

DRAINAGE MEETING
DISTRICT WARREN #11
NOVEMBER 20, 2024

The Story County Drainage District Trustees met in the Public Meeting Room of the Story County Administration Building in Nevada, IA to consider annexation of additional lands into Drainage District Warren #11 and a proposal to repair the open drainage ditch in that district. Members present were Lisa Heddens, chair, Linda Murken, and Latifah Faisal. Also present in person were Story County Communications Assistant Bryce Garman and Drainage Clerk Scott Wall, and Drainage Engineer Tyler Conley from Bolton and Menk, Inc. along with 45 landowners in the Warren #11 watershed and their representatives (see attached sign in sheets). Attending virtually were at least 10 people including Story County Engineer Darren Moon, Hamilton County Supervisors Rick Young and Jerry Kloberdanz, and Matthew's iPad, Kadie Ritland, Jon Risdal, and Douglas Tjelmeland.

Heddens called the meeting to order at 6:30 p.m.

Murken moved, seconded by Faisal, to approve the agenda. Motion carried unanimously (MCU).

Conley briefly reviewed the Engineer's Report (on file in the Story County Auditor's Office) which was presented to district watershed landowners on March 21, 2024. That report was done to update an Engineering Report prepared by Fox Engineering in 2011 which was shelved after several public meetings on its recommendations. The current report examined the condition of the open ditch and, at the request of the landowners in Warren #11, also looked at the watershed served by the district. Through LiDAR data acquired from the State of Iowa the watershed was found to be significantly larger than the existing district and the report recommended annexing an additional 6,804.7 acres in Story County, 6,535.1 acres in Hardin County, and 315 acres in Hamilton County to add to the 8,450 acres currently within Warren #11. The report also recommends a repair of the entire open ditch including tree removal, straightening the ditch, reshaping the ditch banks, and removing silt from the ditch bottom to bring it back as nearly as possible to its original design condition.

At the end of the March meeting the trustees directed Conley to prepare an Annexation Report and Preliminary Classification for the entire watershed. The presentation of that report is the subject of tonight's meeting. The advertised accuracy of the state LiDAR is plus or minus 6" per square meter. Bolton and Menk performed field surveys across the watershed to correlate with the LiDAR data and to create a digital elevation model (DEM) that shows the path taken by a drop of water that falls anywhere in the Warren #11 watershed. Aerial photos also show evidence of surface drainage and watershed boundaries.

The annexation report indicates which properties are benefitted by the district. The classification details how much each of those properties is benefitted. In Warren #11 there appeared to be inequities between the parcels directly adjacent to the open ditch as they were receiving significantly higher benefits than properties adjacent to them but not on the ditch.

The Code of Iowa provides two methods for annexation into a drainage district. If the trustees become convinced that lands outside the existing district are benefitted by that district or if lands in another district are benefitting from the subject district. In Warren #11 the open ditch serves as the outlet for 5 tile districts within Story County and water from Hardin County District #34 also drains into Story County and to the Warren #11 open ditch. Districts that use another district's facilities can be annexed into that district if the trustees of said districts agree to the annexation. Some of the properties within the other Story County districts are included in the Warren #11 district but most are not, which is inconsistent with other drainage districts within the State of Iowa.

The preliminary classification is for comparison purposes only. It has not been vetted by district commissioners. It also assumes that the entire proposed annexation occurs. Depending on the final scope of any annexation, or no annexation at all, the benefits assigned to the parcels ultimately within the district could change. Benefits are determined by five factors. Those factors are: 1. Area - How much land do you have draining to the facility, 2. Wetness – Based on soil types, are the soils wet or dry, 3. Proximity – How close are you to a district facility, 4. Use – How much of the facility do you use, and 5. Land Use – What is the land being used for? These factors are combined to create a benefit for each parcel of land within the district. The process is math based, computer driven, and repeatable.

