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RCWD BOARD OF MANAGERS WORKSHOP

Tuesday, November 12, 2013, 3:30 p.m.

Rice Creek Watershed District Conference Room
4325 Pheasant Ridge Drive NE, Suite 611, Blaine, Minnesota

*****Note Day****

Agenda

ITEMS FOR DISCUSSION

- 1
- 2
- 3
- 4
- 5 3:30 Discussion on request for more information on RCWD’s Minnesota Association of Watershed
- 6 Districts resolution regarding project eligibility under Army Corp of Engineers Regional
- 7 General Permit
- 8 3:50 Discussion /update on Anoka County Ditch 10 -22 32 project
- 9 4:10 Discussion on Anoka County Ditch 53-62 Branch 1 Lateral 1 and possible realignment
- 10 4:30 Follow-up discussion on Clearwater Creek /Anoka County Ditch 55
- 11 4:50 Discussion on cost share program and how many times applicants can return for funding
- 12 5:00 Discuss Locke Lake survey results
- 13 5:15 Follow-up on Manager Haake’s request for video conferencing per the open meeting law
- 14 5:25 Discuss revised language for public hearing scripts
- 15 5:40 Discuss Bridget Osborn Citizen Advisory Committee application
- 16 5:50 Project /program updates:
- 17 o Prescribed burn status on Brown’s Preserve/Hair
- 18 o Discuss possible “walk-up” permits for the 11/13 board meeting
- 19 o Discuss possible BWSR Targeted watershed grant application for the SW Area
- 20 Adjournment
- 21

3:30 Discussion on request for more information on RCWD's Minnesota Association of Watershed Districts resolution regarding project eligibility under Army Corp of Engineers Regional General Permit



Land and Water Shall be Preserved

Minnesota Association of Watershed Districts

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St. Paul, MN 55123

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www.mnwatershed.org
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Nov. 4, 2013

TO: Watershed Districts

L.V.

FROM: Larry Kuseske, Chair, MAWD Resolutions/Policy Committee

RE: 2013 MAWD Proposed Resolutions Recommendations

Please find attached seven proposed resolutions and Resolution/Policy Committee recommendations for consideration at our upcoming Annual Meeting. The MAWD Resolutions/Policy Committee will meet on Friday, December 6th at 7:30 am to hear from any of the Watershed District who proposed these resolutions or from anyone else interested in addressing the committee regarding the resolutions.

We ask that your board of managers take the time to review these pending resolutions and committee recommendations and come prepared to discuss and vote on these at our Annual Meeting on December 5-7, 2013.

MAWD 2013 Proposed Resolutions

- | Title | Sponsor |
|--|---------|
| #1. Engineering Study for Floodwater Retention Ponds, Lac qui Parle-Yellow Bank WD; The MAWD Resolutions Committee recommends approval with the following clarification. | |
| #2. WD Project Eligibility under COE's Regional General Permits; Rice Creek WD | |
| #3. Restoring Consistency and Predictability to WCA and Clean Water Act exempted or authorized activities, Rice Creek WD | |
| #4. Watershed Boundary Correction: Consolidated Process, Sauk River WD | |
| #5. Watershed District Funds; Statutory Correction, Sauk River WD | |
| #6. Authorization to Conduct WD meetings via conference call or other electronic means, Metro MAWD | |
| #7. Amending MN Statute 103G (Appropriation of Waters of the State) So That Water Quality Treatment Projects are not subject to Regulatory Disincentives, Minnehaha Creek WD | |

See MAWD Resolution Committee recommendations attached.

Resolution Committee Recommendations:

Resolution #1. Engineering Study for Floodwater Retention Ponds, Lac qui Parle-Yellow Bank WD

The MAWD Resolutions Committee recommends approval with the following clarification:

NOW THEREFORE, BE IT RESOLVED that the Minnesota Association of Watershed Districts supports the Lac qui Parle-Yellow Bank Watershed District request to seek funding of \$500,000 from the legislature for engineering analysis for two Floodwater retention projects as identified in the PL 87-639 Study at sites located in Section 29 of Norman Township, Yellow Medicine County, on the South Branch of the Lac qui Parle River and in Sections 29/30 of Florida Township Yellow Medicine County, on the West Branch of the Lac qui Parle River.

Resolution #2. WD Project Eligibility under COE's Regional General Permits, Rice Creek WD

The Resolution Committee is unable to make a recommendation to the membership at this time. The committee will assemble additional facts and make a final recommendation on December 6th.

Resolution #3. Restoring Consistency and Predictability to WCA and Clean Water Act exempted or authorized activities, Rice Creek WD;

The committee recommends approval with the following changes to the resolution:

NOW, THEREFORE, BE IT RESOLVED that Minnesota Association of Watershed Districts supports amending Minnesota Statutes Section 103E.2241, subd. 3, to set a date certain by which the Board of Water and Soil Resources, the commissioners of natural resources and agriculture, and the Pollution Control Agency must establish and approve the minimum state standards that address existing federal approvals under the Clean Water Act and Regional General Permits. ~~Failure of the agencies to develop and approve the required state standards should result in the reinstatement of the Federal Approvals exemption as it existed prior to 2002.~~

Resolution #4. Watershed Boundary Correction: Consolidated Process, Sauk River WD

The committee recommends approval with the following changes:

THEREFORE, the Minnesota Association of Watershed Districts (MAWD) recommends that BWSR pursue funding and develop an abbreviated process, for consenting Districts and WMOs, to correct or reestablish Watershed District boundaries using the current and more accurate technology. MAWD suggests eliminating petition and hearing requirements following the process established for the Water Management Plan including a local public hearing when a Watershed District, or Districts, or WMO request boundary changes based on errors identified by improved mapping technology, in favor of a request, notice and comment process.

Resolution#5. Watershed District Funds; Statutory Correction, Sauk River WD

The Resolution Committee recommends approval of the resolution with the following changes:

THEREFORE, the Minnesota Association of Watershed Districts directs its staff to work with the Board of Water and Soil Resources to sponsor an amendment to section 103D.905, subd. 9, to include all current and future, state-wide grant, cost share or low interest loan programs for state approved projects.

Resolution#6. Authorization to participate in watershed district meetings via conference call or other electronic means, Metro MAWD

The Resolution Committee recommends approval of the resolution with the following changes:

WHEREAS: The geographic extent of watershed districts and some other local units of government, and the possibility of cost savings to the public support extension of the telephone meeting provision in the Open Meeting Law to ~~{watershed districts/local units of government}~~;

NOW, THEREFORE, BE IT RESOLVED that the Minnesota Association of Watershed Districts supports legislation extending the operation of Minnesota Statutes section 13D.015 to ~~{watershed districts/local units of government}~~ to allow ~~officials~~ managers to participate in public meetings via telephone or other electronic means if a quorum is physically present at the meeting site.

Resolution#7. Amending MN Statute 103G (Appropriation of Waters of the State) So That Water Quality Treatment Projects are not subject to Regulatory Disincentives, Minnehaha Creek WD

The Resolutions Committee recommends approval as submitted.

