

STATE OF MINNESOTA
Before the
HERON LAKE WATERSHED DISTRICT
SITTING AS THE DRAINAGE AUTHORITY FOR
JACKSON COUNTY JUDICIAL DITCH NO. 3

In the Matter of:

**the Improvement of Jackson County
Judicial Ditch No. 3**

FINDINGS AND ORDER

The Board of Managers of the Heron Lake Watershed District (Board), sitting as the drainage authority for Jackson County Judicial Ditch No. 3 (JD 3), having received a Petition for Improvement of JD 3 pursuant to Minnesota Statutes § 103E.215 by the petitioners, having noticed and conducted a public hearing on the preliminary survey report, having noticed and conducted a public hearing on the detailed survey report, and based on the record and proceedings, Manager R. Luebben moved, seconded by Manager C. Reith to adopt the following Findings and Order:

Findings:

1. On April 5, 2017, a Petition for the Improvement of Jackson County JD 3 (Petition) and bond was filed with the Board requesting to improve JD 3, located in Sections 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36 of West Heron Lake Township; Sections 30, 31, 32 of Heron Lake Township; Sections 1, 2, 3, 4, 5, 6, 9, 10, 11, and 12 of Rost Township; and Sections 3, 4, 5, 6, 7, 8, 9, and 17 of Hunter Township, in Jackson County, Minnesota pursuant to Minn. Stat. § 103E.202.
2. The Board met on May 16, 2017 and accepted the Petition and bond. The drainage authority also appointed, pursuant to Minn. Stat. § 103E.241, Chuck Brandel of I+S Group (ISG) as engineer to make a preliminary survey pursuant to Minn. Stat. § 103E.245.
3. The engineer submitted a preliminary survey report to the Board on October 25, 2019. The Board mailed a copy of the preliminary survey report to the Director of

the Division of Ecological and Water Resources in the Department of Natural Resources (DNR) on October 26, 2019.

4. On November 19, 2019, the Board ordered a public hearing in accordance with Minn. Stat. § 103E.261 for review of the engineer's preliminary survey report to be held on December 16, 2019, and directed the Board secretary to provide at least 10 days advance notice by mail of the time and location of the hearing to the petitioners, political subdivisions, and owners of property likely to be affected by the proposed project.
5. Notice of the public hearing was properly provided as required by law.
6. At the public hearing, the engineer presented the preliminary survey report, which estimated the total cost of the improvement as requested to be \$10,461,982. The report demonstrated that the improvement was feasible, practical, and necessary; that the proposed improvement would be a public benefit, and that the existing outlet for the project was adequate.
7. Tom Kresko presented comments on behalf of the DNR, and an advisory letter from Tom Kresko dated January 8, 2020 was included in the record of proceedings as required by Minn. Stat. § 103E.261. The Board of Water and Soil Resources' advisory report, received by the Board on November 22, 2019, was publicly read and included in the record of proceedings.
8. Comments from the petitioners and other interested parties were received at the public hearing in accordance with Minn. Stat. § 103E.261.
9. At the conclusion of the preliminary hearing, the drainage authority adopted findings pursuant to Minn. Stat. § 103E.261 determining that continued proceedings on the Petition were necessary and proper, and ordered that proceedings on the Petition continue, that the Board issue an order directing the engineer to proceed with the detailed survey, and that the Board issue an order appointing three viewers to determine benefits and damages.
10. On January 15, 2020, the Board ordered that the engineer proceed with the detailed survey pursuant to Minn. Stat. §§ 103E.265, 103E.271, 103E.285, and ordered the appointment of three viewers to determine benefits and damages pursuant to Minn. Stat. §§ 103E.305, 103E.311, 103E.315, and 103E.321.
11. On February 26, 2021, the engineer filed the detailed survey report with the Board secretary pursuant to Minn. Stat. § 103E.291. A copy of the detailed survey report

was mailed to the commissioner of the DNR for review and filed with the Jackson County auditor.

