On April 5, 2017 a Petition for the Improvement of Jackson County Judicial Ditch 3 (JD 3) was filed with Heron Lake Watershed District (HLWD) Administrator along with a surety bond to initiate proceedings to improve JD 3 pursuant to Minnesota Statute Section 103E. The petition included a request that the Drainage Authority consider separable maintenance as part of the proposed improvement.

The Board of Managers of the HLWD (Board) did forward the Petition to its legal counsel to review the Petition and Surety Bond to determine if it met the legal requirements of the proceedings.

Michael Tow, legal counsel for the Board, acting as Drainage Authority for JD 3 as it related to the proposed Petition for Improvement project, reviewed the petition and bond to verify compliance with Section 103E and 103D.625, Subd. 4, and found that the petition met the requirements of the Section 103E.215 and that the bond met the requirements of Section 103E.202, and by a letter dated May 10, 2017, Mr. Tow recommended that the Drainage Authority review the petition and determine that a legally sufficient and proper petition had been filed and formally accept the petition.

On May 16, 2017, following the advice of its legal counsel, the Board reviewed the petition and determined that the petition was legally sufficient and proper, and accepted the petition. The Board appointed Chuck Brandel, I+S Group (ISG), as the project engineer and requested Mr. Brandel prepare a preliminary engineering survey and report pursuant to Minnesota Statute Section 103E.241. The engineer executed the required oath and bond.

On September 18, 2017, the petitioners’ attorney made a request to the Jackson County Commissioners requesting that in order to allow for a more timely procedure on the petition for improvement, a redetermination of benefits (ROB) be completed on this system as soon as possible and appointment of viewers to examine the system and provide the appropriate reports for the Board’s consideration.

Jackson County provided notice of the hearing on the order for ROB and appointment of viewers by publication, posting, and mail as required by statute.

The Jackson County Commissioners held a hearing on December 7, 2017, to consider the request for a ROB and appointment of viewers. Kurt Deter, legal counsel for Jackson County acting as Drainage Authority for Jackson JD 3 briefed them regarding the option of transferring authority for the ditch to the HLWD according to Minnesota Statutes 103D.625.

After asking for comment by the public, but hearing none, the Jackson County Commissioners closed the public comment portion of the hearing. Sherry Haley, Jackson County Attorney, made the comment that she would like more time for the necessary people to meet and discuss the option of turning the JD 3 authority over to the HLWD. The Jackson County Commissioners tabled the request for a ROB.
9. On December 28, 2017, the Jackson County Commissioners issued the following Findings of Fact and Order. Due to the fact that there is an improvement petition in front of the HLWD, the decision to do a ROB is tabled, pending further exploration and possible hearing concerning the transferring of JD 3 to the HLWD, on a temporary basis, to coordinate the ROB and improvement process. It is hereby ordered that the decision as to a ROB objects and JD 3 is hereby tabled, and the Jackson County Commissioners, acting as Drainage Authority for JD 3, shall have further discussions on whether to hold the public hearing, pursuant to Minnesota Statutes 103D.625, concerning the temporary transfer of JD 3 to the HLWD for the coordination of the improvement process and the redetermination process.

10. On March 20, 2018, the Board sent correspondence to the Jackson County Commissioners respectfully requesting the county’s plan relative to the ROB.

11. On April 16, 2018, Kevin Nordquist, Jackson County Auditor-Treasurer, requested an update from the HLWD Administrator on her progress in securing an example agreement for transfer of authority of a ditch system from a county to a watershed district.

12. Jan Voit, HLWD Administrator, responded to the request from Mr. Nordquist on April 16, 2018. She provided a copy of Minnesota Statutes 103.621, Subdivision 4 and noted that once the improvement process has been completed through a watershed district, the watershed district is permanently the drainage authority. She also provided a copy of Minnesota Statutes 103D.625 regarding watershed district assumption of a drainage system. According to statute, no agreement for transfer of authority is needed. It is done at a hearing held by the county and by an adopted resolution. It was requested on behalf of the HLWD, that a hearing on the transfer of authority for JD 3 be held as soon as possible.

13. On May 31, 2018, the HLWD Administrator participated in a meeting with the Tim Stahl, Jackson County Engineer; Dave Macek, Jackson County Drainage Inspector; and Kevin Nordquist, Jackson County Auditor-Treasurer to discuss the transfer of authority for JD 3 to the HLWD. By the time a hearing would be scheduled and held, it would be the end of July. The viewers cannot work during the summer months when the crops are in the fields. It was agreed that waiting until fall to have the preliminary hearing and ordering the ROB at that time would be the best course to follow because it saves the ditch system the additional costs of a hearing.

14. On October 16, 2018, the HLWD Administrator participated in a meeting with the Jackson County Drainage Inspector, Jackson County Auditor-Treasurer, and Ron Ringquist, Viewer. Discussion was held regarding the status of transfer of authority to the HLWD. Because only a portion of the ditch system is being improved, the HLWD would only be able to order the ROB for the portion of the system being improved.

