RESOLUTION 2017-10

RICE CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

FINDINGS AND ORDER APPROVING PETITIONED ACTION; AUTHORIZING MODIFICATION OF DRAINAGE SYSTEM AND ABANDONING PORTIONS OF DRAINAGE SYSTEM

Manager Walter offered the following Resolution and moved its adoption, seconded by Manager Bradley.

FINDINGS

1. Marvin LaValle (LaValle), by and through his consultant, John Smyth of Stantec, petitioned the Board of Managers of the Rice Creek Watershed District (RCWD), Drainage Authority for the Anoka-Washington Judicial Ditch 3 system (JD 3), to impound waters on Branch 2 of JD 3, abandon a portion of Branch 3 of JD 3, re-align a portion of Branch 3 of JD 3 and encroach upon required right of way of the main channel of JD 3. The petitioned actions are for the beneficial purpose of restoring wetland areas adjacent to the ditch and development of a wetland bank.

2. By resolution 2016-36, the Board accepted the petition and appointed its engineer, Houston Engineering, Inc., to conduct review and analysis of the proposed action pursuant to statutes sections 103E.227 and 103E.806.


4. By resolution 2017-03, the Board received the engineer’s report and set a hearing for March 8, 2017.

5. The Board provided notice of the hearing as required by statute. Evidence of the notice provided was reviewed at the hearing.

6. 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.

7. The day of the hearing, written comments were provided by Ms. Alice Waller and the City of Hugo. The nature of the comment and the Board’s responses are indicated below (the Board’s response is indicated in italics following the individual comment).
Ms. Alice Waller indicated that she is opposed to the proposed action. She expressed her concern that impounding water will create problems for adjacent property owners because of the lateral movement of the water and noted Rice Lake and JD2 as an example.

The Board referred Ms. Waller's comment to its engineer for response. The engineer stated that the relative elevations of natural ground near and adjacent to the impoundment area, along with soil types and the anticipated subsurface flow of water near the impoundment area in the pre- and post-project conditions were all evaluated in its review of the proposed project. The engineer notes that the general flow of water is from southeast to northwest through the project site and from the lands adjacent to the impoundment area. The engineer notes that the combination of soils and elevation will prevent water from the impoundment area from traveling up-gradient in a manner that will cause interference with surface use of upland areas adjacent to the impoundment area.

The City of Hugo offered comments related to the proposed wetland bank application and the consistence of the proposed project with flood plain and land use regulations of the City and future plans of the City related to transportation and development. The City included with its comments substantial documentation related to review of the proposed wetland restoration and banking plan for both the Local Government Unit and the Corps of Engineers.

The role of the Board in this application is to evaluate whether the proposed actions – in this case realignment and partial abandonment of a portion of the drainage system and impoundment of drainage system waters – will be beneficial and will not impair the utility of the drainage system or deprive affected landowners of its benefit. Benefit can be evaluated in terms of public or private benefit. In any event, the decision of this Board does not eliminate the applicant's obligation to obtain other necessary approvals. Here, the engineer recommends and the Board concurs that the proposed action will be of benefit by creating wetland banking credits for multiple purposes; restoring wildlife habitat; improving water quality; and providing additional flood storage. Further the engineer recommends and the Board concurs that the proposed project will not impair the utility of the drainage system or deprive affected landowners of its benefit. It is not within the standard of review for this Board to determine the viability of the proposed wetland bank or to resolve the applicant's other regulatory approval requirements.
8. No members of the public commented at the public hearing. However, the applicant’s representative did appear and make comments regarding the proposed project.

9. At the close of public comment, Manager Waller moved, seconded by Manager Bradley to recess the 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. The motion passed by unanimous vote of the managers.

10. The Board finds that the partial abandonment of branch 3 of JD 3, as indicated in the petition and the engineer’s review will provide public and private benefit by creating wetland banking credits for multiple purposes; restoring wildlife habitat; improving water quality; and providing additional flood storage.

11. The Board finds that the partial abandonment of branch 3 of JD 3, as indicated in the petition and the engineer’s review is reasonable and that, as part of the overall project proposed by LaValle, the portion of JD 3 proposed to be abandoned will not be of public utility and benefit; and, further, that the partial abandonment will not deprive any landowner of the beneficial function of the drainage system.

12. The Board finds that the realignment of branch 3 of JD 3, as indicated in the petition and the engineer’s review is reasonable and that, as part of the overall project proposed by LaValle, the realignment is beneficial and will not impair the utility of the drainage system or deprive affected landowners of its benefit.

13. The Board finds that the impoundment of water on branch 2 of JD 3, as indicated in the petition and the engineer’s review is reasonable and that, as part of the overall project proposed by LaValle, the impoundment is beneficial and will not impair the utility of the drainage system or deprive affected landowners of its benefit.

14. The Board finds that the proposed encroachment on the right of way of the main channel of JD 3, as indicated in the petition and the engineer’s review is reasonable, subject to the conditions recommended by the engineer.

Therefore, the RCWD Board of Managers makes the following:

ORDER

A. The Board of Managers approves LaValle’s petition subject to the conditions set forth in the engineer’s report.
B. LaValle is required to transfer an easement over the realigned portion of branch 3 of JD 3 to the drainage system, for the benefit of the drainage system, as a condition of this approval.

C. The realignment of branch 3 of JD 3 requires a Public Waters Work Permit as a precondition to construction of the realignment as authorized herein.

D. LaValle is required to execute a Maintenance Declaration, in a format prescribed by the RCWD, providing for the maintenance of the modifications authorized herein as a precondition to construction of said modifications.

E. To the extent the modifications authorized herein require permits or approvals of other regulatory authorities, including the RCWD in its role as Watershed District, receipt of such permits or approvals is a precondition to construction of said modifications.

F. Once all contingencies are satisfied and the actions completed, the engineer is directed to prepare a record of the drainage system modifications authorized herein to be in filed in the drainage system record.

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

<table>
<thead>
<tr>
<th></th>
<th>Yea</th>
<th>Nay</th>
<th>Absent</th>
<th>Abstain</th>
</tr>
</thead>
<tbody>
<tr>
<td>WALLER</td>
<td>☑</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>HAAKE</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>BRADLEY</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
<td>☐</td>
</tr>
<tr>
<td>WAGAMON</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>PREINER</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

Upon vote, the President 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