

Heron Lake Watershed District JD 3 Continuation Hearing

September 2, 2021

Heron Lake Community Center

Called to order at 8:00 a.m.

Managers Present: Wayne Rasche, Mark Bartosh, Randy Lubben, Jason Freking, Cory Reith

Staff Present: Attorney Louis Smith ~ virtual, Engineers Chuck Brandel, Jacob Rischmiller, Viewer Byron Murphey, Jackson County Drainage Coordinator Kelly Rasche, Attorney Bruce Sellers

Public present sign in sheets available

Motion to approve the agenda made by Manager Luebben with a second by Reith, all yes motion carried.

Published and mailed notices were sent as required.

1. Petition for Abandonment – City of Lakefield

Attorney Smith stated the Abandonment Petition is found to be legally sufficient for consideration. Sufficiency of bond, there is not a need for a bond for this petition. The tile was televised and found to be blocked, the 2022 Hwy 86 project will divert water into the city storm system sending it north vs using the tile line.

Phil Kruger asked the location of the blockage. The location is known, but the information was unavailable at the meeting.

Public input was closed at 8:10 a.m.

Findings, the tile can be abandoned if:

- The water from the property has been diverted from the drainage system or the property cannot use the system
- The property is not benefited by the drainage system
- The removal of the property from the drainage system will not prejudice the property owners remaining in the system found the tile no longer serves a public purpose.

Engineers affirm the tile will be diverted with the MNDOT Hwy 86 project in 2022 and will serve no public purpose.

Petition hearing closed at 8:14 a.m. with a motion made by Manager Lubben second by Manager Bartosh, all yes, motion carried.

Motion to have legal staff make the findings to abandon the tile based on the engineer's report of review of the MNDOT Hwy 86 reconstruction plans the water will be diverted from the system and the property will not make use of the system made by Manager Reith second by Manager Lubben, all yes, motion carried.

2. Redetermination

Bryan Murphey of H2Over Viewers reported on the changes to the report from the June hearing and since reports were sent out for this hearing. Some minor adjustments were made to acres in and out as information was provided to the viewers with tile maps and discussions.

Major changes, the reasons there is an uptick/change of the landowner reports

1. Some changes were made across the system for properties that have been brought to the viewer's attention as being tiled in a way that does not show up in overland maps. There were acres added and subtracted:
 - a. Tungland property removed because of tile direction (11.66 acres)
 - b. Benson property removed because the land was included in a different system, previously
 - c. Milbrath property added acres to true up to the neighboring drainage system
 - d. Bass property added to true up to the neighboring drainage system
 - e. Jo's Family Farm property added to true up to the neighboring system
2. JD 19 outlet fee was not calculated appropriately. The original calculation was JD 19 at over 8%, should have been less than 1%. This changed caused the remaining 7% to be allocated across the entire system as the benefit roll must equal 100%.
3. Horace Thompson property acres will be entered into a permanent easement and acres will be utilized for storage for the system. This caused a change in benefit for 120 acres causing the allocation of the difference across the system.
4. The City of Lakefield removal petition, approved earlier, removes 130.43 acres from the system.
5. The cost of the project was raised in comparison to the June reports.
6. Jackson County CSAH right of ways were calculated larger than the Jackson County ROWs are. This is a correction of 44 acres removal across the system.

The benefits are evaluated in the system in an "as constructed" basis. The redetermination does not adjust for the system being in disrepair.

Public Input:

VanVoorst – What is the increase in cost? Rischmiller stated the cost has increase 15% since the Preliminary Engineer's Report (PER) was presented in February. The main driver of this increase is the drastic materials cost in 2021. Dirt work costs have not increased as dramatically. The hope is the materials costs will resolve in 2022. 2021 had a greater demand than supply could satisfy.

Buresch – SE of Lakefield property dumps into the creek, why is the property assessed fully. Muphey stated the land is benefited by the JD 3 system, if the system did not exist those lands would be unfarmable, as they would not have a drainage outlet. Buresch state the acres are higher than JD 3. Murphey stated the property places a burden on the downstream landowners thus responsible for an assessment.

