

**Preliminary Hearing  
Jackson County Judicial Ditch #14  
January 25, 2018**

**ATTENDANCE**

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

Manager absent: Wayne Rasche

Staff: Jan Voit

Others: Mike Tow, Tow Law Firm Ltd.; Bruce Sellers, Wendland Sellers Law Office; Chuck Brandel and Becky Guenther, I+S Group; Dave Macek, Kevin Nordquist, Tim Stahl, and Jim Eigenberg, Jackson County; Ron Kolander, Philip Paulson, Tim Baumann, Paul Burmeister, Clyde Burmeister, Leon Voss, Tim Tunglund, Justin Farmer, and Kim Aukes

**1. Call to Order**

Bruce Leinen called the meeting to order at 10:00 a.m. Managers, staff, legal counsel, and engineer were introduced.

Bruce Leinen convened the meeting and made opening remarks regarding housekeeping items, the history of the project to current meeting, and the purpose of the meeting.

Housekeeping

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

History of Project

Bruce Leinen provided the following history on the project: On January 31, 2017 a petition for the proposed improvement of Jackson County Judicial Ditch (JD) #14 was presented to the Board of Managers (Board) of the Heron Lake Watershed District (HLWD). The petition was reviewed by HLWD Legal Counsel, Mike Tow and approved by the board of managers on April 18, 2017. Chuck Brandel, I+S Group, was appointed as engineer for the project and was instructed to draft an engineer's preliminary report.

The preliminary report was submitted to the board of managers on August 17, 2017. An Order and Notice of Hearing for Preliminary Hearing was issued on December 21, 2017. The engineer addressed comments from the DNR and BWSR Advisory Reports in an amended preliminary report that was submitted on December 28, 2017.

The purpose of this morning's meeting is to review the engineer's reports and take testimony from all parties to determine whether to proceed with the project or dismiss the petition.

**2. Determine the Sufficiency of the Petition**

Bruce Leinen reported that the attorney for the HLWD has reviewed the petition. All legal requirements have been met. The petition has been deemed adequate.

**3. Determine Sufficiency of Bond**

Bruce Leinen reported that on April 3, 2017, the petitioners submitted a cost bond of \$50,000.00. On December 19, 2017 a bond rider of \$50,000 was submitted. The funds provided to date are adequate to cover costs incurred through the preliminary hearing. Should the Board vote for continued proceedings, additional funds may be needed to cover the costs of the final survey and viewers. The costs will be monitored on a monthly basis and an additional bond would be required of petitioners pursuant to Minn.Stat. 103E.202, Subd. 6, if the costs incurred before the proposed drainage project is established will exceed the amount of the petitioner's bond.

**4. Department of Natural Resources (DNR) Commissioner's and Board of Water and Soil Resources (BWSR) Advisory Reports**

Bruce Leinen reported that the next item of business was to permit the Commissioner of Natural Resources to give his advisory report regarding the proposed drainage project. The Commissioner was not present. Jan Voit read the Commissioner's Final Advisory Report into the record. A copy of the letter will be included with the preliminary hearing minutes.

Bruce Leinen reported that the next item of business was to provide BWSR's Advisory Report regarding the proposed drainage project. No BWSR representative was present. Jan Voit read the report into the record. A copy of the letter will be included with the preliminary hearing minutes.

Bruce Leinen opened the meeting to public comment and questions respecting the Commissioner's or BWSR's advisory reports. Chuck Brandel stated that all the comments in the BWSR report were added and updated in the amended report submitted in December. In the DNR letter there really wasn't anything to update. They just said please implement what you say you are doing.

Bruce Leinen closed discussion on the Commissioner's and BWSR's Advisory Reports.

**5. Take and Consideration of the Evidence**

Chuck Brandel and Becky Guenther, I+S Group (ISG), gave a presentation explaining the engineer's preliminary report. Chuck Brandel explained that a copy of the full

plans was available so if there were specific questions regarding land they could be addressed. The ditch system was flown with a drone earlier in 2017 to look at the condition of the ditch. That is where they got some of the photos in the presentation. Most of you know about ISG. Our headquarters is in Mankato. We do drainage work throughout southern Minnesota and northern Iowa.

The Engineer reported that the JD 14 watershed primarily lies within Heron Lake Township. It provides drainage to approximately 1,344 acres. It drains into JD 30. One of the BWSR comments was does JD 30 have adequate capacity and has it been improved. JD 30 just went through an improvement. There were some culverts that were added and updated. We did look at the adequacy of JD 30. ISG did the engineering for the improvement so we had all of that data.

The Engineer reported that there is about 90 feet of fall throughout the entire watershed. Soils are primarily clay soils that need subsurface drainage to grow a crop. Most of the land is in agricultural row crops.

The Engineer showed one of the maps that BWSR asked to be added. It showed where the watershed is in relation to Heron Lake. It showed all of the other ditch systems that surround JD 14. We have JD 14 that drains to the west, then drains into JD 30, and then into Heron Lake.

The Engineer reported that the system was originally constructed in 1916 as an all tile system. In 1953, 12,000 feet of open ditch were added and improved, replacing some of the tile system and 2,000 feet of Branch GG was added as a shallow open ditch. In 2012 a redetermination of benefits (ROB) was done. The petition for improvement was submitted in 2017.

The Engineer showed the existing watershed map was shown on the screen and contained in the handout. The blue line represented open ditch. There is a 60 inch culvert on 450<sup>th</sup> Avenue. That is the outlet of the system. It is where JD 30 and JD 14 separate from each other. There is an open ditch that comes up that is the mainline. There are multiple tiles off that. They are shown as tiles A through G and the tiles range in various sizes. The Branch GG is a shallow open ditch in Sections 21 and 16.

The Engineer reported that most of the tile capacities are below the 0.50 Natural Resources Conservation Service (NRCS) drainage coefficient. The system is approximately 100 years old. Photos of other systems with similar problems were shown.

