

## HISTORICAL REVIEW MEMORANDUM

**DATE:** June 4, 2019  
**TO:** Jan Voit, Heron Lake Watershed District Administrator  
**CC:** Dave Macek, Jackson County Ditch Inspector  
**FROM:** Chuck Brandel, PE – I+S Group  
**SUBJECT:** Heron Lake Watershed District Project 2

### HISTORY

The Order Establishing Ditch for Project 2 was approved by the Board of the Heron Lake Watershed District (HLWD) (previously known as the Middles Des Moines Watershed District) on November 17, 1973.

Pursuant to Minn.Stat. § 103D.625, the Board of Managers of the HLWD is the drainage authority for HLWD Project 2.

Benefits for HLWD Project 2 were determined concurrent with establishment in 1973, prior to the initiation of modern, intensive farming and drainage practices within the HLWD.

The 1973 benefits roll reflects the benefitted properties, benefitted areas, and benefit values as determined by viewers based on assumptions regarding the future use and drainage of said properties prevailing at that time.

Since the 1973 establishment of HLWD Project 2, the original determination of benefits and damages, land uses and drainage practices have changed resulting in the acceleration of and increase to the flow of water within the drainage system changing the nature and value of benefits accruing to lands from construction of HLWD Project 2.

Since the 1973 determination of benefits and damages, land values have changed significantly within the benefitted area of HLWD Project 2 and do not reflect reasonable present day land values.

On October 2, 2015, the Jackson County Commissioners ordered a redetermination of benefits for HLWD Project 2. It was later determined that Jackson County is not the drainage authority for this ditch system, rather the HLWD is the drainage authority for the ditch system.

Based upon the foregoing, the HLWD found that the conditions required for the initiation of a redetermination of benefits as set forth in Minn.Stat. § 103E.351, Subd. 1, exist and that a redetermination of benefits was warranted.

On March 20, 2017, the HLWD adopted findings and ordered the initiation of a redetermination of benefits and damages for HLWD Project 2. Pursuant to Minn.Stat. § 103E.351, Ron Ringquist, Dan Ruby, Chuck Bowers, Tom Mahoney, and Greg Tusa were appointed as viewers.

The viewers completed their report on April 5, 2017, which included a benefits and damages statement for all property affected by the drainage system and filed their report with the drainage authority.

On June 27, 2017, the HLWD adopted the Findings and Order Approving the Redetermination of Benefits, Acquiring Grass Buffer, Confirming Damages, and Directing Payment.

Since the proceedings for the Redetermination of Benefits, the Jackson County Ditch Inspector was contacted to repair tile outlets. The location was not shown as being part of the ditch system on the HLWD Project 2 maps. The landowner informed the Jackson County Ditch Inspector that these were private tile that were taken over by the ditch system when the project was built.

The original viewers report shows tile in NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  and NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  of Section 12 and NE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , and SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  of Section 11 as "tile take-over". However, no records exist that describe the alignment, dimensions, profile and/or terminus of these lines.

### **RECOMMENDATION**

ISG has reviewed the documentation on HLWD Project 2. Based on this, the records for the existing grades, profiles, alignments, and other design data are not sufficient to determine the legal grade and capacity of this system for portions of the tile system. There are portions of the open ditch that have records and those can be incorporated into the report. Per Minn.Stat. § 103E.101, ISG recommends a Reestablishment of Records for HLWD Project 2. This will include a survey, soil borings (if necessary), exploratory excavations, and updated drawings to be utilized for future maintenance. The statute below explains the details for this work. Please review and let us know if you have any questions or comments.

(a) If, after thorough investigation of drainage system records, a drainage authority finds that records establishing the alignment, cross-section, profile, or right-of-way of a drainage system that it administers are lost, destroyed, or otherwise incomplete, it may, by order, reestablish records defining the alignment; cross-section; profile; hydraulic structure locations, materials, dimensions, and elevations; or right-of-way of the drainage system as originally constructed or subsequently improved in accordance with this chapter. The procedure for reestablishing drainage system records must involve, at a minimum, investigation and a report of findings by a professional engineer licensed in Minnesota supported by existing records and evidence, including, but not limited to, applicable aerial photographs, soil borings or test pits, culvert dimensions and invert elevations, and bridge design records. The existing and reestablished records together must define the alignment; cross-section; profile; hydraulic structure locations, materials, dimensions, and elevations; and right-of-way of the drainage system. Drainage system records reestablished under this subdivision do not interrupt prescriptive occupation.

(b) The description of a drainage system under this subdivision may be initiated by the drainage authority on its own motion or by any party affected by the drainage system filing a petition. If the system is under the jurisdiction of a county board, the petition must be filed with the auditor. If the system is under the jurisdiction of a joint county drainage authority, the petition must be filed with the auditor of the county with the largest area of property in the drainage system. If the system is under the jurisdiction of a watershed district board, the petition must be filed with the secretary.

(c) When a drainage authority directs by resolution or when a petition is filed under this subdivision, the drainage authority, in consultation with the auditor or secretary, shall set a time and location for a hearing after the engineer's report is complete. The auditor or secretary shall give notice of the hearing by mail to the commissioner of natural resources, the executive director of the Board of Water and Soil Resources, the petitioner or petitioners, and all property owners benefited or damaged by the drainage system and shall give notice to other interested parties either in a newspaper of general circulation in the drainage system area or by publication on a Web site of the drainage authority.

(d) Drainage system records reestablished under this subdivision constitute official drainage system records. A finding of drainage system right-of-way in the applicable order is a defense to a trespass claim



and shall be given due weight in any subsequent court proceeding to establish the existence or nature of a property encumbrance.

Sincerely

A handwritten signature in black ink that reads "Chuck T. Brandel".

Chuck Brandel, PE  
Vice President

