

STATE OF MINNESOTA

IN COURT OF APPEALS

Appellate Court Case No. A111875

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In re the Appeal from the Final Order of  
the Board of Managers of the Bois de Sioux  
Watershed District Redetermining Benefits  
and Damages for Judicial Ditch No. 14

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**APPELLANT'S REPLY BRIEF TO THE FOLLOWING:  
TRAVERSE COUNTY RESPONDENTS' BRIEF AND  
RESPONDENT GRANT AND OTTER TAIL COUNTY APPELLANT'S  
RESPONSE BRIEF**

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As the Respondent groups have presented somewhat different approaches in their briefs, Appellant will address them separately.

**I. REPLY TO TRAVERSE COUNTY RESPONDENT’S BRIEF**

Appellant agrees with the Traverse County Respondent’s statement that the issue is whether a “determination” made pursuant to Minn. Stat. § 103E.351, Subd. 1 must be made in a manner that is clear, definite and formal. (Traverse County Respondents’ Brief, p. 10). Appellant’s position is that Minn. Stat. § 103E.351 does not have such a requirement and that it need not be formal.

Traverse County Respondents argue that (a) the primary purpose of the determination is to provide the drainage authority with jurisdiction over the proceeding. (Traverse County Respondents’ Brief, pp. 10 and 19). They then argue that (b) the second purpose of the determination is to provide notice to previously un-assessed landowners. (Traverse County Respondents’ Brief, p. 16). (c) In support of these contentions they adopt the trial court ruling that the determination required a “final decision”. (Traverse County Respondents’ Brief, p. 15); SEE APPENDIX-000354.

**A. Whether the purpose of a Minn. Stat. § 103E.351, Subd. 1 determination is to provide the Drainage Authority jurisdiction over the proceeding.**

The cases Traverse County Respondents cite to support their position that Minn. Stat. § 103E.351, Subd. 1 has a jurisdictional requirement are clearly distinguishable on

two grounds. Both Oelke v. County of Faribault, 70 N.W.2d 853 (Minn. 1985) and In re Judicial Ditch No. 17, 117 N.W.2d 392 (Minn. 1962) are ditch proceedings commenced by an improvement petition on judicial ditches that were initiated in the district court. Thus they involve “drainage projects” as defined by Minnesota Statute §103E.005, Subd. 11. A Minn. Stat. § 103E.351 redetermination, however, is by definition not a “drainage project”. Nor is it a “proceeding” as defined in Minn. Stat. § 103E.005, Subd. 22.

Indeed, one may wonder how a Minn. Stat. § 103E.351 redetermination was ever to be commenced in district court for judicial ditches other than by petition to correct error. Perhaps this uncertainty, plus the difficulty in providing regular ditch maintenance, pursuant to Minn. Stat. § 103E.705, is why the legislature passed Minn. Stat. § 103E.235 transferring jurisdiction of judicial ditches from the district courts to joint county boards.

The legislature intentionally resolved any uncertainty by including subdivision 2 in Minn. Stat. § 103E.625, which states a joint county drainage system that is taken over in whole or in part is part of the works of the watershed district to the extent taken over. Drainage Authorities have ongoing jurisdiction to inspect and maintain their ditches, Minn. Stat. § 103E.705 and, if the conditions exist, to appoint viewers under Minn. Stat. § 103E.351, Subd. 1.

The substantive difference is that the cases and ditch proceedings that Traverse County Respondents rely upon all involve formal sections of the drainage code that set forth detailed requirements and provisions for commencing a ditch proceeding by way of

a petition, upon receipt of which the drainage authority must take action. (Traverse County Respondents' Brief, p. 18).

By contrast, Minn. Stat. § 103E.351, Subd. 1 is informal. As described in Appellant's primary brief, none of the detailed requirements found in Minn. Stat. §§ 103E.202, 103E.241, 103E.245 and 103E.261, are mentioned by the legislature in 103E.351, Subd. 1. There is no basis for the Traverse County Respondents attempt to mandate a jurisdictional requirement in Minn. Stat. § 103E.351, Subd. 1, and the trial court erred in adopting this reasoning.

