

STATE OF MINNESOTA  
JOINT DRAINAGE AUTHORITY OF JACKSON AND NOBLES COUNTIES  
SEATED AS DRAINAGE AUTHORITY UNDER STATUTES CHAPTER 103E  
FOR THE IMPROVEMENT OF JACKSON AND NOBLES COUNTIES JUDICIAL DITCH 13 (PHASE 2)

The matter of the petition for the improvement of Jackson and Nobles Counties Judicial Ditch 13 (Phase 2)

**FINDINGS AND FINAL ORDER:  
ESTABLISHING DRAINAGE PROJECT;  
ADOPTING AND CONFIRMING THE  
VIEWERS' REPORT OF  
IMPROVEMENT BENEFITS AND  
DAMAGES; AND DIRECTING  
CONSTRUCTION OF THE PROJECT**

The Joint Drainage Authority Board of Commissioners of Jackson and Nobles Counties, sitting as Drainage Authority for the improvement of Jackson and Nobles Counties Judicial Ditch 13 met at 10:00 a.m. on June 23, 2023, for final hearing on the proposed improvement. The hearing was held according to Minnesota Statutes, section 103E.335. After considering facts in the proceedings and required reports, Commissioner Paplow moved, seconded by Commissioner Eigenberg for adoption of the following:

**Findings:**

1. On August 3, 2021, the Joint Drainage Authority of Jackson and Nobles Counties (Drainage Authority) accepted the petition for the improvement of Jackson and Nobles Counties Judicial Ditch 13 (JD 13).
2. The petition was properly filed with the Board pursuant to Minnesota Statutes, section 103E.215.
3. The petition included a request that the Board consider separable maintenance as part of the proposed improvement.
4. The Board and its attorney reviewed the petition and bond to verify compliance with Statutes chapter 103E. The Board found that the petition met the requirements of section 103E.215 and that the bond met the requirements of section 103E.202.
5. The Board appointed the engineering firm of ISG (engineer Jacob Rischmiller, P.E.), pursuant to section 103E.241, to perform the duties required of the project engineer.
6. After filing its oath and bond, the engineer prepared and filed a preliminary survey report (preliminary engineer's report) with the Board.

7. The Board noticed and held a preliminary hearing pursuant to statutes section 103E.261, at which hearing the Board reviewed a DNR preliminary advisory report, received public comment on the preliminary survey report, adopted findings and issued a Preliminary Hearing Order.
8. At the preliminary hearing, the Board:
  - a. Directed the engineer to make a detailed survey with plans and specifications for the proposed drainage project and submit a detailed survey report (final engineer's report (FER)).
  - b. Directed the engineer to address comments of the DNR commissioner, and evaluate whether changes to the proposed project are feasible to address concerns raised by the commissioner. If feasible, the engineer was directed to include changes in the final project plans.
  - c. Directed the engineer to continue to work through the processes contained in statutes section 103E.015 to ensure that environmental, land use, and multipurpose water management criteria are considered for inclusion in final project plans and the engineer include the options 2 and 3 proposals in the final design.
  - d. Directed the engineer to continue to coordinate with the soil and water conservation district, county and USDA planning authorities about potential external sources of funding and technical assistance for environmental, land use, and multipurpose water management features or alternatives.
  - e. Directed the engineer to request additional information about potential funding or technical assistance for environmental, land use, and multipurpose water management features or alternatives from the executive director of the Board of Water and Soil Resources.
9. As part of its preliminary hearing order, the Board appointed viewers to perform the determination of improvement benefits and damages as well as an update to the benefits roll to reflect the improvement and other changes to drainage benefits within the watershed of the drainage system.
10. The engineer filed its final engineer's report with the Board. Concurrent with the filing, on or about April 25, 2023, the engineer provided a copy of the final engineer's report to the Commissioner of Natural Resources, through her designated hydrologist and regional environmental assessment ecologist by electronic correspondence, and by email to the designated email address for the DNR related to Region 4.
11. The engineer considered the effects of the proposed improvement on water quality; the effects of the proposed improvement on fish and wildlife resources; the effects of the proposed improvement on shallow groundwater availability, distribution, and use; and the overall environmental impact of the proposed improvement. Based on the engineer's analysis, the comments presented at the final hearing and the Board's own judgment, the

Board finds that the proposed improvement will not create any negative impact on water quality; fish and wildlife; or shallow groundwater.