12. On May 5, 2021 the viewers filed the viewers' report with the Board secretary along with a detailed statement showing the actual time the viewers were engaged and the costs incurred, in accordance with Minn. Stat. § 103E.321.
13. Within 30 days after the viewers' report was filed, the Board secretary made a property owners' report from the information in the viewers' report in conformance with the requirements of Minn. Stat. § 103E.323, subd. 1. A copy of the property owners' report was mailed to each owner of property affected by the proposed drainage project and an affidavit of mailing is on file with the drainage authority.
14. A commissioner's final advisory report was filed with the drainage authority on April 22, 2021.
15. The drainage authority, set a final hearing for June 21, 2021 for review of the engineer's detailed survey report and the viewers' report and directed the Board secretary to provide notice of the final hearing by publication, by posting, and by mail to the petitioners, political subdivisions, and owners of property likely to be affected by the proposed project.
16. Notice of the public hearing was properly provided as required by law.
17. At the final hearing commenced on June 21, 2021, the engineer presented the detailed survey report, which projected the total cost of the improvement to be \$15,626,785, with an estimated net benefit of \$5,800,000. The report demonstrated that the improvement was feasible, practical, and necessary; that the proposed improvement would be a public benefit, and that the existing outlet for the project was adequate.
18. During the public hearing portion of the June 21, 2021 proceedings, the following persons appeared and provided comment (the Board's response is indicated in italics following each comment):
 - a. Paul Rentschler:

Asked how the tile lines indicated as being in need of replacement were selected.

The Board asked engineer Chuck Brandel to respond. Mr. Brandel stated that the tile lines, many of which are 100 years old and consist of cement

and clay, are evaluated based on their condition, with televising assisting in some of this evaluation. When many repairs are needed within a section, replacement is the option that makes the most financial sense.

b. Wayne Rasche:

Asked the engineer to provide the percent of disrepair in the system.

The Board asked Chuck Brandel to respond. Mr. Brandel stated that he estimates the majority of tile in the system to be in disrepair. Jackson County staff Dave Macek reported that repairs on every branch in the system have been requested, and that the multiple repair requests signal that the system is failing.

c. Klay Walinga

Requested that the Board compensate assessments on parcel 19.033.0100 (Horace Thompson's property) at the outset of the project with a contingency or an abatement at the back end of the project. The owner of the parcel is working with the Minnesota Land Trust to secure a conversation easement on the land.

The Board considered this request.

d. Greg Hasara

Asked if better alternatives to the project that would be of greater benefit to citizens have been explored, and noted that there has been a 15% increase in the cost of the project since February 2021. Asked when the dollar amount for a project is considered to be too high.

The Board asked Chuck Brandel to respond. Mr. Brandel stated that the Board, engineer, and others involved in the project are promoting best practices for the system, and that landowner best practices within the system are also important. Minnesota Statutes require that bids more than 30% over the engineer's estimate of project costs, set at the time of Board ordering of the project, must be refused.

e. Dick Amendt

Asked what number is used for the 30% overage limitation stated in statute.

The Board asked Chuck Brandel to respond. Mr. Brandel stated that the Board has authority to refuse bids, and that in 2021, two projects were refused due to the 30% overage limitation stated in Minnesota Statutes.

f. Phil Kruger

Asked what the final overage was for JD 19, and noted that he requested that DNR share the lake levels during the 2019 and 2020 high water years, noting that it seems like every ten years the lake levels are rising, and that he perceives sediment to be entering the lake and decreasing the capacity of the lake.

The Board asked Chuck Brandel to respond. Mr. Brandel stated that the improvements will help reduce the sediment being discharged to the lake, and that the tile improvements and holding areas included in the project reduce the overland flow and sediment throughout the system.

g. Lloyd Kalfs

Expressed concerns that the modeling for JD 3 does not include flow from JD 19, that enlarging the tile on branches of the system without providing storage will not reduce flow, and that the flow charts are not consistent. Asked whether the calculations consider water flow when the holding ponds are full. Noted that there is more water outside the banks than what the model shows.

