

Heron Lake Watershed District (HLWD)
Adjourned Hearing - Jackson County Ditch (CD) #3
May 25, 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.; Kurt Deter, Rinke Noonan; Bruce Krahmer, Krahmer and Shafer, Ltd.; Jim Eigenberg, Scott McClure, Kevin Nordquist, Dave Macek, and Tim Stahl, Jackson County; Chuck Brandel and Jacob Rischmiller, I+S Group (ISG); Bruce Sellers, Wendland Sellers Law Office; Klay Walinga, Chuck Dewanz, Susan Schwab, Terry Post, Jim Baumgard, David Ford, Robert Lange, Marlis Lange, Nila Pederson, David Post, Vernon Bass, Don Obermoller, Rich Cross, Bob Springman, David Damm, Rodger Hotzler, Dan Milbrath, Ryan Hill, Naomi Hill, Geoff Johnson, Diane Burns, Shauna Bunkholt, Tara Burns, Steve Droll, Dwayne Milbrath, Jim Milbrath, Beverly Hussong, Lois Kruger, Ron Pomerence, Clem Ulbricht, Cindy Hill Ekedahl, Gregg Hussong, Paul Henning, Sandy Kalfs, Lloyd Kalfs, Jim Appel, Don Stenzel, Greg Post, Don Gentry, Perry Cranston, Ed Freking, Jason Freking, Bob Ferguson, Susan Schwab; other unidentified individuals may have been in attendance who chose not to sign the attendance sheet

Jim Buschena made a motion to approve the agenda. Wayne Rasche seconded this. Motion carried unanimously.

The Board of Managers of the HLWD, acting as a drainage authority under Minnesota Statutes, Chapter 103E, held an adjourned hearing on the petition to improve Jackson CD #3, review the petition, the Engineer's Final Report and Amendments, the Viewers' 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 9:00 a.m.

The petitioner's attorney, Bruce Sellers was called upon to review the history of the project and proceedings to date. He explained that at the final hearing in March, the board requested additional information regarding separable maintenance due to issues raised by Mr. Deter. Mr. Brandel's presentation will provide two options to address those issues. On behalf of the petitioners, he requested the board approve the project and go forward.

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 that would change the determination. The current bond on file with the petition has a balance of \$13,520.30, which is deemed adequate at this time.

3. Engineer's Report

The next item of business was to receive, review, and discuss the engineer's final report, including Amendments 1, 2, and 3. Chuck Brandel gave a PowerPoint presentation that

summarized the Final Engineering Report (FER) and amendments, addressing separable maintenance and branches added. A copy of the presentation is included with the hearing minutes.

Chuck Brandel informed the board that since surveying was done in 2014, ISG has flown portions of the ditch with a drone equipped with GPS to compare the existing condition with the surveying. Areas of the ditch are meandering, not at legal width or depth, contain washouts, bank sloughing, and vegetation. The drone flight was done to verify that the ditch does need maintenance and the cleaning should be included in separable maintenance.

Chuck Brandel explained Amendment #3. It addresses separable maintenance on double and triple tile lines, open ditch cleaning, private tile outlets, removal of buffer acquisition and the redetermination of benefits, addition of Branch 2A, reroute of Branch 7, decrease in Branch 11, extension of Branch 12, addition of Branch 12A, repair of Branch 12B, and the removal of Branch 6B extension and Branch 7A. Storage for the project was designed to match or decrease peak flows. The storage could be downsized by two acres, which would match existing flows, rather than provide a decrease.

During the presentation, Chuck Brandel provided the wording for Minnesota Statutes § 103E.701 Subd. 1 regarding repairs, stating the intent to provide the same capacity as originally constructed. In the original FER, this statute was taken word for word. Chuck Brandel met with Dave Macek and Tim Stahl and asked their procedure for completing repairs. They are repairing them in the same manner as proposed in this project.

Bruce Leinen asked where Dave Macek and Tim Stahl work. Chuck Brandel explained that they have been maintaining ditches in Jackson County, including this system. It is still ISG's opinion that separable maintenance can be applied to this project – to both open ditch cleaning and protection of tile outlets.

Chuck Brandel explained the options. Option 1 is the same as presented previously. Option 2 caps separable maintenance on tile areas at the cost to improve the tile where the repair costs are higher than the proposed improvement costs. This is not something that he has done before, but is presenting it as an option at the request of the petitioners. Option 3 combines multiple tile branches or laterals with a single line that provides the same capacity.

Chuck Brandel stated that the costs in the FER were updated with averages of 2017 bid costs. Because this was done, costs are slightly less. There would be an approximate \$118,000 in cost savings to make the pond smaller.

Chuck Brandel said that Option 1 is still his recommendation because that is how he has looked at projects in the past, that is how Jackson County is maintaining lines, and the storage pond gives a decrease in peak flow in most of the events.

Chuck Brandel explained that a grant application was submitted to the Legislative-Citizen Commission on Minnesota Resources for funding the full cost of storage and the two-stage ditch. It will not be known until July if the project makes it through to the next round. The project can be approved. If funding comes through, it saves money for the project. Wayne

Rasche asked if the savings would be applied to the improvement or to separable maintenance. Chuck Brandel replied that the storage and two-stage ditch are all improvement cost.

Bruce Leinen asked if changing the pond design would make a difference for grant funding. Chuck Brandel said that if grant funding was received and the pond size was reduced, the grant budget would be adjusted and a request would be made for less money. He has done that in a previous grant. The dollars are coming from the Environment and Natural Resources Trust Fund. It is very competitive. About 50 percent of the grant applications submitted are approved. Wayne Rasche asked about the grant requiring monitoring for pollutants and field days. He wanted to know who was responsible for those costs. Chuck Brandel said that those would be paid with grant funds. They are not included in the improvement. This grant is for a demonstration project. Our argument here is that there isn't a project like this in the area.