12. The Commissioner of Natural Resources, through her designee, Tom Kresko, DNR Southern Region, EWR South District Manager, provided the DNR's final advisory report dated May 27, 2023. The final advisory report and the comments therein were read during the final hearing.
13. The engineer addressed the DNR comments during the final hearing and has provided a plan for the improvement that incorporates all feasible recommendations of the DNR within the Board's authority. At the hearing, the Board and engineer encouraged individual landowner practices consistent with the DNR comments.
14. The DNR commented that Branch A is proposed to be improved from an 8-inch to a 15-inch tile size and questions the increase in drainage capacity of only 0.42 in/day to 0.53 in/day. The Board finds that a change in slope in this portion of the system is the reason for the only slight increase in capacity. The existing slope is 1.80% while the proposed slope is 0.10%. By flattening the slope of the improvement, the system gains both depth and stability while providing recommended drainage efficiency.
15. The DNR commented that Branch S13 improvement exceeds the 0.50 in/day drainage efficiency. The Board considered a small sized tile for Branch S13 but finds that an 18-inch tile would not be sufficient as the drainage coefficient would be 0.33 in/day. Slope in this area cannot be changed to accommodate the desired design considerations.
16. The DNR states that it "disapproves of negative environmental impacts and recommends the project offset any impacts as recommended in this report" The Board finds that the DNR recommendations are directed at individual landowner practices. The Board encourages the use of alternative tillage practices on the landscape but also recognizes that the project cannot enforce such practices. Additional wetland restoration projects could be implemented aside from the improvement project as additional storage and wetlands may aid in environmental benefits. The original JD 13 (associated improvement) project incorporated storage throughout the system which was designed for this project. As these branches were originally part of that project, the storage that was incorporated into the associated improvements.
17. The viewers completed and filed their Viewers' Reports of improvement benefits along with a benefits and damages statement, as amended (improvement reports).
18. The Drainage Authority prepared Property Owners' Reports and mailed them to the owners of property identified in the Viewers' Reports.
19. Notice of the final hearing on the improvement was provided by publication, posting, and mail as required by statute.

20. Evidence of all actions in this matter, including preliminary orders, appointments, oaths, affidavits of mailing, publication and posting, as well as hearing agendas and presentation materials, are present in the record of proceedings and are incorporated herein by reference.
21. The viewers were made available to meet with individual property owners for the purpose of addressing individual concerns and to gain better information regarding the unique features, if any, of an individual property. The viewers' availability for individual meetings was contained in the notice of informal meeting mailed by the Drainage Authority staff.
22. The Drainage Authority met at 10:00 a.m. on June 23, 2023, for final hearing on the petition for improvement of JD 13.
23. The hearing was conducted according to Minnesota Statutes, section 103E.335.
24. The Drainage Authority's attorney presented the history of the proceedings through the final hearing and summarized the requirements of the drainage code and the decision standard for the Board.
25. At the final hearing, the engineer presented the final engineer's report and details of the project, including its analysis of the necessity and feasibility of the proposed improvement in light of the environmental and land use criteria contained in statute. The engineer further provided an explanation of the need for repair on portions of the system proposed to be improved and the allocation of separable maintenance costs on the system.
26. The engineer discussed the portion of its final report addressing water quality, rate and volume control features to be incorporated into the project.
27. The engineer performed hydraulic modeling of the drainage system watershed and outlet downstream of the drainage system to determine the impact of the project on the outlet of the system. Based on the modeling, the engineer concluded that the outlet was adequate to handle the proposed improvement.
28. The engineer evaluated the portion of JD 13 proposed to be improved in order to determine whether the application of separable maintenance was appropriate for the project. The engineer reviewed past maintenance records on the system, notes from the system survey and technical information related to the cost of repairing the in-place system. The engineer noted an increase in maintenance and repair requests on the system in recent years. Based on the engineer's review of the system, it prepared a list of maintenance requirements that will be avoided by the proposed improvement and estimated the costs of the avoided repairs for the Board's consideration. Based on the engineer's review and opinion of the need to repair portions of the existing system, the engineer recommended application of separable maintenance to the project.

29. The viewers appeared and presented amended improvement reports based on landowner meetings. The viewers further provided detail of the viewing process and the information used by the viewers to: (1) verify the boundary of the watershed of the ditch; (2) verify and confirm the existence of drainage benefit; (3) determine the economic benefit to lands deriving a drainage benefit from the proposed improvement; and (4) determine the value of damages for the grass buffer areas required in these proceedings. (Determination of improvement benefits and damages).
30. Several members of the public attended the hearing and asked questions or made comments regarding the project or determination of improvement benefits. The Board finds the comments and questions were adequately addressed by the appointed engineer, the Board's attorney and staff during the hearing.
31. The comments have been noted and preserved in the record of proceedings. The comments were not substantive in nature and were addressed during the proceedings as reflected in the minutes.

