

Heron Lake Watershed District (HLWD)
Final Hearing – Jackson County Ditch (CD) 3
March 30, 2017

1. Call to order

Managers: Bruce Leinen, Harvey Kruger, Wayne Rasche, Jim Buschena, and Gary Ewert

Staff: Jan Voit

Others: Mike Tow, Tow Law Firm, Ltd.; Bruce Sellers, Wendland Sellers Law Office; Jim Milbrath, Dwayne Milbrath, Lois Kruger, Michael Hoeft, Ryan Hill, David Damm, John Post, Don Gentry, Richard Cross, Bob Springman, Cindy Hill Ekedahl, Rodger Hotzler, Vern Bass, Verlin Bass, Dan Milbrath, Dave Pomerence, Nila Pederson, Don Stenzel, Dan Ruby, Jim Baumgard, John Nauerth III, Horace Thompson, Terry Post, Perry Cranston, Greg Post, Robert and Marles Lange, Bruce Krahmer, Krahmer and Shafer, Ltd. for Grace Kay; Steve Christoffer, Kurt Deter, Rinke Noonan; Chuck Brandel and Jacob Rischmiller, I+S Group (ISG); Kim Hummel, Dave Macek, Kevin Nordquist, Jim Eigenberg, Scott McClure, and Catherine Hohenstein, Jackson County; other unidentified individuals may have been in attendance who chose not to sign the attendance sheet

The Board of Managers of the HLWD, acting as a drainage authority under Minnesota Statutes, Chapter 103E, held a final hearing on the petition to improve Jackson CD 3, review the petition, the Engineer's Final Report and two amendments to the final report, the Viewers' Report, the Department of Natural Resources (DNR) Commissioner's Final Advisory Report, Board of Water and Soil Resources (BWSR) Advisory Report, and take testimony from all interested parties to determine whether to establish the proposed project or dismiss the petition. The board of managers was introduced. A quorum being present, Bruce Leinen declared the meeting to be open at 9:38 a.m.

The petitioner's attorney, Bruce Sellers was called upon to review the history of the project and proceedings to date.

2. Determine sufficiency of petition and bond

The first item of business was to determine the sufficiency of the petition. The petition was previously determined to be sufficient and the board has received no new information which would change that determination. The current bond on file with the petition has a balance of \$30,703.36, which is deemed adequate at this time.

3. Read DNR Commissioner's and BWSR Advisory Reports

The next item of business was to permit the Commissioner of Natural Resources to give his final advisory report regarding the proposed drainage project. Whereas the Commissioner was not present, Jan Voit read the Commissioner's Final Advisory Report into the record. A copy of the report is included with the hearing minutes.

The next item of business was to provide BWSR's Advisory Report regarding the proposed drainage project. Whereas no BWSR representative was present, Jan Voit read the report into the record. A copy of the report is included with the hearing minutes.

Bruce Leinen asked if there were any questions or comments respecting the Commissioner's or BWSR's Advisory Report.

Bob Springman made a statement regarding the BWSR comments which indicated that there appeared to be “a lot of holes” in this project. He said that CD 45 was just approved a few days ago, with this same type of engineering report and asked what was different about that? Chuck Brandel said that he had reviewed BWSR’s comments and interpreted the comments to mean that BWSR desires to review a final plan, which is not possible until the project is approved and going out for bids. Mr. Brandel also stated that some of BWSR’s comments have been addressed in Amendment 2.

Horace Thompson asked for a review of why the ditch 84 was separate from CD 3. Chuck Brandel explained that JD 84 is added in when discussing the CD 3 outlet.

Jim Buschena made a motion to close discussion on the Commissioner’s and BWSR’s reports. Gary Ewert seconded this. Motion carried unanimously.

4. **Engineer’s Report**

The next item of business was to receive, review, and discuss the engineer’s final report, including Amendments 1 and 2. Chuck Brandel gave a PowerPoint presentation that summarized the Final Engineering Report (FER) including an overview of the project, history of the ditch, separable maintenance, adequacy of outlet, and estimated costs. A copy of the presentation is included with the hearing minutes.

