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# Le Sueur County, MN

Tuesday, July 15, 2014

Board Meeting

## Item 6

**10:45 a.m. Darrell Pettis Administrator / Engineer**

*RE: Petition for Redetermination of Benefits on County Ditch #54*

*RE: Aquatic Invasive Species Prevention Aid*

*RE: Flooding*

*RE: County Road Projects*

*RE: Other*

Staff Contact:

Names of the Owners of all Lands and the Names of all Public Roads, Corporate Roads and Railroads that are Assessed for the Repair of said Ditch.	Description of each Parcel of Land to be Assessed for the Repair of said Ditch as it Appears from Original Lien Statement for Construction of said Ditch.	Section	Township	Range	Number of acres in each tract according to assessment rolls and tax list.	Estimated number of acres benefited.	Amount that each tract of land and each public road, corp-orate road and rail-road was benefitted by the construction of said ditch.	Amount that each tract of land and each public road, corp-orate road and rail-road is liable for and must pay for the repair of such ditch.	Board Meeting August 18, 2009, 24% Lien, 5 years, 4% interest Filing Date November 16, 2009
					Acres	Acres	Dollars	Dollars	
Robert B & Cynthia M Gregor	SW 1/4 of NE 1/4	23	111	23	40.00	40.00	80.00	19.20	09.023.2600
Terry L Hayes	NE 1/4 of NE 1/4	23	111	23	40.00	40.00	80.00	19.20	09.023.2500
Robert B & Cynthia M Gregor	SE 1/4 of NE 1/4	23	111	23	40.00	40.00	80.00	19.20	09.023.2600
Robert B & Cynthia M Gregor	N 20 ac of W 1/2 of SE 1/4	23	111	23	20.00	12.00	24.00	5.76	09.023.5000
Robert B & Cynthia M Gregor	S 60 ac of W 1/2 of SE 1/4 less 11.15 ac	23	111	23	48.85	3.00	6.00	5.00	09.023.5000
Robert B & Cynthia M Gregor	NE 1/4 of SE 1/4 less 1.84 ac	23	111	23	38.16	35.00	70.00	16.80	09.023.2600
Robert B & Cynthia M Gregor	SE 1/4 of SE 1/4 less 7.01 ac	23	111	23	32.99	8.00	16.00	5.00	09.023.2600
Terry L Hayes	W 20 ac of NW 1/4 less N 1 rod	24	111	23	20.00	18.00	36.00	8.64	09.024.0200
Leonard E & K J Beatty Jr	E 30 ac of NW 1/4 of NW 1/4	24	111	23	30.00	30.00	60.00	14.40	09.024.0100
Leonard E & K J Beatty Jr	E 30 ac of SW 1/4 of NW 1/4	24	111	23	30.00	30.00	60.00	14.40	09.024.0100
Leonard E & K J Beatty Jr	NE 1/4 of NW 1/4	24	111	23	40.00	40.00	80.00	19.20	09.024.0100
Leonard E & K J Beatty Jr	SE 1/4 of NW 1/4	24	111	23	40.00	40.00	80.00	19.20	09.024.0100
Pam Dunkelbeck & Brian Gregor	S 1/2 of NW 1/4 of SW 1/4	24	111	23	20.00	20.00	40.00	9.60	09.024.7500
Karl Bohn	N 1/2 of NW 1/4 of SW 1/4	24	111	23	20.00	20.00	40.00	9.60	09.024.7600
Pam Dunkelbeck & Brian Gregor	SW 1/4 of SW 1/4	24	111	23	40.00	18.00	36.00	8.64	09.024.7500
Karl Bohn	NE 1/4 of SW 1/4	24	111	23	40.00	40.00	80.00	19.20	09.024.7700
Karl Bohn	SE 1/4 of SW 1/4	24	111	23	40.00	30.00	60.00	14.40	09.024.7700
Randolph & Lisa Marie Kubes	N 1/2 of NE 1/4 less 7.81 ac	24	111	23	72.19	70.39	140.78	33.79	09.024.2700
Gregory J Vlasak	7.81 ac of N 1/2 of NE 1/4	24	111	23	7.81	7.61	15.22	5.00	09.024.2800
Randolph & Lisa Marie Kubes	SW 1/4 of NE 1/4	24	111	23	40.00	40.00	80.00	19.20	09.024.2500
Randolph & Lisa Marie Kubes	SE 1/4 of NE 1/4 less 300 x 588 ft	24	111	23	36.00	35.05	70.10	16.82	09.024.2500
Darren & Andrea Dejoy	300 x 588 ft of SE 1/4 of NE 1/4	24	111	23	4.00	1.95	3.90	5.00	09.024.2600
Robert B & Cynthia M Gregor	NW 1/4 of SE 1/4	24	111	23	40.00	40.00	80.00	19.20	09.024.5000
Robert B & Cynthia M Gregor	SW 1/4 of SE 1/4	24	111	23	40.00	30.00	60.00	14.40	09.024.5000
William J & Diane Hammes	NE 1/4 of SE 1/4	24	111	23	40.00	33.00	66.00	15.84	09.024.5100
William J & Diane Hammes	SE 1/4 of SE 1/4 less 10.00 ac	24	111	23	30.05	2.00	4.00	5.00	09.024.5100
Scott J. Simon	N 50 ft of W 1/2 of Block 3 & E 1/2 of Block 3 less S 80 ft of W 57 ft in Richters 3rd Add in City of Montgomery	9	111	23			3300.00	792.00	22.643.0130
Seneca Corp	Block 1 South Slope Addn (in City of Montgomery)						15000.00	3600.00	22.680.0010
City of Montgomery	Outlet for Sewage Disposal Plant						60000.00	14400.00	22.999.0920
City of Montgomery	Storm Waters from City						5600.00	1344.00	22.999.0710
County of Le Sueur Hwy Dept	On the W line of NW 1/4 of SW 1/4 of Sec 35-112 23 (Main) CAR #144						100.00	24.00	07.999.8889