Chuck Brandel stated that it is his opinion that separable maintenance should be considered as originally proposed, that the project is cost-effective, practical, and feasible. Its necessity has been presented, showing that there are areas that are out of repair through televising, survey, and aerial photography. It will be a public benefit. He recommended approval of Option 1.

Bruce Leinen stated that to be clear, Chuck Brandel is going with Option 1, because if the project didn't go through and the maintenance would occur over the next 10, 15, 20 years on those separate tile lines, they would all be repaired individually, and the cost would be incurred at that time. Chuck Brandel said that was correct.

Bruce Leinen asked if anyone had any questions or comments respecting the engineer's FER. He asked that each speaker introduce himself or herself before speaking.

Kurt Deter spoke on behalf of Alba Grain Company. He said that in reviewing the original petition, the petition was to improve the system because it was undersized and didn't have the capacity for today's standards. Chuck Brandel answered that improvement was part of the petition. Kurt Deter asked that in the petition the open ditch part wasn't a need to improve it, other than to get depth for the tile grade at the upper end. Chuck Brandel said that was the case, especially in the southern part of the system on Branch 1. There is not enough depth to adequately drain Branch 1 and Branch 6. That is why the entire open ditch was included. To gain depth going further north, it was needed. Most of Branch 1 is being deepened, the northern part of the open ditch includes cleaning. Kurt Deter said that the improvement on the open ditch is because you needed depth for tile lines. Chuck Brandel said yes, except in a few areas that didn't have capacity and on the northern end where depth couldn't be gained at the outlet.

Kurt Deter stated that the petition asked to look at separable maintenance. He asked if anyone had requested a physical repair of the system. Chuck Brandel said no one had. Kurt Deter said that the cost of repair for separable maintenance is more a mathematical exercise under the statute versus somebody requesting the whole system be repaired. Chuck Brandel said that was correct. Repair costs were included for anything that will be replaced.

Kurt Deter said that there have been a number of reports and he wanted to make sure he had the correct figures. Chuck Brandel said that after the FER was completed and a landowner meeting was held. Information was received that was not previously available. The original FER was modified. Option 1 is the original report with modified costs.

Kurt Deter asked if the costs for Option 1 were improvement of \$5,969,425 and repair costs of \$5,115,000. Chuck Brandel stated that the figures were correct, without storage and without additions added at the last meeting. Kurt Deter said that the improvement costs under Option 1 that are recommended do not include storage. Chuck Brandel stated that it does include storage. The total cost with the storage and additions is a little over \$7 million.

Kurt Deter asked what had changed, since the May report showed a repair cost of \$5,115,000. Chuck Brandel said that those were the repair costs if the storage and additions were not included.

Kurt Deter asked that if more improvement is added, more separable maintenance is added. Chuck Brandel said yes. He also said that this information was included in the report. Kurt Deter asked if the project is over \$7 million and the repair costs are \$5.6 million. Chuck Brandel said that the costs were higher because of the addition of Branch 12, Branch 2A, Branch 12B, and Branch 12A.

Kurt Deter's opinion was that all those landowners get an improvement and pay about 40 cents on the dollar for those requests. He asked if storage costs were only in the improvement. Chuck Brandel said that was correct.

Kurt Deter asked if the only report submitted to the Department of Natural Resources (DNR) was the original report. Chuck Brandel said yes and that report included storage. Kurt Deter asked if the FER with the changes had been submitted to the DNR. Chuck Brandel stated that it had not.

Kurt Deter asked if Option 2 was capping of repair costs. Chuck Brandel said that was correct. Kurt Deter asked if this was a mathematical exercise if the costs to improve were \$400,000 and \$600,000 to repair, it would be capped at \$400,000. Chuck Brandel stated that was correct.

Kurt Deter asked if Option 3 was combining some of the different tile lines into one line. Chuck Brandel said that was correct. Kurt Deter asked if the areas that have three lines were put in at one time or at different times. Chuck Brandel stated they were put in at different times and they have different slopes. The line that had the flattest slope was used to determine size.

Kurt Deter asked if all three lines are out of repair today. Chuck Brandel said yes they are out of repair. Kurt Deter said that this is a snapshot in time. So if all of the lines are out of repair today, then the way they would be repaired would be to replace them with one line. Chuck Brandel stated not necessarily.

Kurt Deter asked if the grant for storage was available today. Chuck Brandel replied no.

Kurt Deter said that the road crossings are not in the costs. He asked if they were bridges or tile lines. Chuck Brandel stated that they are bridges. Kurt Deter asked if the improvement was paying for tile lines across roads. Chuck Brandel said yes. There are also road authority costs included. Kurt Deter asked if the road authority was going to pay for tile lines through their roads. Chuck Brandel said that there are a small number of them. The county would pay the repair costs. Kurt Deter asked who was paying the improvement costs. Chuck Brandel stated the landowners in the system.

Kurt Deter asked if there was information showing that any tile lines going into the open ditch are forced outlets or not flowing freely. Chuck Brandel said there are a few of them. There are areas that have sloughed in and have backed up water. They are not legally forced outlets. Kurt Deter asked if the tile were free flowing. Chuck Brandel responded that the tile were free flowing from legal grade.

Kurt Deter referred to the repair costs for Option 1 in the May report. He asked if the open ditches were Main Open Ditch, Branch 1 Open Ditch, and Branch 2 Open Ditch. Chuck Brandel said that was correct. Kurt Deter stated that the cost to clean Main Open Ditch is \$59,400; Branch 1 Open Ditch is \$10,282; and Branch 2 Open Ditch is \$33,100. Chuck Brandel said that was correct. Chuck Brandel also said that the cost for Branch 2 was less per foot because it is slightly narrower.

Kurt Deter stated that if he added those three numbers, the total is \$102,785.50 for the actual physical removal of silt or whatever has to be removed. The actual physical work for the Main Open Ditch is \$59,000, but the cost is \$301,708. Chuck Brandel said that was correct. Kurt Deter said that on Branch 1 Open Ditch the physical moving dirt is \$10,282 and cost to landowners is \$57,645. Chuck Brandel replied yes. Kurt Deter stated that on Branch 2 Open Ditch the moving of dirt is \$33,100 and the cost to landowners is \$171,077.