Lee Gallentine, Clapsaddle-Garber Associates and Hardin County's Drainage Engineer, spoke representing Hardin County and their Drainage District #34. The Supreme Court does not recognize watersheds as a basis for annexation. All of the court rulings he has read refer to material benefit. To be materially benefitted parcels must be able to be used for a different or better use than they are now. If the land being annexed can be used in a better or more efficient manner after annexation that could be used as justification but it is not the case here. Gallentine shared a map (attached) showing how far flooding in Story County would have to extend into Hardin County before it had a negative impact on Hardin County Drainage District #34. This shows that Hardin #34 functions perfectly well with or without the existence of Warren #11 and is not materially benefitted by Warren #11.

Eric Eide, an attorney with Nymaster Goode, P.C. in Ames, is representing over 100 landowners who are objecting to the proposed annexation. He gave a brief overview of Warren #11 and work done in the district. He stated that the only reason we are here tonight is because the ditch has not been maintained since 1951. Iowa Code 468.126 states the trustees have an absolute, court enforceable duty to maintain the district facilities. It doesn't matter what the landowners want. He has had two court cases where landowners took drainage districts to court to force the trustees to maintain their district and the landowners won. If this annexation goes forward the trustees are trying to shift the burden for maintaining the district from themselves and the landowners who blocked recommended repairs in the past onto people outside the district.

In 2023 the trustees hired Bolton and Menk to prepare a new report. Why? He could've told the trustees that nothing had changed since the last report. He has had three bad annexation cases in the past 4-5 years including one in Story County (*Grant #5*) and that case was a lot closer than this one. Eide said the people that did the original work to establish Iowa's drainage districts did a terrific job. Annexations are intended to bring in small areas of land that should have been included in the original district but any annexation of more than 40 acres is suspect. There is no way an 8,000-acre annexation can happen under Iowa law. The people Eide represents have hired Gallentine to represent their interests and Eide wouldn't be here without having Gallentine in his corner. For an annexation to take place it is the trustees, not the engineer, that must be convinced that annexation is necessary.

The Hardin County trustees have filed an objection to annexing their district #34. Hamilton County had this exact kind of case and Eide told them they were wrong but they pushed it. What needs to happen is the ditch should be cleaned. Then, if the trustees want to pursue annexation, they can but this cleanup will not make a difference to any benefit to lands outside the district. Trying to push an annexation before cleaning a ditch that hasn't been cleaned in 75 years makes no sense.

Randy Hill, McCallsburg, has lived in Warren #11 all of his life. Hardin County does drain into Warren #11 and the situation has gotten worse as more private tiles are added to the watershed. The landowners on the open ditch in Warren #11 get flooded because of all the water coming down from Hardin County and McCallsburg. Because of inequities in the current assessment schedule 19% of the landowners in Warren #11 pay 41% of any costs while the people draining in from outside the district pay nothing.

They've gotten a free ride for over 100 years. His brother, Jerry, would pay \$27,000 of a \$900,000 project for his 160 acres on the ditch while his adjacent neighbors would pay \$3,000. Maybe the classification schedules made sense in 1907 but with today's pattern tiling people removed from the open ditch have much greater access to that facility than they did in the past. Every drop of water that falls on the watershed shown in the reports ends up in the open ditch and floods the land along the ditch. So much water comes from McCallsburg that in 1977 it blew out the railroad tracks near his property. The biggest problem in Warren #11 is that it needs to be reclassified.

Dennis Friest owns land in Hardin #34 as well as land in Hardin County that is not part of any district. Why should he pay for any work in Warren #11? Hardin #34 is dumping water into a natural creek – East Indian Creek. All of the water from Hardin #34 finds its way into the Warren #11 ditch then East Indian Creek then the Skunk River then the Mississippi then the Gulf of Mexico. How far downstream could this go? It seems ridiculous that he should have to pay for a problem Warren #11 has allowed to develop over 75 years.

Daniel Reisetter, Radcliffe, said his property is at the far north edge of the watershed. How is he benefitted by anything done to the Warren #11 ditch?

