COON CREEK WATERSHED DISTRICT
Request for Board Action

MEETING DATE: September 9, 2013
AGENDA NUMBER: 9
ITEM: Petition for the Impoundment of County Ditch 44-8

POLICY IMPACT: Policy
FISCAL IMPACT: Non-Budgeted

REQUEST
Adopt resolution receiving petition to create an impoundment on Ditch 44-8

BACKGROUND
As part of the Lexington Avenue Improvement project and the widening of Lexington Avenue, the Anoka County Highway Department encountered a pipeline owned by Minnesota Pipeline that was above the approved elevation for Ditch 44-8 and thereby was an obstruction. Both ACHD and CCWD staff met with the pipeline company to discuss lowering the pipeline. A second, less expensive option for everyone, was to create an impoundment under the drainage law and then make a portion of the adjacent private ditch system, which has been serving as the drainage outlet, the outlet for ditch 44-8.

Anoka County Highways took the lead on this effort after staff review and coaching in how to proceed. Michelle Ulrich drafted a memorandum (attached) on the process.

ISSUES/CONCERNS
Current Situation: Currently there is a culvert within County Ditch No. 44-Branch 8 which allows the flow of water north through the intersection of the pipelines and the Ditch. The Highway Project would require the installation of a new culvert to perpetuate for the flow of water north. Because of the location and elevation of the pipelines it would be very expensive to install such a culvert.

Preferred Option: In lieu of constructing a new culvert under the pipelines as part of the Highway Project, the County is proposing 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 the pipelines as indicated in the attached Exhibit B (“Impoundment Area”).

The impoundment of the water 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 Exhibit B. Water entering that part of County Ditch No. 44-Branch 8 located north of the pipelines would continue to flow north into Coon Creek.
**County Action:** To facilitate the impoundment of water within the Impoundment Area and reverse the flow of the water as provided above, the County would acquire at the County’s expense, the necessary drainage easements over five parcels as approved by the District, and convey them to the District.

The County also agrees 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.

**County Request:** the County requests that the Board of Managers of the Coon Creek Watershed District appoint an engineer to investigate the effect of the proposed impoundment and to make a report of the findings thereon, and that thereupon such further proceedings shall be taken as may be necessary or expedient for the impoundment of the water within County Ditch No. 44-Branch 8 and the redirection of the flow of water over newly acquired easements, all as provided for herein.

**Process:** Impoundment Proceedings are found in Minn. Stat. § 103E.227 (2012)

1. **Petition.** Anoka County is authorized to petition the District “to impound, reroute, or divert drainage system waters.” The Impoundment Petition must:

   (1) Contain the location of the installation, concept plans for the proposed project, and a map that identifies the areas likely to be affected by the project.

   (2) Identify the source of funds to be used to secure the necessary land rights and to construct the project. Minn. Stat. § 103E.227 (1)(c),(d) (2012).

   The Petition must be filed with the District’s Secretary. The Secretary must then make a copy of the petition available to the public. (The petition could be posted on the District’s web site.) Minn. Stat. § 103E.227 (1)(b) (2012).

2. **Board Resolution that addresses**
   1. Accept the Petition for Impoundment;
   2. Make a copy of the Petition and supporting documentation available to the public; and
   3. Direct the District Engineer to investigate the effect of the proposed installation and file a report of findings.

3. **Hearing.** After the Engineer has filed his report, the Board of Managers by order must set a date and time for a public hearing on the Petition.

At least ten days before the hearing the District must give notice by mail to

1. Anoka County,
2. Owners of property (X5),
3. City of Ham Lake
give published notice of the hearing once a week for two successive weeks in its papers and on its website.

At the hearing the Board of Managers will consider
- the Engineer’s report and
- other evidence presented on the matter.

If upon hearing the Board of Managers determines that the impoundment project “will be of a public or private benefit and that it will not impair the utility of the drainage system or deprive affected land owners of its benefit,” the Board of Managers shall make an order modifying the drainage system as proposed and authorizing the project. The Board of Manager’s order must also identify the parties responsible for construction, operation and maintenance of the drainage system modification (here Anoka County).

