RESOLUTION NO. 2017-09

RICE CREEK WATERSHED DISTRICT BOARD OF MANAGERS
FINAL FINDINGS AND ORDER DIRECTING THE REPAIR OF BRANCH 2 OF ANOKA COUNTY DITCH 53-62 AND IMPLEMENTING WATER MANAGEMENT DISTRICT CHARGES

Manager Hagamen offered the following Resolution and moved its adoption, seconded by Manager Bradley:

FINDINGS

1. The Board of Managers of the Rice Creek Watershed District (Board), consistent with its Watershed Management Plan, sought concurrence from the Cities of Blaine, Lino Lakes, Lexington and Circle Pines to undertake the repair of ACD 53-62 using the additional authorities of Minnesota Statutes Section 103D.621, Subd. 4, which grants the Board authority to undertake proceedings related to the Drainage System in accordance with the Watershed Law (Minnesota Statutes Chapters 103B & D) rather than the Drainage Code (Minnesota Statutes Chapter 103E).

2. The Cities have given their concurrence.

3. Based on the municipal concurrence, the Board determined to proceed with the repair of Branch 2 of ACD 53-62 using alternative funding authorities under Minnesota Statutes Chapters 103B and 103D.

4. The engineer has provided, after consultation with the Board, an opinion of probable cost for the recommended repair alternative and a charge analysis with recommended allocation of costs under a water management district charge system which was established by amendment to the Board’s Watershed Management Plan.

5. The charge analysis recommends an allocation of costs between water management charges and ad valorem taxes. The recommended allocation, developed in consultation with the Board, takes into consideration past legal authorizations and policies of the Board related to drainage system maintenance; current policies as articulated in the District’s Watershed Management Plan; district-wide benefits of the ecological and floodplain management components of the repair alternative; and direct, localized benefit of restoring core drainage function and accommodating future stormwater demands.

6. By Resolution 2011-28, the Board initiated proceedings to consolidate ACDs 53 and 62 (into ACD 53-62 as a single system) and to correct the drainage system record of ACD 53-62, to include defining the alignment; cross-section; profile; hydraulic structure locations, materials, dimensions, and elevations; and right-of-way of the drainage system as originally constructed or subsequently improved.
7. By Resolution 2012-06, after duly noticed public hearing, the Board adopted a resolution consolidating ACDs 53 and 62 and correcting the drainage system record for ACD 53-62.

8. By Resolution 2015-33, the Board adopted findings and an order directing proceedings for the repair of Branch 2 of ACD 53-62.

9. By Resolution 2017-01, the Board (1) accepted the Engineer's final Repair Report for the repair of ACD 53-62; (2) concurred with the Engineer's Recommended Repair Alternative; (3) accepted the charge analysis and recommended allocation of costs for the repair of Branch 2 of ACD 53-62; (4) directed further proceedings for the repair of Branch 2 of ACD 53-62 to occur utilizing the additional authorities provided in Minnesota Statutes Section 103D.621 Subd. 4; and (5) set a hearing for 9:00 a.m., Wednesday, March 8, 2017 in the Shoreview City Council Chambers, 4600 North Victoria Street, Shoreview, Minnesota, to consider both the repair of Branch 2 of ACD 53-62 and the establishment of Water Management District Charges to pay a portion of the cost of the work.

10. Statutory notices throughout these proceedings, as required by Statutes Chapters 103B, 103D and 103E, as well as notices required by local rule were provided and are contained within the record of proceedings maintained by the District. The Board provided notice of the hearing as required by statute. Evidence of the notice provided was reviewed at the hearing.

11. Evidence procedural actions in this matter, including resolutions, notices and affidavits is on file with the drainage authority and is incorporated into these findings by reference.

12. Prior to the hearing the Board received comments from the Corps of Engineers (Corps) and the Department of Natural Resources (DNR).

13. The Corps provided its concurrence that the work proposed constitutes maintenance and is not subject to Clean Water Act regulations.

14. The DNR provided comments related to the repair and has provided recommendations for the protection of threatened and endangered species and for containment of aquatic invasive species — such recommendations shall be incorporated by the engineer into the repair plans.

15. Also, prior to the hearing, the Board's staff received inquiries from landowners and from the Department of Transportation (MnDOT) regarding the proposed water management charges.

16. In one case, staff discovered a small error in the landowner charge calculation. This error was corrected prior to the filing of the revised charge analysis memorandum.
17. Similarly, MnDOT identified in error in treating Right of Way as urban rather than highway/rural. This error was also corrected prior to the filing of the revised charge analysis memorandum.

18. The Board received no written comments at the hearing.

19. Oral comments were received at the hearing as follows:

   - Dotty McKinley appeared and asked for clarification of the water management charge that will be applied to her property. Ms. McKinley explained that she owns 53 acres of pasture land and asked if the charge will be $28 per acre as indicated in the engineer’s presentation. Also, Ms. McKinley asked whether this charge will, once again, be imposed on all properties within the ditch system. The Board confirmed Ms. McKinley’s understanding of her charge ($28 per acre) and also confirmed that the water management district charges for the work would be applied across all properties within the ACD 53-62 system just as they were for the repair of branch 1.