Conley said this is not about how the ground in the watershed drains now compared to how it will drain when the ditch is repaired. This is about land that should have been included in Warren #11 when it was established in 1907. The Engineer's Report from 1907 calls out the amount of water flowing from Hardin County, saying it renders the land in Warren #11 unfit for cultivation and it is a health hazard. He concurs that Friest's benefit would be small but water in the entire watershed drains faster because of what was done with Warren #11 in 1907.

Reisetter is worried that people downstream of Warren #11, on a "wild" waterway, will look at what is being proposed here and decide they need better drainage. What is to stop them from forming a new district then annexing Warren #11 and asking everyone in the watershed to pay to extend the open ditch?

Conley said nothing he does will change the amount of water entering or leaving Warren #11. He is merely trying to see that the ditch is restored to its original capacity. Certainly, the people downstream could decide they need better drainage but that is all hypothetical.

Jacob Handsaker, Radcliffe, has friends in Hamilton County where Bolton and Menk recommended a similar project. That was where the group that opposes the Warren #11 annexation originally got organized. No one here has ever paid a dime to improvements being done in the Mississippi Delta watershed which includes 7,196,800,000 acres. He agrees with Friest that if this annexation goes through where will it end?

When the landowners in Hamilton County were faced with a project like this one they had 40 days to organize opposition. They've been organizing against this project since June. In Hamilton County the case went to the Iowa Supreme Court and the landowners won. If this goes to court it will delay work on the Warren #11 ditch and add court costs to the eventual bill. The Hamilton County project and two others he is aware of all lost in court.

Loren Tjernagel, Roland, owns land in Warren #11 along the open ditch. He has 160 acres that regularly get flooded and that water is coming from Hardin County. When it rains hard he always says here comes Garden City water and here comes Hardin County water. Everyone has fixed their farms so the water drains faster and faster but no one wants to help pay for the consequences.

Dwayne Tjelmeland, who owns land along the Warren #11 open ditch, seconded Tjernagel.

Rick Young said he understands the frustration of the landowners as he has been deeply involved with drainage districts in Hamilton County. However, the open ditch has not been cleaned out for 75 years and now it is someone else's fault? Hamilton County cleans their ditches every 30-40 years. He's been in district court as a witness and in the Appellate and Supreme Courts in Des Moines in cases that had better evidence than this and this will not make it past district court. The people in Hamilton County will stand with the people in Hardin County and oppose the annexation.

Jon Risdal owns 320 acres in Warren #11. Regardless of what happens with the annexation the benefits in the existing district must change. They are not fair. Under the current schedule he pays almost 10% of any assessment. He has farmland on each side of the ditch and in the 2024 assessment one property was assessed \$16 per acre and the other was \$32 per acre. He doesn't see how that can possibly be equitable.

Douglas Tjelmeland helps his father, Dwayne, with the farm. Water clearly flows from Hardin County into Story County and into Warren #11. Their family farm ends up cleaning out the corn stalks, trees, and other debris that comes down from Hardin County. That the ditch has been neglected is not the issue. He disagrees with Eide. There has always been a benefit from the district for Hardin County. This is a totally different issue from Eide's other cases and from Hamilton County's experience.

Faisal clarified why a new Engineer's Report was necessary. The report prepared by Fox Engineering was more than 10 years old.

Conley said that, under the Code, reports are valid for ten years. The Fox Engineering Report was dated 2011 and could no longer be used.

Faisal said claiming nothing had been done to the ditch in 75 years was misleading. There have been many small repairs but, once the Fox report was accepted, the trustees were aware that a comprehensive repair of the entire ditch was necessary and the Code prohibits breaking large projects into smaller pieces to avoid requirements for hiring an engineer to generate a report.

Conely confirmed that the trustees cannot continue to perform spot repairs when they know that a comprehensive repair is needed. Story County Secondary Roads has been attempting to control serpentine of the ditch along a county roadway as well as performing emergency repairs along the ditch but they cannot continue to do that without addressing the ditch as a whole.

Murken asked Conley to show the aerial imagery of the Warren #11 watershed which clearly shows a natural stream leading from Hardin #34 to the top of the Warren #11 ditch. She questioned the statement made by someone that the water goes into a natural creek that then goes into another natural creek.