H. Kruger – His land cannot be tiled per the FSA office, feels the land should be classified as wetlands/buffer vs agricultural land. Murphey stated the records at the FSA office classify the land

as “farmable” wetlands, during dryer years crops could be grown. The land that is regularly wet were reclassified to wetlands.

P. Kruger – Private ditch (creek) did have an outlet before JD 3 was constructed. The benefits for those using the creek should be less than those on the system. Murphey stated there was a classification adjustment for the creek use. JD 19 is causing pressure on the JD 3 system. Murphey stated the 8% number was incorrect, should not have been used in the previous reports. The .74% (\$78,653.09) ROB benefit amount is attributed to JD 19 is an accurate reflection of the JD 19 use of JD 3.

At this time a connection issue was found to those trying to attend online. A short recess was held for an opportunity to correct the issue.

When the issue was corrected, those participating online were given the opportunity to comment on the City of Lakefield petition. There were no comments, the hearing for the redetermination was resumed.

Buresch – A machine shed is being built and acres should be considered for removal. Murphey stated they will view the property for a change.

P. Kruger – Match up of boundaries of JD 19 and JD 3. The two systems were reviewed for accuracy. Rischmiller stated the number of deeded acres for the two systems are accurate when compared to the viewer’s reports. The City of Lakefield removal petition did not removal all of the city limits.

Murphey stated an adjustment will be made due to the DNR building a dike system for carp control that diverted water out of the JD 3 system. This is in Section 4 of Rost township. 55 acres have been diverted to the Little Sioux. The water is moved from the JD 3 system with use of the diversion and a pump/lift station.

Baily – who controls the private ditch between JD 3 and JD 19? Landowners do, but a petition for a later would be required to do work. The creek could be considered a public water, that would involve the Army Corps of Engineers. ISG will research this area. Brandel reported, he did not see this on the public water’s maps.

H. Kruger – If a wetland it should be classed as a wetland. Murphey reiterated the land is classified as farmable wetland on the national wetland inventory.

P. Kruger – Shared concerns about the Lakefield street projects bringing more water into the system, addition of more storm sewer water into the JD 3 system. Rischmiller stated the storm sewer for the projects will bring the water to the north out of the JD 3 system.

The changes to the redetermination as heard at this hearing, will result in .134% removed in Section 4 & Section 9 of Rost Township. The City of Lakefield petition was already removed for the redetermination presented.

9:35 a.m. the public comment period was closed.

Motion to continue the redetermination hearing to be held on September 22, 2021, at 8:00 a.m. in the Heron Lake Community Center made by Manager W. Rasche with a second by Manager Lubben, all yes, motion carried.

3. Final Engineer's Report

JD 3 has 3 open ditches, 94 tile and 10 open repairs. Rischmiller overviewed the project.

W. Rasche noted past repairs have found areas where the tile is gone. During the project, the old tile is investigated on condition. If functional, it can be attached to the new system. The project cost included tile connections every 200'.

The project has been amended with the cleaning of the system stopping 300' sooner. This will keep the cleaning out of the lake area.

The project will be broken up to make each bid package feasible. Hoping to entice locale contractors. The 319 grant portion needs to be done ASAP to meet grant requirements. The second phase the Thompson storage area and Ackermann wetland. Open ditch cleaning, ditch deepening then tile branches.

Lake level modeling show a change of 1/10th to the lake level. ISG models have been reviewed by other experts in the field and feel strongly the modeling is accurate and the project will not have an adverse affect on the calcareous fen thus an environmental worksheet would not be needed.

Past repairs are extensive and 10 open repair tickets in place. Since 2011, 84 repairs have been completed. The completed repairs and open tickets are spread across the system.

Total project cost estimate is \$15.3 million, with buffer payment and damages estimate is \$15.6 million.

ISG completed the modeling and feels the project will not affect the calcareous fen.

The DNR response letter dated September 1, 2021, was read.

Tom Kresko –The DNR feels the difference in lake levels in the 25-year and 50-year rain events do not show enough effect on the lake level. DNR feels the modeling needs further analysis.

Board of Water and Soil Resources – No comments

The engineers will meet with the DNR to discuss their concerns.

The engineers feel the project meets the statutory requirements for a project. Per the request of HLWD board, the engineer's will meet with the DNR to discuss their concerns.

The public comment period of the Final Engineer's Report was opened.