The Board asked Jacob Rischmiller and Chuck Brandel to respond. Mr. Rischmiller stated that the JD 19 flow information is included in the modeling. Mr. Brandel stated that the spreadsheet did not transfer the numbers correctly from the model and that the engineer will check the numbers for any inconsistencies. Mr. Brandel noted that he has updated the modeling software and it shows the flooding outside the banks.

h. Harvey Kruger

Asked whether storage for JD 19 flow on his property was considered.

Mr. Brandel stated that this could be considered, and a grant could be applied for if the Krugers are interested. This process would fall outside of the proposed Improvement to JD 3.

19. The commissioner's final advisory report dated April 22, 2021, and a second letter dated June 17, 2021, were publicly read and included in the record of proceedings. At the DNR's request, and the Board voted to continue the hearing to allow the engineer to meet with the DNR to discuss the DNR's concerns.

20. At the continuation of the final hearing, held on September 2, 2021, the engineer presented updates to the engineer's report based on additional modelling completed since June 21, 2021. The updates included measures to keep impacts from the cleaning of the tile system further away from Heron Lake. ISG's lake level modeling shows a change of 1/10th to the lake level, and other experts in the field have reviewed and confirmed the accuracy of this modelling and ISG's conclusion that the project will not have an adverse effect on the calcareous fen. An Environmental Assessment Worksheet is not required if there is not a finding of an adverse effect. The total project cost estimate is \$15,300,000, and the buffer payment and damages estimate is \$15,600,000.
21. During the public hearing portion of the September 2, 2021 proceedings, the following persons appeared and provided comment (the Board's response is indicated in italics following each comment):
- a. Dick Amendt

Asked the engineer to clarify the rain events they relied on in the modeling. Made a motion that the Board hold a mail-in ballot of landowners before the project move forward.

Chuck Brandel responded on behalf of the Board. Mr. Brandel stated that the requirement that ISG complied with is to model a 50-year (6 inch) rain event. ISG also modeled the 100-year event for reference.
 - b. Bruce Sellers

Asked if the DNR is challenging the engineer's modeling, and asked if the DNR has completed its own modeling.

Tom Kresko responded on behalf of the DNR. Mr. Kresko stated that the DNR is challenging the modeling because it does not see enough of a difference in the 100- and 50-year rain event levels, and does not think that the modeling takes into consideration the rain falling on the lake that is raising the lake level. Mr. Kresko stated that DNR has not completed its own modeling, and that he has asked DNR management to make staff time available for modeling.
 - c. Phil Kruger

Asked if another engineer could complete modeling as a comparison. Asked how petitioners are assessed fees if the project is not ordered.

Manager Rasche responded that yes, another engineer could complete modeling, but at an additional cost to the landowners. Mr. Brandel stated that it has happened in the past, and that the second engineer agreed with the modeling completed by ISG. Mr. Brandel stated that the petitioners are responsible for all expenses up to the date that the project is denied.

d. Unknown

Asked about engineering, legal, and other fees included in the assessment estimates shared with landowners.

Chuck Brandel responded on behalf of the Board. Mr. Brandel stated that the estimated expenses are all included in the information shared with the landowners.

e. D. Johnson

Stated ownership of 80 acres, and that project costs will withdraw significantly from her income, and that the cost is a burden on small landowners.

The Board considered this comment.

f. VanVoorst

Stated her feeling that landowners do not have input, and that she cannot afford and does not want this project.

The Board considered this comment.

g. Clark

Stated that cannot see how the benefits outweigh the costs of the project.

The Board considered this comment.

h. Kalfs

Asked the engineer to restate the three points raised by the DNR, and stated that he shares DNR's concerns about the modeling. Stated that the improvement is a benefit only to upstream landowners, and urged the Board to complete the repairs and not the improvements.