Aerial views of the open ditch were shown by the Engineer, which showed that Vegetation is growing in the open ditch. In a portion, it is almost naturally forming a two-stage ditch. Areas of erosion and bank sloughing were shown. Field crossings and the culvert at the outlet of system were shown. There are a few areas with gully erosion coming into the open ditch. Existing surface side inlets and open side inlets were shown. Most of the pictures show that maintenance and repairs are needed on the system.

The Engineer reported that he is proposing that part of the system maintain the two-stage channel. Portions of the system are below the existing legal grade. As part of the improvement, The Engineer proposed to adjust the legal grade to where the system has eroded. There are a couple of areas where the Engineer is proposing to deepen the existing ditch.

Becky Guenther explained proposed tile sizes throughout the proposed improvement. She referred to the map on the second page of the handout. She explained that the Engineer is proposing to improve the open ditch and the mainline tile. Currently the outlet of the mainline tile is a 10 inch tile. The Engineer is proposing to upsize that to an 18 inch outlet, upstream of that going up to a 15 inch tile, and where it was originally an eight inch tile, up to a 12 inch tile. Just off the open ditch in that same location is Branch C, which is currently a 10 inch outlet tile which the Engineer is proposing to upsize to 15 inch tile. The eight inch tile upstream of that is going to be upsized 10 inch tile. The original six inch tile will be upsized to an eight inch tile.

Ms. Guenther reported that Branch D is just north on the open ditch. The Engineer is proposing to upsize from a 12 inch tile to an 18 inch tile; a 10 inch tile to an 18 inch tile; an eight inch tile to a 10 inch tile; and at the very upstream end stay at an eight inch tile.

The Engineer reported that Off Branch D the landowner petitioned to have Branch D1 added. That was shown on the map. The Engineer is proposing to have a 12 inch tile and a 10 inch tile line going through that section. It is a proposed new county line. There is no existing tile through there that would have to be abandoned. Private tile would be connected along all lines.

The Engineer reported that Branch F has a 15 inch outlet that will remain the same; and upsizing upstream of that the 12 inch tile to 15 inch tile; 10 inch tile to 15 tile and 12 inch tile; and at the upstream end keeping the eight inch tile.

The Engineer is proposing to fill in the shallow open ditch in Branch G and take all of that flow into the tile. Currently there are tile there that are 12 inch tile, 10 inch tile, and eight inch tile. The Engineer is proposing a 24 inch tile, 18 inch tile, and a 15 inch tile to account for all of the flow that the existing tile and open ditch are taking.

At the downstream end of ditch the Engineer is proposing to keep the two-stage ditch to prevent sloughing and keep the inner channel and those banks. Low flow will go through the inner channel. Any of the high flows will bounce up into the banks and be able to take just as much flow. The Engineer is proposing that the two-stage ditch will go all the way to where Branch G is.

At that location, the Engineer is proposing a weir structure which will help meet the regulations so there is no increase in the outlet flows. It will make sure that JD 30 can handle the flows. It offers a metering at that point in the system. It was designed to take some of the low flows and space out the timing of when water leaves the system. On the higher flows it will bounce up and overtop the weir. All of the flow

will go downstream. It was designed so that water will overtop the weir before it will go over the crossings. It shouldn't impact the drainage. It is designed so the water will leave the system at the right time.

The Engineer stated that they also looked that if water is backed up behind the weir, which is only 5.3 feet tall, that the tile outlets were not negatively affected. There are some tile outlets that may be temporarily under water. When we looked at the flow rate of the tile, the improved tiles were seeing an increase in flow.

The Engineer reported that the open ditch will be cleaned east of the weir in its entirety. There will be a fully maintained system when the project is done. There are some private tile outlets. All of the public outlets will have rip rap for protection from erosion.

The Engineer reported that some side inlets will be added. When we finished the report last August, we were calling these WASCObS or water and sediment control basins. We are now calling them alternative side inlets. A design was shown. Instead of allowing water to run over the top of the ditch, we will have it come into a pipe and down into the bottom of the ditch. We have a calculator that we have developed with the Greater Blue Earth River Basin that sizes these to allow the 10-year event to store along the ditch for 24 hours or less. In some areas there will be a rip rap overflow. This will reduce erosion in the ditch and hopefully reduce long-term maintenance.

The Engineer reported that a flow rate table and model of the system was created. With the addition of the weir, we are matching or reducing the peak flows from the system. Looking at the capacity of the outlet of the JD 30 system, the outlet would be adequate with those inclusions. The 100-year event shows a slight increase in flows.

Per statutory requirements, the Engineer examined the existing and proposed flows and where flooding occurs. Some of the areas are restricted by the tile and can be seen along the open ditch. The ditch has capacity to hold water with the addition of the weir. These flood areas are due to tile inlets in the 10-year event, which is a five-inch rain.

The Engineer reported that for all of the tile improvements we specify that HDPE (high-density polyethylene) or RCP (reinforced concrete pipe) can be installed. We ensure that all the private tile is connected. If the existing public tile is in fair shape, portions of that will be connected. We use two different types of connections. For large branches or larger connections, we will use a pre-fab tee. For smaller connections, all the way up to a 24 inch tile, we use what is called an Insert-a-Tee. An example was displayed. The reason we use that is the gasket and piece of PVC (polyvinyl chloride) go into the tile and the tile still has full capacity. The other thing is the gasket cannot be pushed through the tile. Typically, the new main is deeper than the old main. It is definitely going to be deeper than the private tile. It is not easy to compact the connection around the private tile. We sometimes see the soil settle and

it wants to push that tile. When the tile is put in here right you cannot push the tile through. Then it does not cause a problem of reducing flow of the system. There are a couple of manufacturers of this. Advanced Drainage Systems of Fairmont and Prinsco, Inc. of Prinsburg have these readily available.

