way to compare the costs of the options to each other.

Sanders said this board approached State Representative David Deyoe three years ago with a proposal to change the way drainage districts are assessed to an equal amount per acre across the district. Deyoe took the proposal to the legislature but it didn't go anywhere.

One landowner said there are three large culverts under the railroad now just south of where the tile crosses the ROW. They are included in the photos in the Engineer's Report. Even with those culverts water still sometimes overtops the railroad. He wondered if an 84” culvert would be sufficiently large. Right now the land west of the railroad is soup. There is no way you can dig in it or get equipment to it.

The land owner asked what would happen to the culverts if the 84” culvert is installed. Rode said he does not expect the existing culverts to be maintained but they belong to the railroad and what becomes of them is up to the railroad. Regardless of what is done there will have to be considerable cooperation with the railroad.

If option one is taken and the additional lands are not annexed the trustees would not have to reclassify the district. Rode recommends that the district be reclassified regardless of what option is done because the current classification is a single schedule for the entire district and is not equitable because the west and east tiles are, essentially, separate facilities.

Frederiksen spoke briefly about the reclassification process which I & S is recommending for all three options and which is mandatory for any improvement. Simply put, classification is an attempt, through the use of various factors (soil type, slope, proximity to district facility, proximity to outlet, etc.), to ensure that everyone's benefit to drainage is equitable.

Sanders said we just went through reclassification in another district and he was very impressed with the results. It is not a simple process and some people were happy with the results while others were not happy at all but everyone was able to follow the process and understand how the final numbers were determined.

A landowner near the top of the west branch said there is a lot of surface water that is directed into a road ditch then eventually flows across his land creating the waterway over the tile. How is the tile benefitting him if he is seen to be using most of the length of the tile yet he has the surface water to contend with? Rode said lands at the top of the district do have a higher use factor but that is only one of the factors considered in reclassification. Frederiksen said they also look at flow paths and the amount of surface water that does not enter the tile is another factor taken into account when determining benefits.

Another land owner asked about the grade of the repair or improvement relative to the 22” tile on the west side of the railroad. Rode said in the repair option the bottom of the new, 42” tile would be level with the bottom of the existing tile. In the case of the repair the bottom of the culvert would be significantly lower than the existing tile.

Sanders called for a 5 minute recess at 7:40 p.m. before moving on to issues in Drainage District Richland #20A, a sub-district of Richland #20.

When the hearing reconvened Sanders asked Moon to talk about the issues in #20A. Moon said three years ago there was a bad tile blockage in Fernald and the engineer's tile crew spent a lot of time there clearing roots from the tile and removing several trees with the help of the utility companies. One tree near the end of the tile whose roots had grown into the tile was not removed because the owners wanted to keep the tree. Short of removing the tree the district has two options. They can jet the roots out of the tile every 3 years for \$500 or replace the tile near the tree with 50-100' of impervious pipe for \$2-3,000. The tree is only 15-20' from the tile and it is a large tree. Several landowners in Fernald have approached Moon about what can be done about the tree.

John Hunter said he doesn't think one tree is worth having his basement flood every 3 years. If he had a tree he really liked he'd pay for the impervious tile himself but he doesn't have any trees he likes that much. Several landowners echoed Hunter's sentiments saying they were being penalized with water in their basements because one person wanted to keep one tree. Moon said he had hoped the owners of the tree would be at the meeting but they did not attend.

Sanders suggested that Moon and he meet with the tree's owner and see if they can reach a solution. It should not be everyone else's responsibility to deal with issues caused by one individual's tree There being no further business in Richland #20A Sanders returned to Richland #20 and asked Holmes to talk about the railroad.

Holmes said his understanding of the law was that if the water is in a tile underground it is the drainage district's responsibility. If it is flowing over the ground it is the railroad's responsibility. The unique situation here is that option two would be bringing underground water to the surface. The question is, will the Union Pacific be responsible for the expense of installing a new culvert under their ROW and who will be responsible for the maintenance of that culvert going forward? If the district does not have a sound engineering justification for the culvert it will look to a court like the district is installing the culvert in an attempt to force the railroad to pay for it when the district could be replacing the tile with a new tile instead.

Holmes asked if the three existing culverts remove the surface water now. A landowner said that they do. Holmes said if that is the case it will be very difficult to argue that an additional culvert is needed. The railroad can state that they are already handling the surface water and there is no need for the 84" culvert.

Sanders said some of the water that should be in the existing tile is now on the surface and going to the existing culverts. We need to think about what is right for the district and not about who will pay for what. If the 84" culvert is what is needed to achieve proper drainage then that is the way the trustees need to go.

Sanders read a letter (attached) that was received from the UP this evening. The letter expresses an interest by the railroad in working with the district but the railroad wants to see design plans and understand how the district intends to pay for the work before they comment further.

Holmes said he was interested in what would become of the three existing culverts if the 84" inch culvert is installed. They belong to the Union Pacific and the Union Pacific is under no obligation to maintain them. If the Union Pacific can be convinced from an engineering stand point that the 84" culvert is beneficial to them they might be willing to give the district permission to install the culvert at the district's expense with the understanding that the district will maintain the culvert in the future. Holmes is encouraged by the tone of the letter received from the Union Pacific and that they are willing to work with the district and consider the district's needs.

Holmes is also interested in the existing open ditch's apparent encroachment on the Union Pacific's ROW. If the open ditch is inside the railroad's right-of-way they are probably interested in what happens there. Rode said the proposed option two would relocate the ditch out of the railroad's ROW where it is beginning to cut into their embankment, thus benefitting the railroad.