**Findings Specific to the Determination of Improvement Benefits and Damages:**

32. The viewers reviewed all property within the drainage area of the proposed improvement to determine the improvement benefits and damages.
33. To determine the economic benefit to lands deriving a drainage benefit from the proposed improvement, the viewers conducted a condition comparison comparing the current efficiency of the drainage system with the improvement efficiency. The viewers used this comparison in determining the increased market value of the properties receiving a direct drainage benefit.
34. Based on their detailed observations, the viewers determined benefit classifications, classified acres and assigned economic benefit on a per acre basis.
35. The viewers determined that some acres within the watershed of the proposed improvement, i.e. existing wetlands and non-contributing basins, received no benefit from the proposed improvement.
36. The viewers accounted for the efficiency of the drainage system, as designed, and the proximity of lands to and the elevations of lands above the ditch.
37. The viewers determined the amount of economic benefit to property benefited immediately by the proposed improvement, or for property for which the proposed improvement can become an outlet for drainage, make an outlet more accessible, or otherwise directly benefit the property.

38. The viewers determined economic benefits based on: (1) an increase in the current market value of the property as a result of constructing the project; (2) an increase in the potential for agricultural production as a result of constructing the project; or (3) an increased value of the property as a result of a potential different land use.
39. Within the watershed of the drainage system, the viewers determined outlet benefits on property that is responsible for increased drainage system maintenance, or increased drainage system capacity because the natural drainage on the property has been altered or modified to accelerate the drainage of water from the property.
40. Among other considerations, the viewers considered yield, crop prices, rental rates, land sales and conservation program payment rates in making their determination of value.
41. The viewers determined road benefits based on accelerated drainage from road surfaces and based on the reduced cost of road maintenance and construction because the ditch provides an outlet for drainage from the road and adjacent road ditches.
42. Temporary damages will be awarded for reduced crop productivity in the areas disturbed by the improvement.
43. The viewers prepared reports, as amended, which (1) describe how improvement benefits and damages were determined ("Benefits and Damages Statement") and identify and list the lands, land classes and value of benefits and damages by parcel and owner ("Viewers' Report"), which are attached and included as part of **Exhibit A** of these findings.

**Total Benefits and Damages for the Improvement:**

44. The viewers determined improvement benefits of \$134,983.80.
45. The viewers determined the total damages attributable to the improvement as temporary damages totaling \$159,258.47.

**Improvement Costs and Separable Maintenance:**

46. The engineer's estimate of the cost of construction of the improvement is \$719,085.00 (including damages as determined by the viewers).
47. The engineer's estimate of the portion of the cost of improvement attributable to separable maintenance is \$630,104.00 (88%).
48. The separable maintenance cost is less than the current total benefits on JD 13 based on the most recent redetermined benefits. Therefore, separable maintenance may be

applied to this project because the separable maintenance cost is less than the redetermined benefits of the system.

49. Subtracting separable maintenance costs (\$630,104) from the engineer's estimated cost of improvement (\$719,085) yields a total improvement cost of \$88,981 (12%).
50. The total improvement benefits (\$134,983.80) exceed the net improvement cost (\$88,981).

**Costs of Proceedings:**

51. The viewers kept an accurate account of all time engaged in viewing and examination; the nature and kind of work performed; the days each viewer was engaged in said work; the amount charged per day by each viewer; and every item of expense incurred by the viewers in said work.
52. The engineer kept an accurate account of all time engaged in analysis and preparation of reports and every item of expense incurred by the engineer in said work.
53. The Board's attorney kept an accurate account of all time engaged in assisting the Board in the proceedings and every item of expense incurred by the county attorney in said work. The petitioner's attorney has kept an accurate account of his assistance to the petitioner in these proceedings.
54. The viewers', engineer's, and attorneys' accounts of work have been filed with the Board.

**General Findings:**

55. The detailed survey report and Viewers' Reports have been made and other proceedings have been completed as required by Minnesota Statutes, chapter 103E.
56. All reports made or amended in these proceedings are complete and correct.
57. The damages and benefits for the improvement of JD 13 have been properly determined.
58. The improvement benefits are greater than the total, estimated improvement cost, including damages after applying separable maintenance.
59. The proposed improvement of JD 13 will be of public utility and benefit, and will promote the public health and welfare.
60. The proposed improvement of JD 13 is practicable.