**B. Whether a Minn. Stat. § 103E.351 determination is intended to provide notice to un-assessed landowners.**

There is also no support for the contention that a Minn. Stat. § 103E.351, Subd.1 determination is intended to provide notice to un-assessed landowners. Traverse County Respondents admit that Minn. Stat. § 103E.351, Subd. 1 does not "expressly require notice of the preliminary hearing." (Traverse County Respondents' Brief, p. 20). By the tone of their arguments, they obviously hold the opinion that such notice should be required. However, Appellant's position is that the legislature intentionally excluded all formal requirements, including notice, from Minn. Stat. § 103E.351, Subd. 1.

There is no basis to assume that adding language to the December 5, 2005 board minutes, such as, "the Board determines that land values have changed and that there may be lands benefitted or damaged area have changed", would have provided the objecting landowners any more notice than what they had received.

The District's board minutes demonstrate that as of August 2005, by consensus, the Board had determined the basis to proceed with a redetermination process existed. The Board then prepared an informal petition for the landowners presently assessed to sign if they desired such action. The District's administrator reported the progress at the October 2005 meeting. The administrator also reported that the petition, containing over 60% of the presently assessed landowners signatures, was received by the District prior to the November 2005 meeting. At that time, the December 15, 2005, informal meeting was scheduled. All areas of the District had board member representation. Two Board members voted no on the motion to start the process and appoint viewers. Respondents do not explain how adding this language gives additional notice.

It should be noted that the Traverse County Respondents took remarkably inconsistent positions in their arguments to the trial court. (Traverse County Respondents' Brief, p. 2.). Their second argument for summary judgment which was made vigorously to the trial court (SEE APPENDIX-000027-000032) is that lands cannot be added to a benefitted area of a drainage system under Minn. Stat. § 103E.351. This issue remains to be decided by the courts but if Respondents are correct here, then notice of the December 15, 2005 informal meeting was given to all affected landowners.

**C. Whether the trial court erred in ruling that a Minn. Stat. § 103E.351 determination is a final decision.**

The Trial Court based its decision on its conclusion that a Minn. Stat. § 103E.351, Subd. 1 determination is a final decision. Traverse County Respondents attempt to

support this conclusion by arguing the plain meaning of the term “determine” is consistent with this ruling, arguing “plainly, a determination requires a clear, definite and ‘final decision’”. (Traverse County Respondents’ Brief, p. 15).

It is Appellant’s position that, the trial court’s conclusion that a Minn. Stat. § 103E.351, Subd. 1 determination has to be a final decision, is a fundamental error which requires reversal of the trial court’s decision. Appellant construes the statute’s plain meaning to be that a “determination” to appoint viewers is a preliminary decision only.

Minn. Stat. § 103E.351, Subd. 2 directs that after viewers are appointed, a determination process follows the provisions of Minn. Stat. §§ 103E.311-103E.321 with a final hearing pursuant to Minn. Stat. §§ 103E.325, 103E.335 and 103E.341. Thus, Minn. Stat. § 103E.351, Subd. 2 directs the process back in to the formal detailed matrix set forth by the legislature in Minn. Stat. §§ 103E.202-103E.345.

The relevance of those sections of this matrix that relate to the preliminary hearing is clearly appropriate in the interpretation of Minn. Stat. § 103E.351, Subd, 1. These sections apply to all drainage projects commenced by petition and require public hearing, notice, an engineer’s report, findings and an order. Minn. Stat. § 103E.261, Subd. 7(b) specifically states that the findings and order of the drainage authority at the preliminary hearing are conclusive only for the signatures and legal requirements of the petition, the nature and extent of the proposed plan, and need for the detailed survey. All questions relating to the practicability and necessity of the proposed drainage project are subject to

additional investigation and consideration at the final hearing. It is Appellant's position that the Minn. Stat. § 103E.351, Subd, 1. "determination" is not only a preliminary one, but that it is also a minimal one, as it is Appellant's position that the proper interpretation of the statutory scheme is that the drainage authority should have no preconceived opinions as to what lands should be added, if any, when it decides to appoint viewers.