15. The Jackson County Commissioners discussed transfer of authority for JD 3 at their meeting on November 28, 2018. No action was taken. They intended to contact legal counsel from Rinke Noonan Law Firm with questions regarding the $2 million lending cap
for watershed districts, transfer of authority, and reporting drainage system costs annually.

16. On December 11, 2018, the HLWD Administrator contacted the Jackson County Attorney for an update on transfer of authority. She was informed that contact had not been made with Rinke Noonan lawyers until the first week of December. No response had been received.

17. The HLWD Administrator requested an update from the Jackson County Auditor-Treasurer on December 17, 2018. He had not heard anything. At the HLWD meeting on December 18, 2018, the HLWD Administrator was instructed to follow up with HLWD legal counsel and engineer.

18. On January 8, 2019, the HLWD Administrator met with the Jackson County Auditor-Treasurer, Jackson County Auditor-Treasurer, Tim Stahl, Jackson County Engineer, and the HLWD’s engineer. The purpose of the meeting was the review the draft Preliminary Engineer’s Report (PER) and discuss the process for moving forward. ISG plans to update the report after reviewing road authority information from Jackson County. Information was provided regarding the disrepair of many of the lines that are proposed to be replaced. The PER will be submitted to the HLWD in the first week of February. That will allow the Board to schedule a March hearing date. A landowner meeting will be held at the end of February. Jackson County still has not received a response from Rinke Noonan regarding their drainage and transfer questions.

19. On January 22, 2019, the Board sent correspondence to the Jackson County Commissioners informing them that the PER would be submitted the first week of February. The commissioners were informed that the HLWD is committed to excellence in managing the public drainage systems in their charge and would be pleased to meet to discuss drainage system management.

20. On January 23, 2019, the Jackson County Attorney forwarded a memo from Rinke Noonan addressing Jackson County’s questions about drainage system management. This correspondence was forwarded to HLWD managers and HLWD legal counsel.

21. On February 28, 2019, a landowner information meeting was held at the Heron Lake Senior Citizens’ Center. ISG staff presented the draft preliminary engineering report. Landowners had the opportunity to ask questions. Several landowners are interested in adding tile branches and additional storage. ISG will be revising the PER to reflect the potential changes. Bruce Sellers, petitioners’ attorney will be contacted regarding the process for adding tile lines and whether there will be a need for additional petitioners.

22. On March 12, 2019, a joint meeting was held between the Board and the Jackson County Commissioners. The purpose of the meeting was to discuss drainage system management. General agreement was shared that the HLWD has the authority and capacity to manage public drainage systems, the $2 million lending limit only applies to Chapter 103D projects, that communication can improve, and that county staff will identify areas of potential duplication so that a process can be agreed upon to manage
systems in the most efficient and cost-effective way. No action was taken on transfer of authority.

23. On March 19, 2019, the Jackson County Commissioners approved a motion authorizing the Jackson County Auditor-Treasurer to begin the process of transfer of authority of the entire JD 3 system to the HLWD.

24. On April 12, 2019, the Jackson County Commissioners held a duly noticed public hearing on the transfer of jurisdiction of the Jackson County JD 3 system pursuant to Minn. Stat. § 103D.625. Following the public hearing, the Jackson County Commissioners found that the takeover of the Jackson County JD 3 system by the HLWD serves the purpose of Minn. Stat. Ch. 103D and the public welfare and public interest and ordered a transfer of jurisdiction of the Jackson County JD 3 system in its entirety to the HLWD.

25. On April 23, 2019, the Board sitting as the drainage authority for Jackson County JD 3, pursuant to Minn. Stat. § 103E.351, approved the Findings and Order Initiating the Redetermination of Benefits and Appointing Viewers. Bryan Murphy, Larry Murphy, and Shantel Hecht were appointed as viewers.

26. On June 12, 2019, the Board authorized Bruce Leinen to sign the H2Over Viewers contract and amendment. The document was sent to H2Over Viewers for signatures. The signed copy was received on July 22.

27. The Engineer prepared and filed a preliminary survey report dated October 2019 with the Drainage Authority on October 25, 2019. The report found that the improvement was feasible, necessary, would be of public benefit, and that the existing outlet for the proposed project was adequate. The report was forwarded to the Minnesota Department of Natural Resources (DNR), the Board of Water and Soil Resources (BWSR), and state, county, and local road authorities.

28. On November 19, 2019, the Board acted on the Order Setting Preliminary Hearing.

29. The BWSR Advisory Report was received on November 22, 2019.

30. On November 26, 2019, a memorandum to landowners, preliminary hearing agenda, and the Order Setting Preliminary Hearing were sent to affected landowners. The Order was published in the December 11, 2019 edition of the Tri County News.