

STATE OF MINNESOTA  
*Before the*  
HERON LAKE WATERSHED DISTRICT  
SITTING AS THE DRAINAGE AUTHORITY FOR  
JACKSON COUNTY JUDICIAL DITCH 36

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In the Matter of:

the Improvement of  
Jackson County Judicial Ditch 36

FINDINGS AND ORDER FOR CONTINUED  
PROCEEDINGS

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Manager Leinen moved, seconded by Manager Reith to adopt the following Findings and Order:

The above-entitled matter came on before the Board of Managers of the Heron Lake Watershed District, on July 9, 2020, for the preliminary hearing upon the Petition for Improvement to Judicial Ditch 36 pursuant to Minn.Stat. § 103E.261. The following persons were present at said hearing: the Board of Managers of the Heron Lake Watershed District, consisting of Wayne Rasche, Harvey Kruger, Mark Bartosh, and Cory Reith (Bruce Leinen was absent) sitting as a drainage authority respecting Judicial Ditch 36, Jackson County, Minnesota; also present were the watershed administrator, Jan Voit; the project engineers, Charles Brandel and Jacob Rischmiller; the watershed attorney, Louis Smith, Esq.; petitioners' attorney, Bruce E. Sellers, Esq., and other interested parties and members of the public.

On or about July 15, 2019, a petition and bond for a drainage improvement project to Judicial Ditch 36, Jackson County, Minnesota, was submitted to the Board of Managers of the Heron Lake Watershed District alleging, in pertinent part, that: “. . . the system consists of a combination of an open ditch and subsurface tile, each having insufficient capacity or requiring enlarging to furnish sufficient capacity or a better outlet.” The petition and bond were accepted by the Board of Managers of the Heron Lake Watershed District on August 20, 2019.

In accordance with Minn.Stat. § 103E.241, the Board of Managers of the Heron Lake

Watershed District appointed Charles Brandel, of I & S Group., as the project engineer and directed the engineer to prepare a preliminary report in accordance with Minn.Stat. § 103E.245.

On or about March 23, 2020, the Engineer submitted his Preliminary Report to the Board of Managers of the Heron Lake Watershed District. The Engineer's Preliminary Report for the proposed improvement of Jackson County Ditch 36 demonstrates that the estimated total cost of the improvement as requested is \$586,029 with storage and \$502,621 without storage. The report also demonstrated that the improvement was feasible, practical and necessary; that the proposed improvement would be a public benefit; and that the existing outlet for the project was adequate.

An Order and Notice of Hearing for Preliminary Hearing was issued by the Board of Managers of the Heron Lake Watershed District on June 17, 2020. The Engineer's Preliminary Report was forwarded to the Department of Natural Resources and the Board of Water and Soil Resources for review, with a request that an advisory report be filed prior to the hearing date. The advisory report from the Board of Water and Soil Resources was received on April 27, 2020.

On July 9, 2020, a preliminary hearing on the petition was held at Heron Lake, Minnesota. President of the Board of Managers, Wayne Rasche, called the hearing to order at 10:00 a.m. and gave brief comments explaining the present status of the proceedings. The Board determined that the Improvement Petition was sufficient. On July 15, 2019, the petitioners submitted a cost bond of \$50,000.00. On April 9, 2020, a bond rider of \$50,000.00 was submitted. The funds provided to date are adequate to cover costs incurred through the preliminary hearing. The costs will be monitored on a monthly basis and an additional bond would be required of the 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 petitioners' bond.

Jan Voit, watershed administrator read the advisory report of the Board of Water and Soil Resources to all persons present. The project engineers, Charles Brandel and Jacob Rischmiller, reviewed the results of the Engineer's Preliminary Report and responded to questions. The Board President then opened the hearing for public comment and the board received testimony for and against the petition and the proposed improvement. A discussion

period ensued wherein all interested parties were heard and their testimony considered by the board.

Based upon the Engineer's Preliminary Report, the Board of Water and Soil Resources' Advisory Report the testimony, and comments from the petitioner's attorney, the public and other interested parties, the Board of Managers of the Heron Lake Watershed District, acting as the drainage authority for the proposed improvement of Jackson Judicial Ditch 36, upon motion and voice vote, made the following:

**FINDINGS OF FACT:**

1. Based upon the evidence, the board finds that the private and public benefits will exceed the costs of the proposed drainage project;
2. Based upon the evidence, the board finds that anticipated agricultural land acreage availability and use in the drainage project or system will be unchanged from the present availability and use of the land;
3. 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;
4. 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 improved;
5. 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;
6. Based upon the evidence, the board finds that there is a positive effect on water quality of constructing the proposed drainage project;
7. Based upon the evidence, the board finds that there is an insignificant effect upon fish and wildlife resources affected by the proposed drainage project;
8. Based upon the evidence, the board finds that the shallow groundwater availability, distribution, and use in the drainage project or system will be unaffected;

9. Based upon the evidence, the board finds that the overall environmental impact of the above criteria relating to the proposed drainage project is positive.
10. 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.
11. 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.
12. Based upon the evidence, the engineer is required to determine the applicability of separable maintenance under Minn.Stat. 103E.215, Subd. 6, in his final report.

Based upon the foregoing findings and based upon all the documents, records, applicable statutes, and other information contained within the file, the Board of Managers of the Heron Lake Watershed District, acting as a drainage authority under Minnesota Statutes, Chapter 103E, concluded:

1. That the proposed drainage project as stated in the petition, is feasible, and there is a necessity for it;
2. That the public benefit is greater than the environmental impact of the drainage project; and,
3. That the outlet is adequate.

WHEREFORE, the Heron Lake Watershed District Board of Managers, determined that continued proceedings on the Petition for Improvement of Judicial Ditch 36, Jackson County, Minnesota, were necessary and proper.

**NOW THEREFORE, IT IS ORDERED**, that proceedings shall continue on the Petition for Improvement of Judicial Ditch 36, Jackson County, Minnesota, and the Board of Managers of the Heron Lake Watershed District, upon filing of this Order with the Auditor of Jackson County pursuant to Minn. Stat. § 103E.265, shall forthwith issue orders directing the engineer to proceed with a detailed survey and appointing viewers.

Dated: this 19th day of August 2020.

A handwritten signature in black ink that reads "Wayne Rasche". The signature is written in a cursive style and is positioned above a solid horizontal line.

Wayne Rasche  
President of the Board of Managers  
Heron Lake Watershed District

ATTEST:

A handwritten signature in blue ink that reads "Jan Voit". The signature is written in a cursive style and is positioned above a solid horizontal line.

Jan Voit  
District Administrator  
Heron Lake Watershed District