

**BEFORE THE HERON LAKE WATERSHED DISTRICT BOARD OF MANAGERS,
ACTING AS DRAINAGE AUTHORITY FOR JACKSON COUNTY JUDICIAL DITCH NO. 30**

**Findings of Fact and Order
Regarding the Establishment of the
Improvement to Portions of Jackson
County Judicial Ditch No. 30, Pursuant
to Minnesota Statutes §103E.341 and
Redetermination of Benefits, Pursuant
to Minnesota Statutes §103E.351**

WHEREAS, a Petition for an Improvement of Jackson County Judicial Ditch No. 30 ("Petition"), Minn. Stat. §103E.215, and Surety Bond dated March 27, 2014 ("Surety Bond") was received by the Heron Lake Watershed District Administrator ("District Administrator") on or about July 2, 2014, pursuant to Minn. Stat. §103E.202, subd. 4, requesting consideration from the Heron Lake Watershed District Board of Managers ("the Board"), acting as the Drainage Authority for Jackson County Judicial Ditch No. 30, for the improvement of Branch A-1 ("the Branch") of Jackson County Judicial Ditch No. 30 ("drainage system"); and

WHEREAS, in accordance with Minn. Stat. §103E.238, legal counsel for the Heron Lake Watershed District reviewed the Petition and Surety Bond and determined each met the requirements of Minn. Stat. §103E.215 and Minn. Stat. §103E.202, Subd. 5, respectively, and referred the Petition to the Board with a recommendation to accept the Petition at its next meeting, pursuant to Minn. Stat. §103E.215, Subd. 5; and

WHEREAS, on or about October 21, 2014 the Board determined that the Petition was sufficient and met the requirements of Minn. Stat. §103E.215, and accepted the Petition; and

WHEREAS, pursuant to Minn. Stat. §103E.215, Subd. 5 and Minn. Stat. §103E.241, on or about October 21, 2014, the Board appointed Chuck Brandel, I+S Group, as engineer, to examine the drainage system and make an improvement report; and

WHEREAS, the engineer examined the drainage system and completed a Preliminary Engineering Report dated March 13, 2015, pursuant to Minn. Stat. §103E.245; and

WHEREAS, pursuant to Minn. Stat. §103E.251, a Preliminary Engineering Report dated March 13, 2015 was filed by the engineer on March 16, 2015 with the District Administrator for future consideration by the Board; and

WHEREAS, in accordance with Minn. Stat. §103E.261, Subd. 1, the Board issued an Order for a preliminary hearing on April 21, 2015, and said hearing was scheduled for May 13, 2015 at 7:00 p.m. at the Heron Lake Community Center, located in Heron Lake, Minnesota; and

WHEREAS, notice of the time and location of the preliminary hearing was properly given by publication, posting, and mail by the District Administrator to the Board of Managers of the Heron Lake Watershed District, acting as Drainage Authority for Jackson County Judicial Ditch No. 30, auditors of affected county, and all interested persons, pursuant to Minn. Stat. §103E.261, subd. 1; and

WHEREAS, a Preliminary Hearing was conducted on May 13, 2015 at 7:00 p.m. at the Heron Lake Community Center in accordance with Minn. Stat. §103E.261, Subd. 2, and was attended by a quorum of the Board of Managers of the Heron Lake Watershed District, sitting as the drainage authority for Jackson County Judicial Ditch No. 30, and other officials and interested parties; and

WHEREAS, the Board was briefly advised as to the history of the proposed project and status of the proceedings by Petitioner's legal counsel; and

WHEREAS, in accordance with Minn. Stat. §103E.255, Subd. 1, the Commissioner of the Department of Natural Resources ("Commissioner") submitted a Preliminary Advisory Report with an opinion about the adequacy of the Preliminary Engineering Report dated March 13, 2015, and said advisory report was read into the public record, pursuant to Minn. Stat. §103E.261, Subd. 2; and

WHEREAS, Chuck Brandel attended the preliminary hearing and presented the Preliminary Engineering Report dated March 13, 2015, and provided necessary information and recommendations for options to improve the drainage system, pursuant to Minn. Stat. §103E.261, Subd. 2; and