Names of the Owners of all Lands and the Names of all Public Roads, Corporate Roads and Railroads that are Assessed for the Repair of said Ditch.	Description of each Parcel of Land to be Assessed for the Repair of said Ditch as it Appears from Original Lien Statement for Construction of said Ditch.	Section	Township	Range	Number of acres in each tract according to assessment rolls and tax list.	Estimated number of acres benefited.	Amount that each tract of land and each public road, corp-orate road and rail-road was benefitted by the construction of said ditch.	Amount that each tract of land and each public road, corp-orate road and rail-road is liable for and must pay for the repair of such ditch.	Board Meeting August 18, 2009, 24% Lien, 5 years, 4% interest Filing Date November 16, 2009
					Acres	Acres	Dollars	Dollars	
County of Le Sueur Hwy Dept	At the SW cor of NW 1/4 of SW 1/4 of Sec 26-112-23 (Spur 1 CAR #144)						588.00	141.12	07.999.8889
State of Minn-Hwy Dept DOT	In the NE 1/4 of SE 1/4 of Sec 33-112-23 (T.H. #13)						300.00	72.00	07.998.0033
Grand Total:							178,115.00	45484.70	

- 3,300 ABATEMENT  
\$ 174,815 BENEFITS

CITY OF  
MONTGOMERY

\$ 65,600 = 37.5% OF  
\$ 174,815 BENEFIT

**WARNEMUNDE LAW OFFICE, LLC**

TIMOTHY L. WARNEMUNDE  
400 FIRST STREET SOUTH  
P.O. BOX 22  
MONTGOMERY, MN 56069  
(507) 364-8611  
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June 30, 2014

Darrell Pettis  
Le Sueur County Administrator  
Le Sueur County Courthouse  
88 South Park Avenue  
Le Center, MN 56057

In re: City of Montgomery Petition for Redetermination of Benefits for Le Sueur County Ditch #54

Dear Darrell:

In August, 2013, you and I spoke about the city's possibly seeking a redetermination of benefits on County Ditch #54. You suggested the city may want to check into whether it believes it will be in a better position after the determination before actually filing the petition. I took your advice and turned the matter over to SEH Engineering. Their specialist in ditch law did a projected recalculation, based upon the existing legal standard, and determined the city's benefit would be reduced significantly by filing a petition.