Conley said Hardin #34 drains into a natural creek which is then more adequately drained by Warren #11. They are all the same creek.

Faisal asked what if Warren #11 did not exist? What would the area be like?

Conley referred to a statement in the 1907 Engineer's Preliminary Report that says, "...a large amount of water comes down from the adjoining county on the north (Hardin) and spreads out over much of the lands of this district rendering them too wet for agricultural purposes..." Without the Warren #11 facilities most of the area would be swampland.

Randy Hill asked when the four old bridges across the open ditch will be replaced? They are too small and constrict the flow of water along the ditch.

Heddens said that is a separate issue from the drainage ditch and is not pertinent to this evening's discussion. That is a question for the County Engineer and what his plans are for bridge replacement.

Tjernagel asked why we are talking about 1951. This area was classified in 1907 and that classification is not fair today. *(Tjernagel is mistaken here. The district was reclassified in 1951 and that is the schedule currently in use.)*

Faisal addressed comments about land downstream of Warren #11. If those landowners want a district they can petition to form one. Would they have a reason to want to form a district?

Conley said those landowners have not raised issues with their drainage in over 100 years. Worrying about what may happen with them in the future is purely hypothetical.

Faisal said if Hardin County does not use Warren #11 what would happen if, for the sake of argument, we built a dam on the county line?

Conely said water would pool in Hardin County until it reached the top of the dam.

Faisal said so the water does drain into Warren #11.

Conely said if the use and expedient removal of water due to a district improvement is not a material benefit he'd like to know what does constitute such a benefit. He does not claim to be infallible and welcomes any discussion regarding his findings.

Gallentine does drainage work in other counties besides Hardin. He sympathizes with the landowners in Warren #11. He hears the same arguments in other districts. He would love it if it was as simple as defining a watershed. You won't find this in the Code but the courts have ruled it is a material benefit if annexation provides a different and better use of the ground. He does not dispute that Hardin and Hamilton Counties drain into Story County – they do. The ground proposed for annexation has to have a different and better use because of the existence of Warren #11. He referred to the map he'd handed out earlier showing how much land would have to be flooded before the use of Hardin #34 changes.

Murken asked for clarification on what Gallentine meant by how much flooding was necessary to impact Hardin #34.

Gallentine said the map he'd presented was based on elevations. We know the elevation of the Hardin #34 outlet and of the land to the south. His map shows the area that would have to be flooded before that flooding pushed water back into Hardin #34. The Iowa Supreme Court has ruled that if the water is already there through a mechanism that God put there it is not the dominant (upstream) landowners' concern, it is the subservient landowners' concern. It is unfortunate for the landowners in Warren #11 that the water comes to them. Hardin #34 was established before Warren #11. If Warren #11 was needed for Hardin #34 to function this area would already be in a single district but Hardin #34 functions just fine on its own.

Randy Hill said if you don't believe you benefit from Warren #11 plug your tile and see what happens.

Murken asked Conley why he feels the proposed annexation areas are materially benefitted by Warren #11.

Conley said the proposed annexation areas are materially benefitted by Warren #11 because they are made better compared to their condition prior to 1907.

Murken asked if the fact that Hardin #34 was established before Warren #11 negated the argument that it benefits from Warren #11.

Conley said the only recourse Warren #11 has to deal with siltation and debris entering the district is to annex and assess those grounds.

Reisetter asked how far the top of the Warren #11 ditch was from Hardin County.

Conley said it was about one mile in a straight line.

Reisetter asked if he was expected to believe that brush, trees, and other debris from Hardin County was travelling over a mile down a natural waterway and ending up in the Warren #11 ditch and on the Tjelmeland's property.

Conley said that he is saying runoff from Hardin County is contributing to the debris load in the Warren #11 ditch.

Reisetter said the fall from Hardin County is too great for the Warren #11 ditch to be of any benefit to Hardin County landowners. They will drain the same with or without Warren #11.

Reisetter asked if the annexation goes forward who will be in charge of the district? Will he get an equal vote with the people in the current district?