Traverse County Respondents appear to concede that Appellant would have complied with the statute if Appellant had included the statement, "the original benefits or damages determined in the drainage proceeding do not reflect reasonable present day land values" in its minutes. (Traverse County Respondents' Brief, p. 15). As the benefits for Judicial Ditch 14 were determined in 1956, it would seem the court could take judicial notice of the fact this requirement had been met.

The significance of the trial court error in concluding that the Minn. Stat. § 103E.351, Subd. 1 determination is a final decision is further demonstrated in its reasoning set forth in its Memorandum.

"...All of the essential facts upon which the order is based must be found. An Administrative board should state with clarity and completeness the facts and conclusions essential to its decision so the reviewing court can determine from the record whether the facts furnish a justifiable reasons for its action...Nothing in the record this Court has reviewed states with clarity or completeness the reasoning behind the Districts initiation of the redetermination;...An Administrative board should not leave it up to the court to spell out, argue, or choose between conflicting inferences..." SEE APPENDIX-000354- 000355.

Clearly the trial court believed its duty was to review the determination as a final

order. Our supreme court in Mosloski v. County of Martin, 80 N.W.2d 637 (Minn. 1957) clearly held that only final orders in drainage proceedings are reviewable, and that orders made following preliminary hearings are not final orders on matters that are to be considered at the final hearing. The Mosloski Court states: “The issue in this case is whether the order of the County board involved made at the close of the preliminary hearing pursuant to Minn. Stat. § 106.101, Subd. 5 constituted a final determination of relator’s rights.” Id. at 506. The Mosloski court goes on to point out that Minn. Stat. § 106.101, the predecessor to Minn. Stat. § 103E.261, states that the findings therein required are conclusive only as to the sufficiency of the petition, etc. Id. at 507-508. All questions relative to the practicability and necessity of the proposed drain shall be subject to further investigation or consideration at the final hearing. This language is now in Minn. Stat. § 103E.261, Subd. 7. The Mosloski Court goes on to explain the findings and order of a preliminary hearing are not conclusive as to matters to be considered at the final hearing. Id. at 508. The Mosloski Court states, “Since there is no final determination here prior to the final hearing provided for by statute, there is nothing for the Court to review.” Id. Benefits are to be determined at the final hearing. Minn. Stat. § 103E.335.

Appellant further contends that Titrud v. Achterkirch, 213 N.W.2d 408, 412 (Minn. 1973) is solid authority that a drainage authority need not prepare formal findings that include the basis for the determination. The “omission” Traverse County

Respondents argue relative to the preliminary order in Titrud is not relevant to that Court's ruling. The nature of a drainage project and proceeding can change drastically from the engineer's preliminary survey considered at the preliminary hearing and the nature of the project proposed at the final hearing. See Oelke v. Faribault County, 70 N.W.2d 853 (Minn. 1955). In the Oelke case, one of the issues for the court's consideration was whether the objectors, subsequent to the original order granting the petition, may challenge the sufficiency of the petition. Id. At 547. The Oelke court explains its decision to allow subsequent challenges by detailing the changes to the project that occurred between the preliminary and final hearings.

The proceeding was commenced under a petition contemplating the improvement of an outlet at an estimated cost of about \$25,000. It finally culminated in an order providing for improvements which would cost in the neighborhood of \$83,000. It is conceivable that many of the landowners who may have examined the original petition or who attended the early hearings might well have assumed they would not be affected by the proceeding at all. As the scope of the proceeding was extended, their position may have been considerably altered.