The Engineer reported that the cost for tile investigation was included in our cost estimate. We have 100-year old maps. The existing system is not always where we think it is. We have some time factored in for the contractor to dig a few holes and find the tile. If necessary, the alignment can be adjusted. We have found this to be a good practice to avoid potential change orders. If we run into an issue we can adjust ahead of time.

Photos of tile installation were shown. The Engineer explained that they prefer, if dual-wall pipe is installed, a round spoon bottom trench with six inches of aggregate over it. Most contractors put it in with an excavator. There are a few contractors that can do that with a plow for 24 inches and less. ISG is waiting for them to bid on some of these projects. The bids may be more competitive when they do that.

The Engineer reported that along road crossings and in low areas of fields, ISG installs what BWSR wants us to call tile intakes. A photo of a road crossing was shown. Sometimes we use Hickenbottoms with rock around them at road crossings. It is a practice that is identified in the Best Management Practices (BMP) handbook. We will raise the dual wall pipe up eight to 10 inches, drill or cut holes in it, and provide a surface drain that is similar to a Hickenbottom with overflow. It can collect trash and sediment but still allows drainage and keeps debris out of the system.

A short video of tile installation from a 2017 Martin County project was shown by the Engineer. Topsoil was being stripped and separated as much as possible. Chuck Brandel explained that they include temporary damages in the cost estimate. The contractor is limited to 100 to 150 feet wide. The video image showed backfilling behind the tile, pushing the clay, and putting the topsoil back.

The video also showed the installation of a 24 or 30 inch pipe. The Engineer explained that a round spoon bucket could be seen. ISG wants as little movement of the tile as possible. The contractor (in the video) was using some crushed rock over the top. A granular material would be acceptable. This was shown so landowners have an example of a good contractor putting the system together.

The Engineer reported that when ISG looked at the cost, they developed what it would cost to repair the system and improve the system. The reason for that was in statute, separable maintenance can be used for the project if there are areas that are in need of repair. They have done a visual inspection of the ditch and some of the intakes. If this project moves forward into a final report, separable maintenance can be used. This could include tile installation, tile connections, open ditch cleaning, tile outlets and side inlets into the open ditch, and some of the culvert crossings.

The Engineer reported that the cost estimate was included in the handout. The cost of repair is approximately \$810,950. The improvement cost is approximately

\$1,085,238. There are some township road crossings that by statute the road authority pays. The potential landowner cost is \$1,057,800. A net cost of separable maintenance is used of just under \$250,000.

The Engineer's report included a graphic of road authority and landowner costs which was reviewed. The Engineer explained that if the system was there before the road and it is a benefit to the road, potentially the road authority has a cost to maintain the tile system underneath it. They factor in the repair costs for the stretch of tile into road authority costs. Landowners pay for everything outside of that. They also pay for upsizing through a road. A similar example of a culvert was also shown.

The Engineer reported that ISG is estimating that for temporary damages on this system everything would be 100 feet. Actual temporary damages would be surveyed. The amount allocated in the cost estimate is \$500 to \$600 per acre for temporary damages. Since the system has been redetermined, they did not include any costs for acquiring buffers. They do have some seeding costs for buffers in areas that are proposed to be disturbed when the ditch is cleaned.

The Engineer reported that existing county tile systems will be abandoned. In some cases they will not be connected. In other cases they will be connected and can be utilized as private headers. When they are in a condition that is not usable, they are not connected.

The Engineer reported that part of the drainage statute requires that ISG looks at Multi-Purpose Drainage Management (MPDM). The DNR discussed cover crops, crop rotation, and nutrient management in the advisory report. Those are outside the drainage authority's jurisdiction. Control and treatment measures are within their jurisdiction. ISG is proposing alternative tile intakes, side inlets, maintaining the two-stage ditch, side inlets, and a control structure in the ditch for storage.

The map of the MPDM Plan was shown. The Engineer reported that these are things that can be done in the system, not what is getting done. Orange dots denoted alternative side inlets. A control structure and two-stage ditch are proposed. There are other things that would work for MPDM. The hatched line shows where controlled drainage would work. If there is interest in that, more detail can be provided. Other areas where storage or wetlands could be installed or maintained were shown.

The Engineer reported that this was a summary of a rather large project. The project is cost-effective, practical, and feasible. It is necessary. The outlet is adequate with the BMPs that have been incorporated. The project will be of public benefit and contribute to the public welfare. Therefore the Engineer recommends considering preliminary approval as described in the report.

Bruce Leinen asked if there were side inlets in some of the ditches that have been constructed. The Engineer replied that some were done this summer in Stearns County. The side inlets were installed and within four days there was a three-inch rain overnight. ISG's inspector was there the next day and took pictures. They were

working very well. The inspector was there 15 to 18 hours after the rain event. Of the four side inlets observed, one had some water there and the others the ground was saturated but we could see the water was still running underneath. Faribault and Martin County had over 100 of them put in. If the Board wants more information, they should talk to those guys next spring to see how they are working.

Following the engineer's report, Bruce Leinen asked Bruce Sellers, the petitioners' attorney, to make comments. He requested that the Board move forward with the project as it meets statutory requirements, is feasible and practical, and it does have public benefit when considering the MPDM criteria. The outlet is adequate with the added BMPs. He requested the Board have the engineer make a detailed survey to submit for final hearing.

Bruce Leinen then asked if there were comments or questions from the petitioners or objectors to the petition.