The City Council reviewed this matter carefully and has now determined it wishes to proceed with the petition. I am therefore enclosing for your review and for filing the petition for redetermination of benefits for Le Sueur County Ditch #54 pursuant to Minn. Stat. Sec. 103e.351. If there is a filing fee which needs to be submitted, please let me know.

If you have any questions in this matter, please call me.

Sincerely,



Timothy L. Warnemunde

TLW:cs

Enclosure



**BEFORE THE LE SUEUR COUNTY BOARD OF COMMISSIONERS  
ACTING AS THE DRAINAGE AUTHORITY FOR  
LE SUEUR COUNTY DITCH #54**

**PETITION FOR REDETERMINATION OF  
BENEFITS FOR LE SUEUR COUNTY DITCH  
#54 PURSUANT TO MINN. STAT. SEC. 103e.351**

Petitioner represents and requests as follows:

1. Petitioner City of Montgomery, a Minnesota municipal corporation, believes that the original benefits or damages determined for Le Sueur County Ditch #54 do not reflect reasonable present date land values and/or that the benefit and damaged areas have changed. The following changes have occurred since the original benefits were determined in 1967:

- a) almost all of the land within the subject drainage system is agricultural, and there has been an exponential increase in tiling of the subject farmland since 1967, resulting in a significant increase in the amount of agricultural surface water delivered into the subject ditch; and,
- b) rural land values have increased significantly since 1967; and,
- c) there is a significant reduction in Petitioner City of Montgomery's use of the subject ditch since 1967.

The above changes, and other changes in the use of the ditch since 1967, Petitioner believes, renders the current benefit calculation method obsolete and unfair to all owners using the ditch and located within County Ditch #54's area of assessment.


2. Petitioner requests that Viewers be appointed to redetermine and report the benefits and damages of Le Sueur County Ditch #54.


3. Petitioner further requests that the Le Sueur County Board of Commissioners, acting as the drainage authority for Le Sueur County Ditch #54, hold the necessary hearings and conduct the proper procedures to redetermine benefits for Le Sueur County Ditch #54.

Dated this 26 day of JUNE, 2014.

LANDOWNER:

City of Montgomery, a Minnesota  
Municipal corporation

BY:   
Jean M. Keogh, Its Mayor

BY:   
Brian Heck, its City Administrator

LEGAL DESCRIPTION:

All lands within the Montgomery city  
limits located in the assessment area  
For County Ditch #54

**[477A.19] AQUATIC INVASIVE SPECIES PREVENTION AID. --**

**Subdivision 1. --**

**Definitions. --**

-- (a) When used in this section, the following terms have the meanings given them in this subdivision. --

-- (b) "Aquatic invasive species" means nonnative aquatic organisms that invade water beyond their natural and historic range. --

-- (c) "Watercraft trailer launch" means any public water access site designed for launching watercraft. --

-- (d) "Watercraft trailer parking space" means a parking space designated for a boat trailer at any public water access site designed for launching watercraft. --

**Subd. 2. --**

**Distribution. --**

-- The money appropriated to aquatic invasive species prevention aid under this section shall be allocated to all counties in the state as follows: 50 percent based on each county's share of watercraft trailer launches and 50 percent based on each county's share of watercraft trailer parking spaces. --

**Subd. 3. --**

**Use of proceeds. --**

-- A county that receives a distribution under this section must use the proceeds solely to prevent the introduction or limit the spread of aquatic invasive species at all access sites within the county. The county must establish, by resolution or through adoption of a plan, guidelines for the use of the proceeds. The guidelines set by the county board may include, but are not limited to, providing for site-level management, countywide awareness, and other procedures that the county finds necessary to achieve compliance. The county may appropriate the proceeds directly, or may use any portion of the proceeds to provide funding for a joint powers board or cooperative agreement with another political subdivision, a soil and water conservation district in the county, a watershed district in the county, or a lake association located in the county. Any money appropriated by the county to a different entity or political subdivision must be used as required under this section. Each county must submit a copy of its guidelines for use of the proceeds to the Department of Natural Resources by December 31 of the year the payments are received. --