Kurt Deter asked about the number for HLWD administration costs. For the Main Open Ditch that cost is \$7,694.00. Chuck Brandel said that he was using a percentage for these costs. Kurt Deter asked what percentage was used. Chuck Brandel said two percent. Kurt Deter said that he added what the landowners would pay the HLWD to repair the system and that came to \$96,161.50. Chuck Brandel stated that was an estimate based on the complete \$5 million repair being done.

Kurt Deter said the cost for ISG to do the topographic survey would be \$133,879. Chuck Brandel replied that they would survey the entire open ditch and every tile line. Kurt Deter opined that it would not be done for a repair. Chuck Brandel said that it would be done. Kurt Deter opined that ISG already knew where the tile lines were located. Chuck Brandel stated that the map was 100 years old and tile lines would be verified.

Kurt Deter stated that ISG would get \$291,918 for repair plans and specifications. Chuck Brandel said that it would depend upon how many hearings were held and how the repairs were done. Kurt Deter opined that this was assuming separable maintenance and it is a snapshot in time and all lines need repair today. Chuck Brandel stated that he researched the industry standard and design costs are five to six percent.

Kurt Deter referred to construction, staking, and administration. He said those amounts totaled \$389,220. Chuck Brandel replied that those costs were eight percent. That included staking all tile lines and locations.

Kurt Deter said that he added all of the numbers. To repair the existing system, under separable maintenance, ISG would charge \$815,017. Chuck Brandel stated that if the entire project was done at once there might be some efficiencies. Kurt Deter again referred to the staking costs of \$389,000. Chuck Brandel said those costs include construction, inspection, and administration. Staking would be about half of those costs. Kurt Deter opined that no drainage authority would hire ISG to do a repair if they knew the costs would be \$815,000.

Kurt Deter asked if costs for buffer strip mowing and weed spraying were included in the original project. Chuck Brandel thought they were included. Kurt Deter opined that those costs would be incurred only after the system was repaired. Chuck Brandel said that when the ditch is cleaned and material is put on the side slopes, they are reseeded and weed control is done. ISG included a bid item for seeding and weed control for one year.

Kurt Deter asked to go through the three main open ditches tile line by tile line to determine which ones were part of the original system. Chuck Brandel said that he would have to go back and look at the maps. Kurt Deter asked if he could be told today which ones were part of the established ditch system and what are private tile. Chuck Brandel said that on the Main Open Ditch, 13 of the 60 were part of the established system. Kurt Deter opined that landowners would pay to fix 47 private lines. He opined that there was no disputing that they were not part of the established ditch system.

Kurt Deter asked about the tile lines on Open Ditch Branch 1. Chuck Brandel stated that all of the tile are public.

Kurt Deter asked about Open Ditch Branch 2. Chuck Brandel stated that there were 51 outlets and 13 were part of the established system. Kurt Deter stated that there were about 38 private tile lines that were figured into separable maintenance. Chuck Brandel replied that was a standard that ISG has done. Kurt Deter opined that it is a standard that ISG has done, but that it was not done according to statute because those tile lines were not part of the established ditch system. Chuck Brandel replied that they outlet into and cause erosion problems in the open ditch. That is why they were included as repair. Kurt Deter opined that landowners' private tile were going to be paid by everybody in the system. Chuck Brandel replied just the outlet and protection in the open ditch.

Kurt Deter said that his client did not oppose an improvement, but wanted to make sure what actual repair costs were. He opined that for the calculation, it was assumed that everything is out of repair as of today to do the separable maintenance. Chuck Brandel replied correct. Kurt Deter opined that if that was the case, the system was not being repaired, a mathematical calculation was being done. He opined that it could not be assumed that one of the tiles was going to last another 30 years for the purpose of separable maintenance. Chuck Brandel replied that the improvement would replace the lines and they would not need to be replaced in the future. Kurt Deter opined that if the three lines were all out of repair,

ISG would not recommend replacing the three lines. Chuck Brandel stated that there were other options out there.

Bruce Leinen asked Kurt Deter if his client had county branches in their property or only private branches. Kurt Deter replied that they have both. Bruce Leinen said that the lines would all be improved and repaired. Kurt Deter opined that if the county lines were out of repair that could be a separable maintenance cost, but private tile lines were not part of the established ditch system for separable maintenance.

Bruce Leinen asked where the line was drawn on becoming part of the system. Kurt Deter opined that to determine what is part of the legally established system, one looks at the original approved establishment order. Whatever engineer report was approved, that is the established Ditch 3, not later private tile. Bruce Leinen said that the board made the decision, for the sake of the ditch, that private tile outlets would be included as separable maintenance. The board decided this because it might not get done if individual owners were required to repair their systems. Kurt Deter opined that from a practical point of view that may or may not get done. The issue was separable maintenance. This project is \$7 million worth of improvement and less than \$2 million is being paid for by those who get the improvement. The rest is being paid for as if the system is all out of repair today and needs to be repaired tomorrow. On behalf of his client, this project gives them \$20,000 worth of improvement and they are paying \$300,000. The board has to decide what is out of repair and the pro rata cost of that repair. In his opinion, private lines could be repaired, but not calculated in separable maintenance. That cost is spread against people and it is not their private tile.

Chuck Brandel asked if Kurt Deter was asking to take those costs out of separable maintenance. He said that could be easily done. He would still recommend that those be fixed as part of the project cost. Kurt Deter opined that they would be an improvement cost. Chuck Brandel said they would still be a repair cost. He did not know if they would be charged separable maintenance for the cost of the improvement. Kurt Deter opined that for the purpose of this project the board is to decide a reasonable cost to repair. He also opined that a lot of costs should not be separable maintenance or were inflated. Option 3 does not work. The costs exceed the benefits. That doesn't mean that the board doesn't accept that option. The board doesn't start juggling things to get to one that works.