2013 MAWD Resolutions Background Information

Proposing District: Lac qui Parle-Yellow Bank Watershed District

Contact Name: Trudy Hastad, Administrator

Phone Number:

(day) 320-598-3117

(cell) 701-212-3933

(evening)

Email Address: trudy.hastad@lqpc.com

Resolution Title (brief subject statement):

Engineering Study for Floodwater Retention Ponds

Factual points which provide background to, or a basis for, the issue addressed by Resolution:

1. The Lac qui Parle-Yellow Bank Watershed District is the recipient of uncontrolled water coming from a unique geologic feature known as the Coteau des Prairie in northeastern South Dakota. From the Coteau's highest point near Summit, SD at Mean Sea Level (MSL) 2014, to the lower points of the LQP-YB Watershed entering into the Minnesota River at MSL 934, over 1080 of fall occurs. This is more fall than from the Twin Cities to the Gulf of Mexico.
2. The PL 87-639 Upper Minnesota River Subbasins Study completed by the joint cooperation of the Soil Conservation Service and U.S. Army Corp of Engineers recognized 81 possible sites for floodwater retention within the study area. Seventeen (17) of those sites lie in the Lac qui Parle-Yellow Bank Watershed District.
3. Bonding funds in the amount of \$500,000 are being requested for engineering analysis for two of these PL 87-639 Study sites located in Section 29 of Norman Township, Yellow Medicine County, on the South Branch of the Lac qui Parle River and in Sections 29 & 30 of Florida Township Yellow Medicine County, on the West Branch of the Lac qui Parle River. It is the intent of the LQP-YB Watershed District to provide 25 % local match to the bonding funds.
4. Similar pre-engineering funding was granted in 1997 for the Lazarus Creek Floodwater Retention Project (reference: BWSR Contract #104-45). The Lac qui Parle – Yellow Bank Watershed District successfully completed that project in 2005.
5. The study results will provide the engineering data, potential environmental concerns, and cost estimate needed to determine the feasibility of construction. Projects of this nature provide stormwater retention and reduce peak flows thereby reducing streambank sloughing, turbidity, and bacteria entering the Lac qui Parle River and the Minnesota River Basin. This project is identified in the Lac qui Parle-Yellow Bank TMDL

Implementation Plan, Lac qui Parle-Yellow Bank Watershed Plan, & the Yellow
Medicine Water Plan.

Based upon the above facts, what is the proposed solution to the problem discussed above:

The final outcome of these floodwater retention ponds would impact the entire Minnesota River Basin and would ultimately reduce sedimentation flowing into Lake Peppin and downstream into portions of the Mississippi River.

Likely Reaction by the Public or Other Governmental Units:

Public support of floodwater retention is strong and positive in our area of western Minnesota. Reaction by government units will vary as environmental impacts are largely considered. It is often proven that the benefits of retention (reduced flows, sediments and nutrients) far exceed the impacts to natural resources.

This issue is of importance (Check one):

To just our District: _____

To just our Region: _____

To the entire State: ___X___

ENGINEERING STUDY FOR FLOOD WATER RETENTION PONDS

WHEREAS, the Lac qui Parle-Yellow Bank Watershed District is the recipient of uncontrolled water coming from a unique geologic feature known as the Coteau des Prairie in northeastern South Dakota. From the Coteau's highest point near Summit, SD at Mean Sea Level (MSL) 2014, to the lower points of the LQP-YB Watershed entering into the Minnesota River at MSL 934, over 1080 of fall occurs.

WHEREAS, the PL 87-639 Upper Minnesota River Subbasins Study completed by the joint cooperation of the Soil Conservation Service and U.S. Army Corp of Engineers recognized 81 possible sites for floodwater retention within the study area. Seventeen (17) of those sites lie in the Lac qui Parle-Yellow Bank Watershed District.

WHEREAS, similar pre-engineering funding was granted in 1997 for the Lazarus Creek Floodwater Retention Project (reference: BWSR Contract #104-45). The Lac qui Parle – Yellow Bank Watershed District successfully completed that project in 2005.

WHEREAS, the study results will provide the engineering data, potential environmental concerns, and cost estimate needed to determine the feasibility of construction. Projects of this nature provide stormwater retention and reduce peak flows thereby reducing streambank sloughing, turbidity, and bacteria entering the Lac qui Parle River and the Minnesota River Basin. This is identified in the Lac qui Parle-Yellow Bank TMDL Implementation

WHEREAS, bonding funds in the amount of \$500,000 are being requested for engineering analysis for two of these PL 87-639 Study sites located in Section 29 of Norman Township, Yellow Medicine County, on the South Branch of the Lac qui Parle River and in Sections 29/ 30 of Florida Township Yellow Medicine County, on the West Branch of the Lac qui Parle River. It is the intent of the LQP-YB Watershed District to provide 25 % local match to the bonding funds.

NOW THEREFORE, BE IT RESOLVED that the Minnesota Association of Watershed Districts seek funding of \$500,000 from the legislature for engineering analysis for two Floodwater retention projects as identified in the PL 87-639 Study at sites located in Section 29 of Norman Township, Yellow Medicine County, on the South Branch of the Lac qui Parle River and in Sections 29/30 of Florida Township Yellow Medicine County, on the West Branch of the Lac qui Parle River.

2013 MAWD Resolutions Background Information

Resolution # 2

Proposing District: Rice Creek Watershed District

Contact Name: Patricia Preiner, President, RCWD
Phil Belfiori, District Administrator

Phone Number: 763-398-3070

Resolution Title (brief subject statement): Watershed District project eligibility under Corps of Engineers' regional general permits for ecological projects and wetlands/waters restorations.

Factual points providing background and basis of the issue:

Watershed Districts are uniquely positioned and authorized to identify and implement ecological projects for the benefit of Minnesota's water and other natural resources. The Saint Paul District Corps of Engineers' regional general permit #3 (RGP-003-MN) for Minnesota, authorization category I, allows discharges of dredged or fill material in waters of the U.S. associated with the restoration and enhancement of former non-tidal wetlands and riparian areas, the enhancement of degraded wetlands and riparian areas, the creation of wetlands and riparian areas, or the restoration and enhancement of non-Section 10 streams and open water. This authorization, however, is limited to projects undertaken by or funded by a state agency.

Currently, the abbreviated, less expensive authorization process under the regional general permit is not available to the State's Watershed Districts undertaking ecological projects. Instead, Watershed Districts are required to navigate the time-consuming and expensive individual permitting process with the Corps to gain authorization to implement the same projects for which State agencies enjoy the abbreviated process.

Proposed solution: Seek amendment to RGP-003-MN to include Watershed Districts within authorization category I of the regional general permit.

Likely reaction of public or other governmental units: Because of the unique nature and authorities of Watershed Districts, little negative reaction should be anticipated by the public or other governmental units. The proposed inclusion of Watershed Districts under the RGP authorization will reduce costs of public projects with substantial public benefit. The proposal promotes equal treatment of similarly purposed public entities implementing or funding similar projects.

This issue is of importance (Check one):

- To just our District:
- To just our Region:
- To the entire State: **X**

2013 MAWD Resolution

Watershed District project eligibility under Corps of Engineers' regional general permits for ecological projects and wetlands/waters restorations

WHEREAS, Watershed Districts are uniquely positioned and authorized to identify and implement ecological projects for the benefit of Minnesota's water and other natural resources.

WHEREAS, the Saint Paul District Corps of Engineers' regional general permit #3 (RGP-003-MN) for Minnesota, authorization category I, allows discharges of dredged or fill material in waters of the U.S. associated with the restoration and enhancement of former non-tidal wetlands and riparian areas, the enhancement of degraded wetlands and riparian areas, the creation of wetlands and riparian areas, or the restoration and enhancement of non-Section 10 streams and open water.

WHEREAS, category I of RGP-003-MN, however, is limited to projects undertaken by or funded by a state agency and the abbreviated, less expensive authorization process under the regional general permit is not available to the State's Watershed Districts undertaking ecological projects.

WHEREAS, Watershed Districts are currently required to navigate the time-consuming and expensive individual permitting process with the Corps to gain authorization to implement the same projects for which State agencies enjoy the abbreviated process.

NOW, THEREFORE, BE IT RESOLVED that Minnesota Association of Watershed Districts supports amending the Corps' RGP-003-MN to include Watershed Districts within authorization category I of the regional general permit.

2013 MAWD Resolutions Background Information

Proposing District: Rice Creek Watershed District

Contact Name: Patricia Preiner, President, RCWD
Phil Belfiori, District Administrator

Phone Number: 763-398-3070

Resolution Title (brief subject statement): Restoring consistency and predictability to Wetland Conservation Act and Clean Water Act exempted or authorized activities – requiring the development of minimum standards.

Factual points providing background and basis of the issue:

In 2002, at the request of state agencies, the Minnesota Legislature amended Statutes Section 103G.2241, subdivision 3, eliminating an exemption for projects authorized under section 404 of the Clean Water Act until the Board of Water and Soil Resources, the commissioners of natural resources and agriculture, and the Pollution Control Agency establish and approve minimum state standards for such projects.

Since 2002, the Board of Water and Soil Resources, the commissioners of natural resources and agriculture, and the Pollution Control Agency, have taken no action to establish and approve the minimum state standards required by statute.

