

Heron Lake Watershed District (HLWD) Project 2
Reestablishment of Records (ROR) Hearing
July 9, 2020

1. Call to Order

Managers present: Harvey Kruger, Wayne Rasche, Cory Reith, and Mark Bartosh

Manager absent: Bruce Leinen

Staff: Jan Voit

Others (in person): Chuck Brandel and Jacob Rischmiller, ISG; Perry Cranston, Dave and Rose Freking, Jason Freking, Ryan Freking, Coleen Freking, Tom Appel, Jim Appel, Bob Mathias, Dean Christoffer, George Mathias, and Kent Freking

Others (Microsoft Teams): Louis Smith, Smith Partners

Wayne Rasche introduced the Board of Managers of the HLWD (Board), staff, HLWD legal counsel, petitioners' attorney, and engineer. He read the following housekeeping items.

- Please turn your cell phones off or to vibrate. If you must answer a call, please take your conversation outside.
- When the public comment periods are open, please state your name for the record.
 - Five minutes will be allowed for each person to speak. A timer will be set to ensure that the timeframe is followed.
 - Each person is allowed to speak only once. At my discretion, persons may be allowed to speak a second time to respond to earlier comments. However, comments are limited to the new information, not for repeating previous comments.
 - Respect the person that is speaking. Please do not interrupt.
 - Side conversations should be taken outside.
 - When multiple comments on the same topic have been presented, I may request that further comments be limited to new information.

These guidelines are printed on the agenda for today's hearing. Your cooperation is greatly appreciated.

The Board of Managers of the HLWD (Board), acting as a drainage authority under Minnesota Statutes, Chapter 103E, held a hearing on the reestablishment of drainage system records for HLWD Project 2, the Engineer's Preliminary Report, the Department of Natural Resources (DNR) Commissioner's advisory report, and the Board of Water and Soil Resources (BWSR) advisory report. A quorum being present, he called the meeting to order.

Chuck Brandel and staff at ISG investigated the HLWD Project 2 records and found that records establishing the alignment, cross-section, profile, or right-of-way of the drainage system were not sufficient to determine the legal grade and capacity of this system for portions of the tile system. This information was reported to the Board on June 4, 2019.

On June 12, 2019, the Board adopted a resolution to follow the procedures of Minnesota Statutes § 103E.101, Subd. 4a to reestablish and correct the drainage system record of HLWD Project 2. Chuck Brandel was appointed to conduct an investigation and a report of findings.

The purpose of today's meeting is to review the engineer's reports and take testimony from all parties to determine whether to adopt findings to reestablish the drainage system records for HLWD Project 2.

2. DNR Commissioner's and BWSR's Advisory Reports

The next item of business was to permit the commissioner of natural resources to give her advisory report regarding the proposed records reestablishment. No report was submitted.

The next item of business was to provide BWSR's Advisory Report regarding the proposed records reestablishment. No report was submitted.

Wayne Rasche moved to close discussion on Commissioner's and BWSR's reports. Mark Bartosh seconded this. Motion carried unanimously.

3. Take and Consideration of the Evidence

The next item of business was to receive, review, and discuss the engineer's report. Chuck Brandel of ISG, is the project engineer, and it was requested that he present a summary of the records reestablishment report.

Chuck Brandel explained that a meeting was held about a year ago, before any work was done. He described the presentation overview.

In 1939, a private tile project was completed and installed before Project 2 was established. The project was established by the Middle Des Moines Watershed District (MDMWD), now known as the HLWD, in 1973. Viewers' reports were submitted. In 1974 there was a landowner agreement for private tile takeover. The private tile takeover made the tile on the west side of Project 2 part of the public system. The records never said the tile size, slope, or where it was located. There have been some failures of that tile. Because it is a public tile, the landowners have the right to repair it. There was an abandonment of a waterway in 2016 and a redetermination of benefits (ROB) in 2017. The ROR process started in 2019.

