



Division of Ecological & Water Resources  
Region 4 (Southern Region)  
21371 Highway 15 South  
New Ulm, MN 56073

June 17, 2021

Heron Lake Watershed District  
1008 3rd Ave  
Heron Lake, MN 56137  
admin@hlwdonline.org

Re: Follow-up on Heron Lake Watershed District Jackson County Judicial Ditch 3

Dear Heron Lake Watershed District Drainage Authority,

This letter is a follow-up to the engineer's response to the DNR FER Advisory Letter. While the DNR letter is "advisory" by statute, the letter also serves to identify statutory and legal obligations of projects related to DNR jurisdiction. As such, statutory and legal obligations cannot be disregarded, as the engineer's letter suggests. Two issues were identified in the DNR Advisory Letter that cannot be dismissed: the potential need for a public water's permit and the potential impact to the calcareous fen. We also believe that the project should be evaluated for a mandatory Environmental Assessment Worksheet.

#### **Public Waters Permit**

South Heron Lake is a Public Water. Per MN Statute §103G.245, a permit is required to change or diminish the course, current, or cross section of public waters, entirely or partially within the state. As stated in the DNR advisory letter, the DNR does not intend to issue a permit for excavation of the sediment delta unless more comprehensive sediment prevention practices are incorporated. The engineer response was that the system will be cleaned to the legal extent of the system as it was designed in 1938, which is approximately the edge of the trees from the 1938 photos. We note that the area of work is labeled in the FER as South Heron Lake, and that the planned cleaning does extend into the area identified in the public waters geospatial data. **We are requesting that substantive proof, the original 1938 design including the originally designed ditch terminus, be submitted to the DNR to assess the proposed exemption of a permit under §103G.245 Subd 2 (1).**

#### **Calcareous Fen**

Calcareous fens are protected by MN Statute §103G.223 from degradation. The engineer commented on the potential for the project to impact the groundwater hydrology. However, the DNR is concerned about impacts due to lake level increases caused by more water being added to South Heron Lake due to this (and potentially future additional) drainage improvement(s). This calcareous fen is located within a larger wetland complex and is naturally supplied groundwater of specific water quality and temperature characteristics. Calcareous fens are degraded by surface water and by even low levels of nutrients. The DNR recently assessed the quality of the calcareous fen and found that the upper elevation portions of the calcareous fen are good quality. However, the

lower elevation portion of the calcareous fen are becoming degraded. This degradation is likely due to rising lake levels and the surface water and nutrients that are infiltrating the lower portions of the fen. Therefore, although the project will not directly physically impact the fen and may not change groundwater flow to the fen, if lake levels are (continually) increased by this (and additional) drainage improvement, then the calcareous fen could be further degraded.

To date, the PER, FER, and engineer responses have not demonstrated that an indirect impact due to increasing lake levels or event duration will not occur. In order for the DNR to assess the potential impact, a hydrologic model analysis of the whole Heron Lake watershed (including both the north and south basins) should be conducted. The analysis needs to include information on changes in water levels, flood stage, and stage duration due to this project. This analysis needs to be accompanied by sufficient identification of model assumptions and mechanics that the DNR can confidently accept the results to meet statutory obligation. **The project sponsors are responsible to provide conclusive data and information that the proposed project will not cause indirect or direct impacts to the calcareous fen. This may include additional modeling and survey elevations to comply with these statutory requirements and could require a Calcareous Fen Management Plan.**

### Environmental Assessment Worksheet

The project should use the produced model information to assess the need for an Environmental Assessment Worksheet (EAW). Relevant threshold requirements for public waters are copied from statute below.

4410.4300 Subp. 27. Public waters, public waters wetlands, and wetlands (Mandatory EAW)

For projects that will change or diminish the course, current, or cross-section of *one acre or more* of any public water or public waters wetland except for those to be drained without a permit according to Minnesota Statutes, chapter 103G, the DNR or local governmental unit is the RGU.

For projects that will cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands, regardless of type, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local governmental unit is the RGU. This item does not apply to projects exempted by part 4410.4600, subpart 14.

8420.0111 DEFINITIONS.

Subp. 32. Impact. "Impact" means a loss in the quantity, quality, or biological diversity of a wetland caused by draining or filling of wetlands, wholly or partially, or by excavation in the permanently and semi-permanently flooded areas of type 3, 4, or 5 wetlands, as defined in subpart 75, and in all wetland types if the excavation results in filling, draining, or conversion to non-wetland.

Subp. 33. Impacted wetland. "Impacted wetland" means a wetland that has been partially or wholly subjected to an impact.

Subp. 34. Indirect impact. "Indirect impact" means an impact that is the result of an activity that occurs outside of the wetland boundary.

### Grant Funding

The engineer's response notes that up to \$165,000 in secured grant funds could be lost if the project is delayed in order to provide more information. In conversation with the MPCA 319 project grant manager, that grant for \$122,000 is not dependent on the drainage improvement project being approved. The project was awarded to help improve South Heron Lake and not necessarily intended as a drainage improvement mitigation. From the grant's perspective, the work can be done regardless of the drainage improvement project. We did not have opportunity to consult the BWSR grant project manager to comment on those funds. Either way, grant timelines are not a legitimate reason to by-pass statutory requirements.

### Overall Impact

We appreciate the work that was done to integrate some storage into the watershed, but we do not believe that this storage is sufficient to mitigate this project as described in our first comment letter and the hydrograph from the FER. This project will contribute more total water volume to South Heron Lake, even if the peak flow is reduced. This project will also contribute more nutrients because there is more water being contributed and there are not sufficient nutrient reduction practices being installed or adopted. Sediment reductions may result but could increase if this project does not function as it is intended to.

South Heron Lake still retains many benefits to fish, wildlife, and the public. However, the lake has continually degraded as land conversion and development including unmitigated drainage improvements have accelerated. We also believe that some landowners at the lower elevations in this system will not receive the drainage that they expect. We again implore the drainage authority and landowners to help balance farming and environmental needs by adopting soil health practices like cover crops and reduced tillage that create a win-win for farmers and the environmental and consider placing some of this lowest elevation land into restored wetlands that are sufficiently sized to fully mitigate nutrient and water volume increases due to improved drainage.

### Follow-up

The DNR expects continued collaboration and the requested information on this project to assess its statutory requirements. Information can be directed to Regional Drainage email at [Region4Drainage.dnr@state.mn.us](mailto:Region4Drainage.dnr@state.mn.us) where it will be distributed to the appropriate staff. If the project is pursued without additional review and approval by the DNR, we may pursue additional review or pathways including an Environmental Assessment Worksheet.

Sincerely,



Todd Kolander

DNR Southern Region, Ecological and Water Resources South District Manager

cc: Joanne Boettcher, DNR Regional Environmental Assessment Ecologist  
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