Section 404(f) of the Clean Water Act authorizes the discharge of dredged or fill material for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches (activities not prohibited by or otherwise subject to regulation).

Regional General Permit 003-MN, category N, authorizes discharges of dredged or fill material for the construction of wildlife ponds that result in permanent and temporary impacts, through filling, excavation, or inundation, of up to ½ acre of waters of the U.S., including jurisdictional wetlands.

The Wetland Conservation Act exempts from wetland replacement requirements excavation or the associated deposition of spoil within a wetland for the primary purpose of wildlife habitat improvement, if: the total area of deposition, and excavation if within the permanently or semipermanently flooded areas of type 3, 4, or 5 wetland, does not exceed five percent of the wetland area or one-half acre, whichever is less (§103G.2241, Subd. 10).

The Wetland Conservation Act contains no exemption for the construction or maintenance of farm or stock ponds.

The failure of the Board of Water and Soil Resources, the commissioners of natural resources and agriculture, and the Pollution Control Agency to establish and approve the minimum state standards required by statute, has resulted in eleven years of confusion and inconsistent regulation of water resources in Minnesota.

Proposed solution: Require that the Board of Water and Soil Resources, the commissioners of natural resources and agriculture, and the Pollution Control Agency establish and approve the minimum state standards that address existing federal approvals under the Clean Water Act and Regional General Permits. Failure of the agencies to develop and approve the required state standards should result in the reinstatement of the Federal Approvals exemption as it existed prior to 2002.

Likely reaction of public or other governmental units: The public should generally support this action because it requires the agencies to follow through on its request to the legislature in 2002. Additionally, the public should support the streamlining of the regulatory processes and elimination of inconsistency and redundancy. The Board of Water and Soil Resources, the commissioners of natural resources and agriculture, and the Pollution Control Agency will likely oppose the action since it seeks to force them meet the expectations of the 2002 statutory amendments.

This issue is of importance (Check one):

To just our District:

To just our Region:

To the entire State: X

2013 MAWD Resolution

Restoring consistency and predictability to Wetland Conservation Act and Clean Water Act exempted or authorized activities – requiring the development of minimum standards

WHEREAS, in 2002, at the request of state agencies, the Minnesota Legislature amended Statutes Section 103G.2241, subdivision 3, eliminating an exemption for projects authorized under section 404 of the Clean Water Act until the Board of Water and Soil Resources, the commissioners of natural resources and agriculture, and the Pollution Control Agency establish and approve minimum state standards for such projects.

WHEREAS, since 2002, the Board of Water and Soil Resources, the commissioners of natural resources and agriculture, and the Pollution Control Agency, have taken no action to establish and approve the minimum state standards required by statute.

WHEREAS, section 404(f) of the Clean Water Act authorizes the discharge of dredged or fill material for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches (activities not prohibited by or otherwise subject to regulation).

WHEREAS, Regional General Permit 003-MN, category N, authorizes discharges of dredged or fill material for the construction of wildlife ponds that result in permanent and temporary impacts, through filling, excavation, or inundation, of up to ½ acre of waters of the U.S., including jurisdictional wetlands.

WHEREAS, the Wetland Conservation Act exempts from wetland replacement requirements excavation or the associated deposition of spoil within a wetland for the primary purpose of wildlife habitat improvement, if: the total area of deposition, and excavation if within the permanently or semipermanently flooded areas of type 3, 4, or 5 wetland, does not exceed five percent of the wetland area or one-half acre, whichever is less (§103G.2241, Subd. 10).

WHEREAS, the Wetland Conservation Act contains no exemption for the construction or maintenance of farm or stock ponds.

WHEREAS, the failure of the Board of Water and Soil Resources, the commissioners of natural resources and agriculture, and the Pollution Control Agency to establish and approve the minimum state standards required by statute, has resulted in eleven years of confusion and inconsistent regulation of water resources in Minnesota.

NOW, THEREFORE, BE IT RESOLVED that Minnesota Association of Watershed Districts supports amending Minnesota Statutes Section 103E.2241, subd. 3, to set a date by which the Board of Water and Soil Resources, the commissioners of natural resources and agriculture, and the Pollution Control Agency must establish and approve the minimum state standards that address existing federal approvals under the Clean Water Act and Regional General Permits. Failure of the agencies to develop and approve the required state standards should result in the reinstatement of the Federal Approvals exemption as it existed prior to 2002.

2013 MAWD Resolutions Background Information

Proposing District: Sauk River Watershed District

Contact Name: Holly Kovarik

Phone Number: 320-352-2231

Resolution Title (brief subject statement): Watershed Boundary Correction; Consolidated Process

Factual points providing background and basis of the issue:

Most of Minnesota's Watershed Districts were established at a time when limited data and technology were available to quickly and efficiently identify accurate watershed boundaries. Inaccuracies, once discovered, may be corrected through the procedure found in Minnesota Statutes section 103D.251, which requires a petition and hearing before the Board of Water and Soil Resources (BWSR). The petition must be signed by (1) at least one-half of the counties within the proposed watershed district if the boundary change were adopted; (2) counties having at least 50 percent of the area within the proposed watershed district if the boundary change were adopted; (3) a majority of the cities within the proposed watershed district if the boundary change were adopted; (4) at least 50 resident owners in the proposed watershed district if the boundary change were adopted, excluding resident owners within the corporate limits of a city, if the city has signed the petition; or (5) the managers of a watershed district affected by the proposed boundary change. BWSR must hold a hearing on the proposed boundary change in the watershed where the change is proposed, notice must be given in the same manner as an establishment hearing. If a petition for a boundary change involves a common boundary of two or more watershed districts, the board must determine the watershed district where the hearing will be held. BWSR must order the boundary change if it determines that establishment of the proposed boundary change would benefit the public welfare and public interest and the proposed boundary change would advance the purpose of chapter 103D.

Current technology, including LIDAR, GIS and parcel mapping, provides a relatively inexpensive and efficient way to accurately identify watershed boundaries and the parcels associated with the boundaries. As more and more Watershed Districts, Counties, Soil and Water Conservation Districts and state and federal agencies are using LIDAR, more errors are being discovered in previously established Watershed District boundaries. Inaccurate Watershed District boundaries create several problems for effective implementation of watershed district objectives and for effective coordinate with other units of government. Most notably, for District's trying to identify areas benefited by a project or attempting to derive revenues to pay the costs of projects that benefit a certain area, the District has no legal authority to levy or assess against property not included within the District's legal boundary, even though that property is located within the watershed and benefits from the District's actions. The current process is unnecessarily time consuming and expensive.

Based upon the above facts, what is the proposed solution to the problem discussed above:

In order to ensure that the jurisdictional boundaries are accurately established, we recommend that BWSR pursues funding and develops an abbreviated process, for consenting Districts, to correct or reestablish Watershed District boundaries using the current and more accurate technology. We believe that the procedures in section 103D.251 can be simplified with the following language. "Errors in the original establishment of a Watershed District boundary changes identified by improved mapping technology such as LIDAR may be corrected by order of the Board, upon request of an affected district or districts, without petition or hearing, after 30 days' notice of the intent to change the watershed boundary is published in the State Register."

This issue is of importance (Check one):

To just our District:

To just our Region:

To the entire State: **X**

WHEREAS, Minnesota Statutes section 103D.251 provides a process for ordering changes to a Watershed District Boundary; and

WHEREAS, current technology, including LIDAR, GIS and parcel mapping, provides a relatively inexpensive and efficient way to accurately identify watershed boundaries and the parcels associated with the boundaries; and

WHEREAS, as more and more Watershed Districts, Counties, Soil and Water Conservation Districts and state and federal agencies are using LIDAR, more errors are being discovered in previously established Watershed District boundaries; and

Whereas, inaccurate Watershed District boundaries create several problems for effective implementation of watershed district objectives and for effective coordinate with other units of government. Most notably, for District's trying to identify areas benefited by a project or attempting to derive revenues to pay the costs of projects that benefit a certain area, the District has no legal authority to levy or assess against property not included within the District's legal boundary, even though that property is located within the watershed and benefits from the District's actions; and

Whereas, the current process of changing a Watershed District boundary is unnecessarily time consuming and expensive.