Chuck Brandel explained that there have been multiple meetings and two amendments to the project since the preliminary hearing. The FER was updated to address some of the comments made by BWSR. Portions of the system were televised over 20 years ago. Jackson County can show the history of the maintenance that has been done on the system. He explained the changes that were made in Amendment 1 and Amendment 2 based upon landowner comments and requests.

It is Chuck Brandel’s opinion that the system is in need of repair; that separable maintenance be included; that the project is cost-effective, practical, and of public benefit; and with amendments, recommends final approval of the project. Adequacy of outlet was reviewed and is in the report. It is adequate and will not cause any significant downstream effects.

Chuck Brandel provided a summary of the proposed Optional Additions contained in Amendment 2. Wayne Rasche said that those additions will add almost a 10 percent increase in cost and asked if those additions would increase all of the landowners’ costs by 10 percent. Chuck Brandel explained that the improvement costs will not be equally divided, they will be borne by the area affected. The repair costs will affect the majority of the landowners. He also explained that while all of these tile lines are almost 100 years old, these proposed additions were not part of the original petition.

Bruce Leinen asked if anyone had any questions or comments respecting the FER. Kurt Deter stated that he was representing Alba Grain, Inc. and that most of his questions would relate to separable maintenance. He started with questions about the history of the project and how separable maintenance and improvement costs had changed since the initial feasibility study until Amendment 2 was presented.

Chuck Brandel explained that since the feasibility study there have been multiple meetings

with landowners who requested changes that have been incorporated. The two-stage ditch has always been included as part of the project. The storage pond was added. Both the improvement and redetermination reports show the costs for the redetermination of benefits. This was done because the redetermination of benefits had not yet been approved. Showing the costs in the improvement report was done to give the landowners a picture of the entire costs associated with the project.

Chuck Brandel also clarified that there are bridges over county roads and township roads that need to be replaced. ISG found issues with the bridges during inspection. They have been working with Jackson County to replace those bridges and are seeking funding. The bridge replacement costs are not included in the CD 3 improvement budget. If funding is not obtained, some cleaning under the bridges will need to be done. No improvement costs or separable maintenance for bridges is included in the CD 3 improvement budget.

Kurt Deter asked about the Optional Additions in Amendment 2, the costs, separable maintenance, and mobilization. Chuck Brandel explained that mobilization costs are in a two to five percent range for the project. Instead of a line item of three percent mobilization costs for the whole project, the costs are included in each branch. This method is used so if a branch is removed the entire project budget doesn't have to be adjusted. Because of the size of the CD 3 project, if the project is ordered, there would be multiple bids, but the contingency costs would be the same.

Kurt Deter asked if the current system is out of repair. It is his opinion that the entire open ditch is not in need of repair. Chuck Brandel said that portions of the open ditch need to be cleaned.

Kurt Deter asked about tile outlets and rip rap. Chuck Brandel explained that when large repairs are put forward, rip rap at outlets is recommended. Kurt Deter said that means everybody in the system is helping to pay for those private outlets. It is his opinion that they should not have to pay separable maintenance for that. Chuck Brandel stated that if that area is eroding, it will add cost to the project. Rip rap of outlets is a standard practice.

Kurt Deter asked about the permanent damages shown in the report. Chuck Brandel said those were for the acquisition of the buffer. Kurt Deter opined that the buffer is not a repair cost; it has nothing to do with this. Chuck Brandel said that he included it with the project cost so the landowners could get a true picture of the project costs. Kurt Deter again opined that buffer acquisition is not separable maintenance. Chuck Brandel stated that the costs are included in the improvement and the redetermination of benefits reports. If taken out, the costs would come out of both reports.

Kurt Deter asked about buffer seeding and temporary damages. It is his opinion that buffer seeding should not be included as a separable maintenance cost. He also said that the redetermination of benefits was something that Jackson County approved and that the HLWD has nothing to do with it. He also opined that the seeding of the buffer strip and acquisition of the buffer strip should not be part of the project.