Chuck Brandel responded on behalf of the Board. Mr. Brandel stated that with the storage additions, the lake level increase is limited. The project

includes the installation of several wetlands and storage areas to help reduce peak flows and sediment to the lake. The repair would bring the system up to the standards of the 1910 installation, not to current design standards.

i. Heron Lake Game Producers – letter

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

The Board considered this comment.

22. At the continuation of the final hearing, held on September 2, 2021, an advisory letter from the DNR dated September 1, 2021 was read into the record. Tom Kresko of the DNR stated that the agency does not think that the difference in lake levels in the 25- and 50- year rain events shows the correct effect on the lake level, and that the modeling requires additional analysis. At the DNR's request, the Board voted to continue the hearing to allow the engineer to meet with the DNR to discuss the DNR's concerns..
23. At the continuation of the final hearing held on September 22, 2021, the engineer presented updated information and additional modelling completed since September 2, 2021, after a meeting with the DNR. The ISG engineers found that, with the additional storage constructed as part of the JD 3 improvement, there is little to no effect on the levels of Heron Lake in comparison to current events. The cost of the improvement and estimated net benefit remained the same.
24. At the continuation of the final hearing, held on September 22, 2021, correspondence from the DNR dated September 22, 2021 was read into the record. Tom Kresko of the DNR requested additional time to review the new modeling information. At the DNR's request, the Board voted to continue the hearing as to the DNR's comments on the additional modelling completed by the engineer since September 2, 2021.
25. During the public hearing portion of the September 22, 2021 proceedings, the following persons appeared and provided comment (the Board's response is indicated in italics following each comment):
 - a. Phil Kruger

Commented that given recent improvements to other drainage systems that use the lakes as an outlet, historical data may no longer be accurate for the engineer's report and modeling.

Manager Rasche stated that the water affected by the JD 3 improvement project currently goes into the lake, and that the addition of storage to the JD 3 system will slow this flow and reduce peak flows. Mr. Brandel stated that the additional of acres to the lake would need to be petitioned and reviewed before such a project could be implemented. Additional storage is required for the JD 3 improvement.

b. Bruce Sellers, Petitioners' attorney

Asked the engineer:

Are you required to consider current and potential flooding characteristics of property in the drainage project or system downstream for the 5-, 10-, 25- and 50-year flood events including the adequacy of the outlet and overall environmental impact of the criteria in 103E.015 sub. 1?

Mr. Brandel answered yes.

Did engineers perform more modeling than required by the Statute?

Mr. Brandel answered yes, and noted that the engineers went further downstream to address the calcareous fen concerns.

Did engineers look at the impacts further downstream than required?

Brandel answered yes, and noted that there is a negligible effect on downstream impacts.

Did engineers look at the effect of the improvement on the calcareous fen?

Brandel answered yes.

Do the engineers believe amended reports are complete and correct?

Brandel answered yes.

Do the engineers believe the proposed project will be of public utility and public benefit and will promote the public health?

Brandel answered yes.

Do the engineers believe the proposed project is practical?

Brandel answered yes.

Do the engineers still believe the outlet is adequate?

Brandel answered yes.

c. Lloyd Kalfs

Stated that flooding of the lake has occurred more frequently in recent years, and asked where this additional water is coming from, and if it is due to increased pattern tiling that is increasing flooding of the lake and the levels of sediment and nutrients in the lake.

The Board considered this comment.

d. Todd Kolander, DNR

Asked that the engineers provide the additional modeling information that they prepared and stated that the DNR is still not satisfied that an EAW is not needed.

The Board considered this comment

26. The detailed survey report and viewers' report have been made and other proceedings have been completed under this chapter.
27. The reports made or amended are complete and correct.
28. The Board made careful consideration of the Department of Natural Resources' concerns, and based on the findings of the engineers', has determined that the project does not adversely affect the calcareous fen. The engineer has determined that the net effect of the proposed improvement project is to decrease flows to Heron Lake and therefore to decrease the potential impact to the calcareous fen.
29. The damages and benefits have been properly determined based on the viewers' report and updates.