Tim Tunglund asked what criteria was used to say that the project is justifiable. For the last four years in farming everybody in this room knows how that has been going. There is no money to even pay the bills that are there, let alone the extra added increased cost of updating the ditch. So he was wondering how you justify that it benefits everyone? Engineer Chuck Brandel stated that the viewers actually determine what the benefit is. Tim Tunglund asked if that was Ringquist's bunch. Chuck Brandel stated that if this moves forward, it would be whoever the Board appoints. There is an existing value of the system now because of the ROB. The viewers look at the existing value and the value an updated and improved system adds. At the preliminary hearing, ISG is looking at whether the project is cost-effective and feasible. Based on recent projects, there is a net cost of \$250,000 for a 1,350 acre watershed. Tim Tunglund stated that is roughly \$1,275 for every acre in the watershed. Engineer Chuck Brandel said that he thought it was less than that. Two or three years ago ISG saw benefit costs of \$400 to \$500 per acre from viewers' reports. Lately he has seen them \$300 to \$400 per acre. Tim Tunglund asked where those numbers were from. Engineer Chuck Brandel replied based on benefits from viewers' reports. For this system, on the low end the cost is \$300 an acre. That is for improving 1,300 acres. Based on how viewers are looking at systems now, there would be about \$400,000 of benefits. It would meet the requirement, but he is not a viewer. It is not his job to determine that. It is a good question. But most of that should be calculated by the viewers. They look at hydraulic benefit, long-term maintenance of the system, and other things. Crop prices and land prices are factored into that.

Tim Tunglund asked how many acres were petitioned. He also asked for a list of the petitioners. Bruce Sellers stated that there were a total of 26 affected owners. He submitted four signed petitions representing 15.38 percent of the affected property. There are 15 owners of property that is bordered by, touched by, or is underneath the path of the proposed drainage project. The petitions included a total of three owners representing 20 percent of the property passed over. There are 1,344.12 acres in the system. There are four owners owning a total property area of 503.25 acres or 37.44

percent of the affected area. The proposed project borders, touches, or is underneath the path of approximately 1,036.33 acres. Three owners have submitted petitions owning a total property area of approximately 472.02 acres which represents 45.64 percent of the property that is passed over. The petitioners are Dustin and Lindsay Wasenaar, Michael and Dawn Rossow, and Theodore Bretzman.

Tim Tunglund again asked about the percentages. Bruce Sellers replied 37.44 percent of the land affected and 45.64 percent of the land passed over.

Clyde Burmeister said that he and his sister are the joint owners of land in Section 22. He has looked over the material. He sat through this presentation about three years ago in Jackson County. He asked if this was a watershed hearing or a tile project hearing. If it is a watershed project hearing, then it seems to have a lot of validity. If it is a tile hearing, it seems incongruent that you want to control the water but you are increasing the number of tiles and the size of the tiles. He looked at how high the water would be on his farm. The assessment back in 2015 was going to be \$16,000 per year for 15 years or approximately \$240,000. We get three or four acres of drowning out a year. Many times it is early enough so it can be replanted. That just isn't good stewardship of money. At my age to put that kind of debt to my heirs seems incongruent with a watershed versus a tile project.

Clyde Burmeister asked about the redetermination that was done. He thought the tile was cleaned out, as well as 16 foot buffers on the sides. Many of the pictures showed that the ditch was filled up. He asked if that happened since 2012. He also asked that if this is a watershed project, are there any state or federal funds to help with the cost. Engineer Chuck Brandel replied that the petition is for tile improvement. The watershed is the drainage authority. In the statute, both 103E and 103D, there are requirements to look at water quality and environmental impacts. This was petitioned as a tile improvement project. It is a balance between improving the tile and increasing the capacity of the tile, but not pushing a problem downstream. Clyde Burmeister stated that you are also adding more tile and bigger tile that goes faster. That is in the incongruent part of it. You are trying to control the amount of water that is going into Heron Lake. You are going to put bigger tile that makes it go faster. It doesn't seem to make sense to me. Engineer Chuck Brandel responded that ISG looks to see if there are any places where the system has more capacity than it needs. The open ditch at 10 feet deep and 10 feet wide has a lot more capacity than a 12 inch tile. When the capacity is increased from a 12 inch to an 18 inch tile, ISG proposes to use some of the additional capacity in the ditch to slow the water down. A lot of it is about timing. If there is a five-inch rain on this watershed, whether it is improved or not, the water is going to go somewhere eventually. The tile is going to reduce some of the overland flow and flooding on the farmland. ISG is going to use some of the capacity of the ditch to hold water back and adjust the timing to allow it to drain slower so flows downstream are not increased. The reason the weir structure is where it is, is that the area west of that had a smaller channel already and there was extra capacity in this area. The ditch could be deepened and get extra capacity.

Clyde Burmeister asked why the project would be done. Engineer Chuck Brandel explained that landowners petitioned for the improvement because they wanted to improve their tile capacity. To do that, the Engineer has to determine that the outlet is adequate. They have to meet environmental criteria so that is why they are adding those things to it. Ron Kolander said that it is done with a great cost.

Kim Aukes said that she is looking at the statutes and it says, “state that the proposed improvement will be of public utility and promote public health.” When you have three or four people who are for it and everybody else can’t see a benefit with a big price, is it really for the good of the people? Another one is, “is the proposed drainage project practical?” She thought we are finding here today that in its current state it isn’t practical. It is too big, too expensive, and it is not necessary. Engineer Chuck Brandel stated that from an engineer’s point of view, he has to determine if the project can be constructed. In his opinion it could. There are multiple projects throughout the state that are being constructed. There is nothing extraordinarily difficult here. The tile is not at a great depth. The ditch has the capacity to take the water and with some controls can meet the requirements of the statute. ISG does multiple projects like this. Is it practical? Yes. From a public benefit standpoint, a lot of these tiles are 100 years old and will need to be repaired. ISG went through multiple iterations with landowners before this was petitioned. At some point these tile are going to have an \$810,000 repair cost. They asked for an improvement to replace them to get more depth and more capacity. Does it have a public benefit? Yes. The farmland will be worth more and will have better drainage. If erosion control practices can be installed, water quality will be improved. That is why he said that in his opinion it is practical and a public benefit.