Id. at 859.

Thus, in Titrud, the issue as to the adequacy of the outlet was very material at the final hearing and this opinion is solid precedent that specific findings are not required.

Appellant continues to contend Minn. Stat. § 103E.351, Subd. 1 is directive only and further insists the Traverse County Respondents overstate the case law asserting that drainage statutes must be strictly complied with. A careful reading of the cases with this language show they involved proceedings for the commencement or improvement of

drainage ditches. As stated In Re Judicial Ditch No. 17 in Meeker and Kandiyohi Counties, 117 N.W.2d 392, 395 (Minn. 1962), portions of the drainage law are remedial. “Thus, s 106.511 has its proper purpose in our ditch law, but is in effect only a remedial statute.” Id. at 395.

## **II. REPLY TO GRANT COUNTY AND OTTER TAIL COUNTY RESPONDENTS’ BRIEF.**

Respondent Grant and Otter Tail County Appellant’s (hereinafter referred to as “Grant and Otter Tail County Respondents”) also argue the determination must be formally stated and final. (Grant and Otter Tail County Respondents’ Brief, pp. 16-17).

Grant and Otter Tail County Respondents also argue that the ditch authority originally proceeded on the basis of a defective petition. (Grant and Otter Tail County Respondents’ Brief, p. 13).

It is unfortunate that the animus of Grant and Otter Tail County Respondents’ and/or their counsel, towards the District is such that they cannot accept that the District has no hidden agenda and was simply trying to fulfill their obligations as the drainage authority for Judicial Ditch No. 14.

### **A. The evidence supports the Appellant’s position that it acted upon its own independent determination.**

The purpose of the opening remarks at the watershed final hearing, referenced by Grant and Otter Tail County Respondents in their Brief, was to direct the focus of the hearing to be on the merits of the viewer’s findings, rather than a detailed discussion of

the drainage authority's actions that initiated the process during the years 2002 through 2005. At the Final Hearing on April 15, 2010 the following was said by Appellant's Attorney:

This is a Judicial Ditch hearing. It is not a Bois de Sioux Watershed hearing as such. The Bois de Sioux Watershed District is the ditch authority for Judicial Ditch 14 and thus it is the overseer of that ditch. In the olden days when it was started, JD 14 was started it was a judicial ditch that would have been the court. Then later the Statute was changed and jurisdiction handed over to the counties to handle joint ditch systems.

When the watershed was formed this judicial ditch was turned over to the watershed by Grant and Traverse Counties and now the watershed is the ditch authority...

(SEE APPENDIX-000246; Transcript, p. 3, lines 22-25 through p. 4, lines 1-10)

The Board is not something that started this. The Board is here to make a decision on this. But the Board has a statutory obligation to redetermine benefits because they have that petition and they started the process...but we don't plan to conclude this today. None of us believe that the Viewers necessarily did everything perfect...

(SEE APPENDIX-000247; Transcript, p. 5, lines 2-13)

The statute says the people have a right to be heard and we want to honor that completely. We want to give everybody here that wants to state anything about it the opportunity to do it...

(SEE APPENDIX-000247; Transcript, p. 6, lines 21-25)

As I said, at the end of this process the Board has to make a decision. They have to reestablish a benefit area, they don't have to accept the Report as it is.

(SEE APPENDIX-000248; Transcript, p 11, lines 13-17).

If these opening remarks raised confusion as to the role of the informal

landowners' petition, this was brought to the attention of the board early on by Traverse County Respondent's attorney Braegelman, who stated the following:

My first concern or frankly objection that my clients have to raise is that the petition is defective. (April 15, 2010 Final Hearing Transcript, p 61, line 19-21).