THEREFORE, the Minnesota Association of Watershed Districts (MAWD) recommends that BWSR pursue funding and develop an abbreviated process, for consenting Districts, to correct or reestablish Watershed District boundaries using the current and more accurate technology. MAWD suggests eliminating petition and hearing requirements when a Watershed District or Districts request boundary changes based on errors identified by improved mapping technology, in favor of a request, notice and comment process.

2013 MAWD Resolutions Background Information

Proposing District: Sauk River Watershed District

Contact Name: Holly Kovarik

Phone Number: 320-352-2231

Resolution Title (brief subject statement): Watershed District Funds; Statutory Correction

Factual points providing background and basis of the issue:

Minnesota Statutes section 103D.905, Subd. 9, allows Watershed Districts to impose a Project Tax Levy, in addition to other tax levies provided in law, to pay the costs of projects undertaken by the Watershed District which are to be funded, in whole or in part, with the proceeds of grants or construction or implementation loans under the state's Clean Water Partnership program (sections 103F.701 to 103F.755), including that costs of bonds and notes issued by the watershed district under the program or construction or implementation loans under the program.

Section 103D.905, Subd. 9, was included in statute at a time when the Clean Water Partnership program was the only program offering grant, cost share and low interest loan dollars for water quality and environmental enhancement projects. The rationale for allowing an additional ad valorem tax was that the projects or actions had already been reviewed and vetted by state government, and by virtue of receiving funding, were found to be a broad public or state-wide benefit.

Now, Watershed Districts routinely compete for Clean Water Fund, Outdoor Heritage, Legacy and other funds which are all reviewed and vetted by state government or the Legislative and Citizens Committee on Minnesota Resources, and by virtue of receiving funding, are found to be a broad public or state-wide benefit. Funds received under these "new" programs should be given the same consideration as Clean Water Partnership Funds as Watershed District seek to find local funding and matching dollars for projects. A Watershed District should have the same special revenue generating authority regardless of whether funding derives from the Clean Water Partnership program, Clean Water Fund, Outdoor Heritage, Legacy or other funding source.

Based upon the above facts, what is the proposed solution to the problem discussed above:

In order to correct the omission that has occurred with the creation of new funds, we recommend that BWSR sponsor an amendment to section 103D.905, subd. 9, to include all current and future, state-wide grant, cost share or low interest loan programs.

This issue is of importance (Check one):

To just our District:

To just our Region:

To the entire State: **X**

WHEREAS, Minnesota Statutes section 103D.905, Subd. 9, allows Watershed Districts to impose a Project Tax Levy, in addition to other tax levies provided in law, to pay the costs of projects undertaken by the Watershed District which are to be funded, in whole or in part, with the proceeds of grants or construction or implementation loans under the state's Clean Water Partnership program (sections 103F.701 to 103F.755), including the costs of bonds and notes issued by the watershed district under the program or construction or implementation loans under the program; and

WHEREAS, section 103D.905, Subd. 9, was included in statute at a time when the Clean Water Partnership program was the only program offering grant, cost share and low interest loan dollars for water quality and environmental enhancement projects; and

WHEREAS, the rationale for allowing an additional ad valorem tax was that the projects or actions had already been reviewed and vetted by state government, and by virtue of receiving funding, were found to be a broad public or state-wide benefit; and

WHEREAS, now, Watershed Districts routinely compete for Clean Water Fund, Outdoor Heritage, Legacy and other funds which are all reviewed and vetted by state government or the Legislative and Citizens Committee on Minnesota Resources, and by virtue of receiving funding, are found to be a broad public or state-wide benefit; and

WHEREAS, funds received under these "new" programs should be given the same consideration as Clean Water Partnership funds as Watershed District seek to find local funding and matching dollars for projects; and

WHEREAS, a Watershed District should have the same special revenue generating authority regardless of whether funding derives from the Clean Water Partnership program, Clean Water Fund, Outdoor Heritage, Legacy or other funding sources.

THEREFORE, the Minnesota Association of Watershed Districts directs its staff to work with the Board of Water and Soil Resources to sponsor an amendment to section 103D.905, subd. 9, to include all current and future, state-wide grant, cost share or low interest loan programs.

2013 MAWD Resolution Background Information

Proposing District: Metro MAWD

Contact Person:

Phone Number:

Resolution Title: *Authorization to conduct (watershed district/local governmental unit) meetings via conference call or other electronic means.*

Factual points providing background to, or a basis for, the Resolution:

1. Minnesota's Open Meeting Law applies to a meeting of a watershed district board of managers and other watershed district meetings, such as committee meetings, and requires that all such meetings to "open to the public." As a general matter, watershed districts and other governmental units comply with the law by providing public notice of meetings and conducting district business at in-person gatherings of officers.
2. Technical capabilities have been developed that allow participation in public meetings through electronic means and the Open Meeting Law allows watershed district and other local and state governmental entities to conduct meetings by interactive television. Minn. Stat. 13D.02.
3. The Department of Administration, the state agency charged with interpretation of the Open Meeting Law and providing support to state and local governmental units' compliance, has broadly read the electronic communications provisions in state statute, recognizing that quickly developing technology provides new means of conducting meetings in compliance with state law. See Minn. Dept. of Admin. Advisory Opinion 13-009 (reading "interactive television" in state law to encompass the software Skype and generally adopting a commonsense approach to use of technology to conduct public meetings). (The department's opinion, however, is in past at odds with at least one related state Supreme Court opinion.)
4. Minnesota law authorizes state agencies, commissions and departments to conduct meetings via phone "or other electronic means," as long as certain conditions are met. Minn. Stat. 13D.015.
5. The geographic extent of watershed districts and the possibility of cost savings to the public support extension of the telephone or other electronic meeting provisions in the Open Meeting Law to (watershed district/local governmental unit) meetings.

The following solution is proposed to the problem discussed above:

Amend Minnesota Statutes section 13D.015 and other provisions as necessary to extend its operation to (watershed districts/local government units), allowing members of such entities to participate in meetings via telephone or other electronic means.

Likely Reacton by the Public or Other Governmental Units:

The public appears generally more comfortable with and adept at electronic communications as a means of conducting business than state law. State agencies and other local governmental units are also exploring the use of electronic meeting systems and likely will not oppose this rather modest extension of state law. Arguments against the measure may be that watershed districts and, even more so, other local local governmental units do not have to cover geographic expanses as large as state agencies do, justifying the distinction in state law; that telephone communications do not offer the same level of information about an official's demeanor and composure that interactive television does, and/or that the requirement that all members participate in a location that is "open and accessible to the public," as interpreted by the Minnesota Supreme Court, is critical to the extension of electronic means of participation to watershed districts and other local units of government, and is not met by participation from far remote location.

This issue is of importance (Check One):

To just our District: To just our Region: To the entire State: **X**

2013 MAWD Resolution

Authorization to conduct (watershed district/local governmental unit) meetings via conference call or other electronic means

WHEREAS: Watershed district in Minnesota are local units of government subject to the state Open Meeting Law, Chapter 13 (MS 13D.015);

WHEREAS: Technological capabilities have developed that allow participation in public meeting through electronic means and the Open Meeting Law already allows watershed districts and other local and state governmental entities to conduct meetings by interactive television;

WHEREAS: State Agencies are authorized by Minnesota Statutes section 13D.015 to conduct meetings with members participating via telephone or other electronic means;

WHEREAS: The geographic extent of watershed districts and some other local units of government, and the possibility of cost savings to the public support extension of the telephone meeting provision in the Open Meeting Law to (watershed district/local governmental unit) meetings.

NOW, THEREFORE, BE IT RESOLVED that the Minnesota Association of Watershed Districts supports legislation extending the operation of Minnesota Statutes section 13D.015 to (watershed districts/local units of government) to allow officials to participate in public meetings via telephone or other electronic means.

: Open Meeting Law and managers participating via electronic means (MS 103D.015)

(Attachments: Open Meeting Law MS103D.015 (page 3); Proposed MAWD Resolution (page 5); Pioneer Press article posted March 27, 2013 (page 6).