Kurt Deter asked about portions of the project where there are currently three tile lines. In the report, they are being replaced by three lines, but, in his opinion, it would seem to be more

appropriate for them to be replaced with one line that has the same hydraulic capacity. Chuck Brandel explained that if the lines were repaired, they would probably be done individually. It would be difficult to know the timing. Putting in one line versus three in some portions may potentially reduce separable maintenance costs. The project costs were put together based upon replacing what is actually in the existing system.

Kurt Deter stated that the people included in the improvement report are going to pay a little over \$1.6 million to get a \$7.6 million project. He asked about the options proposed in Amendment 2. It is his opinion that those people are going to get an improvement and the costs would be paid by everyone else in the system. He asked again about the redetermination of benefits costs and why they were included in the improvement costs. Chuck Brandel explained that he did this to show the total cost of what either project would be. The figures show the total cost of everything that is proposed.

Kurt Deter said that Alba Grain will have about \$338,000 in separable maintenance costs and they only have 19 acres that get some marginal benefit. It is his opinion that separable maintenance is a big cost to them and there are a lot of things that shouldn't be separable maintenance. He stated that just by sitting here today Alba Grain went from \$338,000 to \$350,000 or \$360,000 in separable maintenance costs and they got nothing for the changes. It was his opinion that they are paying for someone else's improvement and separable maintenance is incorrectly figured.

Dave Damm stated that he agreed with what was said about separable maintenance and project costs. He was there to speak on behalf of Howard and Beverly Damm. The separable maintenance cost to them is \$338,000 also. As the system stands now, their drainage works fine. Their property is close to the ditch. It will cost an average of \$59.60 per acre per year for 20 years. He thinks a lot of the costs for separable maintenance and new construction are not balanced. These costs cause an undue burden on one landowner.

Nila Pederson said that she owns land in Section 2 where everyone's land drains their water. She has one quarter of land and gets \$31,000. By doing this project, she is in a financial mess. She is a small person, but she does count. Her land and home are debt free. She is not happy. And she was not notified by anyone that this project was happening before the petition was filed.

Wayne Rasche asked if she was notified. Nila Pederson said that not one person contacted her before the petition came about. Dave Macek said that all informational meeting notices were sent to the landowners on the system. Nila Pederson again said that before it started, nobody had the common courtesy to ask her if she wanted it. Chuck Brandel stated that four informational meetings were held before the petition was filed. Notices of these meetings were sent to landowners based upon the tax roll.

Harvey Kruger asked about separable maintenance and having it accounted for in both the redetermination and improvement. Chuck Brandel explained that the permanent damages for the buffers and the seeding were included to show actual project costs. The costs for the redetermination of benefits will be incurred now because the redetermination was approved by Jackson County. He included these numbers for the landowners so they were aware that

these costs would be part of the project. If the ditches are deepened, there will need to be a place for the spoil. Because this is normally done adjacent to the ditch, if the buffers are seeded, reseeding would be an additional cost the landowners would have to pay.

Bruce Leinen asked if buffer seeding costs would be distributed among all landowners. Chuck Brandel said that they would be.

Kurt Deter opined that separable maintenance isn't whether it is a good project or not. If the project was bid and the legitimate costs were less, then the project could not fly under that situation. The issue is not whether the system needs to be improved. It was his opinion that there are costs that shouldn't be separable maintenance and then people are paying for things that aren't repair costs. In this case, he and his client believe there are thousands of dollars under separable maintenance that are not repair costs.

Chuck Brandel again stated that the redetermination of benefits costs are included in both reports. They could be removed and that adjustment could be done fairly easily. The buffers are not in place. If work is done along the ditch, it would be better to not have the buffers seeded.

Kurt Deter opined that Chuck Brandel has a built-in conflict of interest, since he is the HLWD's engineer, but also works with the landowners. It was his opinion that the HLWD needs to have an independent engineer take a look at the work that has been done. He also opined that filming of a short section of this system in 1992 does not show that the system is out of repair and he strongly believes the open ditch is not out of repair.

Bruce Leinen said that the costs for the buffers have to be distributed to everyone. He asked that if the buffers are in place when construction is done would the costs for fixing them also be the landowners' expense. Mike Tow stated that the approval of the redetermination of benefits by Jackson County allocates the costs for the acquisition of the buffer strip and seeding to the landowners. Kurt Deter opined that it would not make sense to seed the buffers, rip them up, and then seed again.