Chuck Brandel stated that wasn't done. If the ditch is going to be cleaned, the outlets should be fixed. In his opinion, they are part of the repair. Kurt Deter opined that they were not part of the established ditch system, even though they physically go into the system.

Harvey Kruger asked if cleaning the ditch and replacing private tile outlets were included as part of separable maintenance. Kurt Deter interrupted and asked if Harvey Kruger was a petitioner. Bruce Leinen stated that Harvey Kruger is a petitioner, but he is free to make comments. Mike Tow said that Mr. Kruger would not be voting. Harvey Kruger asked if the ditch was cleaned as a repair, and private tile were damaged, would those be repaired as part of separable maintenance. Chuck Brandel replied that was how it is included. But that is only

fixing the end of the tile, not going into the field at all, and installing rip rap so it doesn't continue to erode. If the private tile had eroded into the ditch, the material that eroded into the ditch is definitely part of the system.

Harvey Kruger asked if the original Option 1 was to clean the entire ditch. Chuck Brandel stated that all of the options included cleaning the entire ditch. Harvey Kruger asked if the ditch cleaning would still be done. Chuck Brandel stated that he would recommend cleaning the entire ditch. There may be short sections that do not need cleaning, but it would be difficult to stop and start.

Wayne Rasche asked about cleaning the ditch versus deepening. He asked if the extra cost to deepen the ditch was included as separable maintenance or improvement. Chuck Brandel stated that deepening was an improvement cost. Wayne Rasche also asked about the seeding in that area. Chuck Brandel said that was improvement cost as well.

Bruce Leinen asked that if this was a petition for only cleaning a section of the ditch, would the repair be taking place on individual tile lines as part of the clean out. Chuck Brandel stated that if it was only the open ditch, his recommendation would be to repair the outlet of any private tile that have any erosion issues. But it would only be the end of that tile.

Bruce Leinen asked that if it was cleaned and the tile lines fixed, would that repair cost be separated out and charged to each individual. Chuck Brandel stated that historically it is paid by the ditch system, in Jackson County and throughout the state.

Wayne Rasche asked if someone puts a private tile into an open ditch, doesn't that become part of the system. Mike Tow stated that when a private person goes into a public system, they should get an outlet permit. That is what they are supposed to do according to statute. Unfortunately there are a lot of illegal private outlets. Those are often addressed when a redetermination of benefits (ROB) is done. It is an ignored issues. There are a lot of private people who have tiled into public systems and have not paid for an outlet. That is what an outlet permit is for. There is a very big argument that if they apply for an outlet permit and get it from the ditch authority, then it becomes part of the established system. Right now if someone has not obtained an outlet permit, it is an illegal outlet. That would require them to apply for and pay for an outlet permit or the ditch authority is allowed to block them.

Kurt Deter stated that Mike Tow is referring to Minnesota Statutes § 103E.401, which addresses unassessed property. A landowner does not need an outlet permit for assessed property.

Gary Ewert stated that is one of the reasons for ROB. They had a process that was done when the ditch was established. With the technology today, things are done differently. It is much more accurate than when it was done years ago. The acres involved in a drainage system at the time it was built in the 1920's are different. They are always higher now. So, the whole thing has changed.

Wayne Rasche said going back to the comment that if they have tiled into it legally because they are already in the ditch system, then at that point in time it should become a public

outlet. He thought the ditch should be maintained to keep it from eroding and having to clean it out again. The outlets should be rip rapped to establish the bank and keep it there. Kurt Deter said, "that is why they pay you the big dollars to make that decision." He did apologize and stated that he should not be sarcastic. Kurt Deter opined that it was a mathematical calculation of the existing established system and what it would cost to repair. The private tile are not in the established system. When a private tile line is put into the system and it breaches the open ditch, it does not become Branch 1 of Ditch 3 tile line. The whole thing is private tile. That is his position, but the board will make the ultimate decision.

Gary Ewert stated that there were a number of outlets that are private. He asked if it would be hard to determine the percentage of difference if they were excluded. Chuck Brandel said that it would be about 25 percent. Gary Ewert asked what percentage of the project total the costs would be. Chuck Brandel stated that the costs were minimal. It was his opinion that it is still a project cost. He wanted landowners to be able to look at their assessment and know the total amount this project would cost.

Nila Pederson said that she only had one quarter of land. She wanted to know how this was allowed to go to from a \$1 million to a \$7 million project without talking to all of the landowners. You have affected my life until I die. Bruce Leinen stated that it is his understanding that 26 percent of the landowners have to petition. Nila Pederson stated that 26 percent is not everybody. You don't know how that affects everybody unless you talk to them. Bruce Leinen said that is part of what the hearings are for, for everyone to voice their opinion. We understand what you are saying. We do have other thoughts we have to take into consideration as well. Nila Pederson asked why the project couldn't be done section by section so we don't have this outstanding debt? Where does common sense come in? Bruce Leinen replied that section by section would just be maintaining the system as they do over the years. There was a petition for the improvement. That's the best answer I can give you.

Kurt Deter asked about Option 3 and the difference in costs between one line and three lines. Chuck Brandel replied that separable maintenance in Option 1 is \$5,663,000 and in Option 3 it is \$4,420,000. There is a significant difference. There are a lot of double lines.

Bruce Leinen stated that this discussion has been mainly about how separable maintenance is done. Chuck Brandel said that is correct. Bruce Leinen asked if approving Option 1 meant that each line would be done individually, or if the project is approved, would it save that million dollars and put in one pipe. Chuck Brandel stated that in either case, it is just a cost – Option 1 versus Option 3. It is not physically what is being done. The improvement is for replacing three lines with one line. It is just how the repair costs would be applied. There are landowners that get higher separable maintenance costs. It also affects the cost-benefit ratio. If the project is approved, the improvement is the same under Option 1 and Option 2. What the board would approve is the same, it is just how it would be assessed. Bruce Leinen asked if repairing all three lines separately for separable maintenance is how Jackson County has been doing their maintenance. He asked if that is how the statute reads and how it is understood that it should be done. Chuck Brandel stated that was correct. There are even a few spots (Branch 12) where the improvement reduces footage. Even under Option 3, Branch

12 is more expensive to repair than what is being proposed as an improvement. The alignment was changed, both pipes were put into one.