Ron Kolander asked to go back to the tile map. The county tile that used to come through his property is now a private tile because he was told it did not benefit the system. He asked if there was a chance that Branch G could become a private tile. Engineer Chuck Brandel said that currently there is public tile there and a landowner asked in the petition to improve that. Ron Kolander asked if it could be changed to private tile like they made him. They didn’t ask him if he wanted it to be private tile, they just did it. He asked why ISG couldn’t you just make that private tile. Kim Aukes stated that making it private would save cost. Chuck Brandel replied that it is an option, but that landowner petitioned for it to be a public tile. He cannot change that. Ron Kolander said that they took public tile away from him.

Kim Aukes said that part of why we are here is to look at what is legal. But we also need to look at what is ethical. She asked what the vast majority of the people wanted. The farm economy is down. This is a huge burden on people. It is not three years, it is for 15 years. So for people like her, the younger generation where her husband farms, it will affect them.

Engineer Chuck Brandel explained that this is the preliminary engineer’s report. This is not the final approval of the project. At this point, it is the engineer’s role to say whether the project is cost-effective, can it be done, should viewers be appointed to

give assessments information. He has to look at the law and what's out there. And based on that, it meets those criteria.

Clyde Burmeister said that he had two other questions that were not spoken to. The redetermination has been done. He asked what needs to be done to improve the tile. Engineer Chuck Brandel replied that there are portions of the ditch that don't need to be cleaned. Clyde Burmeister stated that the photos in the presentation showed that the ditch was all filled. Engineer Chuck Brandel stated that ISG shows the worst ones because they have to show need. In his opinion, a large portion of the ditch needs to be cleaned. He said that Clyde's other question was about outside funding. Chuck Brandel said that there are other funding sources. After this meeting he will meet with Jan Voit and discuss potential projects and funding opportunities. Ron Kolander asked if the funding would be for separable costs or just for the improvement. Engineer Chuck Brandel replied that it depends on the funders and what could be funded. It would probably be a combination. Ron Kolander asked if there was funding for new tile. Engineer Chuck Brandel said that he not seen a grant that pays for tile. Ron Kolander stated that funding would be for the weir and maintenance of the ditch. Engineer Chuck Brandel responded that yes, it would be for maintenance of the ditch.

Kim Aukes said that it was stated that the project would improve the value of the land. For certain people yes. For people who are not getting a benefit, no. They are just getting this hefty assessment for 15 years. Say somebody wanted to sell their land, potential buyers are going to see that assessment and they are going to take that into consideration. Ron Kolander added especially if someone like Mr. Burmeister would have \$200,000 worth of assessments. That would be a detriment to him if he ever wants to market his land.

Kim Aukes asked if the viewers take into consideration who is benefitting and how much they are benefitting. Engineer Chuck Brandel said that from his experience, those getting tile on their property would see a higher assessment than those that are not. The new proposed branch, if the viewers do their job right, should be assessed just to those that drain into that.

Tim Bauman said that he has land in Section 22 right next to Mr. Burmeister. ISG is adding a new tile for Ted Bretzman. Obviously he is the petitioner that petitioned for this. He's getting the greatest added benefit from all of this tile. The people in the 1,344 acres are expected to help pick up that tab for Mr. Bretzman. He asked if that was that correct, even the new tile that no one else asked for. He farms that 80 and the Burmeister's corner. He didn't think he had lost in total more than 10 acres over 10 years. He said that he could show maps and crop production reports. He did not think the amount of money spent on the land because of the determination was clear to anyone in this room. The cost is just astronomical. We would be better off to sell the property and buy something else and not go through these assessments. We are not like some of these people that are petitioning it. We have to have it assessed for 15 years and with the interest rates that about doubles the cost of it for us. He didn't

think any of them had gotten the answer. You say, “if those guys do their jobs right to make the determination.” He asked when they were invited to put their input for this project and paying for all this extra tile. If somebody put an assessment against your house because the whole town needed a million dollar street and they assessed you the largest part to make it easier to get to your place, would you stand for that? It is ridiculous to spend this kind of money. He would like a new line of equipment. He asked if he should go out and buy it all at once in this farm economy. He agreed that it is a 100 year old system. But it is just not feasible. The property owners that have the open ditch through the property have paid higher property taxes and where did all that money go? What about a CIP – capital improvement project? When things come up like this is money available in the county budget to do it? Those extra taxes should be put away to help defray some of these costs. We all know nothing is getting any cheaper. Wages are not keeping up. He said he supposed that where all the money has gone was a question for Jackson County and why there isn’t a CIP for ditches and tiles? Now all of a sudden someone wants to add tile to their land and a handful of people have to pick up the tab. He’d love to do that, too.

Engineer Chuck Brandel asked if anyone wanted to comment on the legality of that. It is just that each ditch system is its own fund. That is how the law is set up at this point. There aren’t CIPs for county ditches because each system is in charge of maintaining its own ditch. He has talked about planning at a drainage workgroup subcommittee at the state. It is not required by the law. That is why it is not being done.

Ron Kolander stated that he didn’t think it was very right. He is way down in the corner. He is supposed to pay, according to what they had three years ago, \$60,000 to \$70,000 over 15 years against the tile system that is going to be all up there. He has a tile system in his farm that is all private. He asked how he was supposed to fix his own drainage when he is paying \$60,000 up there. Engineer Chuck Brandel replied that a lot of these are ditch law questions. The way ditch law is set up, the whole system pays for maintaining the system. When the system needs to be cleaned, which everybody drains into, everybody pays for it. When the tile fails, everybody pays for it. When an improvement comes along to replace the tile, you do not have to the replace it anymore. That is why the law is set up that everybody pays for it. That is the rules we have to work under for this project.

Ron Kolander stated that there are a lot of us that won’t use the tile system that is proposed. Kim Aukes said that the upstream system is too big and just not necessary at this time.

Bruce Leinen explained that the project was petitioned and the Board is trying to go through the legal steps required. There are certain things the Board has to do by law. He knows what she is saying, but the project fits what the law states. Kim Aukes replied that it goes back to what she was saying about some kind of ethical check here, too. It’s more than the law. These are people’s lives that are affected.