The Appellant's attorney responded:

I just want to supplement what Kurt said and a little but apologize for Jeff..I'm not sure everything was there, but the Board – and I may have misstated a little bit earlier and I want to correct that impression. This was brought up here by a petition and as I said 60 percent of the landowners and I think the petition is adequate. But the Board did meet with the landowners at a board meeting and in December 15 of 2005 - - I'm afraid those files might not be in the file that you saw Jeff. But the Board at that time the notes show that they were told despite the fact of the petition - - they didn't have to order the redetermination. They had a motion and passed it and it was six, two, among the Board members, so the Board did order the redetermination to go forward based on the petition and the landowners.”

(SEE APPENDIX-000249-000250; Transcript, p. 80, line 16-25 through p. 81, line 1-11).

The landowner petition was only one of the reasons Appellant appointed viewers in 2005. As Minn. Stat. § 103E.351, Subd.1, does not require the drainage authority to act, a drainage authority may recognize or “determine” that the conditions exist that would justify a redetermination, but it is the appointment of viewers that commences the process. Here, the Board records demonstrate that the Board started in September 2002 discussing that the conditions that would justify a redetermination did exist and that by the August 2005 board meeting determined to take action if the landowners who were presently assessed benefits filed a petition demonstrating their support for such action.

The District's Board Minutes from August 18, 2005, state:

JUDICIAL DITCH #14: Re-determination of Benefits. Staff met with land owners that will carry the Petition to proceed with Re-determination of Benefits. JD#14 situation was explained to the board members with the drainage area versus the current assessment area. Administrator explained that BdSWD staff will help in distributing the mailing keeping track of time, postage, etc. All expenses will be billed to the ditch system. Consensus of the board was to proceed.

(SEE APPENDIX-000132-0001333)

Following the August 18, 2005 board meeting, Appellant prepared the informal petition and delivered it to the landowners that supported the redetermination and withheld action until receiving back said informal petition containing support of over 60% of those presently assessed. This informal petition contained the following language: “2.) That the original benefits determined for Judicial Ditch 14 do not reasonably represent current land values and benefitted areas have changed.” SEE APPENDIX-000066. The November 17, 2005 Board minutes are also relevant as they state: “Administrator reported that petitions had been received totaling fifty-nine percent (59%) of the assessed land area, requesting the redetermination of benefits.” SEE APPENDIX-000133.

Simply put, these actions demonstrated that the Appellant’s Board understood it was taking discretionary action in commencing the redetermination process by appointing viewers at the December 2005 meeting. These actions also demonstrate that the Board made the determination that the conditions for a redetermination existed by the August 2005 meeting but did not and would not decide to appoint viewers without the landowners’ support. This was Appellant’s policy, and not an after-thought, as

demonstrated by the discussion of this very subject during the final hearing on June 17, 2010. (June 17, 2010 Transcript, Page 161, line 20-25, and Page 162, line 1-22.)

No where in the records is the informal petition accepted or is there any indication that the drainage authority felt that it was obligated to act because it received a petition.

Grant and Otter Tail County Respondents' reliance on a newspaper article, which is clearly hearsay, shows the weakness of its argument. The Appellant's Administrator, an employee, has never been shown to be any way in charge of the redetermination process and if he misunderstood the significance of the informal petition in April 2010 he clearly understood it at the meaningful time in December 2005 as he is the author of the Appellant's monthly minutes. SEE APPENDIX-000128.

While Grant and Otter Tail County Respondents argue they were not demanding formal findings, the trial court memorandum states an administrative board should state the facts and conclusions essential to its decision. SEE APPENDIX-000354. Grant and Otter Tail County Respondents argue the determination must be formal. It is difficult to discern a distinction.

The repeated reference in the Final Hearing Transcript to the petition was because the landowners' support evidenced by the informal petition was one of the reasons the Board decided to appoint viewers.

The Minnesota Public Drainage Manual recognizes that it is a common practice for a ditch authority to rely upon an informal petition as the basis for initiating a

redetermination.

Minnesota Public Drainage Manual states:

**H. Redetermination of Benefits**

...