Amendt – asked the engineer to clarify the rain events they used for modeling. Brandel stated the requirement is to model a 50-year (6") event. ISG models the 100-year event for reference. Amendt had a concern of water levels before ice out. He "made a motion for the HLWD board to hold a mail in ballot" of the landowners for this project to move forward.

Attorney Sellers – Is the DNR challenging the modeling? Kresko of the DNR stated yes because they don't see enough of a difference in the 100 year and 50-year rain event levels. They feel modeling doesn't take into consideration the rain falling on the lake raising the lake level. Sellers asked if the DNR

has completed their own modeling. Kresko stated they have not, they have not allocated staff time to complete modeling. Kresko has asked DNR management to make staff time available for modeling.

P. Kruger – Can a second engineer complete modeling? W. Rasche stated yes, but at what cost to the landowners. Brandel stated it has happened in the past. A landowner hired an engineer to review the model for JD 13 and JD 9 (Joint systems with Nobles County). The cost for the second opinion was \$22,700. The hired engineer agreed with the modeling completed by ISG.

Unknown – asked about engineering, lawyer, etc being included in the assessment estimates shared with the landowners. Brandel stated all the expenses expected are included in the information shared with the landowners.

P. Kruger – How are petitioners assessed the costs if the project doesn't happen. Brandel stated the petitions are responsible for all expenses up to the date the project is denied.

D. Johnson – Owns 80 acres. Project cost will take \$5,000/\$6,000 out of her income. She is a small landowner in this system. Remember the small guy, this cost is a burden to the small landowners.

VanVoorst – When was the 26% of landowners for a project made into law? Many years ago (1800s?). She feels they have not input. Nothing she can do about the taking of her money without any say. She doesn't want the project. How can people afford this project? The 20 year amortization will be a burden on her grandchildren.

Clark – Mother nature controls the flow of the water. The ditch fills with snow and water cannot flow until the culverts open. Cannot see where the benefits outweigh the costs of the project.

Kalfs – asked the engineer to restate the 3 points emphasized by the DNR. After read, Kalfs shared his concern of the modeling. Brandel stated with the storage additions, the lake level increase is limited. The 4' level increase has happened 11 times in the last 60 years. Kalfs feels the Improvement is only a benefit to upstream landowners. Urges the HLWD to complete the repairs not complete the improvements. Engineer's have an estimate that repair costs over the next 20 years are \$11 million. Modeling shows an increase in lake level of 2.5'. This project includes installation of several wetlands and storage areas to help reduce peak flows and sediment to the lake. A repair brings the system up to the standards of the 1910 installation not current design. Kalfs inquired about a letter received by the board from the Heron Lake Game Producers.

Manager Bartosh read the letter submitted by the Heron Lake Game Producers.

Public input ended at 11:05 a.m.

Improvement Benefits report -- Murphey of H2Over Viewers stated no other changes, other than those heard today, are expected.

Motion to continue the hearing to 8:00 a.m., September 22, 2021, made by Manager Bartosh with a second by Manager Luebben. All yes, motion carried.

4. Lateral Preliminary Engineer's Report Hearing

Attorney Sellers stated the A1 later landowners have reached an agreement in principal and requested the board dismiss the A1 later petition. **Motion to dismiss the A1 petition made by Manager Luebben with a second by Manager Reith. All yes, motion carried.**

Engineers and the petitioner's attorney recommend NOT approving the laterals Preliminary Engineer's Report as the laterals petitions should be in conjunction with the main system improvement project.

The landowners benefiting from the laterals are responsible for the costs. The costs are not spread across the entire system.

Public comments for the PER of the laterals heard

P. Kruger – will the laterals cause efficiency issues downstream? Brandel stated all design plans are created as if all land is pattern tiled with the entire drainage system.

Brandel stated with the improvement on the system and the storage installations, the laterals are feasible, but NOT without the improvement.

11:20 a.m. public input ended.

Motion to continue the hearing for the PER to September 22, 2021, at 8:00 a.m. made by Manager Freking with a second by Manager Luebben. All yes, motion carried.

Proceedings ended at 11:30 a.m.

Respectfully submitted by
Kelly R. Rasche
Drainage Coordinator
Jackson County, MN