Wayne Rasche asked if all current tile lines were going to be removed. If not, what happens to the old county tile lines? If they are connected to the ditch, won't that allow silt to enter? Chuck Brandel said that the tile ISG has seen is in bad shape. The lines could be connected in a few spots. Where they are completely falling apart they would not be connected. At a minimum every piece is plugged at a property line. If tile are completely abandoned, they are broken and new tile is brought across. If tile are plugged, it won't cause a huge problem. There are some stretches that are still functioning.

Wayne Rasche asked if the property owners are responsible for the old tile lines from that point forward. Chuck Brandel explained that the intent is to close the old main and abandon it completely. The cost has been included to do that for improvement tile connections. It is accounted as separable maintenance. The new tile may follow the same alignment, but it needs to be in a new trench and there is still a need to have connections.

Bruce Krahmer spoke on behalf of Grace Kay. She has approximately \$180,000 in assessments. He said that at the very least there should be a review of the separable maintenance

attributed to three tile lines that could be replaced with one. Right now improvement costs are being passed on to other people. The project is needed, but the negative assessments should not be less than zero.

Gary Ewert made a motion, seconded by Jim Buschena, to close discussion on the engineer's report. Motion carried unanimously.

5. Viewers' Report

The next item of business was to receive, review, and discuss the viewers' reports. Ron Ringquist, one of the viewers, presented a summary of the reports, and specifically reviewed the method used to calculate benefits, the method used to calculate damages, and the net benefits of the project. He explained the determination of benefits process, how the viewers work as a team, benefit classifications, income approach to value, and the benefits and damages statement.

Ron Ringquist stated that the report should be approved with the recommendation to adjust acreages for Sections 9 and 10 to match the redetermination report.

Bruce Leinen asked if anyone had questions or comments respecting the viewers' final report.

Kurt Deter opined that the board is in no position today to approve the report. Ron Ringquist said that the report could be approved subject to changes that are proposed in Amendment 2.

Wayne Rasche asked if any loss of value was attributed to farms that have open ditches through them. Ron Ringquist explained that an open ditch is no different than a road going through someone's property. At the time of the original construction, damages were paid. The landowners were compensated for the buffer strip and open ditch when the original construction was done or as a result of any subsequent improvements. That loss of value should have been granted and accepted at the time the ditch was built.

Wayne Rasche asked if the redetermination of the open ditch portions affected property value. Ron Ringquist explained that the value accepted in 1920 was acceptable at the time. If additional land is acquired, then there could be additional severance, but not for the fact that the ditch is already there.

Gary Ewert made a motion to close discussion on the viewers' report. Wayne Rasche seconded this. Motion carried unanimously.

6. Taking and consideration of testimony by interested persons

The next item of business was to receive, review, and discuss testimony from any interested person relating to the project which has not been previously covered. Bruce Leinen asked if anyone had questions or concerns that had not been previously addressed.

Kurt Deter said that he wanted to state for the record that his client is requesting a review of separable maintenance, another engineer to review the engineering, looking at the cost to repair, and determining what is the final project.

Chuck Brandel stated that while discussion was being held he made some of the changes in the worksheet and the separable maintenance was reduced about \$250,000. Kurt Deter said

the statute allows for hiring another engineer. It is his opinion that if the HLWD hires another engineer, then Chuck doesn't get caught in the middle of the separable maintenance issue. Chuck Brandel said that he has all of the hydraulic data. Kurt Deter opined that there is a need to know specifically what is out of repair and what it is going to cost to repair it.

Jim Baumgard stated that the system was installed in the 1900s. If only repairs are made to 12 and 10 inch lines, then what improvement will there be? That doesn't make sense to him.

Dave Damm said that when this project was first proposed, it took 26% of the landowners with certain criteria. He asked if the petition still met the criteria with all of the changes that are proposed. Bruce Sellers explained that the petition was valid when it was submitted. Removing land from the project at this point does not make the petition invalid. Mike Tow and Kurt Deter concurred with his opinion.