**Yet, there is an informal practice, wherein the drainage authority is sometimes “petitioned” for a Redetermination of Benefits and Damages. “**

**(Minnesota Public Drainage Manual, 2.58).**

Grant and Otter Tail County Respondents knew Appellant had independent reasons for commencing the re-determination, as said Respondents set them forth in their brief to the trial court (SEE APPENDIX-000208) and wonder “why the drainage authority did not ever simply order the determination on their own.” SEE APPENDIX-000209.

The Watershed District did not want to get into a detailed discussion during the final hearing as to the basis for the action taken in 2005 as it wanted to avoid a scenario where Appellants would argue with the Board members as to why they voted to appoint Viewers. This scenario did occur at the June 17, 2005 hearing (see transcript pp. 142-150) where the primary Traverse County Respondent, Pat Haney, endeavored to question board members as to why they voted to appoint viewers and what their feelings were about the redetermination now. (see transcript p. 146). The record shows that Appellant consistently discouraged such a discussion throughout this process.

See transcript p. 147 line 25, as follows:

“Pat, I don’t want to cut you off but I want to make it clear that the board and our advice to the board is there are to make a decision but like a jury they’re not to make their decision until they’re done , until they get a final Viewers Report and until they have heard from all of you...(148-1-8) PAT HANEY: Right but don’t you think that the people sitting out there want know how they feel? MR. ATHENS: Right now my advice is to say that they are trying to have an open mind as much as they can.”

The Record shows that Mr. Haney was not confused about the fact that the Board did not have to act upon receiving a petition.

See Transcript p. 142, lines 16-25 and p.143. Lines 1-19, as follows:

“And there’s been one or two Board members, one I know of for sure, made the comment to somebody that, well, we got the petition we had to act on it. Okay, yeah, that’s true. But it didn’t say you had to act on it. The law doesn’t say you have to act on it in a positive way; is that correct, Tom?

TOM ATHENS: Yes, I think we explained that originally.

PAT HANEY: Because the Board had a petition they do not have to go ahead with this redetermination.

MR. ATHENS: Well, okay, Pat, when the Board got the petition they did not have to order a redetermination. At that point they had the discretion. Now that they’ve ordered a redetermination, and the statute says they have to, but I think they have to make some redetermination. They have to establish the benefits because it’s in play.

PAT HANEY: Right. But my point is we had two Board members voted against redetermination.

MR. ATHENS: Now we are going back to 2005. Just so we are in a time frame. In 2005 I agree and I think that I said that all along. If I confused somebody it wasn’t intentional. At that time the Board could have said no, we will not order a redetermination.

See Transcript p. 144, lines 6-14 as follows:

MR. ATHENS: Well, I think it is easy to get confused on the time because they could have said don’t do anything in 2005. Now they could be talking about today, 2010, now we have to do something. I’m not arguing with you. They could have said no in 2005 and we wouldn’t be here, right.

PAT HANEY: I just wanted to clarify that.

### **III. Whether the issue of Remand is properly before this Court.**

It is undisputed that Mr. Von Korff's letter was received by the trial court prior to the trial court issuing its Order granting Respondent's Motion for Summary Judgment. The purpose of Mr. Von Korff's letter was not to further argue any disputed facts. Rather, Mr. Von Korff, in his correspondence, was simply pointing out to the Court that, rather than granting Summary Judgment, remanding the matter back to the administrative tribunal would be appropriate.

There has always been an issue as to what statute governs all of Respondents' appeals to district court. While the Traverse County Respondents' appeal was brought pursuant to Minn. Stat. § 103D, (SEE APPENDIX-000001-000013) they have argued:

“first this redetermination was not a proceeding under watershed law. It was a redetermination proceeding under the Drainage Code only. The Watershed Law is not informative in this redetermination case simply because the District itself is a watershed district...The District's status as a watershed district does not invoke the Watershed Law at all,..." (SEE APPENDIX-000148-000149).

