



DRAINAGE SYSTEM GUIDELINES

BROWN COUNTY, MINNESOTA

Revised 2018

Drainage Contacts:

Wayne Stevens, Hwy Engineer/Ditch Inspector 507-233-5700

Andrew Lang, Asst Hwy Engineer 507-233-5700

Jean Prochniak, Auditor-Treasurer 507-233-6616

Jill Derksen, Assessment Clerk 507-233-6613

Cindy Rueckert, Assessment Clerk 507-233-6699

Updated March 2018

Note: This document puts forward guidelines to be used by Brown County when making decisions regarding public drainage issues. The guidelines have never been formally adopted by the Brown County Drainage Authority. There are vast differences in ditch designs, capacities, soil types and other issues that must be considered, therefore each ditch concern should be considered on its own merits. Ridged adherence to this document in all situations may not be in the best interest of a drainage system.

SECTION 1 – PURPOSE

The purpose of these guidelines is to clarify the procedures for repair, maintenance and the determination of benefits related to public drainage.

These guidelines also identify performance standards and best management practices that are necessary for the efficient and effective operation of public drainage systems.

Benefitted landowners that own the ditch systems have the lawful right to have these drainage systems maintained. These benefitted lands and their owners have paid for the construction and maintenance of the systems without the use of public funds. State statute allows some outside funds to be used for flood control and environmental purposes only, as provided for in 103E.011.

If any portion of these guidelines should come in conflict with any Minnesota Statute, primarily Minnesota Statutes Chapter 103E, the Statute shall prevail over these guidelines.

These guidelines will be reviewed on a regular basis and the most current document will be posted on our county website at: <http://www.co.brown.mn.us/drainage>.

These guidelines are effective as of March 2018 as reviewed by the Brown County Board of Commissioners at their regular board meeting.

Commissioner Borchert
Commissioner Berg
Commissioner Windschitl
Commissioner Simonsen
Commissioner Potter

Auditor-Treasurer, Jean Prochniak
County Ditch Inspector, Wayne Stevens

TABLE OF CONTENTS

GENERAL INTRODUCTION AND DEFINITIONS

INTRODUCTION	
DEFINITIONS	4
RECORD RETENTION	
Drainage Records Modernization	5-6
Benefited Acres	6
REPAIR PROCEDURES	
General Information	7-8
Procedure to Initiate Repairs	8-9
Replacement of Tile	9-11
Payment of Damages during a repair	11
DRAINAGE IMPROVEMENTS/CONSTRUCTION	
Petition Requirements/Bond	12
Expenses Not to Exceed Bond	12
Preliminary Survey & Report	13
Hearings	13-14
Findings & Collections	14
FUNDING DRAINAGE SYSTEMS	
Repair Funds	15
Fee Schedule	15
Annual Drainage Assessments	16
Interest	17
CHANGES IN BENEFITS	
Removal of Property – Abandonment/Partial Abandonment	18
Petition to Remove Benefits	19
Parcel Splits	19
REDETERMINATION OF BENEFITS	
Procedure Requirements	20
BUILDING STRUCTURES OVER TILE LINES	21
PRIVATE CROSSINGS/APPROACHES	21-22
EROSION CONTROL	
Vegetation Control	23
Drop Inlet Pipe Structures	24
Grass Buffer Strips	24
CONSTRUCTION EASEMENTS	25
MUNICIPAL USE OF A PUBLIC DRAINAGE SYSTEM	25
MISC DRAINAGE SYSTEM ISSUES	25-27
COUNTY DITCH INSPECTOR DUTIES	28
Checklists/Forms	29-36

1. DEFINITIONS

The definitions found in 103E.005 are used in this document. Definitions not found in 103E.005 are found below.

Drainage System: A public drainage system managed by the County or a Joint County Drainage Authority including County, Judicial and Joint Ditches.

Drainage Authority Representative: A person appointed by the County board to act on behalf of the Drainage Authority where the repairs are contemplated and may include Drainage Inspectors, Engineers and their assistants or other individuals appointed to perform duties as required by Minnesota Drainage Law.

Normal agricultural practices: Normal agricultural practices include activities normally undertaken for the purposes of raising an agricultural crop and include traditional methods of tilling, planting, cultivating and harvesting. For the purposes of this document the digging of ditches for surface drainage, tiling, the raising of crops that requires unusually deep penetration of the soil or any other practices that require the unusually deep penetration of the soil, are not considered normal agricultural practices.

Drainage Authority on Joint Drainage Ditches. Five (5) members chosen from a joint meeting of the counties involved in the drainage system which will meet annually. This authority cannot delegate its statutory responsibilities to landowners, and shall not approve any action in violation of Minnesota law regardless of the percentage of landowners requesting a particular action.

County Auditor: By law, the County Auditor has oversight of all financial books and records of County Ditches. The Auditor becomes an information resource for the ditch authority, engineers, landowners, and others who have an interest in county ditches. The Auditor's Office is responsible for maintaining all drainage records and for the preservation of all drainage records.

Drainage Inspector. The person appointed by the Drainage Authority, pursuant to Minnesota Statute 103E.065, to inspect and administer the drainage systems of the Drainage Authority.

Improvement. Any work on or within a drainage system that lowers the original ditch or drain tile elevation or increases the original capacity of a ditch or drain tile.

Repair. Any activity that maintains a ditch in, or restores a ditch to, the state it was constructed. All decisions regarding repairs to public drainage systems are the responsibility of the entire Drainage Authority.

RECORD RETENTION

Drainage Records Modernization:

- ✓ The conversion of paper, Mylar and other types of hard copy documents and maps to digital format greatly reduces the need for handling of the originals, and potentially the need to retain them.
- ✓ The digitization of drainage records provides an archived copy of all original documents and maps, preventing the loss of these historical legal documents (with proper electronic backup)
- ✓ The ability to share greater amounts of information more readily and efficiently with landowners, auditors, engineers, viewers and others involved in drainage system administration.
- ✓ The accessibility and ease of printing of electronic documents enables more efficient information sharing among the county staff involved in drainage administration.
- ✓ Digitized layers can readily be loaded onto laptops or handheld GPS equipment with mapping capability, and taken into the field.
- ✓ A website format where drainage records will be available to the public could be a valuable tool for benefits discussions, government transparency, public relations and accountability.

The need to gather and modernize these records is important in order to preserve historical legal documents and enable more efficient drainage system administration. Some documents and maps are more than 100 years old and are falling apart. The material they were printed on can crack, break or tear after many years of being rolled up or stored. The need to convert these paper and Mylar maps to a digital format is the first step in an important process of preserving these documents and making them easily accessible.

Brown County has purchased a program to modernize our drainage records and history. Some of the attributes that our system will track include:

- Drainage system number
- Location of the system, flow direction and watershed ID
- Length of the system, including miles of open ditch and/or tile.
- Dates and types of key proceedings, such as petitions and orders for establishment, improvement, redetermination of benefits, and repairs.
- Engineering-engineer of records, as well as estimated and final costs for various proceedings and projects
- Benefits-Viewer appointments, dollar value of benefits and distribution of assessments
- Ongoing observations/comments from Drainage Inspectors concerning the system.

- Board Minutes where the County Board acts as the Ditch Authority
- Additions of culverts, bridges, side inlets
- Buffer strip locations and dimensions.
- Construction Easements established as part of redetermination proceedings.

One of the most important components of drainage records modernization is scanning of the historical drainage system records. Scanning and digitizing these records protects them from loss due to deterioration and enables many efficiencies of drainage system management.

BENEFITED ACRES



Benefits are the separable portion of a property’s value that can be attributed to the drainage system or project. The benefits roll for a drainage system determines which lands will pay for future drainage repairs.

The viewers’ report must show, in tabular form, or each lot, 40-acre tract, and fraction of a lot or tract under separate ownership that is benefited:

- a) A description of the lot or tract
- b) The names of the owners as they appear on the current tax records of the county and their addresses
- c) The number of acres in each tract or lot
- d) The number and value of acres added to a tract, or lot by the proposed drainage of waters
- e) The damage, if any, to riparian rights.
- f) The damages paid for the permanent strip of perennial vegetation (Buffer strip)
- g) The total number and value of acres added to a tract, or lot by the proposed drainage of public waters, wetlands, and other areas currently being cultivated
- h) The number of acres and amount of benefits being assessed
- i) The amount each tract or lot will be benefited or damaged

REPAIR PROCEDURES

A. General information

All guidelines found in this document are subject to Minnesota State Statute.