Kurt Deter asked if one of the board members was a petitioner on the project. He was informed that Harvey Kruger was a petitioner and that he would step down from the table when the managers began deliberations.

Bruce Sellers stated that he understands the issues that Mr. Deter is raising. It is his opinion that bringing in a third party to review the engineering causes more expense. The petitioners have filed a bond. The more costs that are incurred, the more exposure the petitioners have. He did not want to argue about the use of an independent engineer and would leave that to the board's discretion. But, he wanted to remind the board that it is important for them to remember that the petitioners that are responsible for the costs.

Wayne Rasche asked about adjustment of numbers and the cost-benefits ratio. Chuck Brandel stated that his job is to tell the board what the costs of the project are, not to care what the benefit number is.

Mike Tow stated that the board hired the engineer and should follow those recommendations. Chuck Brandel explained that the separable maintenance figures are what it would cost to repair the existing system as designed.

Bruce Leinen asked if it would be possible to determine the costs for replacing the sections with three separate lines with one. Chuck Brandel said that figuring those costs could be done. In some cases where they are next to each other, it would work. In other cases, where they are all over the place, it may not necessarily work. It might be a combination of what is the best way to repair this. Bruce Leinen asked how that would be done. Chuck Brandel said that a repair may follow the improvement alignment. Capacity would also have to be considered. It would be fairly easy to do. He reiterated that it was his job is to tell the managers what the costs are.

Bruce Leinen stated that the engineering was done to determine the cost of replacing the existing system as closely as possible. He wondered if the petitioners were open to making the changes from three lines to one, if it would be less costly. Bruce Sellers said that the petitioners are most concerned that they will be able to receive the capacity that is needed in order for them to drain and the most efficient costs. It is his opinion that Chuck Brandel is making recommendations to the managers based on what is the best bang for the buck.

Chuck Brandel stated that the petitioners do not want the system repaired, they want an improvement.

Kurt Deter opined that the petitioners have a legitimate request to improve the system. It was also his opinion that legitimate repair costs should be figured based on being as efficient as the original; not an adjustment of numbers; and that legitimate, reasonable costs must be determined for repairing and improving the system, then subtract the two.

Bruce Sellers asked Chuck Brandel to explain the process for determining prices to assure the board that the figures are not being made up. Kurt Deter said that he agreed that the figures were not being made up. Chuck Brandel stated that if the budget figures were updated, it is likely the project costs would be reduced. He said that based upon four recent bids over the last few weeks, the numbers would go down.

Jim Baumgard said that if making a decision keeps being extended, interest and construction costs may increase. It is likely that what some people are trying to save may be their same costs in the end.

Jim Buschena made a motion to close public comment. Gary Ewert seconded this. Motion carried unanimously.

7. Action by the Board

Harvey Kruger recused himself.

Mike Tow stated that the managers had three issues to consider: the request for an appointment of engineer, the engineer's proposed changes, and separable maintenance issues that were raised.

Bruce Leinen said that there has been a request for an independent engineer to look over the separable maintenance. He asked if the board believed this was needed. Gary Ewert said that an engineer is an engineer, just like a lawyer is a lawyer. Why not keep the engineer the board has and address the comments?

Mike Tow stated that there is no requirement to obtain an independent engineer. The board has to consider the request. Gary Ewert said that the engineer is familiar with the system. He presented the material requested. Today the board has another insight into things. Why start all over? It will just increase the costs. The board should set a time that is relatively close for another hearing.

Wayne Rasche asked Mike Tow his opinion about separable maintenance and whether he thought it was extreme. Mike Tow said that it is up to the board to decide. The engineer makes a recommendation as to what is required. There have been some questions by Mr. Deter. It is up to the managers to determine what is necessary. It is a board question. No one is going to agree on separable maintenance cost. Mr. Deter represents his client, who says separable maintenance is too high. Mike Tow did not know if the engineer stood by what was in his report or if he wanted to make modification. Those are questions the board should direct to the engineer.