Problem: Our RCWD attorneys are very conservative and will not allow us managers to participate/speak and of course, not to vote, on any workshop or regular meeting issue/s unless we are present in person at the meeting/workshop. Our attorneys do not want to "open the door" under the current Open Meeting Law so anything can be misinterpreted by any citizen/person who thinks the letter of the existing open meeting law precludes managers from participating in watershed business electronically if the manager is not present in person at the meeting.

Solution (Resolution - page 5): Adding just these words to the existing Open Meeting Law MS 13D.015: "...watershed district/local governmental unit..." can help "fix" the problem/issue. (Note - the phrase "local governmental unit" could be discarded if desired although cities are doing this already.)

Points to consider:

- 1) Some point out that when on a board/council the members need to make the commitment to be present at all of the meetings unless there is an emergency that results in their inability to attend said meeting. Vacations should be worked around the watershed/governmental entity's meetings.

The laws states: See 13D.015 Subd. 2 CONDITIONS:

An entity listed in subdivision 1 may conduct a meeting governed by this section and section 13D.01, subdivisions 1, 2, 4, and 5, by telephone or other electronic means so long as the following conditions are met... (And it goes on from here...)

- 2) Another question: "How many board members need to be present in person to conduct a meeting where electronic means are allowed (for attendance)?" The law states very clearly that only one member has to be present per 13D.015 Subd. 2 (3):

The law does go on to say per 13D.015 Subd. 3 that we should be able to discuss business because the law already addresses the quorum issue in that even being there electronically *is still considered being present at the meeting*':

Subd. 3. Quorum: participation.

Each member of the entity participating in a meeting by telephone or other electronic means is considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

13D.015 Subd. 2 (3) states: ...at least one member of the entity is physically present at the regular meeting location

If a watershed district or another unit of government feels it needs a quorum present *in person* at its meeting/s, according to John Kolb that can be solved by *"the governing body adopting rules that states it requires a quorum to be physically present at the regular meeting location."*

So, a watershed or other governing bodies could write a RULE stipulating a specific number of members that have to be present *in person* in order to conduct its official meetings.

Attached is an article (page 6) by Associated Press that appeared in the Pioneer Press dated March 27, 2013 that the city council of Cohasset MN already allows its city council members to be "present" and voting via electronic means when they are out of town on vacation or staying in a southern location during the winter months.

Minnesota Public Radio News reported Wednesday that Dennis Blankensop (*Cohasset City Council*) spends four months each winter in Palm Springs, Calif. Last week, the state decided that Blankensop could attend council meetings in his northeastern Minnesota hometown via Skype and can even cast votes without violating the state's open meeting laws.

The article goes on to say: While legal under state statute, the use of Skype is putting Blankensop and the town on the front lines of a growing debate over technology and democratic participation. He's not the only Minnesota councilmember to use such an arrangement: in the town of Fifty Lakes, 60 miles southwest of Cohasset, Councilmember Les Degner has also used Skype to attend meetings during a two-month stay in North Carolina.

I believe clarification in the law will help many other government agencies/units of government during this age of many available electronic communication options/devices.

Barbara Haake
Manager, Rice Creek Watershed District
Cell: 651.442.1022; email: trubador2@msn.com

Open Meeting Law (13D.015) and meetings held via electronic means

2013 Minnesota Statutes

Resources

13D.015 MEETINGS BY TELEPHONE OR OTHER ELECTRONIC MEANS.

Subdivision 1. **Application.**

This section applies to:

(1) a state agency, board, commission, or department, and a statewide public pension plan defined in section 356A.01, subdivision 24; and

(2) a committee, subcommittee, board, department, or commission of an entity listed in clause (1).

Subd. 2. **Conditions.**

An entity listed in subdivision 1 may conduct a meeting governed by this section and section 13D.01, subdivisions 1, 2, 4, and 5, by telephone or other electronic means so long as the following conditions are met:

(1) all members of the entity participating in the meeting, wherever their physical location, can hear one another and can hear all discussion and testimony;

(2) members of the public present at the regular meeting location of the entity can hear all discussion and all votes of members of the entity and participate in testimony;

(3) at least one member of the entity is physically present at the regular meeting location; and

(4) all votes are conducted by roll call, so each member's vote on each issue can be identified and recorded.

Subd. 3. **Quorum; participation.**

Each member of the entity participating in a meeting by telephone or other electronic means is considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

Subd. 4. **Monitoring from remote site; costs.**

If telephone or another electronic means is used to conduct a meeting, the entity, to the extent practical, shall allow a person to monitor the meeting electronically from a remote location. The entity may require the person making a connection to pay for documented marginal costs that the entity incurs as a result of the additional connection.

Subd. 5. **Notice.**

If telephone or another electronic means is used to conduct a regular, special, or emergency meeting, the entity shall provide notice of the regular meeting location, of the fact that some members may participate by electronic means, and of the provisions of subdivision 4. The timing and method of providing notice is governed by section 13D.04. In addition, the entity must post the notice on its Web site at least ten days before any regular meeting as defined in section 13D.04, subdivision 1. **History:** 2009 c 80 s 1; 2012 c 290 s 63

Minnesota: Officials 'attend' meetings via Skype. Is that OK?

Associated Press

Posted: 03/27/2013 5:13 PM

DULUTH, Minn. -- A Cohasset City Council member has been participating in meetings while wintering in California by using the video conferencing software Skype.

Minnesota Public Radio News reported Wednesday that Dennis Blankensop spends four months each winter in Palm Springs, Calif. Last week, the state decided that Blankensop could attend council meetings in his northeastern Minnesota hometown via Skype and can even cast votes without violating the state's open meeting laws.

Blankensop said he asked himself last year, before he ran for reelection, if the arrangement was fair to constituents. He said after discussing the issue with the town's mayor and city attorney, they decided to try Skype.

"My argument basically was, if (constituents) want to talk to me, then all they have to do is come to the council meeting, and interact with me via Skype," Blankensop told MPR.

While legal under state statute, the use of Skype is putting Blankensop and the town on the front lines of a growing debate over technology and democratic participation. He's not the only Minnesota councilmember to use such an arrangement: in the town of Fifty Lakes, 60 miles southwest of Cohasset, Councilmember Les Degner has also used Skype to attend meetings during a two-month stay in North Carolina.

In April, the Fifty Lakes Council will discuss whether Mayor Ken Hersey can vote via Skype during a month-long stay in Arizona. City Clerk Karen Stern said she sees pros and cons.

"Sometimes you can float in and out of the conversation, a couple words could be lost," Stern said. "And sometimes it's nice to have the person there to get the vibes off, or the feeling that they portray on a particular subject just by body language."

Anfinson, an attorney for the Minnesota Newspapers Association and expert on the state's open meetings law, said he questions whether Skype participation in meetings conforms to a provision in state statute that all participants in public meetings be at a location that's "open and accessible to the public."

"I don't think it's really appropriate to say that somebody sitting in an apartment or condo in California is accessible to the public," Anfinson said. He also wonders about the long-term effect on the democratic process.

"It's almost hard to articulate, but I think there's something important about elected representatives being physically accessible and present with their constituents," Anfinson said. He questioned whether, for instance, a city council could get away with holding a meeting where a majority of members were participating via Skype.

Cohasset officials don't see a problem.

"My thinking is it's the 21st century; let's do this," said Mayor Greg Hagy.

"You can talk to them. They can talk to you. He can see them, and they can see him. I just don't see any difference between actually sitting there with the four other council members, or interacting in that way," Hagy said. "I just don't have a problem with it. I think it's working great."

2013 MAWD Resolutions Background Information

Proposing District: Minnehaha Creek Watershed District

Contact Name: Renae Clark

Phone Number:

(day) 952-641-4510

(cell) 612-723-5599

(Evening)

Email Address: rclark@minnehahacreek.org

Resolution Title (brief subject statement): Amending MN Statute 103G (Appropriation of Waters of the State) So That Water Quality Treatment Projects Are Not Subject to Regulatory Disincentives

Factual points which provide background to, or a basis for, the issue addressed by Resolution:

1. Science and water quality data show that a large percentage of phosphorus in water is dissolved.
2. University of Minnesota and others have developed strategies to remove dissolved P, some which divert water through a sand iron filter or alum dosing stations.
3. Such projects may be subject to MN Statute 103G for Work within a Public Water (103G.245) and/or for the Appropriation and Use of Water (103G.271).
4. Statute 103G.271 Subd. 6 requires payment of fees based on the volume of water appropriated (used).
5. The fee structure is punitive to public agencies investing public resources to treat water – the more water treated the higher the water appropriation fee.
6. Further, the water diverted for treatment is returned to the waterbody and therefore water is not “used.”