The watershed boundary was shown. The watershed encompasses 1,960 acres in LaCrosse Township. Through this process it was discovered that portions of the map are not correct. It is ISG's opinion that the ROB should be updated. There was a good record of the open ditch. They did not re-survey the entire ditch, but they did check the outlet. The ditch was built very close to the original plan. Branch A and Branch B were part of the original plan. Branch B1 is what was called the tile takeover. There were never any official plans for that. ISG has received a copy of the original private tile construction map.

The ROR process, M.S. 103E.101, Subd. 4 was explained. There are many ditch systems that were constructed 50 to 100 years ago. Courthouses burned and records were lost. There have been incidences of poor record keeping. There have been improvements and repairs that are not all tied together. This process is in place for the engineer to reestablish the records so repairs and maintenance can be done as part of the public system.

Jacob Rischmiller said that the available documentation ISG reviewed included the original MDMWD maps. Those maps specifically looked at the open ditch, as well as Branch A and Branch B. There was no detail for Branch B1. What is being done today should have been done when the original plan was put together. Now the statutory requirements are being followed to do that.

The original plans show the profile view, the grades, and the plan view for the properties for each branch and the main.

In the final hearing notes from October 1973, there is a signature page of the landowners involved in the tile takeover. Everyone affected agreed and signed that Branch B1 should be taken over as a public tile.

The viewers updated their report in 1973. They gave the western portion of the watershed benefits for the tile takeover. The records said that the private tile became part of the public system, but they never said where it is or what size it is. ISG needed to verify what it actually is.

The 1973 agreement was shown. It included two crossings installed on the Julius Appel farm. John Mathias did not want payment for his existing tile, which is the private tile takeover.

Through landowner conversations and individual landowners' research, a cut sheet was provided that showed three different jobs that could have been completed in 1939. Meshing the cut sheet to where ISG dug up tile, Job 3 most closely aligned with what is in the field. The sheet said that the tile ended in what was called the Henkels' Slough. ISG used the plan from 1973 and this plan together with survey data, televising, and excavation. It lined up fairly well with the original 1939 plan. Aerial photos also helped figure out where the tile outletted into the slough.

The original profiles were shown and described. Branch A is a 14 inch tile. Branch B is a 20 inch tile.

ISG created new plan and profile sheets. These sheets show where Branch B1 is located, as well as the depth and size. This information was included in the handout.

ISG spot dug on the west side to verify tile locations and to do televising. With that information ISG could determine the condition of the pipe. Some of it is relatively decent. Others show stress spots, cracks, offset joints, and some spots that are not functioning.

ISG looked at the capacity of Branch B1 to determine what capacity it can be repaired to for future projects. The drainage coefficient is .1 inches per day for the existing 14 inch tile. Manufacturers no longer make a 14 inch tile. The statute does allow repair to next available size. So this line could be repaired to a 15 inch tile at .1 drainage coefficient.

ISG discovered there is a discrepancy of where Branch B1 tile would be. Landowners verified this as a Z box, where one tile is higher than the other. By surveying both ends and verifying the grade, ISG was able to determine where the Z box would be. They confirmed that the elevations were correct. There is a little less than six feet of difference between Branch B and Branch B1.

Branch B1 downsizes to a 12 inch tile in the middle of the Mathias property toward the end of the branch. Branch B1 has two feet of cover toward the upper end of the branch.

There were profiles for the ditch grade. It was constructed close to what was originally planned. It does have a legal grade and elevation.

The fees and expenses, engineer's and viewer costs, board members, and administration are all allowable expenses under the statute. The costs are assessed according to benefit rolls for system. Chuck Brandel reiterated that the ROB should be updated so it includes the correct drainage area and the cost for ROR spread over correct area.

ISG's recommendation was to approve the ROR pending comments from landowners that they haven't received. He thanked landowners for providing information to make sure the record is correct. Once the record is corrected, future work on the system will be appropriately assessed and it can be appropriately repaired.

Wayne Rasche stated that questions or comments respecting the engineer's report would be taken. Please state your name for the record and keep your comments to five minutes or less.