Chuck Brandel said that he included the redetermination costs to accurately reflect all project costs. The redetermination of benefits wasn't approved when the report was written. He

could remove the redetermination costs. He could look at records of where other branch lines are located that are in need of repair. He also said he could look at what it would take to combine the locations where there are three tile lines into one as a repair. It would take some time.

Wayne Rasche asked if the report should be reworked to include all of those additional options. Chuck Brandel said that it is his job to tell the board what the costs are. Are those areas undersized? Yes. Is it prudent to do? Yes. But, the board has a petition before them that did not include improvement of those locations. Jim Buschena stated that he would like to see Chuck Brandel address those issues and bring the information to the board.

Jim Buschena made a motion to not hire an independent engineer to review the project. Wayne Rasche seconded this. Motion carried unanimously.

The following actions were taken regarding the requested Optional Additions.

- Branch 2A was requested to be extended to the East $\frac{1}{2}$ of Section 10 of Ewington Township. The extension would flow from the center of the east $\frac{1}{2}$ of Section 10 of Ewington Township to the existing tile in the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 10 of Ewington Township. Wayne Rasche made a motion to approve the Branch 2A request and direct the engineer to include the information in a revised FER. Gary Ewert seconded this. Motion carried unanimously.
- Branch 6B was requested to be extended from the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 34 of Alba Township and into the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 34 of Alba Township. The extension of Branch 6B would not be able to use any separable maintenance cost, since there is not a current public branch. Ron Ringquist said the only additional benefit would be assigned to this landowner's property. It provides no one else any additional value. Jim Buschena asked if it would be feasible to spend \$18,000 to get \$3,000 in value. He also asked if the extension would be going outside the watershed boundary. Chuck Brandel said it would be a short extension into the property within the watershed. Ron Ringquist stated that the value in the report assumed the landowner would have access to it and not quit one foot short of the property line. Jim Baumgard told the board that he wanted to drop the request. Jim Buschena made a motion to remove the Branch 6B request. Gary Ewert seconded this. Motion carried unanimously.
- Branch 7: Reroute was requested to change the location of Branch 7 which flows from the SW $\frac{1}{4}$ of Section 26 of Alba Township to the NW $\frac{1}{4}$ of Section 36 of Alba Township and then into the open ditch. The original alignment was east and north of the existing home site in Section 36 but after the landowner meeting it was discovered that the existing tile flows west and south of the existing home site. Landowners requested the route to follow the existing alignment. Chuck Brandel recommended that it be done. It will be easier to connect and add a short branch to the east. Jim Buschena made a motion to approve the Branch 7 request and direct the engineer to include the information in a revised FER. Bruce Leinen seconded this. Wayne Rasche asked if this change will affect the current tile. Chuck Brandel said that this addition was proposed. Currently there is no tile in this location. Motion carried unanimously.

- Branch 7A was requested to flow from the SE ¼ of the SW ¼ of Section 26 of Alba Township and into the SW ¼ of the SE ¼ of Section 26 of Alba Township to connect into Branch 7. The additional Branch 7A will not be able to use any separable maintenance cost, since there is not a current public branch. Ron Ringquist stated that there will be additional benefit, but the viewers did not specifically look at this. The project would be replacing private tile with public tile, which gives the property an outlet to the public system. Mike Tow said that replacing private tile with public tile would add expense to the whole system. He suggested that the board might want to delay action until there is more information. Wayne Rasche made a motion to direct the engineer to provide cost estimates for this proposal and present them at the final hearing. Jim Buschena seconded this. Motion carried unanimously.
- Branch 11: Flow north from the Southwest ¼ of Section 30 of West Heron Lake Township into the open ditch. The tile was originally sized as a 12" and 10" line to meet the 0.50" drainage coefficient requirements. Landowners in that area stated that there is existing private tiles that serves some of the watershed for this area and that a 0.30" drainage coefficient is sufficient for Branch 11. This would downsize the tile to and 10" and 8" line respectively. This change saves \$12,024 in project costs. Jim Buschena made a motion to approve the Branch 11 request and direct the engineer to include the information in a revised FER. Wayne Rasche seconded this. Motion carried unanimously.
- Branch 12 was requested as an extension from the end of the proposed tile in Section 24 of Alba Township and into the NE ¼ of the NE ¼ of Section 26 of Alba Township. The extension of Branch 12 would use separable maintenance of Branch 2 of Lateral 3 as well as Lateral 3A. Branch 12 A was requested to flow from the NE ¼ of the SE ¼ of Section 23 of Alba Township and into the middle of Section 24 to connect into Branch 12. The additional Branch 12A would use separable maintenance from Lateral 3A3 as well as Lateral 3 of Main. Ron Ringquist said that with the removal of the southern tile line there is very little added benefit either hydrologically or economically. There is very little additional benefit to the improvement. If the major lines aren't repaired in conjunction with this project, then there would be longer term overlapping assessments. Dave Macek stated that there are areas in these locations where there is tile in need of repair. Chuck Brandel said that the existing line at 360th Avenue has approximately five feet of cover. It would need to be three to four feet deeper. Jim Buschena made a motion to approve the request for Branches 12 and 12A and to direct the engineer to provide the information in a revised FER. Bruce Leinen seconded this. Motion carried unanimously.