WHEREAS, the Board invited Petitioners and all other interested parties to make comment respecting the proposed improvement as presented by the engineer and consistent with its Preliminary Engineering Report dated March 13, 2015, pursuant to Minn. Stat. §103E.261, Subd. 2; and

WHEREAS, interested parties were heard and their testimony was considered by the Board; and

WHEREAS, public discussion on the Preliminary Engineering Report dated March 13, 2015 was closed after comments had been heard; and

WHEREAS, after the presentation and consideration of the Preliminary Engineering Report dated March 13, 2015, the Commissioner's Preliminary Advisory Report, and all public comment, the Board determined that (a) the Petition and Bond were sufficient in accordance with Minn. Stat. §103E.261, Subd. 3 (a); (b) pursuant to Minn. Stat. §103E.261, Subd. 5 that (1) the proposed project outlined in the Petition and recommended by the engineer was feasible, (2) there was a necessity for the proposed drainage project, (3) the proposed drainage project would be of public benefit and promote public health, after considering the environmental, land use, and multipurpose water management criteria of Minn. Stat. §103E.015, and (4) that the outlet was adequate.

WHEREAS, the Board filed its Order dated May 14, 2015, and pursuant to Minn. Stat. §103E.265, Subd. 1, ordered the engineer to make a detailed survey with plan and specifications for the proposed drainage project, and to submit a detailed survey report to the Board as soon as possible; and

WHEREAS, by its Order dated May 14, 2015, the Board further ordered the appointment of three disinterested residents of the state qualified to assess benefits and damages to act as viewers, pursuant to Minn. Stat. §103E.305, Subd. 1; and

WHEREAS, a Viewer's Report dated July 28, 2015 was filed on August 19, 2015 with the District Administrator, pursuant to Minn. Stat. §103E.321, Subd. 4 for future consideration by the Board; and

WHEREAS, the engineer completed a detailed survey report which included data and information in accordance with Minn. Stat. §103E.285; and

WHEREAS, a Final Engineering Report dated August 25, 2015 was filed on August 27, 2015 with the District Administrator pursuant to Minn. Stat. §103E.291 for future consideration by the Board; and

WHEREAS, on October 20, 2015, the Board issued an Order for a final hearing, and said hearing was scheduled for November 5, 2015 at 7:00 p.m. at the Heron Lake Community Center, located in Heron Lake, Minnesota; and

WHEREAS, notice of the time and location of the final hearing was properly given by publication, posting, and mail by the District Administrator to the Board of Managers of the Heron Lake Watershed District, acting as drainage authority for Jackson County Judicial Ditch No. 30, auditors of affected county, and all interested persons, pursuant to Minn. Stat. §103E.325; and

WHEREAS, a final hearing was conducted on November 5, 2015 at 7:00 p.m. at the Heron Lake Community Center in accordance with Minn. Stat. §103E.335, Subd. 1, and was attended by a quorum of the Board of Managers of the Heron Lake Watershed District, sitting as the Drainage Authority for Jackson County Judicial Ditch No. 30, and other officials and interested parties; and

WHEREAS, the Board was briefly advised as to the history of the proposed project and status of the proceedings by Petitioner's legal counsel; and

WHEREAS, in accordance with Minn. Stat. §103E.301, the Commissioner of the Department of Natural Resources ("Commissioner") submitted a Final Advisory Report, and said advisory report was read into the public record, pursuant to Minn. Stat. §103E.335, Subd. 1; and

WHEREAS, Chuck Brandel presented the Final Engineering Report dated August 25, 2015, with recommendations for improving the drainage system and which adequately addressed the concerns and comments raised by the Commissioner's Final Advisory Report, including a potential option to improve the water quality with the installation and implementation of a woodchip bioreactor located in at the

outlet of Branch A-1 located on the properties owned by Lawrence & Debra Nesseth, the cost of which will not be used with public funds, but would be paid for with private funds and/or potential grant funding or other financial resources, if available; and

WHEREAS, Mr. Brandel's presentation of the Final Engineering Report dated August 25, 2015 also included evidence that the drainage system was out of repair, and he further gave his opinion that the drainage system required separable maintenance; and

WHEREAS, in accordance with Minn. Stat. §103E.215, Subd. 6(a), Mr. Brandel also presented evidence in the Final Engineering Report dated August 25, 2015 which determined the proportionate estimated total of \$611,600.00 which would be required to repair the separable portion of the existing drainage system and the proportionate estimated cost of \$168,500.00 for the added work required for the improvement of the existing drainage system; and