A repair as defined in MS 103E.701, Subdivision 1 "... means to restore all or part of a drainage system as nearly as practicable to the same hydraulic capacity as originally constructed and subsequently improved, including resloping of ditches and leveling of spoil banks if necessary to prevent further deterioration, realignment to original construction if necessary to restore the effectiveness of the drainage system and routine operations that may be required to remove obstructions and maintain the efficiency of the drainage system."

All decisions regarding repairs to public drainage systems are the responsibility of the Drainage Authority. Brown County shall retain a Drainage Inspector who shall monitor all drainage systems within Brown County for necessary repairs/maintenance. The Drainage Inspector is responsible for:

- Submitting repair requests for presentation to the Drainage Authority for their approval.
- Obtaining contractors to do the repair work and approve their claims for submittal to the Drainage Authority for their approval.

All repair work documentation shall become part of the drainage system permanent file.

The Drainage Inspector and contractors shall attempt to contact landowners before entering their property concerning all drainage issues.

Contractors are required to submit a Certificate of Insurance at the beginning of each year. The insurance limits shall be as prescribed by M.S. 466.04

Contractors are responsible for contacting Gopher State One Call before digging as required by Minnesota law.

Minor repairs costing less than \$10,000 may be contracted for repair before approval of the full Drainage Authority. A final inspection report, including final costs must be presented to the full Drainage Authority at their regular scheduled meetings within a reasonable amount of time after construction is completed.

All other repairs shall be preapproved by action of the Drainage Authority prior to starting work.

Once a drainage system is established the Drainage Authority has an affirmative duty to maintain the system and the grass strips.

A repair can only affect a county drainage system. Any repairs that will affect public waters must be reviewed by the Department of Natural Resources prior to the commencement of said repairs. Any repair violations issued by the Drainage Inspector will be sent to a contractor, County Commissioner of the district, and any other applicable authorities.

Repairs include:

- Realignment to original construction.
- Removal of obstructions if necessary to restore the effectiveness of the drainage system.
- Routine operation that may be required to maintain the efficiency of the drainage system.
- Incidental straightening of tile system resulting from the tile laying technology used to replace old tile.
- Replacement of tile with the next larger size that is readily available, if the original tile is not readily available.
- Re-sloping of ditch side slopes to reduce maintenance costs.
- Side inlet controls installed as part of the project.
If the size of an inlet is increased, that is considered an improvement, not a repair.
- Establishment of a one-rod grass strip is not required in a repair if viewers are not sent out, although, these may be encouraged in key areas where the strip may be considered valuable. This would require a hearing as per M.S. 103E.705

B. Procedures to initiate repairs

There are two methods used to initiate a repair to a drainage system and grass strip.

1. The most common method is to have the Drainage Authority order the repair without a petition. (103E.705) The Ditch Inspector must file a written report to the Drainage Authority. The Drainage Authority can order a repair without bids where the cost of repairs for one year will be less than the \$100,000.00 or \$1,000.00 per mile of open ditch in the ditch system, whichever is greater. (subject to change see section 471.345, subdivision 3.) The only exception to this limit would be for repairs and construction after a disaster.

In the case of a Joint Ditch, where the authority is shared with another county, Brown County and the adjoining county (ies), by written agreement, have authorized each county on the ditch system to order repairs not to exceed \$5,000.00 per occurrence and \$20,000.00 per ditch, per calendar year. Any repairs in excess of \$5,000.00 per occurrence and \$20,000.00 per ditch per calendar year shall not be made without the authorization of a majority of the Joint Ditch. If the estimated cost of the project on a joint ditch exceeds \$25,000.00 the Drainage Authority must advertise for the proposed work. (see 103E.505 s.3)

2. The second method of initiating a repair is by petition (103E.715). The petition can be signed by “an individual or an entity interested in or affected by a drainage system...”. This petition is then presented to the Drainage Authority. If the Drainage Authority determines that the drainage system needs repair, an engineer shall be appointed to examine the drainage system and make a report.

Once the report is received from the engineer a public hearing must be held and notices mailed to the petitioners, owners of property and political subdivision likely to be affected by the repair. The notice must be mailed at least ten days before the hearing. The Drainage Authority’s ability to reject the petition is further restricted if at least 26% of landowners sign the repair petition. (See 103E.715 subdivision 4)

- The petition may be signed by an individual or an entity interested in or affected by the drainage system.
- The petition must be filed with the County Auditor as per 103E.715
- If the Drainage Authority determines that the drainage system needs repair:
 - i. An engineer will examine the drainage system and make a recommendation to the Drainage Authority; and
 - ii. A public hearing must be held, with mailed notices to the petitioners as well as owners of property and political subdivisions likely to be affected by the repair.

C. Replacement of tile

When replacing tile lines that are in disrepair it is Brown County policy to use tile with the same size and rate of flow and to locate the new tile at the same depth and as close to the original location as nearly as practicable. There are some exceptions.



Minnesota Statute 103E.701 Subdivision 6 specifically allows;
a tile or open ditch to be realigned as a repair if the realignment is for the “preservation, restoration, or enhancement of wetlands.”

Minnesota Statute 103E.701 Subdivision 1 also allows;

- (1) incidental straightening of a tile system resulting from the tile-laying technology used to replace tiles; and
- (2) replacement of tiles with the next larger size that is readily available if the original size is not readily available.

Subsidence of peat ground or erosion may expose tile lines or reduce the cover to the point where tile lines are being damaged by normal agricultural activities. Replacing tile deeper than originally installed is considered an improvement and will rarely be done and

then only under specific conditions. If more cover is necessary to protect the tile it is preferable, when practicable, to realign the tile short distances into side hills nearly as practicable to the original alignment. The following conditions must be met before the Brown County Drainage Authority will allow a tile line to be realigned or replaced at a lower depth than originally constructed.

- a) The tile must be in a state of disrepair to the point a Drainage Inspector appointed by the Drainage Authority or Certified Engineer appointed by the Drainage Authority for the purpose of examining the drainage system in question, files a written report to the Drainage Authority stating the tile line must be replaced to maintain the efficiency of the drainage system.
- b) Subsidence or erosion must have occurred during normal agricultural practices.
- c) Replacing the tile at its original location and depth will result in a situation where damage by normal agricultural practices is likely to occur.
- d) The realignment or replacement of the tile at a lower depth will not result in additional lands being drained.
- e) The realignment or replacement of the tile at a lower depth should not give landowners the ability to increase the efficiency of their private tile beyond the tile's original construction.
- f) The Drainage Authority must consider the total cost of the repair and whether or not the repair is in the best interest of the drainage system.

Exceptions to tile replacement are outlined in Minnesota Statute 103E.701 Subd. 6 and include:

- Drainage tiles or open ditches may be realigned as a repair if the realignment is for the preservation, restoration, or enhancement of wetlands, in accordance with Subd. 6.
- Incidental straightening of a drainage tile system resulting from the tile-laying technology used to replace drainage tiles, in accordance with Subd. 1.
- Replacement of drainage tiles with the next larger size that is readily available if the original size is not readily available, in accordance with Subd. 1.
- If the subsidence has reduced the cover over the tile such that the tile is being damaged by normal agricultural practices, the tile can be relayed or realigned to maintain adequate cover.
- Replacement or realignment of drainage tile deeper than originally installed.
 - Replacement of drainage tile deeper than originally installed is considered an improvement and will rarely be allowed, and then only under specific conditions.
 - If more cover is necessary to protect the drain tile, realignment of the drain tile short distances into side hills is preferred when practicable.
 - These conditions must be met before the Drainage Authority will allow a drain tile line to be realigned or replaced at a lower depth than originally constructed.

- A written report from the Drainage inspector, Drainage Authority, or engineer.
- The report must state that the drain tile line must be replaced in order to maintain the efficiency of the drainage system.
- Subsidence or erosion must have occurred during normal agricultural practices.
- Replacing the drain tile at its original location and depth will result in a situation where damage by normal agricultural practices is likely to occur.
- The realignment or replacement of the drain tile at a lower depth will not result in additional lands being drained.
- The realignment or replacement of the drain tile at a lower depth will not increase the efficiency of a private drain tile beyond the drain tiles original construction.
- The Drainage Authority must consider the total cost of the repair and whether or not the repair is in the best interest of the drainage system.
- All repairs shall be documented and entered into the drainage database.