**Subd. 4. --**

**Payments. --**

-- The commissioner of revenue must compute the amount of aquatic invasive species prevention aid payable to each county under this section. On or before August 1 of each year,

the commissioner shall certify the amount to be paid to each county in the following year. The commissioner shall pay aquatic invasive species prevention aid to counties annually at the times provided in section 477A.015. For aid payable in 2014 only, the commissioner shall certify the amount to be paid to each county by July 1, 2014, and payment to the counties must be made at the time provided in section 477A.015 for the first installment of local government aid. --

-- **Subd. 5.** --

-- **Appropriation.** --

-- \$4,500,000 in 2014, and \$10,000,000 each year thereafter, is appropriated from the general fund to the commissioner of revenue to make the payments required under this section. --

-- **EFFECTIVE DATE.** --

-- This section is effective beginning with aid payable in 2014.

# MINNESOTA • REVENUE

## 2014 Aquatic Invasive Species Prevention Aid

County Name	Watercraft Trailer Launches	x \$1,039 per Launch	Watercraft Trailer Parking Spaces	x \$114 per Space	=	Total Aid
Aitkin	65	\$67,521	504	\$57,540		\$125,061
Anoka	21	\$21,814	310	\$35,392		\$57,206
Becker	80	\$83,102	530	\$60,508		\$143,610
Beltrami	42	\$43,629	367	\$41,899		\$85,528
Benton	6	\$6,233	92	\$10,503		\$16,736
Big Stone	15	\$15,582	194	\$22,148		\$37,730
Blue Earth	23	\$23,892	288	\$32,880		\$56,772
Brown	9	\$9,349	135	\$15,413		\$24,762
Carlton	18	\$18,698	129	\$14,728		\$33,426
Carver	27	\$28,047	277	\$31,624		\$59,671
Cass	115	\$119,460	932	\$106,403		\$225,863
Chippewa	7	\$7,271	79	\$9,019		\$16,290
Chisago	21	\$21,814	360	\$41,100		\$62,914
Clay	4	\$4,155	35	\$3,996		\$8,151
Clearwater	26	\$27,008	158	\$18,038		\$45,046
Cook	46	\$47,784	292	\$33,337		\$81,121
Cottonwood	14	\$14,543	110	\$12,558		\$27,101
Crow Wing	97	\$100,762	893	\$101,951		\$202,713
Dakota	15	\$15,582	372	\$42,470		\$58,052
Dodge	0	\$0	0	\$0		\$0
Douglas	59	\$61,288	520	\$59,367		\$120,655
Faribault	8	\$8,310	66	\$7,535		\$15,845
Fillmore	0	\$0	0	\$0		\$0
Freeborn	11	\$11,427	122	\$13,928		\$25,355
Goodhue	8	\$8,310	197	\$22,491		\$30,801
Grant	13	\$13,504	103	\$11,759		\$25,263
Hennepin	49	\$50,900	836	\$95,443		\$146,343
Houston	6	\$6,233	56	\$6,393		\$12,626
Hubbard	65	\$67,521	391	\$44,639		\$112,160
Isanti	18	\$18,698	133	\$15,184		\$33,882
Itasca	185	\$192,175	562	\$64,162		\$256,337
Jackson	20	\$20,776	156	\$17,810		\$38,586
Kanabec	11	\$11,427	98	\$11,188		\$22,615
Kandiyohi	48	\$49,861	576	\$65,760		\$115,621
Kittson	5	\$5,194	32	\$3,653		\$8,847
Koochiching	29	\$30,125	165	\$18,838		\$48,963
Lac Qui Parle	9	\$9,349	92	\$10,503		\$19,852
Lake	35	\$36,357	331	\$37,789		\$74,146
Lake of the Woods	6	\$6,233	104	\$11,873		\$18,106
Le Sueur	27	\$28,047	377	\$43,041		\$71,088
Lincoln	13	\$13,504	151	\$17,239		\$30,743
Lyon	12	\$12,465	121	\$13,814		\$26,279
Mahnomen	7	\$7,271	46	\$5,252		\$12,523
Marshall	4	\$4,155	24	\$2,740		\$6,895
Martin	20	\$20,776	213	\$24,318		\$45,094
McLeod	14	\$14,543	171	\$19,523		\$34,066
Meeker	41	\$42,590	604	\$68,957		\$111,547
Mille Lacs	12	\$12,465	293	\$33,451		\$45,916