Paul Burmeister said that he had a fundamental question for the Board, as well as the Jackson County board. In 2012 they went through the work to clean it out. Now this group has been tasked to look at a whole new project. Under this brand new project, they have determined that the ditch is not adequate. Now we have two assessments in the last five years. He asked what would prevent Jackson County from coming back two to three years from now and make new charges. It seemed to him that the boards are struggling to figure out who is in charge of this ditch. Bruce Leinen replied that the Board is the drainage authority for ditches within the Heron Lake watershed. That is why it is coming through this channel. The Board relies on the engineer and attorney to make sure everything is done to meet statutory requirements. That is why they are here to answer questions.

Paul Burmeister asked if it is because Jackson County did a poor job in 2012 when they did the clean out. He wanted to know why the ditch had filled up so much. Engineer Chuck Brandel stated that it had not filled up so much. There are large portions that do not need to be cleaned. There are areas that do need to be cleaned. Most of the cost of the project is in the tile improvement. The ditch needs to be adequate to drain that. There are things that ISG found that needed to be repaired in the ditch.

Paul Burmeister said there may be some cleanup. There may be an advance in technology with the two-stage ditch. But really, it is to increase the capacity of the system in order to handle the extra tile. That's what it comes down to. Chuck Brandel replied that it is his opinion that if landowners are going to do a large project, get everything fixed so there are not multiple assessments.

Paul Burmeister stated that went back to his previous point. The boards seem to be piece-mealing this. He asked what would happen two to four years from now. Chuck Brandel replied that if the areas that need to be fixed are fixed and the proper inlets are installed, the buffers have been put in place, and the maintenance will get spread out.

Clyde Burmeister said the redetermination for his land was very significant. It just seems like within five years they are going to get bombarded again significantly.

Tim Bauman asked about the DNR requirements and if there were no adverse effects to adding more water to Heron Lake. Engineer Chuck Brandel replied that the same amount of water runs off whether the improvement is done or not. ISG is proposing to decrease over land flow, decrease flooding in the fields, and decrease erosion. Statute doesn't require that peak flows be lowered, it requires that the outlet is adequate. ISG is doing measures to match the flows that were there by using the extra capacity in the ditch.

Tim Bauman said that he had read articles that start out, "are we over tiling?" He asked that, in Chuck's opinion, a 12 to 16 inch tile isn't going to draw more water quicker than if you didn't have a tile right there and the land was able to soak it in slowly - when he says slowly, he means with no crop damage - versus a tile drawing?

We all go by these pattern tile farms. You can see where it is dry fifty feet on either side of the tile. These tiles are definitely, in his opinion, going to draw in much more water quicker and push much more water that could have been in the ground or evaporated and not gone into that lake. You can mark my words today. Engineer Chuck Brandel replied that the tile will have increased flow. In most of these areas, the tile is already there. Water is already getting to the tile, it will get there faster. ISG is developing ways to slow it down. Tim Bauman stated there is not tile in Ted Bretzman's. Engineer Chuck Brandel said that he was correct, there will be tile added. ISG has to look at the peak flow coming off the system. There cannot be increased flow and have the outlet handle it.

Jackson County Drainage Inspector Dave Macek addressed the redetermination of benefits done in 2012. It was done because of the improvement of JD 30. JD 14 drains into JD 30. That is why the redetermination was ordered. The biggest cost was acquiring the easement for the one rod buffer on the open ditch. The timing of the redetermination, plus continued maintenance of the ditch, is what caused the high assessments. He did not believe Chuck answered Mr. Bauman's question about the New Branch D-1 – whether everybody in the system pays for that or just the landowners. Chuck Brandel replied that just the landowners that get benefit from it pay for that.

Tim Bauman said that raises another question. Since that is a new line and it wasn't in the redetermination in 2012, how do we know what the benefits are of the new line? Engineer Chuck Brandel stated that if this moves forward today, or at a future time, the drainage authority would appoint viewers to update the redetermination. They call it a determination of how the proposed system changes the benefits. Adding a new branch, viewers increase the benefits to those areas because they did not have a public outlet before and now they will. ISG has worked with half a dozen viewer groups. Most of them talk about how they discount lands that are not directly connected to an open ditch or tile. This would bring in more land that would be directly connected and thus would get a higher benefit. But, he is not a viewer. He was just saying what he has seen in the past.

Tim Bauman asked if the landowners, at the time of the determination, get some input. Engineer Chuck Brandel replied that there will be a public hearing just like this. Most viewers have a landowner meeting before the hearing to go over the report. What ISG has been doing here and in other areas is to have an information meeting where he will go over report just like he did today. The viewers will go over how they came up with benefits. They have a day or two where landowners come in and individually meet with them to go over their benefits. They take comments and adjust the report based on information provided.

Tim Bauman said that at the last couple of ditch hearings, they didn't adjust the report because according to the minutes it was determined those were just fine from 2012. We will have a voice, but kind of like today, feels like I wasted my time and took off work to listen to a sales spiel. It is what it is. Sorry.

Tim Tungland stated that as of right now, it meets all the criteria. The costs that are in here are their side of the case. The landowners met their petition acres. Basically right now there is nothing anyone sitting here in these chairs can do to change the outcome. It's a done deal. It is going to go down the road. Unless this process stops, there is nothing short of going to district court with an attorney and an expert in the field that says these guys were wrong. There really is nothing we can do. Mike Tow responded that you are presupposing that once the viewers get done there are going to be sufficient funds, based upon the viewers' report, to warrant establishing the project. His crystal ball is in the shop but maybe yours is better. Tim Tungland responded that he has been through a few of these and this is not his first rodeo. Mike Tow replied that it was not his first rodeo, either. He has seen a lot of them get dismissed because they don't meet the cost-benefit test. Tim Tungland stated that these guys are saying they do. Mike Tow responded that Chuck Brandel is saying that initially, from his perspective, it meets criteria. He (Brandel) does not know what the viewers will come up with. You guys all get input with the viewers. No one should presuppose what's going to happen in the future. You are jumping all the way to the end and saying it's a foregone conclusion. It's not. This Board has dismissed as many petitions as it has actually passed. Tim Tungland asked if Mike Tow was an attorney. Mike Tow responded yes he was the attorney for the Board. He stated that he has been here for a long time and he has seen this Board dismiss as many petitions they have acted upon. If projects do not cost-benefit, their (the Board) hands are bound. You are already saying we have to go to court. Let's wait and see what happens before you start worrying about that.

