

**BEFORE THE HERON LAKE WATERSHED DISTRICT BOARD OF MANAGERS,
ACTING AS DRAINAGE AUTHORITY FOR JACKSON COUNTY JUDICIAL DITCH NO. 19**

**Findings of Fact and Order Regarding
the Establishment of the
Improvement to Portions of Jackson
County Judicial Ditch No. 19,
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. 19 (“Petition”), Minn. Stat. §103E.215, and Surety Bond dated April 6, 2015 (“Surety Bond”) was received by the Heron Lake Watershed District Administrator (“District Administrator”) on or about April 6, 2015, 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. 19, for the improvement of portions of Jackson County Judicial Ditch No. 19 (“drainage system”); and

WHEREAS, the petition included a request that the Board consider separable maintenance as part of the proposed improvement; 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 May 26, 2015 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 May 26, 2015, 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 June 2, 2016, pursuant to Minn. Stat. §103E.245; and

WHEREAS, pursuant to Minn. Stat. §103E.251, a Preliminary Engineering Report dated June 2, 2016 was filed by the engineer on June 3, 2016 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 June 28, 2016, and said hearing was scheduled for July 20, 2016 at 4:00 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 , acting as Drainage Authority for Jackson County Judicial Ditch No. 19, auditors of affected county, and all interested persons, pursuant to Minn. Stat. §103E.261, Subd. 1; and

WHEREAS, a preliminary hearing was conducted on July 20, 2016 at 4:00 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 , sitting as the Drainage Authority for Jackson County Judicial Ditch No. 19, 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 Petitioners' 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 June 2, 2016, 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 June 2, 2016, 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 June 2, 2016, 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 June 2, 2016 was closed after comments had been heard; and

WHEREAS, after the presentation and consideration of the Preliminary Engineering Report dated June 2, 2016, the Commissioner's Preliminary Advisory Report, and all public comment, the Board, by Findings and Order dated July 20, 2016, accepted the preliminary survey report, and determined that the Petition and Bond were sufficient in accordance with Minn. Stat. §103E.261, Subd. 3 (a); and based upon the evidence the board further determined, pursuant to Minn. Stat. §103E.261, Subd. 5, that (1) the private and public benefits would exceed the costs of the proposed drainage project; (2) the anticipated agricultural land acreage availability and use in the drainage project or system would be

increased from the present availability and use of the land; (3) the anticipated land use within the drainage project or system would be improved from the present use of the land; (4) the flooding characteristics of property in the drainage project or system and downstream for 5-, 10-, 25-, and 50-year flood events would be improved; (5) there were no viable alternative measures to drain the waters in the project area, nor that there were feasible alternative measures to conserve, allocate, and use the waters in the project area, including storage and retention of drainage waters; (6) there would be a positive effect on water quality of constructing the proposed drainage project; (7) there would be a positive effect upon fish and wildlife resources affected by the proposed drainage project; (8) the shall groundwater availability, distribution, and use in the drainage project or system would be improved; (9) the overall environmental impact of all the above criteria relating to the proposed drainage project would be positive; (10) the proposed drainage project would be of public utility, benefit or welfare in that it would protect agricultural lands from overflow, and would reclaim or render suitable for cultivation agricultural lands which were normally wet and needed drainage; and (11) that the outlet for the proposed drainage project was adequate to sustain the flow of water that was anticipated by the improvement.

WHEREAS, the Board ordered that the proceedings continue on the Petition, that the engineer proceed with a detailed survey with plans 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 August 23, 2016, 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, 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 8, 2017 was filed on August 9, 2017 with the District Administrator pursuant to Minn. Stat. §103E.291 for future consideration by the Board; and

WHEREAS, a Viewers' Report dated August 9, 2017 was filed on August 9, 2017 with the District Administrator, pursuant to Minn. Stat. §103E.321, Subd. 4 for future consideration by the Board; and

WHEREAS, on August 14, 2017, the Board issued an Order for a final hearing, and said hearing was scheduled for September 28, 2017 at 9:00 a.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, acting as Drainage Authority for Jackson County Judicial Ditch No. 19, auditors of affected county, and all interested persons, pursuant to Minn. Stat. §103E.325; and

WHEREAS, a final hearing was conducted on September 28, 2017 at 9:00 a.m. at the Heron Lake Community Center in accordance with Minn. Stat. §103E.335, Subd. 1, and was attended by a by a quorum of the Board , sitting as the Drainage Authority for Jackson County Judicial Ditch No. 19; and

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

WHEREAS, in accordance with Minn. Stat. §103E.301, the 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, in accordance with Minn. Stat. § 103D.711, the Executive Director of the Minnesota Board of Water and Soil Resources (BWSR) submitted a Final Advisory Report, and said advisory report was read into the public record, pursuant to Minn. Stat. § 103D.711, Subd. 5; and

WHEREAS, Chuck Brandel presented the Final Engineering Report dated August 8, 2017, with recommendations for improving the drainage system and which adequately addressed the concerns and comments raised by the Commissioner's and Executive Director's Final Advisory Reports; and

WHEREAS, Mr. Brandel's presentation of the Final Engineering Report dated August 8, 2017 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 8, 2017 which determined the proportionate estimated cost of \$2,798,655.00 which would be required to repair the separable portion of the existing drainage system and the proportionate estimated cost of \$994,060.00 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 8, 2017; 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 8, 2017 was closed after comments had been heard; and