D. Payment of damages during a repair

There is no mention of “repair right-of-way” in Minnesota Statute 103E. Minnesota case law has determined the “repair right-of-way” is whatever is necessary to maintain the drainage system. It is Brown County Drainage Authority policy to make repairs on ditch systems when the crops are harvested. Brown County does not typically pay for damages to crops.

When requested by landowners, the Brown County Drainage Authority may order damages to be paid to the landowners for loss of crop production during the project construction. Damages to grass buffer strips or other non-crop land may be paid when the damages occur on lands enrolled in a government program that requires vegetative cover be maintained as part of the program. Damages to grass or cover crop will not be paid if the replanting is performed by the contractor as part of the repair. Damages to crops planted in violation of an established buffer strip easement will not be paid.

Pursuant to existing authority granted to the Brown County Ditch Authority (BCDA) by those joint ditch authorities existing between Brown County and each of its neighbors, BCDA may authorize and approve repairs on a joining ditch whenever a repair is within its boundary. Notwithstanding the foregoing, the following rules apply to any such repairs:

- Repairs in excess of \$5,000 shall not be commenced prior to notification of the proposed repair to the other affected county; and
- No repair shall be authorized or approved by BCDA if it is a repair that is in excess of \$10,000 per occurrence or the repair would result in more than \$20,000 of total ditch repairs in a calendar year to the ditch to be repaired

Improvements/Construction – 103E.215

This procedure is used to improve an established and constructed drainage system.

Subd. 2. **Definition.** In this section "improvement" means the tiling, enlarging, extending, straightening, or deepening of an established and constructed drainage system including construction of ditches to reliner or replace tile and construction of tile to replace a ditch.

Subd 3. An improvement may only extend a drainage system downstream to a more adequate outlet and the extension may not exceed one mile.

The Process:



Petition Requirements

A petition is prepared by an Attorney and is filed with the Auditor's office. The petition must:

1. Have the appropriate number of signatures – 26% of the owners that the property passes over.
2. Define the drainage system
3. State that the drainage system has insufficient capacity or needs enlarging or extending to furnish sufficient capacity or a better outlet;
4. Describe the starting point, general course and terminus of the proposed improvement.
5. State that the proposed improvement will be of public utility and promote the public health
6. Contain an agreement by the petitioners that they will pay all costs and expenses incurred even if the improvement proceedings are dismissed.

The petitioner must file a bond with the petition for at least \$10,000 that is payable to the county where the petition is filed. The bond must have adequate surety and be approved by the county attorney where the petition is filed. The bond must be conditioned to pay

the costs incurred if the proceedings are dismissed or a contract is not awarded to construct the drainage system proposed in the petition.

When a petition and the bond required are filed, the auditor shall present the petition to the board at its next meeting. The drainage authority shall appoint an engineer to examine the drainage system and make an improvement report. This must be done within 30 days. (See RBA presented at 10/6/15 board meeting).

Expenses Not to Exceed Bond

The costs incurred before the proposed drainage project is established may not exceed the amount of the petitioners' bond. A claim for expenses greater than the amount of the bond may not be paid unless an additional bond is filed. If the drainage authority determines that the cost of the proceeding will be greater than the petitioners' bond before the proposed drainage project is established, the drainage authority must require an additional bond to cover all costs to be filed within a prescribed time. The proceeding must be stopped until the additional bond prescribed by the drainage authority is filed. If the additional bond is not filed within the time prescribed, the proceeding must be dismissed.

Preliminary Survey and Report

The appointed engineer performs survey for alignment and profile of improvement and prepares a preliminary report discussing the improvement. This is filed with the county board and a hearing date is established. The report is distributed to DNR and other agencies along with the landowners along that system. The hearing is to be scheduled 30 days after the DNR notification.

Preliminary Hearing

When the engineer's report is filed, the county auditor notifies the drainage authority and obtains **a resolution and order for hearing**. The hearing must be held within 30 days of the date of the order. Notice for the **preliminary public hearing must be mailed to the petitioners, and to the landowners of all land likely to be assessed. Although not required, it may be a good idea to publish the notice in a legal newspaper in the area.**

The preliminary engineer's report is presented at the public hearing. If the report causes the drainage authority to find the project is unfeasible, the drainage authority moves to dismiss. Legal counsel should then be instructed to prepare the findings and an order of dismissal, to be presented at a regular open meeting of the drainage authority.

If the drainage authority finds the project to be feasible, it appoints three viewers and directs the engineer to prepare a detailed study and final report.

The viewer's determine the benefits resulting from the improvement. The determination of benefits resulting from the improvement is limited to those lands actually benefiting

from the improvement. The cost of the improvement is therefore not borne by the entire ditch system.

Improvement benefits must exceed improvement costs or the petition for improvement must be dismissed.

A petition may be dismissed by a voluntary action of the petitioners'. This may be done at any time before the establishment of a project by an action of a majority of the petitioners who own at least 60% of the area as described in the petition. Costs must be paid before the dismissal becomes effective.

Viewer's Report

The viewer's determine the benefits for each 40 acre parcel based upon the improved drainage. They will determine damages to each 40 acre parcel based on either the construction occurring or other factors. A report is filed with the County Board.

Final Engineer's Report

The Engineer studies additional matters which may have arisen since the preliminary hearing and prepares a final report for the board.

Final Hearing

The final engineer's report is distributed to the DNR and other agencies. A final hearing is scheduled 30 days after the DNR notification. Landowners are also notified of this final hearing. At the hearing the board would:

- a. Dismiss the proceedings
- b. Accepts the reports and order the construction to proceed
- c. Orders additional research or information and continues the hearing to another date.

Landowners have 30 days to appeal the action in the county system.

Project Construction

Engineer finishes final bidding documents for the project. Bids are received from contractors interested in performing the work. The board would award the contract to successful bidder if less than 130% of engineer's cost. Contractor builds project and may be paid monthly by the Board for work completed to date.

Funding and Collections

Upon completion of the project a final acceptance hearing is held. The board sets the terms for the repayment of ditch liens. (Maximum is 23 years). The board will also establish the interest rate. The final lien amounts are calculated and certified for repayment.

We need to update the GIS maps with any changes to tile size or changes to the ditch system upon approval. (See project checklist to be maintained for each improvement request maintained at the end of this document)



FUNDING DRAINAGE REPAIRS

The drainage authority is responsible for establishing a ditch fund from which the payment of all costs and expenses in connection with a ditch are made. The County Auditor is required to maintain separate accounts for each ditch system within the county's financial system. The money from the collection of liens and assessments and interest thereon is deposited into each ditch's respective account.

COMMON TYPES OF COSTS:

- ❖ Routine Repairs – the drainage code makes repair of systems mandatory
- ❖ Major Repairs – Normally, major repairs should be initiated by petition, should have an engineer report, and bids should be obtained
- ❖ Flood Repair – Refer to Mn Statute 103E.011
- ❖ Improvements – may include tiling, enlarging, expanding, straightening, or deepening of an established drainage system
- ❖ Administrative Costs – legal fees, per diems, audit fees, inspection or engineering fees, mileage
- ❖ Interest – when funding is provided by an advance from the general fund (Interest rate to be set by the drainage authority)
- ❖ Allocated Costs – approximate the proportion of time or dollars spent by ditch that are not directly associated to any single ditch.
- ❖ Engineer Costs
- ❖ Viewers Expenses
- ❖ Board members may be paid a per diem incurred while employed in drainage proceedings or construction, or in the inspection of any drainage system if the board member is appointed to a committee for that purpose.
- ❖ The cost of the petitioner's bond

FEE SCHEDULE

Brown County has a fee schedule established for the maintenance of the accounting records of the drainage systems. The following fees are currently included in the fee schedule for the county:

Drainage Assessments	
New Lien – Minimum Charge \$50	\$5.00 per parcel
Amortized Ditch – Minimum Charge \$50	\$25 per Master/\$5 per parcel
Drainage Petitions	\$150
Ditch Master adjustment/split	\$10 – billed to parent parcel
Drainage Systems Annual Fee (Based on Footage of open ditch and/or tile. Minimum of 500')	\$25,000
Ditch Inspector Fee (Based on Footage of open ditch and/or tile. Minimum of 500')	\$20,000

ANNUAL DRAINAGE ASSESSMENTS

Assessments are made in proportion to the benefits allocated to each property.