Permits and Flowage Easements. Before installing or constructing the impoundment project the County must obtain all required permits and all necessary rights-of-way and flowage easements from land lowers affected by the project. Minn. Stat. § 103E.227 (4) (2012). The petitioner must also acquire a public works permit or a water use permit from the Minnesota Commissioner of Natural Resources if required under chapter 103G. Minn. Stat. § 103E.227 (1)(e) (2012).

**TIMELINE OPTIONS**
Engineer’s Report September 23, 2013
Hearing October 14, 2013

**RECOMMENDATION**
Accept Anoka County’s petition by adopting the following resolution
RESOLUTION ACCEPTING PETITION FOR IMPOUNDMENT PROCEEDING FOR ANOKA COUNTY DITCH NO. 44-BRANCH 8

WHEREAS, on September 9, 2013 the Coon Creek Watershed District (District) received a petition from Anoka County for an impoundment proceeding to impound water within a part of County Ditch No. 44-Branch 8 as more particularly described in the attached Exhibit A;

WHEREAS, District legal counsel have review the Anoka County petition and concluded that it is sufficient to initiate impoundment proceedings pursuant to Minnesota Statutes section 103E.227 (2012), and can be accepted for such purpose by the District;

THEREFORE BE IT RESOLVED that the Coon Creek Watershed District Board of Managers accepts the petition for an impoundment proceeding from Anoka County and directs the Secretary of the Coon Creek Watershed District Board of Managers to make a copy of the petition and supporting documentation available to the public;

BE IT FURTHER RESOLVED that the Coon Creek Watershed District Board of Managers appoints the District Engineer to investigate the effect of the proposed impoundment and file a report of findings;

BE IT FURTHER RESOLVED that upon the Engineer’s filing its report of findings, the Coon Creek Watershed District Board of Managers will set a date for a public hearing on the petition, direct the notice for hearing and further proceed in accordance with Minnesota Statutes section 103E.227 (2012).
STATE OF MINNESOTA

COUNTY OF ANOKA

In the Matter of:
Anoka County Ditch Nos. 44-Branch 8
and 44-Branch 7

PETITION FOR IMPOUNDMENT

TO: The Honorable Board of Managers of the Coon Creek Watershed District
(“District”):

The County of Anoka, a political subdivision of the State of Minnesota (“County”) respectfully states and alleges as follows:

1. Anoka County Ditch Nos. 44-Branch 8 and 44-Branch 7 are part of a public drainage system lying entirely within Anoka County and the Coon Creek Watershed District. By order of the Anoka County Board of Commissioners, jurisdiction over the drainage system was transferred to the District pursuant to Minn. Stat. § 103D.625, and the District is now the drainage authority with respect to this drainage system.

2. The County, as part of Anoka County Highway Project No. 02-617-18, is currently in the process of constructing improvements to Lexington Avenue from approximately 2,200 feet south of its intersection with CSAH 14 in the city of Blaine to a point northerly thereof which is approximately 1,600 feet north of its intersection with CSAH 116 in the city of Ham Lake (“Highway Project”).

3. Currently water flows north in County Ditch No. 44-Branch 8 until it intersects with Coon Creek, as depicted in Exhibit A. Minnesota Pipeline has three pipelines within its own existing easement that intersect County Ditch No. 44-Branch 8, which are located approximately 975 feet north of the intersection of Bunker Lake Boulevard and Lexington Avenue.

4. Currently there is a culvert within County Ditch No. 44-Branch 8 which allows the flow of water north through the intersection of the pipelines and the Ditch. The Highway
Project would require the installation of a new culvert to perpetuate for the flow of water north. Because of the location and elevation of the pipelines it would be very expensive to install such a culvert.

5. In lieu of constructing a new culvert under the pipelines as part of the Highway Project, the County is proposing 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 the pipelines as indicated in the attached Exhibit B (“Impoundment Area”).

6. The impoundment of the water 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 Exhibit B. Water entering that part of County Ditch No. 44-Branch 8 located north of the pipelines would continue to flow north into Coon Creek.

7. To facilitate the impoundment of water within the Impoundment Area and reverse the flow of the water as provided above, the County would acquire at the County’s 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. The County also agrees 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.
WHEREFORE, pursuant to Minnesota Statutes section 103E.227 (2012) the County requests that the Board of Managers of the Coon Creek Watershed District appoint an engineer to investigate the effect of the proposed impoundment and to make a report of the findings thereon, and that thereupon such further proceedings shall be taken as may be necessary or expedient for the impoundment of the water within County Ditch No. 44-Branch 8 and the redirection of the flow of water over newly acquired easements, all as provided for herein.