WHEREAS, the Board called upon Dan Ruby, one of the duly appointed viewers, to present a summary of the Viewers' Report dated August 9, 2017 that reflected the benefits and damages based on the Final Engineering Report dated August 8, 2017, 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. Ruby 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 any interested party/person to make comment respecting the Viewers' Report dated August 9, 2017; and

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

WHEREAS, public discussion on the Viewers' Report dated August 9, 2017 was closed after comments had been heard; and

WHEREAS, the Board opened the hearing to the public to receive, review, and discuss any questions or concerns pertaining to the Final Engineering Report dated August 8, 2017, Viewers' Report dated August 9, 2017, and Commissioner's and Executive Director's Final Advisory Reports; 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 8, 2017, Viewers' Report dated August 9, 2017, and Commissioner's and Executive Director's Final Advisory Reports 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 8, 2017, Viewers' Report dated August 9, 2017, the Commissioner's and Executive Director's Final Advisory Reports, and all other reports, documents, and other matters contained within the file, the Board, acting as Drainage Authority for Jackson County Judicial Ditch No. 19, makes the following Findings of Fact and Order:

FINDINGS OF FACT

1. On or about April 7, 2015, a Petition and Surety Bond for an Improvement to Jackson County Judicial Ditch No. 19 was submitted to the Board alleging, in pertinent part, that: *"the system consists of a combination of an open ditch and subsurface tile, each with insufficient capacity or requiring enlarging to furnish sufficient capacity or a better outlet."*
2. The Board 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 June 2, 2016 with the District Administrator on or about June 3, 2016, and said report met all the requirements of Minn. Stat. §103E.245.
4. Notice of the preliminary hearing was properly 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 June 2, 2016, the Commissioner's Preliminary Advisory Report, and all public comment given at the preliminary hearing on the Petition on July 20, 2016 at Heron Lake, Minnesota, the Board properly determined, among other things, 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 on August 23, 2016.
7. Pursuant to Minn. Stat. §103E.321, Subd. 4, on or about August 9, 2017, the viewers properly filed a Viewer's Report dated August 9, 2017 with the District Administrator.
8. Pursuant to Minn. Stat. §103E.291, on or about August 9, 2017, the engineer properly filed a Final Engineering Report dated August 8, 2017 with the District Administrator.
9. Pursuant to Minn. Stat. §103E.325, notice of the final hearing was properly provided to all interested parties.
10. The Department of Natural Resources (DNR) provided its Final Advisory Report dated August 15, 2017. Prior to the final hearing, the engineer consulted with the DNR to address issues raised in the DNR comments. The comments, and any responses to those comments, were read during the final hearing.
11. The BWSR provided its comments through written correspondence dated August 22, 2017. Prior to the final hearing, the engineer consulted with the DNR to address issues raised in the BWSR comments. The comments, and any responses to those comments, were read during the final hearing.
12. On September 28, 2017, after the presentation of the Final Engineering Report dated August 8, 2017, the Commissioner's and Executive Director's Final Advisory Reports, and Viewers' Report dated August 9, 2017, and after testimony by interested persons at the final hearing, the Board made the following specific findings:

- a. Final Engineering Report dated August 8, 2017, attached as **Exhibit A**, and the Viewer's Report dated August 9, 2017, 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 drainage 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 August 9, 2017 is confirmed and adopted.
2. That the proposed drainage project set forth in the Petition for an Improvement of Jackson County Judicial Ditch No. 19, filed with the District Administrator on or about April 6, 2015, and as presented by the engineer at the final hearing as proposed in its Final Engineering Report dated August 8, 2017, attached as **Exhibit A**, is duly established.
3. That because the Board has found application of separable maintenance is appropriate in this case, the Board orders that the cost of the improvement be allocated as follows: that the separable maintenance cost of \$2,798,655.00 be assessed to all benefited properties on Judicial Ditch No. 19 according to the current benefits roll of the whole system, as recommended by the engineer; that the balance of the cost of the improvement, less the cost of the separable maintenance, or \$994,060.00, be assessed to properties benefited by the improvement as shown in the Viewer's Report dated August 9, 2017, attached as **Exhibit B**; that the Board reserves the right to amend this distribution based on total cost of the improvement determined after a contract is awarded for the improvement.
4. That the engineer is directed to proceed with plans and specifications for bids for the awarding of a contract and to proceed to construction.

5. 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.
6. That the interest rate to be borne by the drainage lien will be determined at the sale of drainage bond.
7. 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.
8. Upon completion of the project, the drainage system record shall be updated with the as-built alignment and conditions of the improvement, and the portions of mainline and branches replaced by the improvement shall be abandoned from the drainage system.
9. The viewers, engineer, and attorneys are allowed payment of their account of work.
10. The Auditor shall ensure that the benefits roll is updated to reflect the improvement benefits.
11. That the District Administrator, in conjunction with the Jackson County Auditor, take all necessary actions for the construction of said improvement and authorizes the District Administrator to proceed as necessary, reserving to itself only those matters that the Board, by vote, must authorize.

Dated this 24th day of October, 2017.

HERON LAKE WATERSHED DISTRICT BOARD OF MANAGERS, ACTING AS DRAINAGE AUTHORITY FOR JACKSON COUNTY JUDICIAL DITCH NO. 19

By


Its President

ATTEST:

By


District Administrator