   - Mary Jo Truchon appeared and commented regarding her interest in the Blaine wetland park which is adjacent to the branch 2 repair area. She wanted to ensure that the repair was taking into consideration the function of the wetland park and the continuing restoration of exceptional natural resource values within the wetland restoration area. The Board responded that it is working closely with the City’s wetland consultant to ensure that the proposed repair occurs in a manner consistent with the wetland restoration and further informed Ms. Truchon that the repair will be beneficial to the wetland restoration by restoring lower water conditions which are necessary to target plant species for the restoration.

20. Following the public comment, the President closed the public comment portion of the hearing and invited manager discussion of the proposed repair, cost allocation and charges.

21. Following Board discussion, Manager Wagamon moved, seconded by Manager Bradley to direct staff to prepare findings and an order consistent with the proceedings, including responses to all comments received through the public comment process; that the draft findings and order be written to affect the repair of Branch 2 of ACD 53-62 according to the engineer’s recommendation and to establish water management district charges according to the revised charge analysis memorandum; and that the hearing be recessed hearing to the Board’s regular meeting on March 22, 2017, at 9:00 a.m., or by adjournment to an appropriate time on the Board’s agenda, at which meeting the Board will consider findings and an order for the proposed repair and establishment of water management district charges. The motion passed by unanimous vote of the managers.

22. Based on the project budget and implementation schedule for the repair of Branch 2 of ACD 53-62, the Board finds it appropriate to extend the collection of Water Management District Charges for the project over a period of three years in equal annual installments. Except as
otherwise indicated in this Resolution, the collection of Water Management District Charges over the three year period will not carry interest.

23. The Board determines that a portion of the Water Management District Charge to currently undeveloped property, subject to future development, shall be deferred according to the staff recommendation to defer the difference between the charge value to the property in a developed state and the undeveloped land charge.

24. The Engineer’s Recommended Repair Alternative, contained in the Repair Report, provides for the restoration of beneficial drainage within the drainage area of the system, minimizes adverse environmental impacts and creates environmental enhancements.

25. A repair, consistent with the Engineer’s Recommended Repair Alternative, will restore predictable drainage efficiency within the drainage area of the system to support current beneficial land uses and future stormwater management demands.

26. The Engineer’s Recommended Repair Alternative is consistent with the District’s Watershed Management Plan and represents the least environmentally damaging practicable alternative.

27. The Engineer’s Recommended Repair Alternative, contained in the Repair Report, is designed to occur within the area contemplated and included in the original proceedings to establish ACD 53-62 and, therefore, no additional right of way or access interests are necessary to perform the proposed repair.

28. The proposed repair of Branch 2 of ACD 53-62, according to the Engineer’s recommendation, will be conducive to public health, will promote the general welfare of the District and within the drainage area of the system, complies with the Watershed Management Plan, and otherwise complies with the requirements of state statute.

ORDER

A. The Board of Managers orders implementation of the repair of Branch 2 of ACD 53-62 consistent with the previously adopted engineer’s recommended repair alternative, and consistent with the capital improvement program contained in the District’s Watershed Management Plan.

B. The Board of Managers orders the allocation of costs for the repair of Branch 2 of ACD 53-62 in a manner consistent with the Staff’s recommendation as outlined in the Charge Analysis Memorandum prepared by Houston Engineering dated December 30, 2016 – Revised February 20, 2017.

C. The Board of Managers approves imposition of Water Management District Charges for the repair of Branch 2 of ACD 53-62 as defined in the amendments to the Watershed

D. The Board of Managers directs that initial Water Management District Charges imposed to pay the costs of repair directed in this proceeding be collected over a period of three years without interest.

E. The Board of Managers approves the deferral of charges and the recording of a notice of deferred charges.

F. The Board of Managers directs its administrator to coordinate and take all subsequent actions necessary for implementation of the repair in a manner consistent and compliant with existing law. The Board reserves to itself, however, all subsequent actions required by law to proceed upon Board approval.

G. The Board of Managers further directs its administrator to provide a copy of this Resolution, along with the comment and response matrix and minutes of the hearing, to those providing comments on the project.

H. The Board of Managers further authorizes expenditures for the repair of Branch 2 of ACD 53-62 and the collection of revenues consistent with this order.

The question was on the adoption of the Resolution and there were 4 yeas and 0 nays as follows:

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Upon vote, the Chair declared the Resolution passed.

Michael Bradley, Secretary

Dated: March 22, 2017
I, Michael Bradley, Secretary of the Rice Creek Watershed District, do hereby certify that I have compared the above Resolution with the original thereof as the same appears of record and on file with the District and find the same to be a true and correct transcript thereof.

IN TESTIMONY WHEREOF, I hereunto set my hand this 22nd day of March, 2017.

Michael Bradley, Secretary