Proposed Solution:

Revise the definition of “appropriation” under Minnesota Statutes §103G.271 to exclude a temporary diversion or withdrawal by a public body for water quality treatment purposes.

Likely Reaction by the Public or Other Governmental Units:

At a staff level indications are the MN Department of Natural Resources (DNR) will agree with the proposed change. The DNR may still have jurisdiction under the Public Waters Permit if the project somehow affects the course, current or cross-section of a Public Water.

Public Agencies such as watershed districts and cities are required to address impaired waters. Dissolved P can be a large percentage of total P in stormwater. Diverting water through a filter system described above can be a very cost effective approach to cleaning water. The clean water is returned to the stream, lake or wetland it came from so there is an argument that there is no use of water as part of these types of projects and therefore there is no "appropriation" of water that should require DNR review and, as well, even if this sort of project falls under the statutory language, there should be no fee.

This issue is of importance (Check one):

To just our District: _____

To just our Region: _____

To the entire State: X

2013 MAWD Resolution

To amend Minnesota Statutes §103G.271 so that a temporary diversion from public waters by a public agency for water quality treatment is not an "appropriation" subject to a permit and annual fee

WHEREAS Minnesota Statutes §103G.271 requires a permit from the Minnesota Department of Natural Resources (MnDNR) for an appropriation from a "water of the state" and payment of an annual fee based on volume appropriated;

WHEREAS appropriation is defined in statute as "withdrawal, removal, or transfer of water from its source regardless of how the water is used";

WHEREAS a challenging aspect of improving water quality in surface waters has been removing dissolved phosphorus;

WHEREAS in recent years cost-effective means of removing dissolved phosphorus from surface waters, using technologies such as aluminum sulfate dosing and iron-enhanced sand filtration, have been developed and are being implemented and refined by watershed districts and other public agencies;

WHEREAS these technologies often must be designed to divert water from a waterbody, treat it and return it to the waterbody;

WHEREAS the MnDNR has advised that the temporary diversion of channel flow or basin waters for treatment is an "appropriation" requiring an appropriation permit and subject to an annual fee based on the volume of water treated, and that the statute does not afford the MnDNR the discretion to find otherwise;

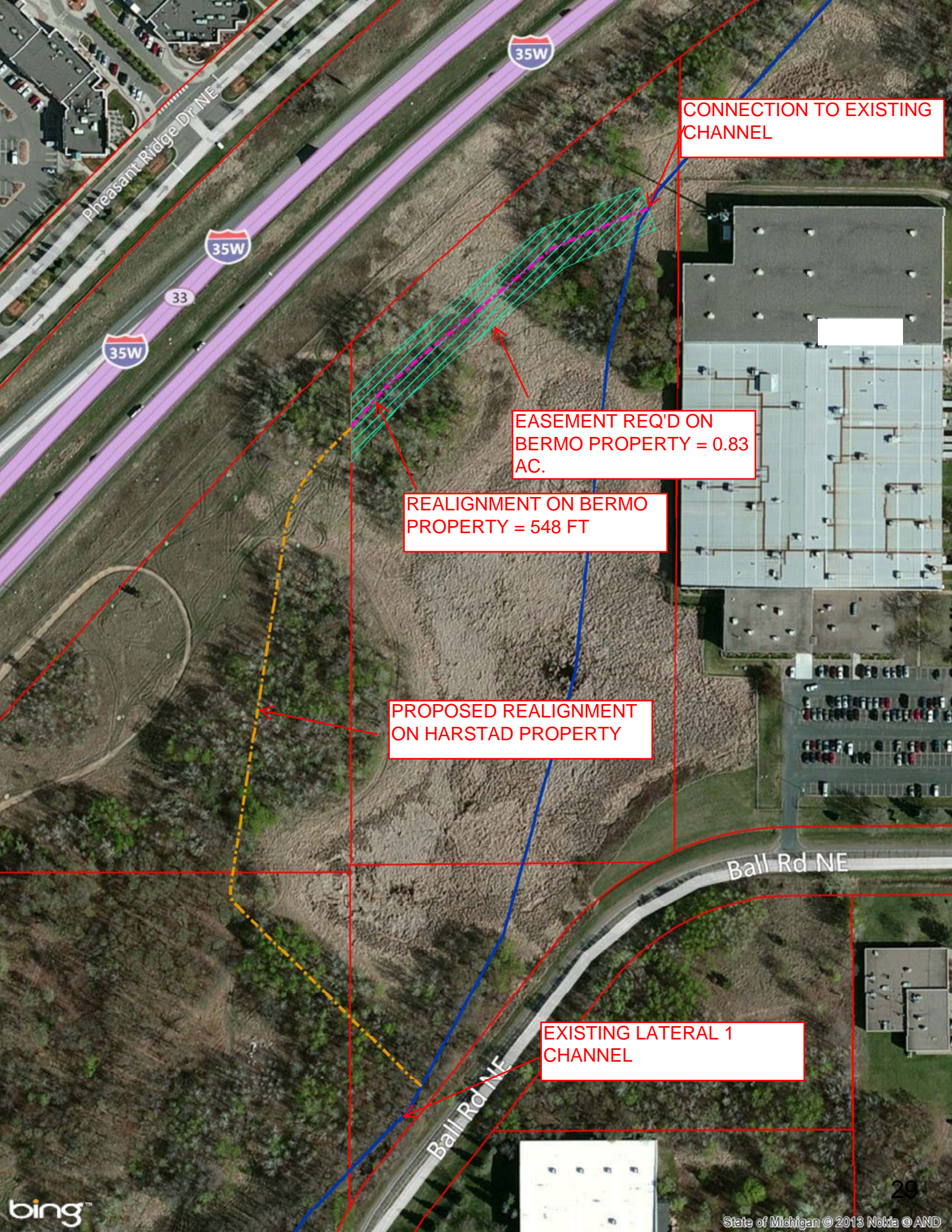
WHEREAS these treatment methods involve no consumptive use of water, and hence do not implicate the statute's regulatory purposes;

WHEREAS imposition of a volume-based fee penalizes a project for achieving greater water quality benefits; can add a substantial annual cost to operating these water quality projects; and is a disincentive to doing so;

WHEREAS the Minnesota Pollution Control Agency has the authority to oversee these methods to ensure they have no unintended adverse impacts on waters of the state;

NOW, THEREFORE, BE IT RESOLVED that the Minnesota Association of Watershed Districts supports legislation clarifying that a temporary diversion from a water of the state, by a public agency, for water quality treatment is not an "appropriation" that requires a permit or annual fee under Minnesota Statutes §103G.271.

