

**Drainage District 2**  
**May 21, 2013**

**9:00 a.m.** The Clay County Board of Supervisors met as trustees of Drainage District #2 to continue the hearing from April 2, 2013 to consider any objections and other comments to the report submitted by the engineers from the I & S Group, Algona, Iowa for repairs and improvements in Drainage District #2 to the Main Open Ditch resulting from the Petition dated August 1, 2011 stating that the Main Open Ditch serving these lands was not sufficient in its current condition to properly drain excess waters from the lands of the petitioners and that the main open ditch needs to be properly repaired or improved to correct the situation. Members present: Chalstrom, Matthews, Skow, Swanson. Attendees: I&S Group representatives Nicholas Roethler, P.E. & Ivan Drossler, P.E.; Bolton & Menk, Inc represented by Jon Rosengren, E.I.; James Hudson, Pocahontas, IA Attorney for D.D. #2; County Engineer Scott Rinehart, Drainage Technician Frank Rouse, Rick Hopper, Jacobsen & Westergaard of Estherville, IA., Charles Selzer, Everly, IA; Brian Fairchild, Everly, IA; Sam Harper representing Heuck Farms Inc., Royal, IA; John Heuck, Everly, IA; and Jeff Pearson, Everly, IA.

I&S Group representatives Ivan Drossler and Nicholas Roethler began the hearing by giving an overview of previous meetings. A new handout was distributed to all attendees highlighting a repair option versus a modified improvement option. The repair option construction cost is \$392,186 vs \$437,358 as listed in the report Amendment #1 because of no cleanout of Stony Creek which saves \$45,000. The repair option would cleanout DD #2 ditch to the original plan grade along the current alignment outlet at Stony Creek along the entire length to Highway 18. There would be no excavation done in Stony Creek therefore no permit required from the United States Army Corp of Engineers or a need to find a location to put spoil due to wetland fills potential. There would be less converting wetlands in the entire district but there would be a need to review a wetland determination on the Cornbelt Power Coop property because a wetland is mapped over an existing drainage ditch which is felt to be shown incorrectly. The cleanout repair of DD #2 would give DD #114 a free outlet which is necessary. I&S Group recommends that the Board of Trustees appoint an engineer to file a report on this finding and proceed to public hearing with landowners of DD #114 for this cleanout. The repair option requires less overall drainage district R-O-W to acquire therefore lowering the project costs to:

- \$392,186 = Construction costs
  - \$0 = No wetland mitigation costs
  - \$230,290 = Construction damages, R-O-W, Engineering, Legal, etc.
- TOTAL = \$622,476 estimated repair cost.

I&S Group continued with the second proposal titled the Modified Option 3 that does a cleanout of DD #2 to the original plan grade and cross section to the railroad bridge, installs ditch block to divert flows west and construct an improved ditch running west under and past power lines, then turning and running south across property of Heuck's and Fairchild. The construction cost is \$487,494 with additional cost of R-O-W, land severance, easement and wetland mitigation due to ditch construction on the Heuck and Fairchild properties that will be approximately \$150,000. Land will be severed by the ditch and likely bought from landowners by the district and possibly resold to the Iowa DNR. The ditch block would require a permit from the US Army Corp or Engineers. The drainage of farmland near the Cornbelt Power Coop would be seen as changed and may require mitigation of at least twelve (12) acres of wetlands at a potential cost of \$20,000 per

acre equaling \$240,000. Wetland determinations for all lands in the watershed would have to be completed which may require hiring a third party delinator to map the remaining wetlands at an estimated cost of \$5,000. The Modified Option 3 is seen as a better long term option in regards to future maintenance and cleanout. It was stated that an improvement is not necessary to give DD #114 a free outlet but would require abandoning existing DD #2 ditch R-O-W on the Iowa DNR Ocheydan wetland management area. The Modified Option 3 would require additional time to obtain wetland determinations for effects to the Corn Belt Power and Fairchild properties, to find mitigation for any wetlands converted, and to negotiate with the Iowa DNR to abandon the existing drainage R-O-W and obtain new R-O-W lands. It was remarked that if an improvement is pursued no construction work would be done this year. The Modified Option 3 results in a higher overall assessable project costs.

- \$487,494 = Construction costs
  - \$150,000 = Heuck / Fairchild R-O-W land severance, easement, wetland mitigation
  - \$240,000 = Wetlands mitigation costs
  - \$238,290 = Construction damages, R-O-W, Engineering, legal, etc.
- TOTAL = \$1,115,784 estimated improvement cost

The hearing was open for comment from the attendees. Supervisor Matthews questioned if an improvement is done there would be a need for annexation of lands but if a repair is done there would not be a need for annexation. The I&S Group answered this to be true but felt in this case if a repair was done there would be need for annexation of lands. Drainage Technician Rouse asked what benefit the Fairchild property would get since it is at the bottom of the system and if a repair is done do we need to mitigate with the US Army Corp of Engineers (USACE). I&S Group answered there would be no mitigation with the USACE but that the Iowa DND favors the improvement. County Engineer Scott Rinehart and Drainage Technician Rouse both believe that the entire drainage district is not being fixed for everyone in the Modified Option 3. Supervisor Chalstrom stated that they wish to solve the problem long term.

Drainage Attorney James Hudson addressed the hearing by explaining process and procedures required by the Board of Supervisors as Trustees of the drainage district. Hudson stated that this hearing can be continued if necessary and that the Board of Supervisors is not bound by the landowners petition that was filed requesting the cleanout / repair of this district. The Board has moved forward and requested an Engineers Report which was amended and can be amended multiple times. Iowa law states that the Board of Supervisors shall keep all drainage districts in good repair as originally designed. If work is done to any ditch to take it back to the original design it is not considered an improvement project. Attorney Hudson further addressed the annexation process where the engineer has determined that a parcel/s outside the drainage district has material benefit from the system so the Board of Supervisors, as Trustees, can do a resolution of necessity resulting in annexation or the landowner can accept the annexation voluntarily. If the landowner does not present written objection to the annexation their ability to appeal to the Iowa District Court is lost. Attorney Hudson touched on the reclassification process and the levy of assessments. Attorney Hudson reviewed with the attendees the original objections filed at the prior hearing and asked if there were further questions. Landowner Brian Fairchild asked if a wetland determination is done does the mitigation cost go to the drainage district. The answer is yes. Supervisor Matthews asked how much overlapped cost would occur if the project starts as a repair and later does the improvement. The answer is an estimated \$10,000.

Motion by Matthews, second by Swanson to proceed with the Drainage District #2 project in two (2) phases. Phase 1 being the clean out repair and Phase 2 being the Modified Option 3 improvement. Motion carried.

Motion by Matthews, second by Skow to set the Drainage District #2 assessment interest rate at five (5) percent with a waiver option of twenty (20) years. Motion carried.

Attorney Hudson recommended that any further annexation, reclassification, or R-O-W issues be continued to a future meeting with a letter of notification to the landowners as to the scheduled date and time of any such meeting.

Motion by Swanson, second by Skow to close the Drainage District #2 hearing at 11:47 a.m. Motion carried.

The Chairperson adjourned the meeting at 11:47 a.m. to convene at the next Auditor's called meeting May 28, 2013 at 8:30 a.m.

/s/ Marjorie A. Pitts, County Auditor

/s/ Kenneth Chalstrom, Chairperson