

STATE OF MINNESOTA
JOINT DRAINAGE AUTHORITY OF JACKSON AND NOBLES COUNTIES
SEATED AS DRAINAGE AUTHORITY UNDER STATUTES CHAPTER 103E
FOR ESTABLISHMENT OF A LATERAL TO JACKSON AND NOBLES COUNTIES JUDICIAL DITCH 13
(PHASE 3)

The matter of the petition for establishment of a lateral to Jackson and Nobles Counties Judicial Ditch 13 (Phase 3)

**FINDINGS AND FINAL ORDER
DISMISSING PROCEEDINGS**

The Joint Drainage Authority Board of Commissioners of Jackson and Nobles Counties, sitting as Drainage Authority for Lateral S16B (a/k/a improvement) to Jackson and Nobles Counties Judicial Ditch 13, met at 10:00 a.m. on June 23, 2023, for final hearing on the proposed lateral. The hearing was held according to Minnesota Statutes, section 103E.335. After considering facts in the proceedings and required reports, Commissioner Metz moved, seconded by Commissioner McClure for adoption of the following:

Findings:

1. On June 13, 2022, the Joint Drainage Authority of Jackson and Nobles Counties (Drainage Authority) accepted the petition for Lateral S16B to Jackson and Nobles Counties Judicial Ditch 13 (JD 13).
2. The petition was properly filed with the Board pursuant to Minnesota Statutes, section 103E.225.
3. 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.225 and that the bond met the requirements of section 103E.202.
4. The Board appointed the engineering firm of ISG (engineer Chuck Brandel/Jacob Rischmiller, P.E.), pursuant to section 103E.241, to perform the duties required of the project engineer.
5. After filing its oath and bond, the engineer prepared and filed a preliminary survey report (preliminary engineer's report) with the Board.
6. The Board noticed and held a preliminary hearing on September 13, 2022, 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 dated September 20, 2023.

7. At the preliminary hearing, the Board found:
 - a. The project is recommended by the engineer and is feasible;
 - b. That there is a necessity for the proposed drainage project;
 - c. That the project will be of public benefit and promotes the public health, after considering the environment and land use criteria in Section 103E.015, subd. 1; and
 - d. That the Outlet for Judicial Ditch 13 is adequately sized for the additional water added to the system by the lateral addition.
8. The Board, further, appointed viewers in the proceedings to determine benefits and damages related to the improvement.
9. 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.
10. 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.
11. The viewers completed and filed their Viewers' Reports of improvement benefits along with a benefits and damages statement, as amended (improvement reports).
12. The Drainage Authority prepared Property Owners' Reports and mailed them to the owners of property identified in the Viewers' Reports.
13. Notice of the final hearing on the improvement was provided by publication, posting, and mail as required by statute.
14. 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.
15. The Drainage Authority met at 10:00 a.m. on June 23, 2023, for final hearing on the petition for improvement to JD 13 (Phase 3) by establishing and constructing new lateral S16B.
16. The hearing was conducted according to Minnesota Statutes, section 103E.335.

17. 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.
18. At the final hearing, the Board suspended consideration of the engineer's report and inquired directly of the viewers regarding project benefits. The viewers reported project benefits of \$5,173.50 based on a 15% efficiency of the system serving as an outlet for the proposed lateral.
19. The engineer offered an opinion of cost to construct the petitioned lateral of \$50,350.00.
20. The Board finds that project costs exceed benefits and that the proceedings must be dismissed on that basis.
21. The Board finds that the project is not feasible or practicable based on costs exceeding benefits.
22. The Board finds that the project does not promote the public benefit and welfare based on costs exceeding benefits.
23. 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.

Findings Specific to the Determination of Improvement Benefits and Damages:

24. The viewers reviewed all property within the drainage area of the proposed improvement to determine the improvement benefits and damages.
25. 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.
26. Based on their detailed observations, the viewers determined benefit classifications, classified acres and assigned economic benefit on a per acre basis.
27. 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.
28. Among other considerations, the viewers considered yield, crop prices, rental rates, land sales and conservation program payment rates in making their determination of value.

29. The viewers prepared and filed a report which is attached and included as **Exhibit A** to these findings.

Costs of Proceedings:

30. 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.
31. 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.
32. The Board's and petitioners' attorneys kept an accurate account of all time engaged in assisting the Board and petitioners in the proceedings and every item of expense incurred by the attorneys in said work.
33. The viewers', engineer's, and attorneys' accounts of work have been filed with the Board.

General Findings:

34. The detailed survey report and Viewers' Reports have been made and other proceedings have been completed as required by Minnesota Statutes, chapter 103E.
35. All reports made or amended in these proceedings are complete and correct.
36. The improvement benefits are not greater than the total, estimated improvement cost.
37. The proposed improvement of JD 13 will not be of public utility and benefit and will not promote the public health and welfare.
38. The proposed improvement of JD 13 is not practicable because the estimated improvement costs are greater than improvement benefits.
39. 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 dismisses the proceedings and Petition for Lateral to Judicial Ditch 13 as required by Minnesota Statutes, section 103E.341 as the benefits of the proposed project are less than the total costs.

- B. The viewers, engineer, and attorneys are allowed payment of their accounts of work.
- C. Petitioners shall be responsible for all costs in the proceedings which must be paid within 30 days of this order. If not paid, a demand shall be made upon petitioners' bond with any deficiency to be assessed to petitioners' property.

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: 06/29, 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 29, 2023.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 29th day of June, 2023.

Kevin Nordquist
Kevin Nordquist
Jackson County Auditor-Treasurer