Sanders said moving the open ditch away from the railway should be beneficial to the railroad and installing the 84" culvert will likely reduce the pressure on the railroad's three existing culverts. Rode said the open ditch has started cutting into the railroad embankment so realigning the ditch is definitely in the railroad's interest.

Toot said if the district wants to install the 84" culvert what is to stop the railroad from saying we don't want it, we want the district to replace the tile with a 24" or 42" tile and continue to maintain that tile. Holmes said that would be his advice to the railroad if he was their attorney however if there is a benefit to the railroad from installing the 84" culvert that is an argument that can be made in the district's favor and the railroad may be willing to maintain the culvert after the district pays the costs to install it.

Sanders said our interests are not divergent. The Union Pacific doesn't want water ponding west of the tracks any more than the landowners do which is the reason for the three existing culverts. He thinks there is a "sweet spot" where the district and the railroad can come together on a solution. We just need to sit down with Union Pacific personnel and see where they and the district can find common ground.

Holmes said the letter from the Union Pacific is encouraging in that they are willing to consider what the drainage district is proposing. It will take time though and working with the railroad and getting things done quickly are usually not compatible.

Sanders repeated that the goal of this meeting, regardless of who ends up paying, is to determine what is the best thing for this district?

Rode said the tile under the railroad is broken and undersized, the ditch is overgrown with brush and trees and needs to be repaired, and the tile on the east side of the railroad is being eroded and washed out where it outlets into the ditch. The changes recommended in option two take care of those issues and improve the capacity of the district for essentially the same total cost as option one which does not improve district capacity at all.

Sanders said it sounds like the trustees are moving towards option two. Did any of the landowners have questions/comments/concerns/objections? Now is the time to voice them.

A land owner questioned how an 84" culvert could take the water from the district tile plus the water from the three existing culverts if they are removed. Sanders said we are not talking about getting rid of the existing culverts which are the Union Pacific's property in any case. What the railroad does with those culverts should be part of the conversation the district has with the railroad concerning the tile crossing.

Rode said it is up to the railroad as to whether or not they keep or remove the existing culverts but he believes an 84" culvert will take all of the water. The Engineer's Report is preliminary and he will look more closely at the area in the final design plans to ensure there is adequate capacity under the railroad.

A landowner said there is tremendous pressure on the west side of the railroad now and it will have to be relieved before any work can be done. That won't be any better next spring. He would like to see someone punch through with a 6-8" tile now to alleviate some of the pressure.

A landowner questioned the relocation of the ditch in option two. It looked like it went a long distance east before curving south. Rode showed on the maps that the tile location in option one goes some distance into the fields to the east of the railroad before curving south which is the tile's current location. In option two the open ditch will be extended to the new culvert along the east side of the railroad but just outside of the railroad's right-of-way and does not follow the current path of the tile.

A land owner said the whole project seems pretty expensive and there is a lot of further exploration needed before work can begin but the potential benefits are also large and something does need to be done as soon as possible. Several land owners commented that something should be done this year to provide at least some relief to the lands west of the railroad.

Sanders asked Rode what he needs to be able to take the next steps in this project. Rode said if there are any objections from the landowners those need to be made tonight. If there are none the next step is for the trustees to direct I & S to proceed with option two and prepare the plans and specifications, documentation for the annexation of additional lands, right-of-way acquisition along the open ditch, and a preliminary reclassification.

Clinton moved, seconded by Toot, to direct I & S Group to proceed with preparing design plans and specifications for option two of the Engineer's Report on Drainage District Richland #20 with the understanding that the proposed 84" culvert would be sized appropriately to handle the expected volume of water. Motion carried unanimously (MCU).

Toot moved, seconded by Clinton, to direct I & S Group to proceed with acquiring additional right-of-way for the existing open ditch and right-of-way for the extension of the open ditch as proposed in option two of the Engineer's Report. MCU.

Clinton moved, seconded by Toot, to direct I & S Group to proceed with the annexation of additional lands into the district as shown in the Engineer's Report. MCU.

Toot moved, seconded by Clinton, to direct I & S Group to proceed with reclassification of the entire Richland #20 district. MCU.

Rode asked if the trustees wanted an initial pre-classification. Sanders said he thinks it is important that landowners get an idea of their share of any project as soon as possible so yes to a pre-classification.

Rode said I & S will prepare Final Plans and Specifications, an Annexation Report, and a Right-of-Way Acquisition Report concurrently. The annexation and right-of-way reports would be presented at another hearing, 40 days following their completion. The preliminary reclassification would be presented at the same time as the bid letting to give landowners an idea of the cost to them. The bid letting will probably be in late March or early May of 2016. Construction would then take place from April to October of 2016. Claims for damages would be submitted after the project is completed. The last step would be preparation of a final classification report.

Sanders said if we can do the project in the timeline laid out by Rode the first time landowners would see a bill for the work would be as part of their real estate taxes in September 2017. He thinks there are some real hurdles to get over to stay on that timeline.

Sanders asked when the next public meeting would take place and what would it be about. Rode said initially he was thinking the annexation and right-of-way reports would come first but we need to get into the design plans as soon as possible. It would be sometime during the winter that the design plans and annexation could be presented.

Sanders asked if the design plans would be far enough along at that time to sit down with Union Pacific representatives. Rode said that should be the next step so the conversation with the Union Pacific can start as soon as possible.

Sanders said it is to our benefit to work as closely with the Union Pacific as possible to reach a consensus. Holmes said he will write a letter to the legal counsel who submitted the letter from the Union Pacific about what transpired at tonight's meeting.

Toot moved, seconded by Clinton, to adjourn. MCU. Meeting adjourned at 8:50 p.m.

Respectfully submitted,

Scott T. Wall