61. As part of its review, the engineer presented alternatives to the improvement requested in the petition. The Board, having considered those alternatives as well as the local Water Plans and other relevant documents, finds that the proposed project is consistent with each of the plans and presents the best and least environmentally damaging practicable alternative considering private and public benefits; the costs of the proposed project; conservation, allocation, and use of drainage waters for agriculture, stream flow augmentation, or other beneficial uses; reduction of downstream peak flows and flooding; drainage system capacity requirements; reduction of erosion and sedimentation; and protection or improvement of water quality.
62. As part of the evaluation of alternatives, the Board considered whether any external programs or resources could be applied to an alternative in order to achieve additional benefits within the proposed improvement. After consideration, the Board finds, because of the nature of the proposed improvement and resources within the project area, that such alternatives are not feasible and that no external sources of funding or technical assistance are available to implement such alternatives if feasible as part of this project. The Board notes, however, that technical assistance funds and cost share funds are available to private landowners to implement many of the suggestions and alternatives identified by the engineer and commented on by the DNR in its advisory report. The Board encourages private landowners to consider implementing such practices.
63. The proposed improvement is consistent with the present and anticipated land use within the project area and is consistent with the local land use ordinances.
64. The proposed improvement will further the public health benefits created by the original ditch establishment and will improve the public health by reducing flood and other deleterious conditions within the drainage area of the project.
65. The engineer evaluated the current and potential flooding characteristics of property within project area and evaluated the downstream outlet of the proposed improvement. The evaluation included consideration of 2-, 5-, 10-, 25-, 50-, and 100-year run-off events. Based on the engineer's analysis, the Board finds that the proposed improvement will not increase flood potential and will provide relief from flood conditions within the project area. The Board further finds that the outlet is adequate for the proposed improvement.
66. Based on the record and findings herein, the Board finds that proper consideration of conservation of soil, water, wetlands, forests, wild animals, and related natural resources, and to other public interests affected, together with other material matters as provided by law has been made in determining that the proposed improvement will be of public utility, benefit and welfare.

Based on the foregoing findings, the Board enters the following:



**Order:**

- A. The Joint Drainage Authority Board of Commissioners of Jackson and Nobles Counties for the improvement of Jackson and Nobles Counties Judicial Ditch 13 hereby establishes and orders said improvement according to the final engineer’s report.
- B. Further, the Board directs the application of separable maintenance to pay 88% of the project costs, based on the final contract award.
- C. Further, the Board directs the engineer to prepare detailed plans and specifications and other necessary documents to allow for bidding on the project.
- D. Further, the Board directs its staff, in conjunction with the Jackson and Nobles County Auditors-Treasurers, to take all necessary actions for the construction of said improvement and authorizes staff to proceed as necessary, reserving to itself only those matters that the Board, by vote, must authorize.
- E. Upon completion of the project, the drainage system record shall be updated with the as-built alignment and conditions of the improvement.
- F. The viewers’ determination of improvement benefits and damages contained in the Viewers’ Report, as amended, and the benefits and damages statement (See **Exhibit A** of these findings) are hereby confirmed and adopted by the Drainage Authority.
- G. The viewers, engineer, and attorneys are allowed payment of their accounts of work.
- H. The Board reserves to itself, by future order, the decision to bond for the proposed improvement and to determine the term and other conditions of assessment for the proposed improvement and the separable maintenance portion of costs.

After discussion, the Board Chair called the question. The question was on the adoption of the foregoing findings and order and there were 5 yeas and 0 nays as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Absent</u>	<u>Abstain</u>
EIGENBERG (JACKSON CO.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MCCLURE (JACKSON CO.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NASBY (JACKSON CO.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
METZ (NOBLES CO.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PAPLOW (NOBLES CO.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Upon vote, the Chairman declared the motion passed.

Phil Nasby  
Phil Nasby, Chairman

Dated: 6/23, 2023

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I, Kevin Nordquist, the Jackson County Auditor-Treasurer, do hereby certify that I have compared the above Findings and Order with the original thereof as the same appears of record and on file with the Drainage Authority and find the same to be a true and correct transcript thereof. The above Findings and Order was filed with me, Jackson County Auditor-Treasurer, on June 23, 2023.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 23<sup>rd</sup> day of June, 2023.

Kevin Nordquist  
Kevin Nordquist  
Jackson County Auditor-Treasurer