Jason Freking had comments regarding the catchments for Branch B and B1. The tile in their property is less than 30 acres. It that goes into Branch B. So does Dean Christoffer's. Chuck

Brandel responded that most of Freking's property goes into Branch B. This doesn't change the ROR, but it changes flow. ISG could update the capacities with that information. ISG's determination was based on LiDAR and topography. It doesn't change the capacity of Branch B, but it does of Branch B1.

Chuck Brandel stated that ISG has spoken with many of the people in attendance. They have gotten input from them.

Bob Mathias said that he could update his tile according to this. It is tiled the opposite way because the line didn't work. Chuck Brandel asked Mr. Mathias to show the location on the map after the meeting. ISG could then have a final accepted report for this project. The new information doesn't change the ROR, its alignment, tile, or size. ISG could share this information with the viewers to make sure they have it correct.

Wayne Rasche moved to close the public hearing. Harvey Kruger seconded this. Motion carried unanimously.

4. Action by the Board

Proposed Findings

1. Wayne Rasche moved that based upon the evidence, the Board finds that the proposed functional alignment and grade of the HLWD Project 2 as described in the engineer's report of findings reflects the level of performance similar in nature to the as constructed and subsequently improved condition of the drainage system considering the function required by the change in land use to reestablish the historic drainage function to benefited lands. Cory Reith seconded this. Motion carried unanimously.
2. Wayne Rasche moved that based upon the evidence, the Board finds that correction of the drainage system records to adopt the proposed functional alignment and grade of the drainage system, as described in the engineer's review memoranda, will provide for the efficient administration of the drainage system. Mark Bartosh seconded this. Motion carried unanimously.
3. Wayne Rasche moved that based upon the evidence, the Board finds that adopting the proposed functional alignment and grade of the drainage system, as described in the engineer's report of findings, will reconcile the historical record of the drainage system with the functional alignment, dimension, and grade of the system as it has historically provided public benefit. Harvey Kruger seconded this. Motion carried unanimously.

Proposed Order to Correct Drainage System Records

Wayne Rasche moved that based on the foregoing Findings and the entire record of proceedings before the Board, the Board, acting as the drainage authority for HLWD Project 2, hereby orders as follows:

- The Board hereby corrects the drainage system records of HLWD Project 2 to reflect the alignment; cross-section; profile; hydraulic structure locations, materials, dimensions, and elevations; and right-of-way of the drainage system as detailed in the engineer's report of findings dated April 29, 2020.
- The Board further directs filing and recording of documents necessary to reflect the reestablishment and correction of the public drainage system records established herein.

Cory Reith seconded this. Motion carried unanimously.

Proposed Order to Initiate Redetermination of Benefits


Wayne Rasche moved that based on the foregoing Findings and the entire record of proceedings before the Board, the Board, acting as the drainage authority for HLWD Project 2, the Board further finds that the benefited or damaged areas have changed, and therefore it is appropriate to initiate the redetermination of benefits pursuant to Minnesota Statutes Section 103E.351, and accordingly:

- The Board hereby initiates a proceeding for the redetermination of benefits and shall follow the procedures of Minn. Stat. § 103E.351 to conduct an updated redetermination of benefits for HLWD Project 2.
- Ron Ringquist, Dan Ruby, Chuck Bowers, and Tom Peterson are hereby appointed as viewers to redetermine and report the benefits and damages for HLWD Project 2.
- Within five days of this Order, the Secretary shall execute an Order designating a time and location for the first meeting of the viewers and mail to the viewers a copy of the Secretary's Order along with a certified copy of this Order.

Harvey Kruger seconded this. Mark Bartosh asked if a quote for viewing should be obtained from H2Over Viewers. Jan Voit explained that this viewing team did the ROB. They will be updating what was already done. Motion carried unanimously.

Wayne Rasche moved that HLWD's attorney shall draft the resolution and order to correct the drainage system records of HLWD Project 2 and initiating a ROB proceeding to be considered and adopted at the next open meeting of the board of managers, and duly issued forthwith. Cory Reith seconded this. Motion carried unanimously.

Wayne Rasche moved that the hearing be adjourned at 1:33 p.m. Harvey Kruger seconded this. Motion carried unanimously.


Harvey Kruger
Secretary