The main source of funding is a ditch assessment. Whether the assessment should be collected before a repair cost is paid, or whether the repair should be done with borrowed funds is determined by the county board. Each ditch should have a reserve sufficient to cover the normal and predictable repairs that happen over time.

If money is not available in the drainage system account on which the warrant is drawn, the board may, by unanimous resolution, transfer funds from any other drainage system account or from the county general revenue fund to the drainage system account. The money plus interest must be reimbursed from the proceeds of the drainage system that received the transfer. Best practices would suggest building a reserve for those ditches where ongoing repairs can be predicted.

Beginning in August of each year, the Drainage committee will begin work on the assessments that will be considered for the next year. A spreadsheet is created for each system. (See sample document attached). Analyzing the true financial condition of a ditch fund is a time consuming task. There is a difference between cash balance, fund balance and fund health. The fund can have a positive cash balance but be seriously overspent. Consider a fund with \$300 Cash and a \$2,000 loan from the general fund, with \$1,000 of uncollected assessments.

The fund reserve balance is (\$1,700) and the “health of the fund is (\$700)

\$300 cash balance + \$1,000 uncollected assessments - \$2,000 loan = \$700 “Health” of the fund

The current philosophy applied to assessing annual assessments in Brown County is the Average Annual Expenditures – the projected fund balance + \$2,000 = the Assessment to be applied. We have a minimum of \$1,000 for an annual assessment. The projected fund balance would include outstanding loans from the general fund, uncollected assessments and projected repairs. (See Addendum C)

The Drainage Committee reviews the proposed assessments and recommends to the county board the amounts to be billed. (Billing Document shown as Addendum D) Once the assessments are approved billings are forwarded to landowners based on these guidelines:

- Landowners will be given a period of 60 days to pay assessment billings in full with no interest.
- Landowners who do not pay in full have the following options:
 - Divide the assessment into two (2) installments on the following year's tax billing. Interest would be applied at the rate determined annually by the county drainage authority.
 - Landowners have the option to amortize the assessment for three (3) years with an interest rate determined annually by the county drainage authority.

INTEREST

The interest rate on the drainage lien principal from the date the drainage lien statement is recorded must be set by the board but may not exceed the rate determined by the state court administrator for judgments under section 549.09. This is the link to review the interest assigned by the State Court Administrator on December 20th each year. <http://www.mncourts.gov/State-Court-Administrators-Office.aspx>. Currently, the rate is 4%.

MN Statutes 103E.735 places limits on the size of a repair fund. The fund may not exceed 20 percent of the assessed benefits of the drainage system or \$100,000, whichever is greater. Assessments for a repair, or to replenish the repair fund, may be collected in equal annual installments.

If a surplus has existed in a drainage system account for a period of 20 years or more, and there has not been any expenditures from the account during the period, the board, by a unanimous resolution, may transfer the surplus remaining in the drainage system account to the general revenue fund of the county.

Suggested Calendar Milestones:

August 1 – Early evaluation of ditch fund balances and anticipated repairs or projects.

Sept 1 – Review proposed assessments with the drainage committee

October 1 - Public Hearing and Assessment billings mailed.

December 31 – Assessments proofed for the tax bills and liens filed as appropriate.



CHANGES IN BENEFITS

Once a drainage system is established benefits can only be changed by petition and hearing as per MN Statute 103E.

Corrections of clerical errors are allowed without a hearing after sufficient documentation is completed.

A. Removal of Property or Abandonment or Partial Abandonment

After construction of a drainage system, an owner of benefited property may petition the drainage authority to remove property from the drainage system. The petition must be filed with the auditor of the county. If the drainage system is under the jurisdiction of a joint county drainage authority, the petition must be filed with the county having the largest area of property in the drainage system, where the primary drainage system records are kept.

When the petition is filed, the drainage authority in consultation with the auditor shall set a time and location for a hearing on the petition and shall give notice of the hearing by mail to the owner of all property benefited by the drainage system, and either in a newspaper of general circulation within the affected drainage area.

At the hearing, the drainage authority shall make findings and shall direct, by order, that the petitioners' property be removed from the drainage system if it can be determined that:

(1) that the waters from the petitioners' property have been diverted from the drainage system, or that the property cannot significantly or regularly use the drainage system;

(2) that the property is not benefited by the drainage system; and

(3) that removing the property from the drainage system will not prejudice the property owners and property remaining in the system.(103E.805)

The procedures for the partial abandonment of a public system are found in 103E.806. At the hearing the drainage authority shall make findings and direct, by order, that part of the drainage system be abandoned, if it is determined that part of the drainage system does not serve a substantial useful purpose as part of the drainage system to any property remaining in the system and is not of a substantial public benefit and utility.

The property that has been removed from the drainage system is NOT affected by the drainage system at any later proceeding for the repair or improvement of the drainage system and a drainage lien or assessment for repairs or improvements may not be made against the property that has been removed on or after the date of the order.

An order under this section does not release the property from a drainage lien filed on account of the drainage system before the date of the order. An order under this section does not release the property from any assessment or a drainage lien filed on or after the date of the order for costs incurred on account of the drainage system before the date of the order.

After partial abandonment of a drainage system, a repair petition may not be accepted for the abandoned part of the drainage system and the responsibility of the drainage authority for that part of the drainage system ends.

The procedures for the total abandonment of a public system are found in 103E.811.

The procedures for a municipality to take over all or part of a county system are found in 103E.812. Brown County encourages municipalities to formally take control of public systems used as, or will be used as, municipal storm systems.

B. Petition to remove benefits but not land from a drainage system

The placement of land into a temporary or permanent conservation easement program is not sufficient cause to remove or reduce a landowner's ditch benefit. Brown County has historically removed benefits from lands as part of a wetland restoration project only after a certified engineer has shown that the impoundment is of a benefit to the drainage system in the form of reduced maintenance or an increase in the efficiency of all or part of the system. Each petition for removal of benefits must be filed in accordance with 103E.805 and will be handled individually based on the merits of the restoration project.

Benefits can be reduced without impoundment or diversion only if executed as part of a Redetermination of benefits of the entire ditch system. (As per Kurt Deter letter 9-12-00) MS 103E.805



C. Parcel Splits on Ditches

A significant source of complication for benefit allocation arises when property is subdivided or platted.

MN Statute 103E.625 SUBDIVISION BY PLATTING MUST HAVE LIENS APPORTIONED.
A tract of property with a drainage lien that is subdivided by platting is not complete and the plat may not be recorded until the drainage liens against the tracts are apportioned and the apportionment is filed with the county recorder of the county where the tract is located.

A sample of the ditch split letter sent to landowners is included as Addendum A.

REDETERMINATION OF BENEFITS (See Addendum B for detailed information on redetermination processes in Brown County)

The Drainage Authority may redetermine benefits and damages:

- Whenever it judges the original benefits and damages determined in drainage proceeding do not reflect reasonable present-day values or that the benefited or damaged areas have changed; OR
- When more than 50% of the owners of the properties benefited or damaged by a drainage proceeding petition for the correction of an error that was made at the time the system was established.

The most common reasons for a redetermination of benefits and damages include:

- There are lands draining into the system which are benefited by the system but are not assessed for benefits.
- Benefits determined many years ago are unrealistic in terms of current land values.
- In the case of a repair by petition, additional lands may be brought into the system that have not previously been assessed benefits. Lands already in the system may have been assessed at land values determined many years ago. A redetermination will assess the entire system at current land values.
- Redetermined benefits and damages replace the original benefits and damages, and benefited and damaged areas must be used in place of the original determinations in all subsequent proceedings related to the drainage system.
- When a petition for an improvement of a separable portion of a drainage system or lateral has been filed, it may be necessary to provide for a fair distribution of the separable maintenance costs and for assessment of future repair costs

Procedure Requirements:

- A resolution of the Drainage Authority.
- Three viewers are appointed to perform the redetermination and report the benefits and damages and the benefited and damaged areas.
- An engineer may be appointed to assist the viewers.
- The viewer's report is filed with the county auditor.
- A property owners report is prepared by the auditor from the viewer's report, and a copy of the property owners' reports is mailed to each owner of property affected by the drainage system.
- A hearing is held on the report. The hearing is similar to the final hearing in the establishment of a new system, except it is to be held within 30 days after the property owners' report is mailed.
- A redetermination of benefits and damages is appealed in the same way as an order establishing benefits and damages. (See addendum B to these guidelines for Brown County's detailed processes)

BUILDING STRUCTURES OVER TILE LINES

Permanent structures of any type should not be built over or near a public tile line. Landowners who do build any type of structure over or near a tile line assume all liability for any damage caused by the failure of the tile line. The landowner is responsible for the cost of moving a tile line away from a structure. Before a tile line is moved the landowner must submit a plan to the Drainage Authority showing the new location of the tile in relation to the old tile and all surrounding structures, list the materials to be used and name the contractor doing the work. The Drainage Authority may require a licensed engineer to review the plan before construction.