30. The viewers found that the benefits of the proposed drainage project are \$10,104,781.12. The engineer estimated that the cost of the proposed drainage project, including damages awarded, is \$15,626,785. The benefits of the proposed drainage project exceed the total cost, including damages awarded. \$10,713,843 is allocated as repairs and assessed against all property benefited by the entire drainage system, and the balance of the cost of the improvement will be assessed in addition to the repair assessment against the property benefited by the improvement.
31. The proposed drainage project will be of public utility and benefit, and will promote the public health. The engineer has provided information in the engineer's report that the JD 3 system is failing, and that the improvement will include features such as storage to help reduce flooding and peak flows in water resources into which JD 3 flows.
32. The proposed drainage project is practical as demonstrated by the findings in the engineer's report.
33. The damages and benefits for the Horace Thompson property located at the SE quarter of the NE quarter, the NE quarter of the NE quarter, and the NW quarter of the NE quarter of Section 33 of West Heron Lake Township, 103 North, Range 37 West, are based on the characterization of the property as conserved wetland and detention at .07%; in the event that the proposed conservation agreement with Minnesota Land Trust is not executed on or before the completion of the final assessment rolls, the benefits and damages for said property shall be based on its current classification at 1.86%.

Order:

Based on the foregoing Findings and the entire record of proceedings before the Board, the Board of Managers of the Heron Lake Watershed District, acting as the drainage authority for Jackson County Judicial Ditch No. 3, hereby orders as follows:

- A. The Heron Lake Watershed District, acting as drainage authority for the Improvement of Jackson County Judicial Ditch No. 3, hereby establishes and orders said improvement according to the project as described in the final engineer's report and subsequently amended.
- B. The Board adopts and confirms the viewers' report as made or amended.

- C. The amount recommended by the engineer as separable maintenance shall be charged to the Improvement of Jackson County Judicial Ditch No. 3 and deducted from the cost of the improvement.
- D. The Board directs the engineer to prepare the detailed plans and specifications and other necessary documents to allow for bidding on the project.
- E. The Board directs the secretary to take all necessary actions for the construction of said improvement and authorizes the secretary to proceed as necessary, reserving to itself only those matters that the Board, by vote, must authorize.
- F. Upon completion of the project, the drainage system record shall be updated with the as-built alignment and conditions of the improvement and the following portions of JD 3 replaced by the improvement shall be abandoned from the drainage system.
- G. The viewers' determination of the improvement benefits and damages contained in the amended viewers' report dated September 20, 2021 and the benefits and damages statement are hereby confirmed and adopted by the drainage authority.
- H. The viewers, engineer, and attorneys are allowed payment of their accounts of work.
- I. The Auditor shall ensure that the benefits roll is updated to reflect the benefits confirmed in this order.
- J. The percentage of the cost of the drainage project to be paid by each affected county shall be in direct proportion to the benefits and damages as determined in the viewers' report.

After discussion, the Board president called the question. The question was on the adoption of the foregoing findings and order, and there were 5 yeas, 0 nays, 0 absent, and 0 abstentions as follows:

	Yea	Nay	Absent	Abstain
BARTOSH	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREKING	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LUBBEN	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
RASCHE	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
REITH	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Upon vote, the president declared the motion passed and the Findings and Order adopted.

Wayne Rasche
Wayne Rasche, President

Dated: 9-29-2021

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I, Cory Reith, Heron Lake Watershed District Secretary, do hereby certify that I have compared the above motion; findings and order with the original thereof as the same appears of record and on file with the Heron Lake Watershed District and find the same to be a true and correct transcript thereof. The above order was filed with me, Heron Lake Watershed District Secretary, on 9/29/2021

IN TESTIMONY WHEREOF, I hereunto set my hand this
29 day of September, 2021.



Cory Reith