COON CREEK WATERSHED DISTRICT
Request for Board Action

MEETING DATE: October 28, 2013
AGENDA NUMBER: 5
ITEM: Ditch 44-8 Impoundment Findings of Fact, Conclusions and Order

POLICY IMPACT: Policy
FISCAL IMPACT: Budgeted

REQUEST
1. Find that the proposed impoundment will be of a public or private benefit and not impair the utility of the drainage system or deprive the affected land owners of its benefit
2. Order the modification to the public drainage system as proposed
3. Authorize the project, identifying Anoka County as the party responsible for construction of the project (In this case acquisition of the easements)

BACKGROUND
On October 14 the Board held a public hearing on the petition received from Anoka County Highways to monument the existing partial blockage of Ditch 44-8 by the Koch Brothers Pipeline by establishing it as the control structure for an ‘impoundment’. The impoundment would allow Anoka County Highways to widen Lexington Avenue and move ditch 44-8 in a manner consistent with the drainage law, provided there is no impairment to the drainage utility to the benefited properties of ditch 44-8 or 44-7.

Several concerns were expressed by Tom Elwell who owns property on 44-8, 44-7 and the private lateral that Anoka County proposed to purchase easements on. A review of Elwell’s concerns at the hearing led staff to review the presentation and analysis for accuracy and clarity. The most obvious concerns are stated below.

ISSUES/CONECERNS
Obstruction: The District first became aware that the pipeline was higher than the approved elevation of ditch 44-8 approximately 5 years ago. A notice of obstruction was sent to Flint Hills Resources. Relocation and lowering of a pipeline (actually three pipelines) would be a very large and expensive proposition (Quotes and estimates of $7-10 million). Staff met with Flint Hills and Koch staff in the spring of 2011 to lay out a long range plan for lowering the pipelines. Reason, discussion and negotiations were unsuccessful.

It appeared that litigation would be the only way to resolve the obstruction issue. Estimates for litigation started at $30,000 to $50,000 with no assurance of victory given the time between installation of the pipeline and the declaration of an obstruction, and no...
complaints have been received regarding the ditch capacity. Litigation was not pursued at that time.

**Highway Requirements:** In late 2011 and into 2012 Anoka County Highways completed the design for the improvement of Lexington Avenue. The widening of Lexington required moving Ditch 44-8 to the east. With that proposal, compliance was an issue with the drainage law and assurance of beneficial functioning of the ditch. Review of the alternatives for both the road and the pipeline; the associated costs of both, and Flint Hills position that the County should pay for lowering the pipe was leading to potentially cancelling or substantially delaying a much needed project with a high public safety need.

**Design Alternatives:** During the review of design alternatives, CCWD noted that no complaints or record of flooding upstream from the pipeline had been received in the past 20 plus years. And that the complaints of flooding on ditch 44-7 had appeared to have been resolved with the 2005 cleaning of that ditch.

**Initial Modeling:** District staff suggested analyzing partially obstructed ditch 44-8 with the effective 12 inch culvert and the private ditch (which had been receiving some flow) for at least the past twenty years. Seeking alternatives for the Highway Department that would not interfere with the need for drainage on 44-8 and 44-7.

**Alternatives:** Anoka County Highway Department and the Coon Creek Watershed District reviewed and discussed the following alternatives:

1. Block the ditch and condemn the land affected by higher water
2. Block the ditch and reroute the water to ditch 44-7
3. Move the ditch, replicate the current 12” opening for higher flows and reroute flow to Ditch 44-7

Alternative 3 was the least cost and did not change the drainage conditions on 44-8 or 44-7 that have existed for the past 20 plus years. To ‘legitimize’ alternative 3, staff turned to the drainage law and the ‘Impoundment’ provision to monument the existing condition and drainage rights.

**“Impoundment”**: Staff believes, based on some of Elwell’s comments and concerns, that the name of the proceeding (Impoundment) created difficulty in communicating what is being proposed.

On several occasions, Elwell’s, as well as Knoll’s, comments and concerns appeared to stem from conclusions that:

1) A new structure was being constructed, and
2) That the new structure would be in the approved unobstructed channel to impound flow, thereby raising the base elevation of water in the ditch above the approved grade, and create a reservoir behind a structure and overtop its banks.
These are valid conclusions based on how the information was presented.

Clarification:
(1) The term “Impoundment” is the name of the section in the law. While it is correct to use the term legally, it creates a wrong image of something new that would raise water elevations.
(2) The “impoundment” of water due to the elevation of the pipeline has existed since the pipeline was installed.

Existing Culvert Size: At the meeting on October 14, staff believes that the fact that the existing culvert is crushed between two of the pipes in the pipeline, and functioning as a 12 inch culvert was not understood.

Clarification: The original culvert used and therefore, reported at the hearing, is a 36 inch culvert. However, that culvert is partially crushed and functions as a 12 inch culvert.

The Project: The project under the drainage law, is the designation (or recognition) of pipeline, where it crosses Ditch 44-8, as the structure creating an impoundment. Such recognition allows the realignment of Ditch 44-8 and thereby the widening of Lexington Avenue to occur.