No permanent structure can be built within 75' of the crown of the spoil bank or 100' from the center of the ditch whichever is greater or the greater distance of other local, state, or federal ordinances or rules that may apply.

Landowners who have built any type of structure over or near a drain tile line assume liability for any damage caused to the tile line and may be required by the Drainage Authority to relocate the tile at the landowner's expense.

Before a drain tile line is moved, the landowner must.

- Submit a plan to the Drainage Authority showing the new location of the proposed structure in relation to the old rain tile and surrounding structures.
- Provide a list of materials to be used.
- Provide the name of the contractor doing the work and be aware that the Drainage Authority may require a licensed engineer to review the plan before construction.
- Be aware that any request to realign more than 500' of tile will require a hearing of the ditch system. The person requesting the change will be responsible for all costs.

PRIVATE CROSSINGS

The installation, repair, or replacement of a private crossing requires written approval from the Drainage Authority before any work is done. Private crossings that were built as part of the public ditch systems will be repaired and costs charged to the repair account. Private crossings not built as part of the public system are the responsibility of the landowner. If a private crossing not built as part of the public system is removed or repaired by the Drainage Authority the costs may be charged to the landowner.

A landowner wishing to construct a new private crossing must submit a written request and get permission from the Drainage Authority before construction begins. The Drainage Authority will set the width depth and size of the crossing and will inspect the crossing after installation. The Drainage Authority may seek the advice of a licensed

engineer to determine if the proposed crossing has a negative effect on the drainage system.

The Drainage Authority reserves the right to remove at the landowner's expense any improperly installed crossing or extension of crossing or any crossing installed without prior approval from the Drainage Authority.

Increasing the width or capacity of the crossing is not a repair and all costs must be paid by the landowner requesting the increase in capacity or width. (This is supported by case law)

The Drainage Authority reserves the right to use alternative methods to maintain a landowner's right of access, including but not limited to replacement of a bridge or culvert with another suitable material or obtaining a legal right of way as permitted by Statute.

If a landowner places an additional crossing or extends an existing crossing he must follow the following guidelines.

- a) All costs of widening the crossing must be paid by the landowners or interested party requesting the widening of the crossing.
- b) The new culvert must be bedded properly with the new culvert installed at the same invert as the original culvert.
- c) All materials used in the installation must be the same or better quality than the original construction.
- d) The flow through the culvert must remain as nearly as practicable to the original flow characteristics.
- e) A qualified contractor must do all construction.
- f) The landowner responsible for the widening of the crossing will be responsible for repairs or maintenance caused by improper installation.
- g) If, at some future date, the culvert is replaced as a repair the current landowners will be responsible for replacement costs of the extended portion of the culvert.

As a condition to the permit authorizing installation of the approach, crossing, or culvert, the landowner must execute and record a restriction on the property to acknowledge that the crossing or culvert shall not be part of the drainage system and subjecting the property, and any additional real estate added thereto, to ongoing operations and maintenance of the culvert.

Irrigation Crossings: Irrigation crossings should be of a bridge type that will not affect the flow of water and be installed in a manner that will not restrict repairs on a system and be able to be removed easily. All costs associated with the crossings will be the responsibility of the landowner. The Drainage Authority reserves the right to set the width, depth and size of the crossing. If, after inspection, the crossing does not meet the

Drainage Authority's requirements it will be modified to meet the requirements or will be removed at the landowner's expense.

EROSION CONTROL

The Drainage Authority will actively promote erosion control measures within the County Drainage System that have been proven to reduce future costly ditch clean outs and to protect the downstream environment. Erosion control methods will include but are not limited to the following:



Vegetation control

Spraying program: the intent of vegetation control is primarily to prevent the growth of any type of tree or brush within the ditch itself or its right-of-way, as a method to reduce future repair and maintenance costs. The Drainage Authority Representative may conduct an annual review of the county ditch systems.

After review, the Drainage Authority Representative will present a spraying program to the Drainage Authority for approval.

Approved Chemicals: Only approved chemicals will be applied to eliminate trees and brush within the ditch bank and within the one rod grass strip. If landowners spray any of their own ditch within the drainage system, they must use only approved chemicals for such an application.

Opt Out of Spraying Program: Landowners who do not approve of chemical application shall notify the Brown County Drainage Authority in writing each year. The Landowner shall have the option to remove all trees and brush in the ditch right-of-way at their own expense. If upon inspection the removal of the trees and brush is satisfactory that portion of the ditch will be removed from the spraying area. If the tree and brush removal is not satisfactory, or if the trees or brush are not removed by a date set by the Drainage Authority, the Drainage Authority may order chemical spray be applied.

Tree Removal: Trees that need to be removed from a drainage system will be removed in a manner that will not cause erosion. Trees may be chipped, piled and burned when dry or buried. Landowners may remove trees themselves for wood at their own expense.

Landowners who remove trees themselves assume all liability from the tree removal including damage to the ditch.

Tree Planting: Trees that are planted as part of the CRP buffer program or other use must not encroach closer than 50 feet from the crown of the spoils. Trees planted within 50 feet of the crown may be removed at the landowner's expense.

Mowing: The Drainage Authority may, if cost effective, consider using a mower to control weeds along a system to prevent possible contamination of the water from spray. Only sprays that are approved for use around and over water should be used.

Seeding. All repairs and improvements will be seeded with approved ditch mix available from the Drainage Inspector.

A. Drop Inlet Pipe Structures

Because the most common cause of erosion in ditches is a lack of adequate structures to control side inlet water flow into the ditch the Drainage Authority will have drop inlet pipe structures installed, as a maintenance procedure, in areas where it determines erosion is a potential problem. This cost of this installation is the responsibility of the landowner.

The Drainage System shall be responsible for paying for the following expenses to install a drop inlet tile structure:

- The first (20) feet of pipe; dual wall plastic pipe preferred,
- The blind tee;
- All necessary digging and dirt moving to install the drop inlet pipe structure.



If a landowner requests extending the horizontal pipe beyond the edge of the spoil bank all expenses associated with the additional extension will be paid by the landowner.

A property owner who has a private tile system that brings sub-surface water drainage into the Drainage System shall be solely responsible for the installation of, and the payment for, an adequate outlet into the Public Drainage System.

Tile System Inlet/Outlet: All tile system outlets entering the open ditch must require a connection notification and must be dual wall non-perforated plastic pipe.

Surface Inlets: All surface inlets will be dual wall non-perforated plastic pipe. All inlets will be marked with a flag or steel post to reduce damage while performing ditch maintenance.

B. Grass Buffer Strips



The Brown County Drainage Authority encourages the use of grass buffer strips beyond the one rod buffer established under Minnesota Statute 103E.021 and the use of grass buffer where the one rod buffer has not been established under 103E.021.

The Brown County Drainage Authority is required to notify landowners of a violation of a grass buffer strip established under 103E.021. The landowner will have 60 days to bring the area of non-compliance into compliance. If the area is not brought into compliance during this period, the Drainage Authority will proceed in the manner described in Minnesota Statute 103E.021 subd. 4 and 5.

Grass buffer strips are required on the 16.5 ft. easement on each side of channels or open ditches that have had a redetermination of benefits. The 16 ½ foot buffer strip shall be measured from the crown of the spoil bank which is the top of the existing ditch.

Agricultural practices such as plowing, tilling, pasturing or other practices, which are not consistent with the purpose of the grass buffer strip, are not permitted. The grass buffer strip may be cut for hay and the parking of mobile irrigation systems for adjacent properties have been determined to be acceptable practices along a buffer. Grasses used to seed slopes and grass buffer strips will need to be resistant to sprays and chemicals used to control brush.

Any landowner who is found to have caused cave-in damage to an open ditch will be responsible for the entire cleanout cost of the affected area.



