Conduct and Order of the Preliminary Hearing

**For the Proposed Improvement**

**of Jackson County JD #30 Branch A-1**

1. **Call to Order**

*The Heron Lake Watershed District (HLWD) President will call the meeting to order at 7:00 p.m.*

*The HLWD President will:* welcome attendees and make the following introductions: HLWD managers, staff, and attorney; petitioner’s attorney, Department of Natural Resources (DNR) staff (if present), and engineer.

*The President of the HLWD will read the following opening remarks.*

On October 10, 2014 a petition for the proposed improvement of Jackson County Judicial Ditch #30 Branch A-1 was presented to the Board of Managers (Board) of the HLWD. The petition was reviewed by HLWD Legal Counsel, Mike Tow and approved by the Board on October 21, 2014. 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 on March 16, 2015. An *Order and Notice of Hearing for Preliminary Hearing* was issued on April 21, 2015.

The purpose of tonight’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.

1. **Determine the Sufficiency of the Petition**

*The HLWD President will read the following.*

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

1. **Determine Sufficiency of Bond**

*The HLWD President will read the following.*

On October 10, 2014, the petitioners submitted a cost bond of $10,000.00. On January 16, 2015 a bond rider of $30,000 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.

1. **Read DNR Commissioner’s Report**

*The HLWD President will ask the District Administrator to read the following.*

On April 9, 2015, Jim Sehl, DNR, provided comments on the preliminary engineer’s report.

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

*The HLWD President will read the following.*

The Project Engineer, Chuck Brandel, I & S Group, will give a presentation explaining the engineer’s preliminary report.

*The HLWD President will read the following.*

The Petitioners’ attorney, Bruce Sellers, petitioner’s attorney, will make comments regarding the proposed project.

*The HLWD President will read the following.*

Testimony will now be taken from petitioners or objectors to the petition.

* Speakers must identify themselves and state the nature of their interest.
* Each person will be given at least one opportunity to speak.

*The HLWD President will read the following.*

The hearing is now closed to public comment. The Board will review and consider 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.

1. **Action by the Board**

*The Board will now proceed by motion and vote on each proposed finding until the findings are complete, whereupon the order relating to the petition will be established by motion and vote.*

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

1. Based upon the evidence, the Board finds that the private and public benefits (will or will not) 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 (increased, decreased, or unaffected) 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, decreased, or unchanged) 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, decreased, or insignificantly affected);
5. Based upon the evidence, the Board finds that there are (no) viable alternative measures to drain the waters in the project area, (nor/or) that there are feasible alternative measures to conserve, allocate, and use the waters in the project area, including storage and retention of drainage waters; (to wit: if there are viable alternatives list them here);
6. Based upon the evidence, the Board finds that there is a (positive, negative, or insignificant) effect on water quality of constructing the proposed drainage project;
7. Based upon the evidence, the Board finds that there is a (positive, negative, or 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 (improved, decreased, or unaffected); and
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, negative, or insignificant).

# Determination of public utility, benefit, or welfare

Based upon the evidence, the Board finds that the proposed drainage project (will be/will not be) of public utility, benefit, or welfare in that it (will/will not) protect agricultural lands from overflow, and (will/will not) reclaim or render suitable for cultivation agricultural lands which are normally wet and needing drainage.

# Adequacy of Outlet

Based upon the evidence, the Board finds that the outlet for the proposed drainage project (is/is not) adequate to sustain the flow of water that is anticipated by the improvement.

## Proposed Finding for Continued Proceedings

Based upon the evidence, the Board finds that the proposal as stated in the petition, (or as modified and recommended by the engineer), 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.

In the detailed survey, the engineer should address the following concerns raised by the DNR:

* Evaluation of the proposed project to ensure it is consistent with the Priority Concerns identified in the Jackson County Local Water Management Plan,
* Landowners in the project area should be encouraged to consider the use of controlled drainage;
* Inclusion of water retention within the watershed including wetland restoration/creation and water storage; and
* A discussion on what Best Management Practices will be implemented to improve the water quality of South Heron Lake.

Based upon the findings, the Board’s order directing the engineer to proceed with a detailed survey and appointing viewers shall issue forthwith.

# Proposed Finding Dismissing Project

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

Based upon the evidence, the Board finds that the proposal as stated in the petition is not feasible; AND/OR that the adverse environmental impact is greater than the public benefit and utility, and the engineer has not reported an alternate plan to make the proposed project feasible and acceptable; AND/OR the proposed drainage project is not of public benefit or utility; AND/OR that the outlet is not adequate; therefore it is appropriate for the Board to issue its order dismissing the petition and the proceedings thereon.

OR

Based upon the findings, the Board’s order dismissing the petition and the proceedings thereon shall issue forthwith.

The HLWD President will state that the hearing is now complete and will entertain a motion to adjourn.