Wayne Rasche stated based on the assumption that the lines are all bad today, that is why it needs the improvement. He asked if that was the case, wouldn't everybody in this room, if spending their own dollar out of their own pocket, buy the bigger, better, cheapest way to do it. Chuck Brandel said potentially yes. He provided what it costs to repair the system.

Bruce Krahmer stated that he represented Grace Kay. He provided a one-page handout that, in his opinion, summarized data from the May 5 report. Chuck Brandel stated that the handout showed totals without storage or additional options that were added. Bruce Krahmer stated that it was his opinion that the board is going to have to decide how to allocate separable maintenance in future projects. He asked for the definition of repair. Chuck Brandel read Minnesota Statutes § 103E.701.

Bruce Krahmer asked where there are multiple lines, it is indicated they are out of repair today. He asked what it meant to be out of repair. Chuck Brandel stated that they do not have original capacity. Some of that area was televised. He showed slides that contained photos of tile lines that were taken 25 years ago. David Damm said that was what the lines looked like before they were replaced. Chuck Brandel replied that portions were replaced and those areas have since had failures.

Bruce Krahmer asked if those lines were at 80 percent of design capacity. Chuck Brandel said probably 50 percent. They were not at original capacity.

Bruce Krahmer asked overall how much worse they would be in five years or would they not be much different than they are today. Chuck Brandel replied potentially. Bruce Krahmer asked if the entire system had been televised. Chuck Brandel responded that ISG had not televised the entire system.

Bruce Kramer asked if the ones that hadn't collapsed were still out of repair if their capacities were lower than originally designed. Chuck Brandel said that was how he interpreted the statute. Bruce Krahmer stated that there were various ways of restoring them. For those lines that might last 10 or 20 years, would one alternative be to have a fourth line? Chuck Brandel stated that would be an improvement. Leaving the three as public lines, whether they are working or not, adding the fourth would increase the capacity of the system. One option for repair would be to abandon one of the lines and add a new one. If a fourth line was added and the other three were not abandoned, there would be an improvement, but no separable maintenance. Bruce Krahmer asked why not. Chuck Brandel said because the three lines would be left in place. Bruce Krahmer asked that if they are under capacity, the only option would be to destroy them. Chuck Brandel said no. Bruce Krahmer asked if they could be plugged. Chuck Brandel explained that if there were offset joints, typically the lines were plugged at property lines and turned into private headers.

Bruce Krahmer asked if a repair could be done by replacing the three lines with an open ditch. Chuck Brandel said that he did not know and would have to ask the attorneys in the room for

their opinion. Bruce Krahmer asked if separable maintenance could be applicable. Chuck Brandel said if the lines were replaced with an open ditch, his answer would be yes. Bruce Krahmer said that an open ditch could be done and be a lot less expensive than replacing three tile lines. Chuck Brandel said that it would depend upon costs. Tile lines that are 36" or 42" is where he has seen the break-even point for considering an open ditch. During the feasibility study, the landowners considered the option of an open ditch for a couple branches. Landowners petitioned for tile instead.

Bruce Krahmer asked about Option 1, Branch 6. It is proposed to spend \$408,309 for that project and charge \$594,000 for repairs and negative \$186,000 for improvement. Chuck Brandel said that was the suggestion for Option 2. Bruce Krahmer stated that the difference of \$186,000 is not being spent. Chuck Brandel replied that was correct. That is why the suggestion was made for Option 2.

Bruce Krahmer stated that with Option 2 the repair costs are limited to \$408,000, which is 100 percent of the project costs for Branch 6. Chuck Brandel said yes, you are making a good argument for that.

Bruce Krahmer said that if the board adopts Option 3 for Branch 6, the repair costs go down to \$325,000. Chuck Brandel said that if the three lines were replaced with one as a repair, same capacity, there is a lot more cost that goes toward the improvement.

Bruce Krahmer stated that if the board would adopt Option 2, if the people with improvement want more capacity, it might be appropriate that instead of asking for a \$408,000 project, they raised it all the way to \$594,000. The extra \$186,000 would all be allocated to repair. Chuck Brandel said that was correct. You are making a good argument for Option 2. Bruce Krahmer asked if Option 3 would be a more fair way to allocate proportions because there is more capacity. How about going to one tile of the same capacity? It wouldn't cost as much as what was being proposed. Chuck Brandel asked if that was really what it would cost to repair the system. Bruce Krahmer said that he was talking separable maintenance. He was not trying to argue for one tile or open ditch. The petitioners have decided they want one tile. He stated that one tile should be used to calculate separable maintenance. He asked what the cost would be for one tile with the same capacity as the three lines being replaced. Chuck Brandel stated that is Option 3. Bruce Krahmer stated that Option 3 has bigger capacity and is charged 100 percent of what it would cost for all three lines. He asked why not have one tile that was the same size as all three lines and to make it bigger, the improvement pays for the increased capacity. Chuck Brandel stated that was how Option 3 is calculated, with one line instead of three.

Bruce Krahmer asked about Branch 12. In Option 3, how come there is a negative \$54,000 of improvement? Chuck Brandel explained that in the improvement the landowners asked to reroute the tile. The repair costs factored were lines running adjacent. Even though it is a smaller pipe, it is a longer distance. Bruce Krahmer stated that Branch 12 in Option 3 charges \$54,000 against everybody on the ditch system for money that is not being spent. Chuck Brandel stated that it would be more expensive to repair than improve. Bruce Krahmer asked

what would happen if they asked to have the line disconnected from system altogether. He asked if the landowners would be paid that cost and then let them put a private tile. Chuck Brandel said no, that he was just stating the cost of the repair. Bruce Krahmer stated that repairs can be done many different ways. Why not figure the repair costs for one tile the way you are going to do it? Chuck Brandel said that is how we factored Option 3 costs, following the original alignment as close as possible. The improvement asked to move the alignment.