The Grant and Otter Tail County Respondents appealed under Minn. Stat. § 103E.091 which deals with the amount of benefits only.

While Minn. Stat. § 103E.095 does not say it applies to an appeal under 103E.351 it appears to be the most appropriate statute to address the issues Respondents have raised, and Minn. Stat. § 103E.095 contemplates the District Court either issuing a substitute order to replace that of the drainage authority or remanding matters back to the district authority in the event of an error.

The issue of remand was raised to the district court before the August 15, 2010 hearing to address the issues Respondents have raised. The trial court discussed the Traverse County Respondent's three summary judgment motions with counsel in chambers before the July 7, 2010 arguments. In those discussions the trial court commented that were it to grant Traverse County Respondent's relief on their "issue 1", the Appellant could quickly remedy that and the matter would shortly be back before the court.

Based on that discussion, Appellant understood the Court was considering remand as evidenced in Appellant's August 3, 2010 memorandum of law to the district court where reference was made that if the trial court granted relief it would be in the form of remand. SEE APPENDIX-000284.

Traverse County Respondents argue the facts do not support the Court finding the Board made a determination. While Appellant argues this determination can be found in the Record, this is a factual issue. A condition for granting summary judgment is that the materials facts are not in dispute. While Respondents have attacked the Affidavits as insufficient, the Affidavits clearly demonstrate at a minimum there is a fact issue. This fact issue, as to what the Board Members determined in 2005 could be resolved in a remand as the original Board Members could then testify as to what their understanding was in 2005.

## CONCLUSION

The trial court clearly misinterpreted Minn. Stat. § 103E.351, Subd. 1 by finding that the administrative board has to make an order setting forth “...all of the facts and conclusions essential to its decision so the reviewing court can determine from the record whether the facts furnished were justifiable reasons for its action.” SEE APPENDIX-000354-000355).

Respondent’s arguments that Minn. Stat. § 103E.351, Subd. 1 has a jurisdictional requirement, and that they were improperly denied notice, are not convincing.

Respondents fail to show that they were in any way prejudiced by the manner in which Appellant has proceeded. Respondents were given ample opportunity to appear before the drainage authority on three separate occasions over a four month period during the final hearing. Further, reversal of the trial court’s decision does not mean Respondents are assessed benefits to Judicial Ditch 14. Respondents retain their legal objections to the Viewer’s methodology as set forth in both of Respondents’ Summary Judgment Motions, as well as their right have a jury trial as to the Viewer’s assessment to their individual properties pursuant to Minn. Stat. § 103E.091.

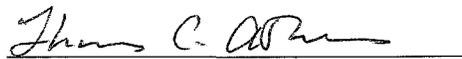
The primary issue as to what lands should appropriately be assessed benefits to Judicial Ditch 14 is not a subject of this appeal as it remains to be determined. The issue here is whether the procedure followed by the drainage authority in initiating the process was appropriate, or at least reasonably in compliance with Minn. Stat. § 103E.351, Subd.

1.

Based on the foregoing, Appellant respectfully requests that this Court reverse the Trial Court's determination in all respects, or in the alternative, remand the matter with instructions to Appellant District as to the proper procedure to be followed when redetermining benefits and damages under Minn. Stat. § 103E.351.

Dated this 30th day of December, 2011.

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CERTIFICATE OF LENGTH COMPLIANCE

I, Thomas C. Athens, an attorney for Appellants, hereby state that Appellant's Reply Brief to the following: Traverse County Respondent's Brief and Respondent Grant and Otter Tail County Appellant's Response Brief complies with both the typeface requirement and word count limitation as set forth in Minnesota Rule of Civil Procedure 132 Subd. 3(b). WordPerfect 11 was used in the preparation of Appellant's Reply Brief.

There are 4,997 words in the brief.

Dated: December 30, 2011

SVINGEN, CLINE & LARSON, P.A.



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