4:10 Discussion on Anoka County Ditch 53-62 Branch 1 Lateral 1 and possible realignment



CONNECTION TO EXISTING CHANNEL

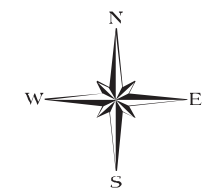
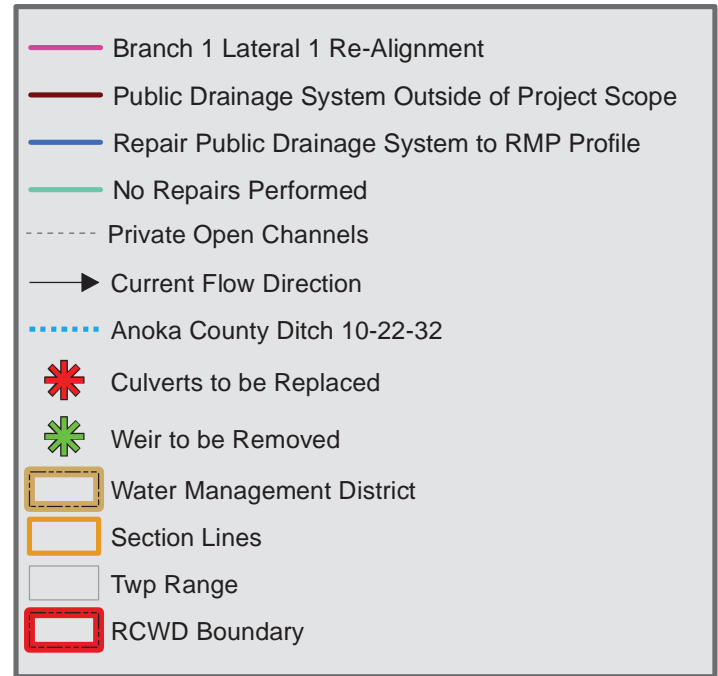
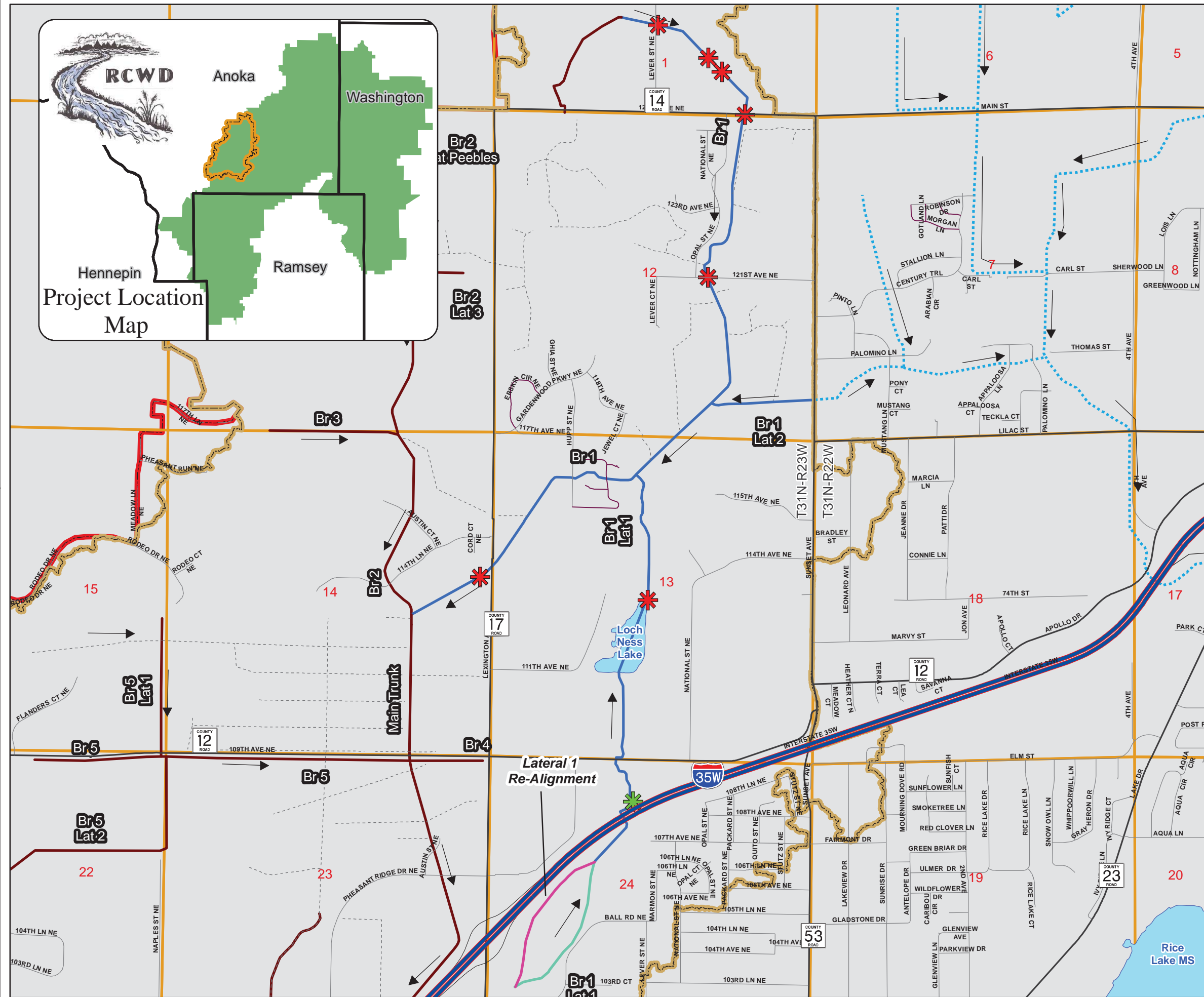
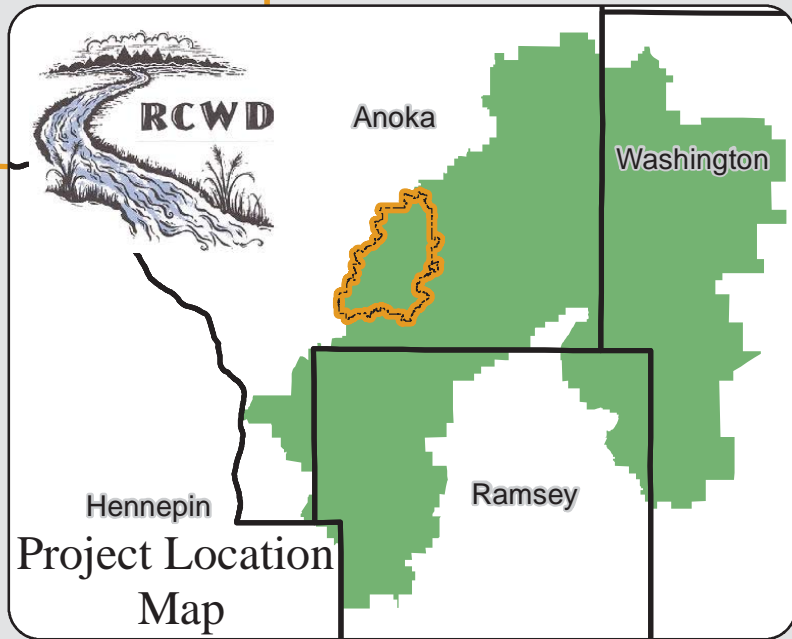
EASEMENT REQ'D ON BERMO PROPERTY = 0.83 AC.

REALIGNMENT ON BERMO PROPERTY = 548 FT

PROPOSED REALIGNMENT ON HARSTAD PROPERTY

EXISTING LATERAL 1 CHANNEL

Rice Creek Watershed District Anoka County Ditch 53-62 Repair Report



Sources: MN DNR Data Deli, TLG

Figure 6-1 Engineers Recommended Alternative

Scale: AS SHOWN	Drawn by: SMW	Checked by:	Project No.: 5555-080.03	Date: 1/24/2013	Sheet: 1 of 1
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Houston Engineering Inc.
Maple Grove
P: 763.493.4522
F: 763.493.5572

5:00 Discuss Locke Lake survey results

MEMO

(External Correspondence)



From: Mark Deutschman, Ph.D., P.E.
Greg Bowles, P.E.

To: Phil Belfiori
Date: October 14, 2013
Cc: Matt Kocian, RCWD
File R135555-217

Subject: Locke Lake Sediment Analysis
HEI Project No. R135555-217
RCWD Account No. 90-13

BACKGROUND

Previous analysis¹ completed by Houston Engineering in 2009 recommended that Locke Lake be resurveyed in 7 to 8 years (2016-2017) to estimate the sediment accumulation rate and assess the need for maintenance dredging. In 2012, a train derailment occurred because of a partial bridge washout at the railroad trestle crossing Rice Creek, located at the inlet of Locke Lake. This derailment occurred during a period of high (flood) flows. These flood flows likely moved considerable volume of sediment into Locke Lake and accelerated the sedimentation rate. Incidental to the inspection of the derailment, the District Engineer observed noticeable sediment accumulation near the inlet. Because of the high flows and noticeable sediment the District Engineer recommended the amount of sediment be estimated by survey and the need for maintenance assessed prior to the original 2016-2017 time period.