Bruce Leinen asked if Option 2 included some of the savings that were just being described. Chuck Brandel said yes. Option 2 might be something to consider.

Bruce Krahmer asked about the cost differences for Branch 1 from Option 1 to Option 3. Chuck Brandel explained that Branch 1 currently had two one-inch lines. The improvement is for a 42 inch line. Bruce Krahmer asked if those lines have been televised. Paul Henning stated that the lines blow out every time it rains.

Vern Bass said that he farms in Section 25 of Alba Township. He asked if any of the board members had driven around the project area to see if there was water sitting around. He stated that there is hardly any water sitting. The tile are working. They don't need to be fixed.

Bruce Krahmer said that he wanted to summarize what he included on the bottom of the handout. Ignoring optional changes and ignoring storage, Option 2 has \$581,000 less separable maintenance. Option 3 has \$952,000 separable maintenance. If the board goes with Option 2, that is encouraging in the future to make the project as big as possible so the improvement costs get up to the costs of replacing it with the original three tiles, even though there is no way they would ever do that. They would replace it with one, even if they were not increasing the size. In his opinion, Option 3 was the standard the board should be looking to or a precedent would be set for the future.

Bruce Leinen asked that in Option 3 any tiles that were put together were run along the same distance as current. Chuck Brandel replied yes. Bruce Leinen asked if that was how the separable maintenance was figured. Chuck Brandel stated that was correct.

Bruce Leinen asked that in Option 2 the costs were capped at the cost of improvement. Chuck Brandel said that was correct. Essentially looking at each line individually and not charging separable maintenance to everyone else in the system. Look at Branch 6. That makes an argument for Option 2. It costs \$408,000 to improve it and just under \$600,000 to repair it. The landowners would not be charged \$600,000. He has been involved in improvements where the repairs would be more than the total improvement. The landowners only got charged for the improvement, but they all got charged 100 percent separable maintenance because the improvement was a better option than the repair.

Bruce Leinen asked if there had been anywhere in Jackson County where there had been two tile lines needing repair that had been replaced with one. Dave Macek said on Branch 6 about 25 years ago that was replaced for 2,000 feet. That is where they did the televising. On JD 19 there are two separate improvements on that one. The old line was a 24" line. The new line was probably three years newer and about 1,800 feet. Jackson County staff goes to find what

line is failing. They figure out what the budget can or can't afford. They have to abide by the law. If there isn't money in the budget to repair it, money is borrowed against another ditch fund to pay the repair costs. Basically they are repairing as needed, knowing that at some point the other line will need to be repaired. Was the other line misaligned? Probably. Was the other line totally dysfunctional like the one we replaced? No. The tile are working, but are they working to what they were originally designed? No.

Bruce Leinen asked if they had ever replaced a lengthy tile, but if it went deeper it would work better. Dave Macek stated that the tile are repaired with the same size and same slope, unless the same size is not available. Then the next bigger size can be used. Bruce Leinen said that he was leaning toward that because that is where separable maintenance is charged and how it will be maintained over the next 25 or 30 years if nothing changes.

Bruce Sellers asked Chuck Brandel if the calculations and determinations for this project were consistent with what he had done in the past with other systems throughout Jackson, Martin, Fairbault, and Blue Earth Counties. Chuck Brandel said separable maintenance is determined the same way for each project in each county.

Wayne Rasche said that if this was a snapshot in time and all the lines were in disrepair, wouldn't Jackson County replace them with the cheapest option, replacing two lines with one and save \$600,000? Dave Macek replied that he would do the investigation to prove both were out of repair. Wayne Rasche stated that Chuck has said they are all in disrepair now. Chuck Brandel responded that by the statutory definition, they are in disrepair, but still functioning. Would they be replaced one by one? Potentially from a cost standpoint they might.

Harvey Kruger asked if the replacement of 2,000 feet of tile in Branch 6 about 25 years ago was all separable maintenance. Dave Macek stated that the repair costs are spread through the whole system. Harvey Kruger asked Bruce Krahrmer what he meant by the board possibly setting a precedent by choosing Options 1, 2, or 3. Bruce Krahrmer responded that he was talking about the board, in determining the appropriate way to do this. If the system can be restored to original capacity for \$400,000 without making it any bigger, but it can be made bigger by spending \$600,000. Or if it is restored to original at a cost of \$800,000, the whole system should only cost the \$400,000 not the extra amount of \$600,000, with \$200,000 extra that is used for a different part of the system altogether on the improvements.

Bruce Krahrmer asked about the project without the consideration of separable maintenance and other issues, would time and use of money be accounted. He asked if a 25 year old tile was fully out of repair. Chuck Brandel stated time and use of money would have consideration. The system is owned by landowners. If three lines need repair and each line costs \$100,000, consideration would be given to the costs to replace each one. Bruce Krahrmer stated that the petitioners decided what they want. But in terms of the other landowners that are not the petitioners, they should not be at the whim of the petitioners to pay these extra bucks because they want to replace a line that is 25 years old but not fully worn out. Chuck Brandel said that they would not have to replace that line in 25 years because

the improvement would eliminate the need to replace in the future. His job is to determine what the costs are.

Kurt Deter opined that for separable maintenance one has to assume that the system is all out of repair today and what it would cost to repair it today. Option 3 saves \$1 million in separable maintenance. He read a portion of the statute regarding separable maintenance. He opined that the first thing the board would decide is if the system is out of repair. Assuming they decide it is out of repair, they decide what it would cost to do a repair to maintain the capacity. The project would put in one tile that matched capacity and save a million dollars. This is not an issue of repair versus improvement, but where does the assessment go. The gap is paid for by the improvement. Our position is that there is \$1 million in Option 1 that wouldn't be spent if it was done tomorrow. Private lines are being repaired that are not part of the established system. Administration and engineering costs are not reasonable repair costs. The system is clearly under capacity. Way more is being put on separable maintenance than is necessary.