CONSTRUCTION EASEMENTS

Drainage Systems that have been redetermined after 2015 will be paid for a 100' construction easement on each side of centerline of the open ditch. This easement gives the ditch authority the right to drive on or spread ditch spoils in the area. The area will most likely never be disturbed. If it is necessary to be on these acres during the growing season, the damaged crops will be paid at the Brown County crop damage rate.

MUNICIPAL USE OF A PUBLIC DRAINAGE SYSTEM

Municipalities are encouraged to request transfer of all or part of a Drainage System being used for municipal drainage to the Municipality. The laws regarding such transfers are found in Minnesota Statutes 103E.812. Municipalities using a Drainage System as an outlet must follow Minnesota Statutes found in 103E. No land within a municipality not already listed as benefiting from a drainage system may use a Drainage System without a petition under 103E.411.



MISCELLANEOUS DRAINAGE SYSTEM ISSUES:

Livestock: Cattle will not be allowed to be in a drainage ditch except to cross at approved locations. If cattle must cross a ditch the preferred method is to have them cross at an installed crossing to prevent the cattle from entering the water. Cattle may be watered from a ditch but the access must be controlled. Cattle are not allowed to graze closer than 16.5 feet of the ditch bank. No trampling of the ditch banks will be allowed.

Manure: The Minnesota Pollution Control Agency has established minimum requirements for the application of manure along ditch systems: “Intermittent stream, DNR protected wetland, drainage ditch w/out berms”:

Winter (frozen or snow covered soils): 300’

Non-Winter with immediate incorporation (w/in 24 hours): 25’

Non-Winter not incorporated within 24 hours:

w/adequate vegetative buffer - 50’

w/out adequate vegetative buffer – 300’

Feedlot Runoff: Feedlot runoff should be prevented from entering the ditch system either by direct or indirect methods.

Fences: No permanent fence may be installed closer than 16.5 feet from the crown of the spoils. When ditch repair is performed, gates may be installed in the property line fences next to each side of the ditch to allow for the access of equipment used for repairing the ditch.

Erosion-Pollution: If erosion-pollution issues are discovered proper measures shall be taken to correct the problem.

Septic Systems: No septic system will be allowed to discharge into a drainage system and are regulated through County Septic Ordinance.

Foundation Drainage Tile: Most public drainage systems are not designed with enough capacity to serve as a direct outlet for foundation tile lines. Most public tile drainage systems will totally fill and back up during large rain events or spring runoffs therefore the Brown County Drainage Authority strongly discourages directly connecting foundation drainage to a public drainage system. Any damage caused by a direct connection to a Drainage System is the responsibility of the landowner.

Beaver Control: When beaver dams are reported or discovered when inspecting drainage systems a trapper will be retained by the Drainage Authority Representative to remove the problem beaver. It is the trapper's responsibility to contact the DNR for appropriate approval for trapping beavers out of season. The rate of payment is currently \$40 per beaver and is subject to change. The County will only pay the trapping fee on beavers when:

- a) The trappers have had their names registered with the Ditch Inspectors;
- b) The trapper has been directed by one of the Ditch Inspectors to remove problem beavers from specifically designated County Ditches.
- c) The beaver tails must be presented to one of the Ditch Inspectors before payment of \$40 per tail will be authorized.

The Ditch Inspector will dispose of the beaver tails in such a way that they will not be resubmitted.

After the beaver are removed the Drainage Authority Representative may hire a contractor to remove the beaver dam(s) by mechanical means whenever possible. If explosives are to be used by a contractor, the contractor must be approved by the County Sheriff and provide permits and insurance.

Obstructions: Any existing or proposed obstruction in a drainage system must be properly engineered, have a hearing as provided by State Statute and be permitted by the Drainage Authority.

Deer Stands: Deer stands and other facilities used for recreation should not be placed closer than 16.5 feet from the crown of the ditch. Any structure blocking maintenance to the ditch will be removed by the Drainage Authority regardless of its distance from the ditch.

Rock and Debris: Unauthorized rocks and debris is prohibited from being dumped within the in-slope of a drainage ditch. Landowners should be encouraged to stockpile rock for later use as riprap. Debris will not be allowed to be dumped within 50 feet of the crest of the ditch.

Wetlands: Wetland areas that are part of a drainage system should be used for temporary storage for large rain events. These areas should be allowed to drain out naturally so storage is available for future events.

Landowner Rights: None of these policies are intended to allow additional access to landowner's property not already allowed by law. A public drainage system is an easement for drainage purposes. The land within a drainage system remains private property, with no right of public access. The State of Minnesota grants right of access only to those appointed by the Drainage Authority for the express purpose of construction, inspection and maintenance of a drainage system.

All decisions made by the Brown County Drainage Authority are subject to Federal and State regulations as well as Minnesota statutes 103E. These regulations may include wetland regulations, best business practices regarding public handling of ditch funds and any other regulation or law affecting public drainage.

DUTIES OF THE COUNTY DITCH INSPECTOR

Inspection and maintenance is the responsibility of the drainage authority, but is often carried out by the drainage inspector, hired to advise the drainage authority regarding proper management of the public drainage systems. The following are specific requirements of drainage inspectors imposed by state law.

1. Must inspect the drainage systems within the county on a regular basis
2. Must inspect open ditches at a minimum of every 5 years if no violations have been found. If violations have been found, the inspector must be inspected every year until one year after the violations have been corrected.
3. The inspection process includes the inspection of vegetative strips along a ditch. If a violation is found, the inspector must send the property owner a notice.
4. If a property owner does not bring an area into compliance with Section 103E.021, as provided in the compliance notice, the drainage inspector must notify the drainage authority.
5. For each drainage system that the board designates and requires the drainage inspector to examine, the drainage inspector must prepare a written drainage inspection report and submit it to the board upon completion of that inspection.

Addendum A

Below is the letter that Brown County has used to reallocate the ditch benefits:

Dear Landowner:

Our records indicate that land in which you have an interest has existing ditch benefits. These benefits were established when a drainage system was constructed or last re-determined and at that time the legal basis for determining the share that each parcel of property will pay for future repair assessments was determined. The percentage of your benefits to the total benefits for the system is multiplied by the amount of the levy that may be applied to arrive at the amount you will owe.

Since the last assessment for the indicated ditch, a document has been filed that splits a parcel. In order to properly assess owners for any future repairs, the benefits attached to the original parcel must be split. The attached agreement shows the amount of benefits for each new parcel based upon the amount of benefits per acre in the original parcel times the amount of acres in the new parcels or a percentage of the original benefits. Our experiences tell us that many landowners agree upon a split based on this formula. If all landowners involved with this property agree with the split you do not need to return the form. **The enclosed agreement is not a bill; please do not pay the amount indicated.**

You may wish to split the benefits in a manner other than this. In this event, please contact the other parties involved and fill in the agreed upon amounts. Please note, this agreement would only be valid until a Redetermination of Benefits was completed for this ditch system. Be sure to have all parties sign the form and return it to the Brown County Drainage Administration's Office within 30 days. If in the event that the parties are unable to agree upon and return the form within 30 days, a public hearing may be held pursuant to Minnesota Statutes 103E.631. The parties involved pay the costs of this hearing. Because of the time and cost of this hearing, I am asking that you make every effort to agree upon a split among yourselves.

An agreed upon split of these benefits can be changed in the future by filling out a new agreement form or by asking for a public hearing. Please note that a \$10 fee will be billed to the parent/original parcel on the next year's tax statement.

This form is being sent to all parties involved in the split as listed on our records. If you have any questions, please call the Brown County Auditor-Treasurer's Office at (507)233-6613.

DITCH ASSESSMENT DIVISION AGREEMENT

County Auditor's Office, Brown County, Minnesota
Mailed:

Date

I hereby certify that the following is a correct statement of the assessment of benefits assessed against the property described below, the said assessment having been made in the matter of County Ditch No. 13.

Name of Owners	Description of Land	# of Acres in Tract	Original Amount of Benefits for Parcel

In order that any future assessments against said ditch systems may be assessed separately, we the undersigned hereby agree to the following division of the benefits against the property. Described below as follows, to-wit:

Name of Owners	Description of Land	# of Acres in Tract	Original Amount of Benefits for Parcel

Note: Parcel ID _____ will be assessed a \$10 fee for this split. This will be placed as an assessment on the following year's tax bill.