WHEREAS, the Board invited Petitioners and all other interested parties to make comment respecting the proposed improvement as presented by the engineer and consistent with its Final Engineering Report dated August 25, 2015; and

WHEREAS, interested parties were heard and their testimony was considered by the Board; and

WHEREAS, public discussion on the Final Engineering Report dated August 25, 2015 was closed after comments had been heard; and

WHEREAS, the Board called upon Ron Ringquist, one of the duly appointed viewers, to present a summary of the Viewer's Report dated July 28, 2015 that reflected the benefits and damages based on the Final Engineering Report dated August 25, 2015, and discuss the method used to calculate benefits and damages, and the net benefits of the project, and to further summarize the redetermination of benefits and damages, pursuant to Minn. Stat. §103E.351; and

WHEREAS, Mr. Ringquist stated that the total amount of benefits, the total amount of damages, and the net benefits, and confirmed that the benefits exceeded the damages; and

WHEREAS, the Board invited Petitioners and all other interested parties to make comment respecting the Viewer's Report dated July 28, 2015; and

WHEREAS, interested parties were heard and their testimony was considered by the Board; and

WHEREAS, public discussion on the Viewer's Report dated July 28, 2015 was closed after comments had been heard; and

WHEREAS, the Board re-opened the hearing to the public to receive, review, and discuss any questions or concerns pertaining to the Final Engineering Report dated August 25, 2015, Viewer's Report dated July 28, 2015, and Commissioner's Final Advisory Report; and

WHEREAS, interested parties were heard and their testimony was considered by the Board; and

WHEREAS, public discussion on the Final Engineering Report dated August 25, 2015, Viewer's Report dated July 28, 2015, and Commissioner's Final Advisory Report was closed after comments had been heard; and

NOW, THEREFORE, based on the unsworn statements of persons present at the final hearing and evidence presented at the preliminary hearing, and based upon the Final Engineering Report dated August 25, 2015, the Viewer's Report dated July 28, 2015, the Commissioner's Final Advisory Report, and all other reports, documents, and other matters contained within the file, the Heron Lake Watershed District Board of Managers, acting as Drainage Authority for Jackson County Judicial Ditch No. 30, makes the following Findings of Fact and Order:

FINDINGS OF FACT

1. On or about July 2, 2014, a Petition and Surety Bond for an Improvement to Jackson County Judicial Ditch No. 30 was submitted to the Board of Managers of the Heron Lake Watershed District alleging, in pertinent part, that: "*the existing Branch has insufficient capacity or requires enlarging to furnish sufficient capacity or a better outlet to Open Ditch #2.*"
2. The Board of Managers properly accepted the Petition and appointed Chuck Brandel, of I+S Group, as the project engineer, in accordance with Minn. Stat. §103E.215, Subd. 5 and Minn. Stat. §103E.241, and further properly ordered him to prepare a preliminary survey report in accordance with Minn. Stat. §103E.245.
3. Pursuant to Minn. Stat. §103E.251, the engineer properly filed the Preliminary Engineering Report dated March 13, 2015 with the Heron Lake Watershed District Administrator on or about March 16, 2015, and said report met all the requirements of Minn. Stat. §103E.245.
4. Notice of the preliminary hearing was provided to all interested persons in compliance with Minn. Stat. §103E.261, Subd. 1.
5. After presentation and consideration of the Preliminary Engineering Report dated March 13, 2015, the Commissioner's Preliminary Advisory Report, and all public comment given at the preliminary hearing on the Petition on May 13, 2015 at Heron Lake, Minnesota, the Board properly determined that (a) the Petition and Bond were sufficient in accordance with Minn. Stat. §103E.261, Subd. 3(a); and (b) pursuant to Minn. Stat. §103E.261, Subd. 5 that (1) the proposed project outlined in the Petition and recommended by the engineer was feasible, (2) there was a necessity for the proposed drainage project, (3) the proposed drainage project would be of public benefit and promote public health, after considering the environmental, land

use, and multipurpose water management criteria of Minn. Stat. §103E.015, and (4) that the outlet was adequate.