Wayne Rasche asked about the percentage the HLWD would get for administration. If the numbers would come in at 25 percent of that, how does that affect the project? Chuck Brandel stated that other drainage authorities have gotten a bid. For example, there is an improvement cost of \$1 million and the bid was \$890,000. The separable maintenance was based on the engineer's estimated costs. Costs come in less than estimated. Separable maintenance costs are set at a hearing. He asked that if the bids came in higher or lower, should separable maintenance costs be adjusted. Kurt Deter said that the bid is for the improvement. Separable maintenance is set in stone. Mike Tow stated that separable maintenance is a percentage or ratio that the engineer recommends. The engineer is giving the board his recommendation. The board either adopts his recommendation or does something else. Whatever the board adopts for separable maintenance doesn't change regardless of actual project costs.

Kurt Deter opined that the board can choose options. They have to look at a reasonable cost to repair the system.

Wayne Rasche asked if it was Chuck Brandel's opinion that the costs for the watershed and other items are exaggerated. Chuck Brandel stated the numbers are historical based on past projects.

Klay Walinga asked for clarification on Option 1 separable maintenance. In the ROB for separable maintenance on the viewers' reports and property owner's reports, the numbers are different. Options 2 and 3 match, Option 1 has about half a million dollars difference. Kurt Deter opined that the correct numbers have to be sent to landowners.

Bob Springman asked how Branch 9D got involved in project. Chuck Brandel explained that there were multiple meetings when reviewing the feasibility study and there was a request to have it included in the petition. Bob Springman asked if there was a special petition that has to go through to take water from one watershed into another. Kurt Deter opined that they would have to petition for an outlet under 401. Chuck Brandel asked if this was included

in the ROB. Ron Ringquist stated that there were no benefits from the existing system. Improvement benefits were applied. The viewers did not follow legalities of whether that was right or wrong. Kurt Deter opined that he did not believe this could be done without petitioning Jackson County.

Mike Tow stated that there was nothing in the petition that indicated they were increasing the drainage by bringing water from another watershed. They would either have to bring a separate petition or cut that portion out. Chuck Brandel said they could do one of two things - eliminate the branch or end where it currently ends inside the watershed.

Bob Springman asked about the \$42,000. Chuck Brandel explained that was the cost to replace the existing six-inch tile.

Bruce Leinen asked what changes would be made if the line is removed. Chuck Brandel said that if the line was removed, the benefits would have to change. Mike Tow stated that the board would have to do another adjourned hearing. He did not think the board had any choice because it cannot stand the way it currently is. The board will have to make a decision whether to cut it out or have them submit a separate petition to bring it in. The board will have to delay until this is settled. Otherwise the board will have to direct the engineer to exclude it and direct the viewer to correct his viewers' report. It will also affect separable maintenance, so the board will have to delay that until the adjourned hearing as well.

Bruce Leinen asked if anyone on the petition was from that branch. He wanted to know that if the petition would be affected if the board asked for the branch to be removed. Chuck Brandel stated that the petition would not be affected.

Steve Droll said that this was a family farm bordering JD 3 and CD 3. When they did the surveying, it was determined that it should have been in CD 3. The water should have gone to the west. That is why the purple line is there. The water that is currently going east at a .03 drainage coefficient should be going to the west. He requested that the line intercept the water that is going to the east that should be going to the west according to the survey. Mike Tow asked to which drainage system it was currently being assessed. Steve Droll said currently to JD 3.

Kurt Deter opined that before the HLWD could approve this, the Jackson County Board would have to look at it. Mike Tow asked, since Kurt Deter works for Jackson County, how long that might take. Kurt Deter said that Jackson County would set a hearing as soon as the 401 outlet petition was submitted.

Bruce Leinen asked how this came through unnoticed in the ROB. Ron Ringquist stated that there were no benefits for the ROB because it was assumed that it would continue to go east. Only benefits to those properties for this proposed project are charged for improvement because it extended the branch to provide the outlet.

Mike Tow stated that the branch still needs to be removed from JD 3 and the watershed boundary changed. Ron Ringquist said they would have to abandon the public tile as well. When the boundary change is done, notice to the landowners and new property owner's

reports will need to be sent. Chuck Brandel stated that this branch actually has a lot of improvement cost, so it will affect the improvement project.

Gary Ewert made a motion to close public comment on the engineer's report. Wayne Rasche seconded this. Motion carried unanimously.

Ron Ringquist said that he wanted people to understand how viewers look at the differences between benefits that exist currently and benefits necessary for future improvements. They look at total potential benefits in that watershed as if every property has an outlet that meets NRCS design standards. They try to split on hydrologic consideration how much benefit the existing system provides and what portion of that benefit is not being received by those properties because the current system does not have adequate hydraulic capacity. They assume the value of the outlet is the total value less the cost to cure the inefficiencies. They got an estimated cost to do the improvement portion from the engineer. They valued that and said this appears to be feasible given the size and the number of acres that have an insufficient outlet. To avoid it being a windfall to the properties on the existing tile, if the improvement were not to go through, we tried not to leave more benefit out there than the cost to get the same quality of outlet to those properties. If this discussion on separable maintenance was to now not make that feasible, then he would feel guilty in not leaving enough benefits out there for the improvement. He would have to say that they assigned too much benefit during the redetermination. It was based solely on the project as a whole. If he would have said, they are going to say that the tile branches only give the hydrologic value of those branches and not considered that the outlet was adequate in the open ditch, they might have left a million or two million dollars of improvement benefit that they would never have to pay for improvement or maintenance. He hated that this has come down to a question of feasibility. By moving that \$1 million of separable maintenance because he feels they should have left the extra \$500,000 as improvement. Because if it doesn't work, these people will never get the opportunity to bring their dollar value up to equal with those on the existing ditch. If it doesn't work, his recommendation would be to go back to the county and say they overvalued the benefits on these tile lines. He would have to make a recommendation to the Jackson County Board that they were incorrect in the valuation for the ROB. Separable maintenance numbers for benefits for the current project are about \$19.8 million. They had \$17 million from the system as it exists, leaving only \$2 million. If they knew that it was going to cost \$3 million to bring it up so everybody had the same outlet for the same dollars, they should have reduced those costs by that \$3 million. Kurt is going to say how can he play with the numbers. The potential benefit is the number. The cost to cure is the only difference between having an adequate outlet. Not having an adequate outlet is the cost to get my water to the adequate outlet. In valuation, if it costs more to get my water there, in order to get the same benefit from the same quality outlet, he should have left more dollars in the ROB. They felt the project proposed was feasible, they didn't want to leave extra improvement dollars out there and make a windfall on those people to get 50 percent of their benefit from improving it. That was not their intent.