Gary Ewert stated that when the decision is made whether or not to proceed, it doesn't commit a finality to the project. When the viewers are appointed, they go through a mass appraisal process, governed by appraisal systems that are governed by state and federal governments. Each parcel will be reviewed onsite by three viewers. There will be data available to them that is carried to the field. About 15 overlays of computer data – soil type, water table depth, elevations, contours, erodibility of soil, class and sub-class - it goes on and on. A decision is made by using that data and looking at each parcel. Often there is a walk over the property. A decision is made by categorizing the acres by 40 acre tracts and classifying them by A, B, C, or D. It has to do with the amount of drainage needed to make those categories productive. Some won't. A percent is put on them based on past history and if drainage is done to NRCS standards of a 0.50 inch drainage coefficient. They evaluate the existing drainage system. They take the data that the engineer has provided and put an estimate on the efficiency now. Then they will turn around and say that if the land was drained to NRCS standards, what tile would be needed and the size to make it work. The comparison is the percentage of benefits. Then, depending on the acres, on any given 40, it is again modified. Land that is high and dry and doesn't need drainage will not have as much of an improving effect as that in need of drainage. After that is done, the proximity to an outlet is considered. If it is a 40 that is on the ditch, it has 100 percent proximity. If it is three forties away, they

have to leave money on the table to get to the outlet. It will cost more, so it is modified again. A benefit is finally determined based on commodity prices. If they use \$3.10 for corn and bean \$9, then this happens. They may use \$4 for corn because there are times when it will be higher than it is right now. It is an attempt to get an average look at what is happening out there before benefits are determined. Once the benefits are determined, then you can meet with the viewers and discuss your parcel numbers. All of that comes after the viewers are appointed. That depends on what happens here today. He is a viewer and cannot view in this watershed because he is on the Board. That would be a conflict of interest. He does participate in viewing outside of the watershed. He has a lot of background in drainage and farms a quarter. He is familiar with and knows drainage systems and ditches.

Tim Tunglund said that he understood that. It is just that sometimes we feel helpless because we know how this process works. Gary Ewert replied that there will be a concerted effort to make you understand before this thing goes. It is very complicated. You have a right to ask until you understand why you have an assessment or damage.

Tim Tunglund apologized for making the leap. What he was hearing is that it was already determined. The benefits outweigh the costs - that is what he heard. Bruce Sellers replied that we have met what needs to be done to move forward to get viewers appointed and have Chuck complete a final survey. Chuck Brandel said that he has to give his opinion as to if it is practical. If there would be no justification for separable maintenance or something like that, he would say in his opinion it's not. But at this point, based on what he has seen in past projects, it is practical and feasible. But he is not the final say.

Tim Tunglund stated that in a past project, we couldn't even stop it as petitioners. It was going down the tracks and that was the end of it.

Bruce Leinen asked if there was anything that hadn't been covered. Hearing nothing, he closed the public comment period on the engineer's report.

He stated that the Board must review and consider the evidence in the form of the petition, the preliminary engineering report, the report of the DNR, and the testimony of any petitioners or objectors to the petition. The major piece of evidence for the Board to consider at the preliminary hearing is the engineer's report and testimony concerning the report. The content of the engineer's report is outlined in detail in M.S. 103E.245. In general, the Board will not be sufficiently knowledgeable to question much of the information contained in the engineer's report. However, there are parts of the engineer's report which the Board is statutorily required to consider prior to establishing a drainage project and which tend to result in more substantial contention and litigation than others. These items must be specifically reviewed when looking to the adequacy of the engineer's report and to enable the Board to make required findings. Bruce Leinen asked Engineer Chuck Brandel to comment on each of the following items, which are also contained in the Preliminary Engineering Report on pages 15, 16, and 17.

1. Private and public benefits and costs of the proposed drainage project. Engineer Chuck Brandel stated that he talked about the existing conditions, proposed conditions, practicality and feasibility. It is his opinion that there are benefits. The tile system is in need of repair. There are repairs that need to be done along the open ditch.
2. Alternative measures, including measures identified in applicable state-approved and locally adopted water management plans, to
  - i. Conserve, allocate, and use drainage waters for agriculture, stream flow augmentation, or other beneficial uses;
  - ii. Reduce downstream peak flows and flooding;
  - iii. Provide adequate drainage system capacity;
  - iv. Reduce erosion and sedimentation; and
  - v. Protect or improve water quality.

Engineer Chuck Brandel said that ISG has talked about a lot of these. They are incorporating weirs and alternative side inlets and are increasing the tile size. He thought they had covered that pretty well.