Owners Signatures:

Owners Signatures:

Name: _____ Name: _____

Addendum B

REDETERMINATIONS

The decision of whether to go ahead with a redetermination is that of the Drainage Authority.

KEY DEFINITIONS:

Redetermination of benefits: Update the benefit rolls of the benefited landowners. A redetermination may add lands, remove lands or change the amount of the benefits assigned to individual parcels.

Viewers: Residents of MN who are qualified to determine benefits and damages of drainage systems and are appointed by the drainage authority for that purpose.

Buffer Strips: Section 103E.021 requires the establishment of minimum 1 rod (16.5') buffer strips of perennial vegetation along drainage ditches whenever viewers are appointed, including for a redetermination of benefits. The primary purposes of these buffer strips are to improve ditch bank stability and reduce ditch maintenance by setting back tillage from the top of the ditch bank, and to trap sediment. Brown County will plant the original buffer strip.

- **Violations:** Landowners will be notified by the Drainage Authority if a violation of the buffer strip requirement is found. The landowner will be given 60 days to bring the area of non-compliance into compliance. If the area is not brought into compliance during this period, the Drainage Authority will proceed in a manner described in M.S. 103E.21 Subd 4 & 5.
- **Agricultural Practices:** Agricultural practices such as plowing, tilling, pasturing cattle or other practices, which are not consistent with the purpose of the grass buffer strip, are not permitted. The grass buffer strip may be cut from time to time, but the cut hay must be removed. Grasses used to seed slopes and grass buffer strips will need to be resistant to sprays and chemicals used to control brush. Alfalfa seeding will not be allowed on the slopes or grass buffer strips.

WHY REDETERMINE BENEFITS:

- Benefited lands and benefits of many public drainage systems have not been updated for decades, some for over a century. There is no provision in the statute to index for inflation over time.
- To create a sense of fairness within the watershed by creating a system whereby every acre of land in a watershed that receives benefits pays for that benefit.
- To increase the total benefits to reflect modern land values. By doing this, it becomes possible to increase the ceiling on permissible repairs.
- Repairs are paid for in proportion to each properties share of the total benefits assessed against all land. It is very likely that the actual proportionate benefits accruing to properties throughout the watershed have changed over the years. Some lands have become relatively more valuable than others. The redetermination of benefits brings the share of properties into line with their share of the total benefits.
- There are ditches that have available levy dollars lower than the cost of funding a repair, especially if any major work is required. Statute 103E.015 states that a drainage authority may only authorize a drainage project if the "estimated benefits are greater than the total estimated costs, including damages."

HOW BENEFITS AND DAMAGES ARE REDETERMINED:

Whenever the county board determines that the original benefits determined in a drainage proceeding no longer reflect reasonable present-day land value or that the benefited areas have changed, the county board may appoint three viewers to redetermine benefits and the benefited areas. (12 Resolution for Redeterminations).

Landowners on a system that is being redetermined are mailed a brochure explaining the process. **(2 Drainage Brochure.pub)** Updates would be required.

Viewers are required to provide a Certificate of Liability Insurance and take an oath. **(3 Viewers Oath)**. An Engineer may also be hired to help determine the watershed area.

Viewers first verify or identify the land parcels, roads and other infrastructure served by a Chapter 103E drainage system. Viewers then use mass appraisal methods to determine benefits of the drainage system. A number of variables, including land use, productivity and value, drainage outlet potential, and drainage system requirements or impacts are used by viewers to determine drainage system benefits and damages.

The Viewers use four benefit classes of land for assessing benefits and costs as follows:

Description without Drainage:	Description with guideline drainage:
Benefit Class "A" Standing water or cattails	Seasonally ponded, low crop classification
Benefit Class "B" Seasonally flooded/pasture	Occasionally flooded, medium crop classification
Benefit Class "C" Wet subsoil, low to medium crop	Wet subsoil, Medium-high crop classification
Benefit Class "D" Upland soils not needing drainage	Upland areas not needing drainage, medium to high crop classification

Viewers may conduct an informational meeting for landowners to discuss the process. A list of landowners is sent to the county Auditor and a mailing is prepared that includes: **(4 Invitation to Redetermination Meeting)**, an agenda and a map of the drainage system. Landowners attending the meeting sign an attendance roster.

There may be more than one landowner meeting, depending on the viewer's preference.

Once the viewers have considered landowner concerns and made benefit adjustments a report is sent to the county. A public hearing is established within 30 days of the final viewers report being filed.

The hearing must be held within 25 to 50 days after the date was set by the Drainage Authority. The final hearing notice must be published for three consecutive weeks in the legal newspaper. **(7publication of Hearing Letter to official newspaper) (8 Public Hearing Notice for Redetermined Benefits)**. An Affidavit of Publication is requested from the newspaper so we can put in our file. We make a practice of posting on the bulletin board and on our website as well.

The Notice of Hearing on Viewers Report includes a detailed description of the drainage system, and the landowners affected by the redetermination. (Notice of Viewers Report). This report is prepared by the viewers and signed by the county board when the final hearing is authorized. Help with the detailed description of the drainage system can be obtained for a fee from the Engineer. This is then mailed to the landowners as their invitation to the public hearing. (5 Affidavit of Mailing)

After the final landowners meeting, the viewers will provide the final determination of the benefits that will be considered at the public hearing previously established. An RBA is prepared that establishes the agenda for the public hearing. The timing of the planting of the grass strip needs to be considered at the final hearing. The planting may be delayed depending on where we are in the agricultural cycle. Has the farmer applied herbicide for his crops, etc. The date for the payment of the buffer strip and construction easement should also be clearly stated. Commissioners did not feel it was necessary to include the redetermination amounts in the board packet. The ditch authority will confirm the benefits at the final hearing. (9RBA to be considered at Public Hearing)

After the public hearing the County Attorney will prepare the Finding of Fact based on the discussion from the public hearing. Buffer strips, construction easements, date of payment for the easement

rights, and the assessment process along with the buffer strip seeding are addressed in these findings. Landowners have 30 days to appeal the new benefits. (10 Buffer Strip Seeding Mix).

The redetermined benefits replace those used to apportion drainage system repair or maintenance assessments. These benefits are adjusted in the tax system.

In addition, the redetermination screen and description screen in Drainagedb need to be updated to reflect the changes in benefits, acreages, etc.

Maps are obtained from the Engineer and laminated for our map file. (This process is usually completed at MLC)

After the findings of Fact are completed by the County Attorney another RBA is prepared for the Board to approve these. Once signed, the findings along with the benefits by parcel are recorded. The recording fee is paid from the appropriate ditch fund. Make sure that drainagedb indicates that the documents have been recorded.

Payments to landowners need to be scheduled and 1099's issued. Those receiving a payment must have filled out a W-9 prior to receiving the funds. (Request for 1099.doc) I send the 1099 request out following the hearing. This allows ample time to get the 1099 on file.

Update the Assessment worksheets with the Largest Landowner Benefit and the Avg Landowner Benefit. We also need to review the date of last redetermination and other information on this worksheet.

Get a digital CAD file from the Engineer for use in GIS & Drainagedb.

Landowner notifications for planting grass strip.

A redetermination of benefits does not result in assessment of any levy against the original benefited lands. Rather, it results in an amended benefits roll which will later be used to apportion the reasonable cost of repairs assessed against all benefited properties and the cost of the redetermination itself.