Certified 6/23/2014

# MINNESOTA • REVENUE

## 2014 Aquatic Invasive Species Prevention Aid

County Name	Watercraft Trailer Launches	x \$1,039 per Launch	Watercraft Trailer Parking Spaces	x \$114 per Space	=	Total Aid
Morrison	28	\$29,086	265	\$30,254		\$59,340
Mower	3	\$3,116	10	\$1,142		\$4,258
Murray	20	\$20,776	189	\$21,578		\$42,354
Nicollet	13	\$13,504	176	\$20,093		\$33,597
Nobles	12	\$12,465	105	\$11,988		\$24,453
Norman	2	\$2,078	16	\$1,827		\$3,905
Olmsted	1	\$1,039	0	\$0		\$1,039
Otter Tail	113	\$117,382	899	\$102,636		\$220,018
Pennington	6	\$6,233	31	\$3,539		\$9,772
Pine	30	\$31,163	244	\$27,857		\$59,020
Pipestone	0	\$0	0	\$0		\$0
Polk	14	\$14,543	91	\$10,389		\$24,932
Pope	19	\$19,737	178	\$20,322		\$40,059
Ramsey	17	\$17,659	255	\$29,113		\$46,772
Red Lake	2	\$2,078	10	\$1,142		\$3,220
Redwood	5	\$5,194	37	\$4,224		\$9,418
Renville	5	\$5,194	32	\$3,653		\$8,847
Rice	18	\$18,698	220	\$25,117		\$43,815
Rock	0	\$0	0	\$0		\$0
Roseau	7	\$7,271	90	\$10,275		\$17,546
Scott	12	\$12,465	186	\$21,235		\$33,700
Sherburne	16	\$16,620	142	\$16,212		\$32,832
Sibley	11	\$11,427	161	\$18,381		\$29,808
St. Louis	166	\$172,438	1173	\$133,918		\$306,356
Stearns	52	\$54,017	533	\$60,851		\$114,868
Steele	5	\$5,194	26	\$2,968		\$8,162
Stevens	4	\$4,155	26	\$2,968		\$7,123
Swift	8	\$8,310	67	\$7,649		\$15,959
Todd	38	\$39,474	294	\$33,565		\$73,039
Traverse	6	\$6,233	59	\$6,736		\$12,969
Wabasha	13	\$13,504	276	\$31,510		\$45,014
Wadena	9	\$9,349	75	\$8,563		\$17,912
Waseca	10	\$10,388	107	\$12,216		\$22,604
Washington	22	\$22,853	350	\$39,958		\$62,811
Watsonwan	7	\$7,271	71	\$8,106		\$15,377
Wilkin	2	\$2,078	16	\$1,827		\$3,905
Winona	15	\$15,582	210	\$23,975		\$39,557
Wright	59	\$61,288	412	\$47,037		\$108,325
Yellow Medicine	10	\$10,388	79	\$9,019		\$19,407
		\$2,250,000		\$2,250,000		\$4,500,000

2166  
Total Number of  
Launches

19708  
Total Number of  
Trailer Spaces

Certified 6/23/2014



July 8, 2014

Direct Dial: 320-656-3503  
Jkolb@RinkeNoonan.com

Le Sueur County Board of Commissioners  
c/o Darrell Pettis, County Administrator  
88 South Park Avenue  
Le Center, MN 56057

**Re: Petition of the City of Montgomery for a Redetermination of Benefits on County Ditch 54**  
**Our File No. 15741-0012**

Dear Board of Commissioners:

Darrell recently forwarded to me a petition of the City of Montgomery for a Redetermination of Benefits on County Ditch 54. In its petition, the City alleges that a redetermination is necessary because it believes that the original benefits or damages determined for CD 54 do not reflect reasonable present day land values and/or that the benefit and damaged areas have changed. The City notes the following changes since the original benefits were determined in 1967: (1) an exponential increase in tiling within the watershed of the ditch resulting in a significant increase in water delivered to the ditch; (2) a significant increase in land values within the watershed of the ditch; and (3) a significant reduction in the City's use of the ditch.

