

**FINDINGS AND ORDER FOR CONTINUED PROCEEDINGS
BY THE BOARD OF MANAGERS OF THE HERON LAKE WATERSHED DISTRICT
IN THE MATTER OF THE PROPOSED IMPROVEMENT OF
JUDICIAL DITCH 3, JACKSON COUNTY, MINNESOTA**

The above-entitled matter came on before the Board of Managers of the Heron Lake Watershed District, on December 16, 2019, for the preliminary hearing upon the Petition for Improvement to Judicial Ditch 3 pursuant to Minn.Stat. § 103E.261. The following persons were present at said hearing: the entire Board of Managers of the Heron Lake Watershed District, consisting of Bruce Leinen, James Buschena, Harvey Kruger, Wayne Rasche, and Mark Bartosh sitting as a drainage authority respecting Judicial Ditch 3, Jackson County, Minnesota; also present were the watershed administrator, Jan Voit; the project engineers, Charles Brandel and Jacob Rischmiller; the watershed attorney, Louis Smith, Esq.; petitioners' attorney, Bruce E. Sellers, Esq., and other interested parties and members of the public.

On or about April 5, 2017, a petition and bond for a drainage improvement project to Judicial Ditch 3, Jackson County, Minnesota, was submitted to the Board of Managers of the Heron Lake Watershed District alleging, in pertinent part, that: *“ . . . the system consists of a combination of an open ditch and subsurface tile, each having insufficient capacity or requiring enlarging to furnish sufficient capacity or a better outlet.”* The petition and bond were accepted by the Board of Managers of the Heron Lake Watershed District on May 16, 2017.

In accordance with Minn.Stat. § 103E.241, the Board of Managers of the Heron Lake Watershed District appointed Charles Brandel, of I & S Group., as the project engineer and directed the engineer to prepare a preliminary report in accordance with Minn.Stat. § 103E.245.

On or about October 25, 2019, the Engineer submitted his Preliminary Report to the Board of Managers of the Heron Lake Watershed District. The Engineer's Preliminary Report for the proposed improvement of Jackson County Ditch 3 demonstrates that the estimated total cost of the improvement as requested is \$10,461,982.00. The report also 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.

An Order and Notice of Hearing for Preliminary Hearing was issued by the Board of

Managers of the Heron Lake Watershed District on November 19, 2019. The Engineer's Preliminary Report was forwarded to the Department of Natural Resources and the Board of Water and Soil Resources for review, with a request that an advisory report be filed prior to the hearing date. The advisory report from the Board of Water and Soil Resources was received on November 22, 2019.

On December 16, 2019, a preliminary hearing on the petition was held at Heron Lake, Minnesota. President of the Board of Managers, Bruce Leinen, called the hearing to order at 1:00 p.m. and gave brief comments explaining the present status of the proceedings. The board determined that the Improvement Petition was sufficient. On April 5, 2017, the petitioners submitted a cost bond of \$100,000.00. On March 6, 2017, a bond rider of \$500,000.00 was submitted. On November 4, 2019, a bond rider of \$300,000.00 was submitted. The funds provided to date are adequate to cover costs incurred through the preliminary hearing. The costs will be monitored on a monthly basis and an additional bond would be required of the petitioners pursuant to Minn.Stat. § 103E.202, Subd. 6, if the costs incurred before the proposed drainage project is established will exceed the amount of the petitioners' bond.

Tom Kresko, Department of Natural Resources presented his final advisory report and Jan Voit, watershed administrator read the advisory report of the Board of Water and Soil Resources to all persons present. The project engineers, Charles Brandel and Jacob Rischmiller, reviewed the results of the Engineer's Preliminary Report and responded to questions. The Board President then opened the hearing for public comment and the board received testimony for and against the petition and the proposed improvement. A discussion period ensued wherein all interested parties were heard and their testimony considered by the board.

Based upon the Engineer's Preliminary Report, the Department of Natural Resources' advisory report, The Board of Water and Soil Resources' Advisory Report the testimony and comments from the petitioner's attorney, the public and other interested parties, the Board of Managers of the Heron Lake Watershed District, acting as the drainage authority for the proposed improvement of Jackson Judicial Ditch 3, upon motion and voice vote, made the following:

FINDINGS OF FACT:

1. Based upon the evidence, the board finds that the private and public benefits will exceed the costs of the proposed drainage project;
2. Based upon the evidence, the board finds that anticipated agricultural land acreage availability and use in the drainage project or system will be increased from the present availability and use of the land;
3. Based upon the evidence, the board finds that anticipated land use within the drainage project or system will be increased from the present use of the land;
4. Based upon the evidence, the board finds that the flooding characteristics of property in the drainage project or system and downstream for 5-, 10-, 25-, and 50-year flood events, will be decreased;
5. Based upon the evidence, the board finds that there are no viable alternative measures to drain the waters in the project area, nor that there are feasible alternative measures to conserve, allocate, and use the waters in the project area, including storage and retention of drainage waters;
6. Based upon the evidence, the board finds that there is a positive effect on water quality of constructing the proposed drainage project;
7. Based upon the evidence, the board finds that there is a positive effect upon fish and wildlife resources affected by the proposed drainage project;
8. Based upon the evidence, the board finds that the shallow groundwater availability, distribution, and use in the drainage project or system will be unaffected;
9. Based upon the evidence, the board finds that the overall environmental impact of the above criteria relating to the proposed drainage project is positive.
10. Based upon the evidence, the board finds that the proposed drainage project will be of public utility, benefit or welfare in that it will protect agricultural lands from overflow, and will reclaim or render suitable for cultivation agricultural lands which are normally wet and needing drainage.
11. Based upon the evidence, the board finds that the outlet for the proposed drainage project

is adequate to sustain the flow of water that is anticipated by the improvement.

12. Based upon the evidence, the engineer is required to determine the applicability of separable maintenance under Minn.Stat. 103E.215, Subd. 6, in his final report.

Based upon the foregoing findings and based upon all the documents, records, applicable statutes, and other information contained within the file, the Board of Managers of the Heron Lake Watershed District, acting as a drainage authority under Minnesota Statutes, Chapter 103E, concluded:

1. That the proposed drainage project as stated in the petition, is feasible, and there is a necessity for it;

2. That the public benefit is greater than the environmental impact of the drainage project; and,

3. That the outlet is adequate.

WHEREFORE, the Heron Lake Watershed District Board of Managers, determined that continued proceedings on the Petition for Improvement of Judicial Ditch 3, Jackson County, Minnesota, were necessary and proper.

NOW THEREFORE, IT IS ORDERED, that proceedings shall continue on the Petition for Improvement of Judicial Ditch 3, Jackson County, Minnesota, and the Board of Managers of the Heron Lake Watershed District, upon filing of this Order with the Auditor of Jackson County pursuant to Minn. Stat. § 103E.265, shall forthwith issue orders directing the engineer to proceed with a detailed survey and appointing viewers.

Dated: this 15th day of January 2020.



Bruce Leinen
President of the Board of Managers
Heron Lake Watershed District

ATTEST:



Jan Voit
District Administrator
Heron Lake Watershed District