The following actions were taken regarding separable maintenance.

- Ditch cleaning. Chuck Brandel stated that it is his opinion that when a large project is done, the entire ditch should be cleaned. Large portions of the ditch would be deepened and those costs are figured in the proposal. Project costs include removing six to eight inches of material and deepening the open ditch. The costs could all be considered improvement costs. The board could consider not cleaning all of it, knowing that it may need cleaning in a few years. He recommended cleaning the entire

ditch, which could get everything repaired and on the assessment now and not worry about doing it in a few years. Jim Buschena made a motion to direct the engineer to remove ditch cleaning from separable maintenance, allocate it to improvement, and provide updated information in a revised FER. Wayne Rasche seconded this. Motion carried unanimously.

- Private tile outlets. Chuck Brandel explained that in order to fix the entire system and not have additional costs after the project is completed, it has been standard practice to repair private tile outlets whenever ditch cleanouts are done. He said that different drainage authorities include it as separable maintenance, others do not. It is his opinion that everything that drains into the system should be fixed. Bruce Leinen asked if this would get done if it was not included in the project. Chuck Brandel said that it would be up to the private landowners. As the drainage authority, the board could require the landowners to do this. Wayne Rasche stated that if this is not done, then there will be washouts that will have to be cleaned later. Wayne Rasche made a motion to direct the engineer to include private tile outlet replacement as separable maintenance and provide the cost information in a revised FER. Gary Ewert seconded this. Motion carried unanimously.
- Buffer strips. Chuck Brandel stated that it was his opinion that the buffer strips could be removed from separable maintenance, with the understanding that the landowners still have to pay for them, just not as part of this project. Ron Ringquist said that statute requires acquisition of the buffer strip with the redetermination of benefits. That is why the costs are included in the viewers' report. The change would be no seeding in separable maintenance, the entire length on one side. Jim Buschena made a motion to direct the engineer to remove buffer strips from separable maintenance and provide updated information in a revised FER. Wayne Rasche seconded this. Motion carried unanimously.
- Redetermination of benefits expense. Wayne Rasche made a motion to direct the engineer to remove the redetermination of benefits from the project costs and provide updated information in a revised FER. Gary Ewert seconded this. Motion carried unanimously.
- Review plan for cost savings for combining multiple tile lines. Chuck Brandel stated that there could be eight different locations where multiple lines could be combined into one that matches the existing hydrology. Gary Ewert made a motion to direct the engineer to reexamine the engineering plan and make a recommendation as to what could be done to combine multiple tile lines. Jim Buschena seconded this. Motion carried unanimously.

Wayne Rasche made a motion to direct the engineer and viewers to make new reports and submit them within three weeks, responding to modifications approved, project plans, and questions raised. Gary Ewert seconded this. Motion carried unanimously.

Jim Buschena made a motion to adjourn until May 25, 2017 at 9:00 am at the Heron Lake Community Center at which time the hearing will be reconvened. Wayne Rasche seconded this. Motion carried unanimously.

8. Adjournment

The hearing adjourned at 12:35 p.m.

Wayne Rasche
Acting Secretary