3. The present and anticipated land use within the drainage project or system; including compatibility of the project with local land use plans. Engineer Chuck Brandel stated that ISG does not anticipate any land use changes. The buffers were already purchased. ISG is going to use some of those for alternative side inlets.
4. Current and potential flooding characteristics of property in the drainage project or system downstream for 5-, 10-, 25-, and 50-year flood events, including adequacy of the outlet for the drainage project. Engineer Chuck Brandel showed a chart that contained the proposed flows that he had explained earlier. The chart also contained the two- and 100-year events. ISG looked at all of the flows in the system and at the outlet of the system. They also looked at elevations. With what they are incorporating, they are increasing tile flow in areas, decreasing over land flow in areas, but the overall peak flow would be below or the same as what it was.
5. The effects of the proposed drainage project on wetlands. Engineer Chuck Brandel stated that ISG did a Level I Wetland Delineation and found that there is no effect on wetlands in the system. All of the areas already have public or private tile in them.
6. The effects of the proposed drainage project on water quality. Engineer Chuck Brandel responded that he believes there will be betterment to water quality. When a tile system starts breaking down and blowing out there is more sediment that goes into the tile system. Also there are some open inlets and open intakes. ISG can install different types of inlets that reduce erosion and sediment transport. In some events, they are using storage in the ditch, which will also have sediment capture. He feels they are bettering water quality.
7. The effects of the proposed drainage project on fish and wildlife resources. Engineer Chuck Brandel stated that ISG is using an existing ditch for taking some

of the increases in flow and then storing them there. Essentially the same answer to number five.

8. The effects of the proposed drainage project on shallow groundwater availability, distribution, and use. Engineer Chuck Brandel said that when ISG modeled the system they took into account land cover and different soil types throughout. There is a factor for infiltration and exfiltration. The soils do not have a high infiltration rate. Most of this area is already tiled. They do not see that groundwater would be effected.
9. The overall environmental impact of all the above criteria. Engineer Chuck Brandel explained that it is negligible as there are no major land use changes. Fish and wildlife areas will not be effected. Water quality will be protected with the use of the control structure and side inlets. They are looking at potential funding sources.

## **6. Action by the Board**

Bruce Leinen asked the Board if they had any items that they would like to discuss. No comments were made. Bruce Leinen noted that the Board would normally make its findings and then either dismiss the petition or order a final engineer survey/report and appoint viewers for the proposed project.

Bruce Leinen stated that the Board should proceed by motion and vote on each proposed finding until the findings are complete, whereupon the order of the Board relating to the petition may be established by motion and vote. Bruce Leinen noted that in rare instances, the Board will continue the hearing to obtain additional information on its own motion or upon a request for delay of proceedings by a majority of the petitioners under M.S. 103E.231.

Bruce Leinen stated that in the event that a dismissal of the petition is warranted—it should be made clear that the findings cannot include “AND/OR” alternatives. The findings in the order dismissing must be unequivocal and only the findings requiring dismissal should be included.

### ***Proposed Findings on Required Considerations:***

1. Bruce Leinen moved that based upon the evidence, the Board finds that the private and public benefits will exceed the costs of the proposed drainage project. Jim Buschena seconded this. Motion carried unanimously.
2. Bruce Leinen moved that based upon the evidence, the Board finds that anticipated agricultural land acreage availability and use in the drainage project or system will be increased from the present availability and use of the land. Harvey Kruger seconded this. Motion carried unanimously.
3. Bruce Leinen moved that based upon the evidence, the Board finds that anticipated land use within the drainage project or system will be improved from the present use of the land. Harvey Kruger seconded this. Motion carried unanimously.

4. Bruce Leinen moved that based upon the evidence, the Board finds that the flooding characteristics of property in the drainage project or system and downstream for 5-, 10-, 25-, and 50-year flood events will be insignificantly affected. Jim Buschena seconded this. Motion carried unanimously.
5. Bruce Leinen moved that based upon the evidence, the Board finds that there are no viable alternative measures to drain the waters in the project area, nor that there are feasible alternative measures to conserve, allocate, and use the waters in the project area, including storage and retention of drainage waters. Harvey Kruger seconded this. Motion carried unanimously.
6. Bruce Leinen moved that based upon the evidence, the Board finds that there is a positive effect on water quality of constructing the proposed drainage project. Jim Buschena seconded this. Motion carried unanimously.
7. Bruce Leinen moved that based upon the evidence, the Board finds that there is an insignificant effect upon fish and wildlife resources affected by the proposed drainage project. Gary Ewert seconded this. Motion carried unanimously.
8. Bruce Leinen moved that based upon the evidence, the Board finds that the shallow groundwater availability, distribution, and use in the drainage project or system will be unaffected. Jim Buschena seconded this. Motion carried unanimously.
9. Bruce Leinen moved that based upon the evidence, the Board finds that the overall environmental impact of the above criteria relating to the proposed drainage project is positive. Gary Ewert seconded this. Motion carried unanimously.

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

Bruce Leinen moved that based upon the evidence, the Board finds that the proposed drainage project will be of public utility, benefit, or welfare in that it will protect agricultural lands from overflow, and will reclaim or render suitable for cultivation agricultural lands which are normally wet and needing drainage. Jim Buschena seconded this. Motion carried unanimously.

***Adequacy of Outlet***

Bruce Leinen moved that based upon the evidence the Board finds that the outlet for the proposed drainage project is adequate to sustain the flow of water that is anticipated by the improvement. Gary Ewert seconded this. Motion carried unanimously.

***Separable Maintenance***

Bruce Leinen moved that based upon the evidence, the Board finds that the engineer is required to determine the applicability of separable maintenance under Minn.Stat. 103E.215, Subd. 6, in the final report. Harvey Kruger seconded this. Motion carried unanimously.

***Proposed Finding for Continued Proceedings***

Bruce Leinen moved that based upon the evidence, the Board finds that the proposal as stated in the petition, is feasible, and there is a necessity for it. Additionally, the Board finds that the public benefit is greater than the environmental impact of the drainage project and that the outlet is adequate; therefore, it is appropriate for the Board to direct the engineer to proceed with a detailed survey and to issue its order appointing viewers. Harvey Kruger seconded this. Motion carried unanimously.

Bruce Leinen moved that based upon the findings, the Board's order directing the engineer to proceed with a detailed survey and appointing viewers shall issue forthwith. Jim Buschena seconded this. Motion carried unanimously.

***Adjournment***

Bruce Leinen made a motion to adjourn the meeting at 11:48 a.m. Jim Buschena seconded this. Motion carried unanimously.

Harvey Kruger  
Secretary