

**BEFORE THE HERON LAKE WATERSHED BOARD OF MANAGERS**  
**ACTING AS DRAINAGE AUTHORITY FOR PROJECT 2**  
**Minutes**

**Preliminary Hearing**  
**January 19, 2022**

- I. **Agenda Approval** – Motion to approve the agenda made by Lubben with a second by Reith, all yes, motion carried
- II. **Opening of Public Hearing** –Chairperson Rasche opened the hearing at 12:00 p.m.
- III. **Purpose of Hearing** – Attorney Louis Smith shared the purpose of the hearing. On March 10, 2021, a petition for the proposed improvement of HLWD Project 2 was filed with the Board. The petition was reviewed by HLWD legal counsel, Louis Smith, and approved by the Board on April 21, 2021. Jacob Rischmiller, I & S Group, was appointed as engineer for the project and was instructed to draft a preliminary report. The preliminary report was submitted to the Board on December 9, 2021. The purpose of this hearing is to take testimony from all parties to determine whether to proceed with the project or dismiss the petition. The attorney for the HLWD has reviewed the petition. All legal requirements have been met. The petition has been deemed adequate. The petitioners submitted a cost bond of \$10,000.00. The funds provided to date are adequate to cover costs incurred through the preliminary hearing. Should the Board vote for continued proceedings, additional funds may be needed to cover the costs of the final survey and viewers. The costs will be monitored on a monthly basis and an additional bond would be required of 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 petitioner’s bond.
- IV. **Notice Requirements** – Kelly Rasche stated notices were provided as statute requires.
- V. **Engineer’s Preliminary Report** – Jacob Rischmiller, ISG engineer overviewed the project. The system is approximately 1,000 acres, established in 1939, became a public system in 1974. In 2020 a Redetermination of Records was completed, in 2021 B1 branch and the end was found. The system has been partially televised, the remaining of the system will be televised, if the PER is approved. Current drainage coefficient is less than .5%, the improvement will gain depth and get to a .5 drainage coefficient and protect down stream lands. The existing tile will be abandoned, disconnected at property lines. Preliminary cost estimate is \$428,000, separable maintenance estimate is \$282,000, have a net benefit of \$150,000. The engineers state the project is feasible and necessary and recommend approval.
- VI. **Department of Natural Resources (DNR) Advisory Report** – The report is attached. Rischmiller read the report at the hearing and addressed the concerns of the DNR. The new line will be the only outlet for landowners. The improvement will cause an insignificant effect on Duck Lake. The protection of swans will be included in the Final Engineer’s Report, as will the report on landowner costs in the viewer’s report. A written response from the engineer’s will be provided to the DNR during the Final Engineer’s Report phase, if the PER is approved.
- VII. **Board of Water and Soil Resources (BWSR) Advisory Report** – No comment received from BWSR.
- VIII. **Public Input and Questions Regarding Preliminary Engineer’s Report**
  - a. J. Freking – has tile maps for Branch B and B1. Why camera Branch B, Rischmiller stated the camera is to find what the condition is to establish separable maintenance from improvement costs of the project. Freking feels Branch B is adequate.

- b. B1 is the line that needs construction.
- c. Branch B is at a 50-year life, camera is worthwhile to see what is needed.
- d. Lloyd Kalfs – This improvement adds to the cumulative affect of all of the projects going on. Consider what the affect is on the Heron lake, wildlife, etc. Is the true affect of all of the projects being considered on the lake?

Discussion closed at 12:50 with a motion by W. Rasche and a second by Lubben, all yes, motion carried.

**IX. Action by Joint Board** – Manager Jason Freking stated he is abstaining from all votes as he has land in the Project 2 drainage system.

1. W. Rasche with a second by Lubben moved that based upon the evidence, the Board finds that the private and public benefits will exceed the costs of the proposed drainage project. All yes, Freking abstain, motion carried.
2. W. Rasche with a second by Reith moved that based upon the evidence, the Board finds that anticipated agricultural land acreage availability and use in the drainage project or system will be unchanged from the present availability and use of the land. All yes, Freking abstain, motion carried.
3. W. Rasche with a second by Bartosh moved that based upon the evidence, the Board finds that anticipated land use within the drainage project or system will be unchanged from the present use of the land. All yes, Freking abstain, motion carried.
4. W. Rasche with a second by Lubben moved that 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 insignificantly affected. All yes, Freking abstain, motion carried.
5. W. Rasche with a second by Reith moved that 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. All yes, Freking abstain, motion carried.
6. W. Rasche with a second by Bartosh moved that based upon the evidence, the Board finds that there is an insignificant effect on water quality of constructing the proposed drainage project. All yes, Freking abstain, motion carried.
7. W. Rasche with a second by Lubben moved that based upon the evidence, the Board finds that there is an insignificant effect upon fish and wildlife resources affected by the proposed drainage project. All yes, Freking abstain, motion carried.
8. W. Rasche with a second by Reith moved that based upon the evidence, the Board finds that the shallow groundwater availability, distribution, and use in the drainage project or system will be unaffected. All yes, Freking abstain, motion carried.
9. W. Rasche with a second by Bartosh moved that based upon the evidence, the Board finds that the overall environmental impact of the above criteria relating to the proposed drainage project is insignificant. All yes, Freking abstain, motion carried.

**Determination of public utility, benefit, or welfare**

W. Rasche with a second by Lubben moved that 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. All yes, Freking abstain, motion carried.

**Adequacy of Outlet**

W. Rasche with a second by Reith moved that 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. All yes, Freking abstain, motion carried.

**Separable Maintenance**

W. Rasche with a second by Bartosh moved that based upon the evidence, the Board finds that the engineer is required to determine the applicability of separable maintenance under Minn. Stat. 103E.215, Subd. 6, in the final report. All yes, Freking abstain, motion carried.

**Proposed Finding for Continued Proceedings**

W. Rasche with a second by Lubben moved that based upon the evidence, the Board finds that the proposal as stated in the petition, and recommended by the engineer, is feasible, and there is a necessity for it. Additionally, the Board finds that the public benefit and promotion of public health is greater than the environmental impact of the drainage project, and that the outlet is adequate; therefore, it is appropriate for the Board to direct the engineer to proceed with a detailed survey and to issue its order appointing viewers. All yes, Freking abstain, motion carried.

W. Rasche with a second by Reith moved that based upon the findings, the attorney for petitioners shall draft the resolution and order directing the engineer to proceed with a detailed survey and appointing viewers and forward the draft order to the HLWD's attorney for review. Upon review and approval as to form and content by the HLWD's attorney, the resolution and order will be considered and adopted at the next open meeting of the board of managers, and duly issued forthwith. All yes, Freking abstain, motion carried.

**Hearing Adjournment** -- W. Rasche with a second by Lubben moved to end the Preliminary Engineer Report hearing at 1:03 p.m. All yes, motion carried.

Respectfully Submitted by  
Kelly R. Rasche  
Drainage Coordinator  
Jackson County