

STATE OF MINNESOTA  
BUFFALO CREEK WATERSHED DISTRICT  
DRAINAGE AUTHORITY FOR RENVILLE COUNTY JUDICIAL DITCH 15, LATERAL V, BRANCH C

---

The matter of the petition of Sullivan, et al.,  
for the improvement of Renville County  
Judicial Ditch 15, Lateral V, Branch C

**Preliminary Findings and Order**

---

The Board of Managers of the Buffalo Creek Watershed District, at its regular meeting on September 24, 2024, received the petition and bond of Sullivan, and others for the improvement of Lateral V, Branch C of Renville County Judicial Ditch 15. Upon review of the petition for improvement and the accompanying bond, Manager Kramer moved, seconded by Manager Melberg, for adoption of the following:

**Findings**

1. The petition was filed with the Board of Managers pursuant to Minnesota Statutes, sections 103D.625, subd. 4 and 103E.215.
2. Improvements of existing drainage systems in the watershed district must be initiated by filing a petition with the Managers.
3. The proceedings for the construction or improvement of drainage systems in the watershed district must conform to chapter 103E.
4. The Board's attorney verified the signatures and ownership interests of the petitioners and finds that the petitioners are 3 out of 5 owners of property affected by the proposed improvement and owners of 3 of the 6 – 40-acre or smaller parcels that the proposed improvement passes over. As such, petitioners are at least 26 percent of the owners of property affected by the proposed improvement and at least 26 percent of owners of the property that the proposed improvement passes over.
5. Though on its face the petition and signatures thereon are sufficient, clarification is required to verify the authority of some signatories to sign and bind property in the petition. Verification is required to confirm that Gregory Kuttner and Douglas Kuttner are authorized to sign on behalf of Kuttner Family Limited Partnership for Tract 1 and that Timothy Sullivan and Lori Sullivan are authorized to sign on behalf of the Trust for Tract 3.
6. The petition was properly filed with the Board of Managers to initiate improvement proceedings. For the purpose of a properly filed petition for improvement of a drainage system within the Watershed District, the Board of Managers composes the Drainage

Authority for the improvement and, if the improvement is ordered and constructed, for all subsequent actions on the drainage system, or portion thereof.

7. The petition properly designated the drainage system proposed to be improved by number or another description that identifies the drainage system.
8. The petition alleges that the drainage system has insufficient capacity or needs enlarging to furnish sufficient capacity.
9. The petition describes the improvement, including the names and addresses of owners of the 40-acre tracts or government lots and property that the improvement passes over.
10. The petition alleges that the proposed improvement is necessary and will be of public utility and promote the public health.
11. The petition contains an agreement by the petitioners that they will pay all costs and expenses that may be incurred if the improvement proceedings are dismissed.
12. The petition alleges that the existing drainage system needs repair and further petitions the Board to consider separable maintenance when determining the allocation of costs of the improvement.
13. The petition was accompanied by a cash bond in the amount of \$10,000.00. The Board's attorney has determined that the bond is sufficient to meet the requirements of 103E.202 in order to initiate the proceedings, but is not sufficient security to secure petitioners' statutory obligation to pay costs. The Board's attorney recommends replacement of the cash deposit bond with a commercial payment bond with minimum face value of \$60,000.
14. 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 the bond amount is increased or 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 shall require an increase in the bond amount or an additional bond to cover all costs to be filed within a prescribed time. The proceeding will 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 will be dismissed.
15. The Board's attorney has reviewed the petition and bond and has preliminarily determined they meet the requirement of these proceedings.

Based on the foregoing findings, the Board of Managers adopts the following **Order**:

- a. The Board accepts and files the petition as sufficient to establish jurisdiction in the proceedings herein.
- b. The Board appoints Shaun Luker, P.E., of Bolton & Menk, Inc., to make a preliminary survey and file a report within 90 days of receipt of a notice to proceed.
- c. The engineer shall serve as the engineer for the drainage project throughout the proceedings and construction unless otherwise ordered.
- d. The engineer shall file an oath to faithfully perform the assigned duties in the best manner possible and file a bond with the Managers.
- e. The engineer is not authorized to proceed until receiving a notice to proceed. The Board authorizes its attorney to issue the notice to proceed upon receipt of a sufficient and compliant bond from one or more of the petitioners as required below.
- f. The engineer shall include in his preliminary survey and report an investigation of the scope of improvement to include consideration of alternative improvement configurations and the impact of regulatory permitting requirements related to wetlands or other environmental factors on the possible alternatives.
- g. The engineer shall, as part of his work on the preliminary survey and report, investigate the potential use of external sources of funding to facilitate the purposes indicated in section 103E.011, subd. 5, and alternative measures in section 103E.015, subd. 1(2). This investigation shall include early coordination with applicable soil and water conservation district and county and watershed district water planning authorities about potential external sources of funding and technical assistance for these purposes and alternative measures.
- h. The engineer shall include in his preliminary survey and report an investigation of the current condition of the portion of the drainage system proposed to be improved and provide a recommendation on the propriety of a separable maintenance allocation of project costs.
- i. Prior to the Preliminary Hearing, Petitioners' attorney shall provide documentation demonstrating that Gregory Kuttner and Douglas Kuttner are authorized to sign on behalf of Kuttner Family Limited Partnership for Tract 1 and that Timothy Sullivan and Lori Sullivan are authorized to sign on behalf of the Trust for Tract 3.
- j. Within two weeks of the filing of this order, Petitioners are required to file a commercial payment bond with a minimum face value of \$60,000 to replace the cash deposit bond in

these proceedings. The commercial payment bond to be conditioned as required by statutes section 103E.202.

After discussion, the Board President called the question. The question was on the adoption of the foregoing findings and order, and there were 5 yeas and 0 nays as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Absent</u>	<u>Abstain</u>
Donald Belter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Lindeman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chad Stuewe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Larry Kramer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Matt Melberg	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Upon vote, the President declared the motion Passed.


  
\_\_\_\_\_  
Donald Belter, President

Dated: Sept 24, 2024

\* \* \* \* \*

I, Matt Melberg, Secretary of the Buffalo Creek Watershed District, do hereby certify that I have compared the above motion, findings and order with the original thereof as the same appears of record and on file with the Board of Managers and find the same to be a true and correct transcript thereof as adopted by and filed with the Board of Managers, on Sept. 24, 2024.

IN TESTIMONY WHEREOF, I hereunto set my hand this 24<sup>th</sup> day of Sept., 2024.

  
Matt Melberg