Is the proposed impoundment of a public or private benefit? Yes.
Public Benefit: The recognition of the pipeline as a structure in an impoundment allows the realignment of Ditch 44-8 and thereby the widening of Lexington Avenue, a public safety project, to occur.
Private Benefit: We can find that there is no change in the private drainage benefit on either Ditch 44-8 or Ditch 44-7.

Not impair the utility of the drainage system or deprive the affected land owners of its benefit?

The District modeled both 44-8 and 44-7 under various precipitation events to induce a change in flooded area and/or duration of flooding and found no difference between the existing condition and the proposed condition.

RECOMMENDATION
Adopt the attached FINDINGS OF FACT, CONCLUSIONS AND ORDER
The above matter came for hearing before the Coon Creek Watershed District Board of Managers pursuant to Minnesota Statutes section 103E.227 (3)(b) (2013) on October 14, 2013 at 7:30 p.m. at the regular meeting of the Coon Creek Watershed District Board of Managers in the Bunker Hills Activity Center, 550 Bunker Boulevard, Andover, MN 55304.

The hearing was held upon the petition of Anoka County to impound water for beneficial use under Minnesota Statutes section 103E.227 (2013).

Based upon the record and proceedings in this matter the Coon Creek Watershed District Board of Managers makes the following:

**FINDINGS OF FACT**

1. The Coon Creek Watershed District (District) published the Notice of Hearing in this matter on the following dates in the following newspapers:

<table>
<thead>
<tr>
<th>Publication Date</th>
<th>Newspaper</th>
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<tbody>
<tr>
<td>October 4 &amp; 11, 2013</td>
<td>ABC News</td>
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</tbody>
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   The District also posted the Notice of Hearing on its website October 4 through October 14, 2013.

2. Pursuant to Minnesota Statutes sections 103E.227 (3)(b) and 103E.261 (1) (2013) the District on October 4, 2013 mailed the Notice of Hearing to the petitioner Anoka County and affected property owners and political subdivisions.

3. All interested parties who were present and desired to be heard were heard.

4. Anoka County Ditch No. 44-Branch 8 is part of the public drainage system lying entirely within Anoka County and the Coon Creek Watershed District. The District as the drainage authority has jurisdiction over this public drainage system.

5. On September 9, 2013 the District received a petition from Anoka County under Minnesota Statutes section 103E.227 (2013) to impound water for beneficial use.
within that part of County Ditch No. 44-Branch 8 located north of the intersection of Bunker Lake Boulevard and Lexington Avenue and south of the intersection of certain pipelines, as more particularly described in the attached Exhibit A (Impoundment Area).

6. The impoundment as proposed by Anoka County would reverse the flow of water from the Impoundment Area south within County Ditch No. 44-Branch 8 until it intersects with an existing private ditch running east and west. The water would then flow east until it reached County Ditch No. 44-Branch 7 and then flow north into Coon Creek as depicted in the attached Exhibit A. Water entering that part of County Ditch No. 44-Branch 8 located north of the pipelines would continue to flow north in Coon Creek.

7. Anoka County has agreed it will be responsible for the installation and construction costs of the proposed drainage system modification. To facilitate the impoundment of water within the Impoundment Area and reverse the flow of water as provided above, Anoka County will also acquire at its expense the necessary drainage easements over the following parcels as approved by the District, and convey the same to the District:

- P.I.N. 25-32-23-33-0001
- P.I.N. 25-32-23-34-0001
- P.I.N. 36-32-23-21-0004
- P.I.N. 36-32-23-22-0010
- P.I.N. 36-32-23-22-0002

8. Anoka County also agrees at its cost to construct and maintain an equalizer culvert at the intersection of County Ditch No. 44-Branch 8 and the pipelines to provide an outlet for water to flow north in the event of a backup of water within the Impoundment Area.

9. Pursuant to Minnesota Statutes section 103E.227 (3)(a) (2013) the District directed the District Engineer Wenck Associates, Inc. to investigate the effect of the proposed impoundment and drainage system modification, and prepare a report on the findings.

10. The District Engineer has completed his work and filed his report.

11. The District Engineer reported that the proposed impoundment project would result in less than 0.1’ increases in the 100-year elevation and in approximately the same drawdown time for the 2, 10 and 25-year storm frequencies. The District Engineer concluded that the proposed project will not impair the function of the drainage system or increase water elevations that will deprive land owners of the drainage system’s benefit or use of their land.
CONCLUSIONS AND ORDER

1. Based upon the hearing, Engineer’s Report and other evidence presented, the impoundment project as proposed by petitioner Anoka County will be of a public or private benefit, and will not impair the utility of the drainage system or deprive affected land owners of its benefit.

2. The drainage system shall be modified as set forth in Anoka County’s plans, as approved by the District.

3. Before installing or constructing the impoundment project petitioner Anoka County shall obtain all required permits and at its cost acquire all necessary drainage easements. Anoka County will subsequently convey these easements to the Coon Creek Watershed District.

4. Petitioner Anoka County shall be responsible for the construction and installation of the drainage system modification and associated project costs and easement acquisitions.

IT IS SO ORDERED.

Dated: October 28, 2013

COON CREEK WATERSHED
DISTRICT
BOARD OF MANAGERS

____________________________________
Its President