Wall said that, under the Code of Iowa, drainage districts are managed by the County Board of Supervisors, acting as Drainage District Trustees unless the residents of the district elect their own trustees and manage the district themselves. If the annexation goes forward the joint boards of Story, Hardin, and Hamilton Counties would be the trustees.

Risdal asked about reclassification without an annexation. If there is no annexation the district still needs to be reclassified.

Conley said the preliminary classification can be modified to whatever area the district ends up covering. It is his opinion that the current classification contains inequities and the district should be reclassified regardless of whether any annexation occurs.

Heddens said none of the current trustees were serving in 1951. None of them were serving in 2011. They cannot go back to what should or should not have been done in the past. They can only look at what they can do now.

Murken moved to approve the Engineer's Annexation Report and proceed with the recommended annexation of additional lands into Drainage District Warren #11 as detailed in that report.

Faisal seconded Murken's motion for the sake of discussion. The question as to what is or is not a material benefit is giving her a moment's pause.

There being no further discussion Heddens requested a vote on Murken's motion. MCU.

Heddens stated the next item on the agenda was the establishment of a defined easement along the open ditch.

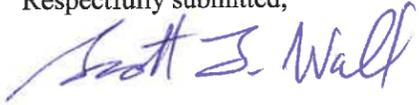
Conley said it is common for there to be no defined easement along open drainage ditches. There is an assumed easement used for access to maintain and repair the ditch but he recommends formally defining that easement as being 50' on either side of the ditch centerline.

Gallentine said that, since the trustees had moved in favor of annexation, they were now a nine-member board and no longer met quorum to discuss further items on the agenda.

Conely said he believed that Gallentine was correct.

Murken moved, seconded by Faisal, to adjourn. MCU. Meeting adjourned at 8:03 p.m.

Respectfully submitted,



Scott T. Wall

DRAINAGE ATTENDANCE SHEET
Drainage District Warren #11
November 20, 2024

Name	Address	Owner/Tenant
Jerry L Hill	Roland	Owner
Randy Hill	McCallsburg	Owner
Loren Fernald	Roland	owner
Willard Weirson	Roland	owner
Dwight Guilmette	Roland	owner
Kay Ewan	Roland	driver -
Merle Olson	McCallsburg	owner
Paul Cook	Hubbard	Owner
Liste Cook	Hubbard	owner
Robin Collins	Nevada	owner
Jeff Collins	Nevada	owner
Lee Callentine	Ashley	DD34 Engr
Guy Frerichs	Ames	
Jacob Handsaker	Redcliffe	Owner
Daniel Reisseter	Redcliffe	Owner
Joe Fager	Redcliffe	owner
Alvin Clark	Hubbard	owner
Robert Lee Backliffe	Redcliffe	owner
Glen Rodenfield	Redcliffe	owner
Anita Matchie	Redcliffe	owner
Ruth Monroe	Zearing	Owner

DRAINAGE ATTENDANCE SHEET

Drainage District Warren #11

November 20, 2024

Name	Address	Owner/Tenant
Denny & Mary Bergsman	2233 Marshall Blvd	owner
David Speltz	14136 600 th Ave	Poland
Maria Johnson	6515 Pearl St	ZEPHIRUS OWNER
Wally & Wanda	8249 NE 110 th Ave.	Bondurant Owner/Tenant
Dennis Friest	14263 Hwy 65	Radcliffe Owner
John J Hinrichsen	2026 Greenbriar Cir	Ames Owner
Kent Vickie	2625 Marshall Blvd	Ames owner
Alan Knaphus	14390 670th Ave.	McCallsburg owner
Audrey Dabbs Farms	P.O. Box 181 Toledo, Iowa 52342	P.O.A. owner
Dan Knaphus	66110 150th	McCallsburg
Ron Sandsew	13688 590 th Ave.	Poland owner
Eric Wewe	66286 140 th St	McCallsburg owner
Stacy Steuve	14865-620 th Ave	McCallsburg owner
Ryan Cory	33975 E Ave	McCallsburg owner
Jesse Cory	5675 Columbia Dr.	Johnston owner