Addendum C



CD 02

IFS Account # 20-901-5051
 Tax Ditch Code: 100020

Ditch #:	CD2	Largest Landowner Benefit %	9.13%
Date of Last Redetermination:	3/31/2003	Average Landowner Benefit %	0.53%
Viewer Group:			
Benefited Acres:	2,904		
Total Benefits:	\$1,041,362.28		
Feet of Open Ditch/Tile	73,398		

Yearly Assessment Amounts	2010	2011	2012	2013	2014	2015	Average
	\$ 5,000.00	\$ -	\$ 3,000.00	\$5,000.00		\$ 3,000.00	\$ 3,200.00

Annual Expenditures	2010	2011	2012	2013	2014	2015	Average
	\$ 2,520.32	\$ 1,548.00	\$ 1,115.00	\$1,465.00	\$ 3,642.00	\$ -	\$ 2,058.06

Current Balance:	\$ 1,204.35
Estimated Expenses thru 12/31:	
Unallocated % of Costs:	\$ 1,421.00 *
Outstanding Assessments:	\$ 1,279.06
Estimated Year End Balance:	\$ 1,062.41
Less Projected Repairs:	
Less Redetermination Costs:	
Funds Required:	\$ 1,062.41
Annual Repair Limits:	\$ 208,272.46 (based on 20% of Total Benefits)
	\$ 100,000.00 (maximum allowed by statute)

Recommended Assessment:	<input type="text" value="\$ 3,000.00"/>	Largest Landowner Cost	\$ 273.90
		Avg Landowner Cost	\$ 15.90
Drainage Authority Determination:	\$ -		

DITCH MANAGEMENT CHECKLIST (Improvement)
RE: Minn. Stat. 103E

_____	_____
Ditch No.	Commissioner District

_____	Petition and bond received from landowners for improvement _____ (name) 103E.202-103E.235
_____	Petition and bond forwarded to County Attorney for Review. (the county attorney must review the petition and bond within 30 days after filing. 103E.238
_____	If adequate, the petition and bond is returned to the County Auditor. If inadequate, it is returned to petitioners by the County Attorney with a description of the deficiencies. 103E.238
_____	Prepare an RBA for county board to consider petition. (The auditor shall present the petition to the board at its next meeting) 103E.215
_____	Notify the County Commissioner of the petition and the upcoming discussion.
_____	Board appoints engineer (within 30 days after receiving the petition) _____ Engineer 103E.241
_____	Bond & Oath received from the Engineer. 103E.241
_____	Following survey of the proposed drainage project, engineer files preliminary report with County Auditor and copies the DNR. 103E.251

_____ Schedule preliminary hearing no more than 30 days after the date of the order(allow time for notices to be mailed 10 days before the hearing) 103E.621

_____ Mail notice of preliminary hearing to landowners affected by the drainage project (including property owners, political subdivisions, etc.) If the improvement includes a repair insure that all on the ditch system are notified.

_____ Although not a statutory requirement, notice of the preliminary hearing may be published and or posted.

_____	_____
Newspaper	Date Published

_____ Ensure that the preliminary DNR report has been received; if it hasn't follow up with the local DNR office.

_____ Prepare agenda for preliminary hearing.
 Confirm that all legal requirements have been met (mailing notices and receipt of DNR advisory report. If DNR report is received it must be read into the record. 103E.261, Subd 2 & 3

Sufficiency of the petition. – County Attorney comments on this at the preliminary hearing.

Board Action

Viewers are appointed

Engineer directed to prepare detailed survey report. (Final)

_____ Within 5 days after the engineer's report is filed, schedule a meeting with viewers and provide them with a copy of the order appointed them; also complete the oath. 103E.305, subd 2&3

Note: In practice, viewers meet shortly after they are appointed, typically before

the engineer's report is received.

Viewers prepare and file a report. 103E.321

DNR examines the engineer's final report and makes a final advisory report within 30 days of receipt of the final report by the drainage authority. 103E.301

Following receipt of the engineer's final report, viewers report and DNR report(if received, schedule a final hearing date (25 to 50 days after the first date of publication of the final hearing notice. 103E.285 & 103E.291, and 103E.325, subd 1

Following receipt of the viewer's report and the DNR report, prepare an owner's report from the viewer's report within 30 days of filing. 103E.323

Mail a copy of the owner's report to each property owner affected by the proposed drainage project, notify County Board, auditors of affected counties, and all interested persons of the time and location of the final hearing by publication, posting, and mail. 103E.325 Note: Notices are to be mailed within one week of the first published notice.

Post a copy of the final hearing notice on the county bulletin board. 103E.325

Publish the final hearing notice once per week for 3 consecutive weeks in a legal newspaper of general circulation in each county affected by the notice. Usually the legal newspaper and the one that is closest to the proposed project.

Newspaper

Date Published

Following publication, the publisher should return an affidavit of publication for the ditch file.

File posted notice, property owner's report, affidavit of publication, final hearing notice, etc. in ditch file to take to the final hearing.

Prepare RBA/agenda for the final hearing.

Final Hearing

Confirm that all legal requirements have been met (i.e. mailing of the notices, receipt of the DNR advisory report—if received, etc. If there is a DNR report it needs to be read into the record.

Board Action

- **Adopt and confirm the viewer's and engineers reports as made or amended**
- **Establish the proposed drainage project**
- **Adopt resolution relating to financing**
- **Determine if damages are to be paid; pay damages or deduct from payment before construction begins (103E.515**

In practice, it is appropriate to wait until the appeal period is up before damages are paid.

Addendum D

 <p>Brown County, MN Jean Prochniak Auditor-Treasurer 14 S State Street, PO Box 115 New Ulm, MN 56073 (507) 233-6613</p> <p>«FD_MAILING_1» «FD_MAILING_2» «FD_MAILING_3»</p> <p>Property ID: «FD_PARCEL_NR_» Legal: «FD_DESC1» «FD_DESC2»</p>		<h2>«Ditch_Name» Assessment Billing</h2>
	Step 1	<p>Total Benefits for this Drainage System (Based on most recent Redetermination of Benefits)</p> <p style="text-align: right;">«Total_Benefits_for_System»</p>
	Step 2	<p>Benefits for this parcel (As assigned by the viewers to your parcel)</p> <p style="text-align: right;">«Benefit_»</p>
	Step 3	<p>Percent of Total Benefits (Step 2 divided by Step 1)</p> <p style="text-align: right;">«Benefit_»</p>
	Step 4	<p>2018 Assessment approved for Entire Watershed of «Ditch_No»*</p> <p style="text-align: right;">«Approved_Assessment_»</p>
	Step 5	<p>Landowner Share of 2018 Assessment (Step 3 X Step 4 = Landowner Share)</p> <p style="text-align: right;">«Proposed_Assmt_»</p> <p style="text-align: right; color: gray;">Payments are due on or before April 30, 2018</p>
<p><i>*Assessments were approved by board action on January 16, 2018.</i></p>		

Please read the back of this billing for important information.

Please detach and return this payment stub in the enclosed envelope with your payment to insure accuracy in posting your payment.

<p>«Ditch_Name» Assessment Payment Stub</p>	<p>Amount Due on or before: April 30, 2018**</p>	<p>«Proposed_Assmt_»</p>
<p>«FD_MAILING_1» Parcel ID: «FD_PARCEL_NR_» Ditch Code: «FD_SPASMT_CODE_»</p> <p>Make checks payable to:</p> <p>Brown County Auditor-Treasurer PO Box 115 New Ulm, MN 56073-0115</p> <p><small>Your cancelled check is your receipt. This Receipt is void if check is not</small></p>	<p><i>**Payments not received by the due date will be applied to the 2019 tax bill with an annual interest rate of 4%.</i></p> <p>See reverse side for payment options if not paying in full.</p>	

honored.
Do not send postdated checks. \$30 fee for payments returned for insufficient funds.

The Redetermination of Benefits on CD 63 was completed in April of 2017. It was listed in the Findings of Fact that buffer payments would be made prior to March 1, 2018. On January 16, 2018, the county drainage authority authorized an assessment to be billed to the landowners on CD 63 based on the information illustrated below.

Current Fund Balance CD # (as of 12/31/17)	43,898.33
- Average Expenditures – Year 1	-8,257.29
- Average Expenditures – Year 2*	-8,257.29
Balance	27,383.75
- Purchase of Buffer & Construction Easements	-368,192.00
Total Assessment	(340,808.25)
Rounded to the nearest \$1,000	\$341,000.00

**It is our goal to insure that an adequate balance is available so that multiple assessments do not run concurrently for a drainage system.*

Landowners who are entitled to damages due to the buffer requirement and have returned a completed W-9, will find a check enclosed with this billing.

Landowners who have not completed the required W-9 will find one enclosed. Your check will be mailed upon receipt of the completed W-9.

Detailed information about your drainage system and this redetermination process can be found by accessing the county’s website.

<http://www.co.brown.mn.us>. Search for drainagedb.

PAYMENT OPTIONS:

Option 1 <input type="radio"/>	I prefer that the entire assessment amount be applied to my parcel in 2019. I understand that payments will be divided evenly over the first and second half and interest will be charged at an annual rate of 4%.
Option 2 <input type="radio"/>	I request that the assessment be amortized over three years with interest accruing at an annual rate of 4%. (This option available for assessments in excess of \$1,000)

Landowner Signature: _____

Date: _____

It should be noted that assessments may be paid in full at any time.