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August 14, 2019

Heron Lake Watershed District
Board of Managers
c/o Ms. Jan Voit, Administrator
1008 3rd Ave., P. O. Box 345
Heron Lake, MN 56137

Re: Petition for Improvement of Jackson County Judicial Ditch No. 36

Dear Board of Managers:

At the request of the Administrator, we have reviewed the Petition for Improvement of Jackson County Judicial Ditch No. 36 ("petition") and related documents submitted to the District by letter of Bruce Sellers dated July 12, 2019. Subject to the conditions stated below, we have determined that the petition meets the legal requirements of Minnesota Statutes Chapters 103D and 103E.

1. The petition conforms to the requirements for "Improvement of a drainage system" listed in Minnesota Statutes section 103E.215. Section 103D.625, subdivision 4 of Minnesota Statutes requires that improvements of existing drainage systems located within a watershed district be initiated by filing a petition with the managers in the watershed district and that the improvement proceedings conform to Minnesota Statutes Chapter 103E. Based on the map prepared by ISG of Judicial Ditch No. 36 ("JD 36") and attached to the petition, JD 36 appears to be wholly located within the boundaries of Heron Lake Watershed District ("District"). Therefore, based on § 103D.625, the District has jurisdiction over the proposed improvement and the petition is properly before the board of managers.
2. The petition and supporting materials satisfy the signature requirements of Minn. Stat. § 103E.215, subd. 4(a), namely that: the petition is signed by: (1) at least 26% of the owners of the property affected by the proposed improvements; (2) at least 26% of the owners of the property that the proposed improvement passes over; (3) the owners of at least 26% of the property area affected by the proposed improvement; and (4) the owners of at least 26% of the property area that the proposed improvement passes over. The petition meets the statutory signature requirement if any one of these four criteria is met.
3. The petition satisfies the requirements of Minn. Stat. § 103E.215, subd. 4(b) in that it was filed with the Jackson County Auditor on July 15, 2019, and the County Auditor certified on July 15, 2019 that the petitioners are the owners of record for tracts of land passed over by the improvement project for taxes payable 2019.

4. The petition satisfies the requirements of Minn. Stat. § 103E.215, subd. 4(c)(1) in designating the drainage system proposed to be improved by number as “Jackson County Judicial Ditch No. 36.”
5. The petition satisfies the requirements of Minn. Stat. § 103E.215, subd.4(c)(2) in stating that “the existing system has insufficient capacity or require[s] enlarging to furnish sufficient capacity or a better outlet.”
6. The requirements of Minn. Stat. § 103E.215, subd. 4(c)(3) do not apply because the petition does not propose any extensions of the drainage system.
7. The petition and supporting documents satisfy the requirements of Minn. Stat. § 103E.215, subd. 4(c)(4) in that it describes the improvement, including the names and addresses of owners of the 40-acre tracts or government lots and property that the proposed improvement passes over.
8. The petition satisfies the requirements of Minn. Stat. § 103E.215, subd. 4(c)(5) by stating that the proposed improvement “will benefit and be useful to the public and will promote the public health.”
9. The petition satisfies the requirements of Minn. Stat. § 103E.215, subd. 4(c)(6) with the statement that “Petitioners further acknowledge that if the proposed Improvement Project is dismissed or a contract is not awarded that it is [they are] liable to the Drainage Authority for all of the costs incurred including engineering, legal and miscellaneous fees and expenses in relation to this Petition as outlined under Minnesota States 103E.”

Based upon the foregoing, we recommend that the Board of Managers, at the next scheduled meeting, (i) review the petition and determine that a legally sufficient and proper petition has been filed with the watershed district in this matter; and (ii) formally accept the petition and, by appropriate order, appoint an Engineer and request preparation of a preliminary engineering survey and report pursuant to Minn. Stat. § 103E.241, subd. 1. Additionally, upon acceptance of the petition, a copy of the petition should be forwarded to Sherry E. Haley, the Jackson County Attorney, for informational purposes.

The petitioners retained the engineer Chuck Brandel of the firm ISG to prepare a preliminary review and feasibility study for the proposed project and have requested that Mr. Brandel and ISG be appointed as project engineer. Managers should take into consideration the resultant cost-savings to the project of appointing Mr. Brandel and ISG. The petition also requests that the cost of separable maintenance on the proposed improvement be calculated pursuant to Minn. Stat. 103E.215, subd. 6, a requirement that the managers should include in the order requiring preparation of a preliminary engineering survey and report.

This opinion as to legal sufficiency is based on the petition and supporting documents alone and does not take into consideration the following about which we recommend you make inquiry:

- A. **Proposed project located within watershed boundary.** This opinion is subject to verification that Judicial Ditch No. 36, Jackson County, Minnesota, is physically located entirely within the Heron Lake Watershed District.
- B. **Public Waters Permit.** This opinion is subject to a determination as to whether or not the proposed project will affect public waters requiring a permit from the Department of Natural Resources pursuant to Minn. Stat. Minn. Stat. 103E.011, subd. 11.

This opinion is subject to the rights or claims of any persons or party who may be in possession of any portion of the property affected by the proposed project and not identified in said petition.

This legal opinion is addressed to the Board of Managers of the Heron Lake Watershed District alone, and no representations are made to third parties who may obtain a copy of this opinion.

Please do not hesitate to be in touch with any questions.

Sincerely,



Louis N. Smith

cc: Jan Voit, Administrator
Bruce Sellers
Chuck Brandel