Bruce Leinen opened the meeting for public comment.

Kurt Deter addressed Ron Ringquist. He said that the Jackson County board hired Ron to do a ROB. Ron Ringquist stated that the value was based on benefits with the assumption there was adequate dollars to get equal drainage to all properties.

Kurt Deter opined that the ROB is the value of the existing system. That is what was represented to the Jackson County board and that is what they approved. The HLWD board appointed Ron to determine the benefits for an improvement. It is not a case of the viewers jockeying numbers to make projects work. Ron Ringquist stated that the viewers are not jockeying numbers. Within the value consideration, they must reduce the benefit by the cost to cure, if it is feasible.

Kurt Deter asked if the viewers were going to come back to the Jackson County board and tell them that the ROB numbers were not correct. Ron Ringquist stated that they relied on the estimates to look at whether or not the benefits that were out there would leave enough dollars. Kurt Deter said that the viewers are not supposed to make the project go or not go. Ron Ringquist replied that there are some of those issues that when they do valuation cannot be done without cost considerations.

A woman in the crowd asked how the project could go from \$1 million to \$7 million with only 26 percent of the landowners requesting it. That seems like such a small amount to say that is enough. When she called and set up an appointment with Jan, there were supposed to be three viewers, but only one showed up. She asked if this was going to go through and was told that it would no matter what. She felt like she was misled. Most of the discussion is about separable maintenance. That is not the only issue. There is the holding pond. No consideration was taken into account for that. It might only be an acre or two. It doesn't make any sense that decisions can be made about taking land away from someone, but there is still some loss. She was told by the viewer that she will be paid x amount. It is up to her to figure out how to recoup what the loss is. She is frustrated. Bruce Leinen asked if this was her land. She said yes. He asked her name. She said Shauna Burns. She said that when she spoke with the viewers she asked what would happen if tile were broken if they are doing the ditching thing, would they be replaced, would they be fixed? She was told she would be paid x amount on the dollar and that is what she would get. It seems like a huge monster and a huge mess. She doesn't feel like she is informed. The packets are great, but she is not an attorney. She feels like she is a smart person and to get that information and try to figure it out is ridiculous.

Bruce Leinen stated that is what the meeting is for. The paperwork is provided so people can look through it at home, gather their questions on it, and bring them forward like many of the people have been doing. Shauna Burns said that she was told that it didn't matter if she came to a meeting or not. Bruce Leinen said that he was not sure what happened on the phone. Shauna Burns said that there were three landowners and the person they had their appointment with. Do with that what you will. She is beyond frustrated.

Nila Pederson said that she thinks this should be considered for all the landowners instead of just the petitioners. The board should figure out something that is reasonable to everybody.

Bruce Leinen stated that it appears that there will have to be more work done on this before it can go any further. Nila Pederson again stated that all landowners should be considered.

Shauna Burns asked what impact the holding pond would have on resale and taxes. Chuck Brandel replied that for the taxes they would have to talk to the county auditor. He didn't have an answer to that. As far as resale values, ISG had a property where a pond was created in another county and it was just like this – adjacent to the ditch. Land had a high resale value because the ditch system was approved and had a better outlet.

Diane Burns asked how the assessments on the holding pond work. Ron Ringquist stated there was no value added so there were no benefits to the area. They looked at paying current market value for the acquisition of the easement for the construction of the pond. Landowners get paid for it today at fair market value. Chuck Brandel said that the pond is treated the same as the buffer.

Nila Pederson asked about the value when she wants to sell. Ron Ringquist stated that he could not tell if market values would increase or decrease in the future. They give current market value with assumption that the landowners would invest that and have the same value in the future as they would have if it was farmed. Shauna Burns said that she would never get an investment that would work that way. Bruce Leinen said that investments are not something that can be decided here. Shauna Burns replied that she didn't have a choice in it and has to deal with it. Bruce Leinen said that it is similar to the buffers. He was glad she voiced her opinion.

Diane Burns asked about the option to decrease the holding pond acreage. Chuck Brandel said that there are two different property owners involved with the holding pond. If the pond was decreased, the land would be removed from the western side of pond on the Baumgard property.

Wayne Rasche made a motion to close public comment. Jim Buschena seconded this. Motion carried unanimously.

Mike Tow said that because there is water coming into the watershed that was not taken into account in the petition, the board will want to make a motion for an adjourned hearing which would be scheduled after the petitioner's attorney obtains a decision from the Jackson County board on the petition to change the watershed boundary for the outlet of Branch 9D. After that the board would want an updated engineer's report, viewers' report, and property owner's report.

Bruce Leinen made a motion for an adjourned hearing to be scheduled after receipt of a decision by the Jackson County Commissioners on a petition for change of watershed boundary and/or outlet of Branch 9D which will be presented by petitioner's attorney Bruce Sellers. Upon receipt of the decision by the Jackson County Commissioners, the HLWD board will receive an updated engineer's report, viewers' report, and property owner's report. The HLWD will provide appropriate notice and distribution. Gary Ewert seconded this. Motion carried unanimously.

Adjourned at 11:45 a.m.

Harvey Kruger
Secretary