6. Pursuant to Minn. Stat. §103E.305, Subd. 1, three disinterested residents of the state qualified to assess benefits and damages to act as viewers were properly appointed.
7. Pursuant to Minn. Stat. §103E.321, Subd. 4, on or about August 19, 2015, the viewers properly filed a Viewer's Report dated July 28, 2015 with the Heron Lake Watershed District Administrator.
8. Pursuant to Minn. Stat. §103E.291, on or about August 27, 2015, the engineer properly filed a Final Engineering Report dated August 25, 2015 with the Heron Lake Watershed District Administrator.
9. Pursuant to Minn. Stat. §103E.325, notice of the final hearing was properly provided to all interested parties.
10. On November 5, 2015, after the presentation of the Final Engineering Report dated August 25, 2015, the Commissioner's Final Advisory Report, and the Viewer's Report dated July 28, 2015, and after testimony by interested persons at the final hearing, the Board of Managers made the following specific findings:
 - a. Final Engineering Report dated August 25, 2015, attached as **Exhibit A**, and the Viewer's Report dated July 28, 2015, attached as **Exhibit B**, have been made and other proceedings have been completed pursuant to Minnesota Statutes §103E.
 - b. Based upon the evidence, the reports made are complete and correct.
 - c. Based upon the evidence, the damages and benefits have been properly determined.
 - d. Based upon the evidence, the estimated benefits are greater than the total estimated costs, including damages.
 - e. Based upon the evidence, the recommended drainage project will be of public utility and benefit and will promote the public health.
 - f. Based upon the evidence, the recommended drainage project is practicable.
 - g. Based upon the evidence, portions of the system was out of repair, and only a separable portion of the existing drainage system will be improved and that this portion also needs repair.

NOW, THEREFORE, based upon the foregoing Findings, it is further Ordered:

ORDER

1. That the Viewer's Report dated July 28, 2015 is confirmed and adopted.
2. That the proposed drainage project set forth in the Petition for an Improvement of Jackson County Judicial Ditch No. 30, filed with the Heron Lake Watershed District Administrator on or about July 2, 2014, and as presented by the engineer at the final hearing as proposed in its Final Engineering Report dated August 25, 2015, attached as **Exhibit A**, is duly established.
3. That the amount required to repair the separable portion of the system totaling \$611,600.00 is allocated as repairs and assessed against all property benefited by the entire drainage system as recommended by the engineer.
4. That the balance of the cost of the improvement shall be assessed in addition to the repair assessment against the property benefitted by the improvement.
5. That no public funds shall be used for the purchase, construction, installation, or implementation of woodchip bioreactors as part of the improvement project. The engineer is directed to seek grant funding or other alternative financial resources to pay for the sole costs associated with such option.
6. That the balance of the cost of the Improvement is assessed, in addition to the repair assessment against the property benefited by the Improvement as shown in the Viewer's Report dated July 28, 2015, attached as **Exhibit B**.
7. That pursuant to the Jackson County Auditor, drainage bonds will be issued to finance the construction of the project and the length of time and number of annual statements in which the assessments for the project shall be paid will be 20 years.
8. That the interest rate to be borne by the drainage lien will be determined at the sale of drainage bond.
9. That the drainage bonds will be issued to finance the construction, and the rate of interest for such bonds shall be determined at the Acceptance Hearing after the project is completed.
10. That the engineer is directed to proceed with plans and specifications for bids for the awarding of a contract and to proceed to construction. For efficiency and feasibility considerations, the engineer is further directed to simultaneously let and award this contract along with the contracts of the similarly-related improvement projects for (1) an improvement to Jackson County Judicial Ditch No. 30 and (2) construction of the Lateral to Branch A-1 of Jackson County Judicial Ditch No. 30, each of which were duly established by Order of the Board of Managers of the Heron Lake Watershed District on November 5, 2015, and in accordance with the specifications of the respective projects as reported and as set forth in each individual order, subject to an explicit requirement that separate accountings

be prepared and maintained as to the construction bids, and the actual construction accounts once the bids are awarded, as and for each project.

Dated this ~~10th~~ day of December, 2015.

HERON LAKE WATERSHED DISTRICT BOARD OF
MANAGERS, ACTING AS DRAINAGE AUTHORITY
FOR JACKSON COUNTY JUDICIAL DITCH NO. 30

By *James Busch*
Its Chairperson