The City believes that the above changes render the current benefits roll obsolete and unfair to currently assessed landowners on the ditch.

One of the basic responsibilities of the Drainage Authority is to ensure that all properties benefited by the drainage system, or placing a burden on the drainage system because of an altered land use, are paying their fair share of costs on the drainage system. As often occurs, land use changes, new drainage and drainage practices, market values and other factors alter the nature and extent of benefits and benefited areas within the watershed of a drainage system. Often properties not assessed for benefits in original or subsequent proceedings become benefited and those originally determined to benefit, benefit less than originally determined. This is especially true where the existing benefits roll is extremely old.

The drainage code contains a process for redetermining benefits – found in section 103E.351. Basically, there are two processes in the statute that result in a redetermination of benefits, one is a pure redetermination – that is by action of the Drainage Authority after a determination that the

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P.O. Box 1497  
St. Cloud, MN 56302  
320.251.6700

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[1806529] Letter Commissioners 07 08 2014  
7/8/2014 2:30 PM

original benefits or damages determined in a drainage proceeding do not reflect reasonable present day land values or that the benefited or damaged areas have changed. The other is based on a 50% petition to correct an error or errors in the original determinations. The statute is confusing because it lumps two separate processes, for two separate purposes into the same sentence.

The statute breaks down like this: (1) “If the drainage authority determines that the original benefits or damages determined in a drainage proceeding do not reflect reasonable present day land values or that the benefited or damaged areas have changed . . . the drainage authority may appoint three viewers to redetermine and report the benefits and damages and the benefited and damaged areas.”

Or

(2) “If more than 50 percent of the owners of property benefited or damaged by a drainage system petition for correction of an error that was made at the time of the proceedings that established the drainage system the drainage authority may appoint three viewers to redetermine and report the benefits and damages and the benefited and damaged areas.”

Once you break it down, it is a bit easier to understand. The redetermination process stems from the Drainage Authority’s fundamental role as administrator of the drainage system and protector of the rights of the assessed landowners. Part of this role is to ensure that every property receiving a benefit from the ditch is paying its fair share of ditch costs. That is why when land values and use patterns change, or when additional property, not originally determined, is benefiting, redetermination is appropriate.

In both cases, the Drainage Authority’s decision to order a redetermination is discretionary. A petition is not required for a redetermination when the Drainage Authority determines that the original benefits or damages determined in a drainage proceeding do not reflect reasonable present day land values or that the benefited or damaged areas have changed. A petition is required if the purpose of the redetermination is to correct an error in the original proceedings.

The City is not petitioning to correct an error. Rather, the City is taking a formal action, in the form of a petition, to inform the Drainage Authority of facts that the City believes warrant a redetermination of benefits. As I stated above, the Drainage Authority’s decision to redetermine benefits is discretionary. However, if the Drainage Authority agrees with the City and finds that the original benefits or damages determined in a drainage proceeding do not reflect reasonable present day land values or that the benefited or damaged areas have changed, then a redetermination of benefits is appropriate.

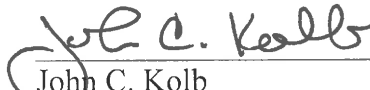
There is no requirement for a hearing to consider the petition. The Drainage Authority may consider the petition in the ordinary course of its business. However, if the Drainage Authority determines a redetermination of benefits should occur, it must adopt findings that the original benefits or damages determined in a drainage proceeding do not reflect reasonable present day

[15741-0012/1806529/1]

land values or that the benefited or damaged areas have changed to support its order for a redetermination of benefits.

Once initiated, the redetermination process proceeds as provided in the drainage code – including a final, public hearing on determination of benefits and benefited and damaged areas. For open ditches, the redetermination process also triggers the requirement to acquire and establish one-rod grass buffer areas adjacent to all portions of open ditch.

Sincerely,

  
\_\_\_\_\_  
John C. Kolb  
JCK/cmt

[15741-0012/1806529/1]