PETITIONER, COUNTY OF ANOKA

Dated: _______________________                 __________________________________
Douglas W. Fischer
County Engineer
Anoka County Highway Department
1440 Bunker Lake Boulevard
Andover, Minnesota  55304
(763) 862-4200

TONY PALUMBO
ANOKA COUNTY ATTORNEY

Dated: _______________________             By: __________________________
Dan Klint
Assistant Anoka County Attorney
Attorney License No. 149810
Anoka County Government Center
2100 Third Avenue, STE 720
Anoka, Minnesota  55303
(763) 323-5668

Attorneys for County of Anoka
MEMORANDUM

TO:        Tim Kelly
            Impoundment File
FROM:      Michelle Ulrich
            Harold Sheff
DATE:      August 26, 2013
RE:        Anoka County Impoundment Project

The following is a summary of the statutory procedure governing public ditch impoundment projects.

Impoundment Proceedings (Minn. Stat. § 103E.227 (2012))

**Petition.** Under Minnesota Statutes section 103E.227 (1)(a) (2012) Anoka County is authorized to petition the District “to impound, reroute, or divert drainage system waters for beneficial use.”

The Impoundment Petition must:

1. Contain the location of the installation, concept plans for the proposed project, and a map that identifies the areas likely to be affected by the project.
2. Identify the source of funds to be used to secure the necessary land rights and to construct the project. Minn. Stat. § 103E.227 (1)(c),(d) (2012).

The Petition must be filed with the District’s Secretary. The Secretary must then make a copy of the petition available to the public. (The petition could be posted on the District’s web site.) Minn. Stat. § 103E.227 (1)(b) (2012).

**Bond.** Since the petitioner here is the County, it does not have to file a bond with the District for the proposed project. Minn. Stat. § 103E.227 (2)(b) (2012).

**Procedure After Filing Petition.** The District Board of Managers by resolution should accept the Petition for Impoundment; direct the Secretary of the District Board of Managers to make a copy of the Petition and supporting documentation available to the public; and direct the District Engineer to investigate the effect of the proposed installation and file a report of findings. Minn. Stat. § 103E.227 (3)(a) (2012).

**Hearing.** After the Engineer has filed his report, the Board of Managers by order must set a date and time for a public hearing on the Petition as provided in section 103E.261. Minn. Stat § 103E.227 (3)(b) (2012). The public hearing must be held not more than 30
days after the date of the order for hearing. Minn. Stat. §§ 103E.227 (3)(b), 103E.261 (1) (2012).

At least ten days before the hearing the District must give notice by mail of the time and location of the hearing to the petitioner Anoka County, owners of property, and political subdivisions likely to be affected by the proposed impoundment project. Minn. Stat. § 103E.261 (1) (2012).

The District should also give published notice of the hearing once a week for two successive weeks (calendar weeks). See Minn. Stat. § 103D.011 (22) (2012). At least five days must elapse between each publication. And at least two weeks shall elapse between the first publication and the hearing date. Minn. Stat. § 645.13 (2012). The District should also post notice on its website.

At the hearing the Board of Managers will consider the Engineer’s report and other evidence presented on the matter. If upon hearing the Board of Managers determines that the impoundment project “will be of a public or private benefit and that it will not impair the utility of the drainage system or deprive affected land owners of its benefit,” the Board of Managers shall make an order modifying the drainage system as proposed and authorizing the project. Minn. Stat. § 103E.227 (3)(c) (2012). The Board of Manager’s order must also identify the parties responsible for construction, operation and maintenance of the drainage system modification (here Anoka County). Minn. Stat. § 103E.227 (5) (2012).

**Permits and Flowage Easements.** Before installing or constructing the impoundment project the County must obtain all required permits and all necessary rights-of-way and flowage easements from land lowers affected by the project. Minn. Stat. § 103E.227 (4) (2012). The petitioner must also acquire a public works permit or a water use permit from the Minnesota Commissioner of Natural Resources if required under chapter 103G. Minn. Stat. § 103E.227 (1)(e) (2012).