PURPOSE

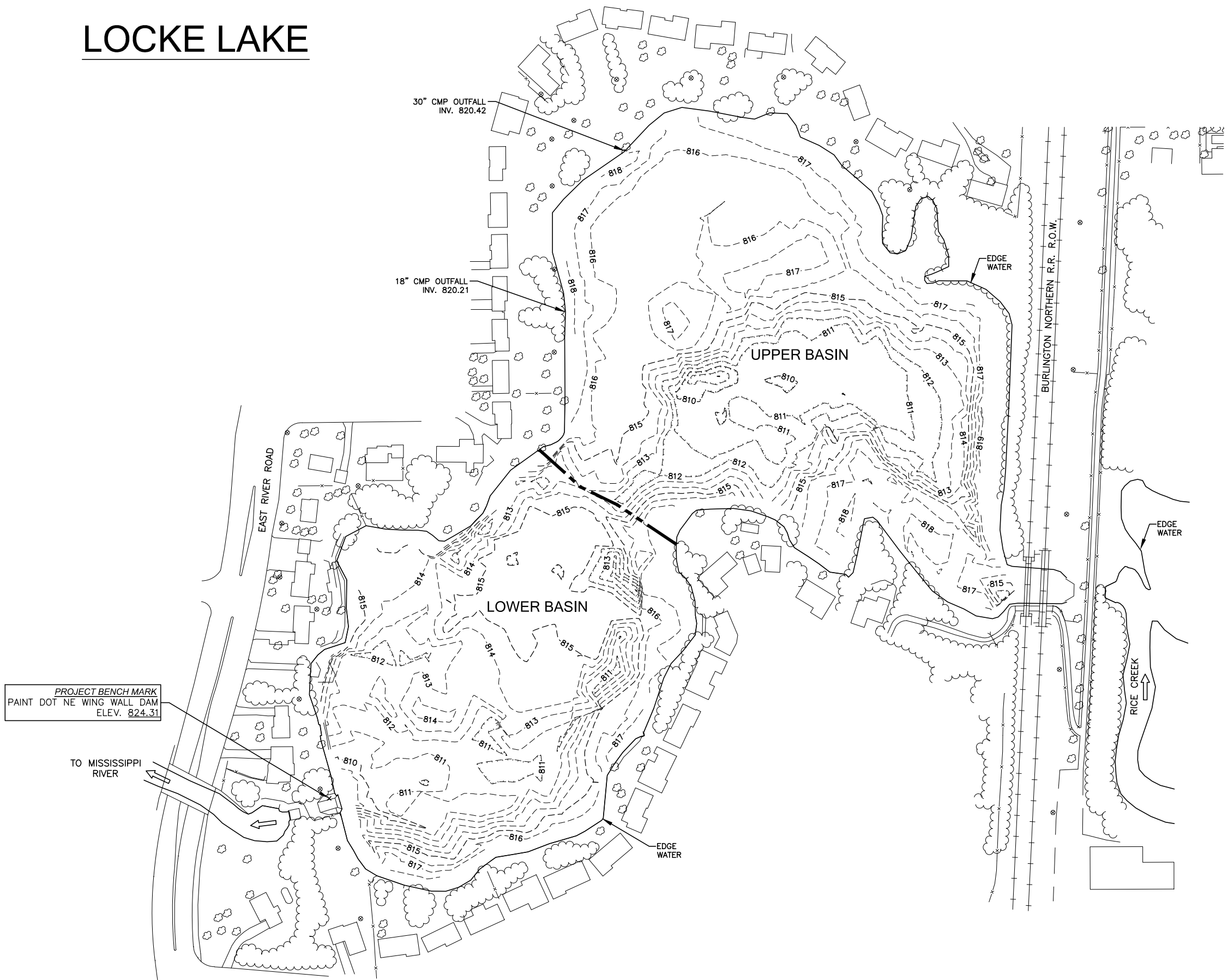
The purpose of this project is to estimate the quantity of sediment and the rate of sediment deposition within Locke Lake. Based upon the quantity of sediment the Board of Managers may decide to complete maintenance dredging.

METHODS

Houston Engineering, Inc. (HEI) completed a bathymetric survey (i.e., of the lake bottom) of Locke Lake on May 15, 2009 using a global positioning system (GPS) mounted on a small boat. Additional survey information collected June 1, 2009 supplemented and verified the May 15, 2009 survey results. The additional survey data was collected by taking an average top of water elevation (819.83) and subtracting the rod height. The GPS was used for determining rod location. All survey information collected by HEI is in 1988 NAVD. **Figure 1** shows the bottom contour based upon the HEI 2009 survey.

¹ Background information and history of Locke Lake can be found in a previous completed memorandum titled "Locke Lake Sediment Survey" dated June 25, 2009.

LOCKE LAKE

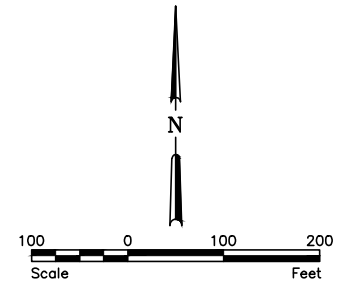


NOTES

1. LOCKE LAKE BATHYMETRIC SURVEY COMPLETED BY HOUSTON ENGINEERING ON MAY 15, 2009 AND JUNE 1, 2009.
2. VERTICAL DATUM: NAVD 88
3. WATER ELEVATION: 819.98 (MAY 15, 2009)
AVERAGE WATER ELEVATION: 819.83 (JUNE 1, 2009)

LEGEND

- TREE LINE
- BUILDING
- RAILROAD TRACKS
- CONTOUR
- UPPER AND LOWER BASIN BOUNDARY



PROJECT BENCHMARK
PAINT DOT NE WING WALL DAM
ELEV. 824.31

TO MISSISSIPPI RIVER

S:\5555-095-002-RCWD_Lake\Locke Lake\CAD\5555095002_CAD\1\5555095002-fig1-2009HESurvey.dwg-8/29/2013 5:16 PM - (dlittner)

No.	Revision	Date	By

Houston Engineering Inc.

Maple Grove

Drawn by DJL Date 6-12-09

Checked by GB Scale AS SHOWN

LOCKE LAKE
RICE CREEK WATERSHED DISTRICT

CURRENT BOTTOM ELEVATIONS
HEI SURVEY MAY & JUNE 2009
PROJECT NO. 5555-095.002

FIGURE 1
33

The Rice Creek Watershed District (RCWD) and Ramsey County Conservation District (RCD) completed a bathymetric survey on May 6, 2013 using a Lowrance sonar unit model HDS 7 and a small boat. The depth data gathered from the survey was converted to an elevation (NAVD 88) using a laser level and the elevation gather from a city benchmark located at the NE corner of the East River Road Bridge.

The collected data was converted to grid using a program called ciBioBase (<http://cibiobase.com/>). This program interprets bottom signals and analyzes the raw acoustic and coordinate data using a procedure called kriging to create a smooth, interpolated map of the bottom. The lake water elevation during the 2013 survey was 818.94. **Figure 2** shows the bottom contour based upon the RCWD 2013 survey. A large sediment delta was observed at the inlet of Locke Lake that varied in depth from 0.25 feet to 1 foot as indicated in **Figure 2** by the hatched area. The shallow depth did not allow for survey data to be collected within this area. Based upon onsite observations, an assumed average water depth of 0.5 feet or bottom elevation 818.44 was used for this area.

The survey data was processed by RCWD using techniques mentioned above and sent to HEI to determine the quantity and rate of sedimentation. Terrain models (i.e., a Triangulated Irregular Network, TIN) of the lake bottom were fit to the HEI survey and the survey completed by RCWD. These TINs were then compared within CAD and used to estimate the volume of sedimentation between May 2009 and May 2013.

As mentioned above the data collected in 2009 and 2013 were by two different methods. In 2009 data was collected using a survey grade GPS for location and rod height for depth. In 2013 data was collected using a Lowrance sonar unit for location and depth. These two methods use different technology to determine water depth and have varying levels of accuracy for determining location. Therefore, the volume of sedimentation calculated is not an absolute value but an estimate.

RESULTS

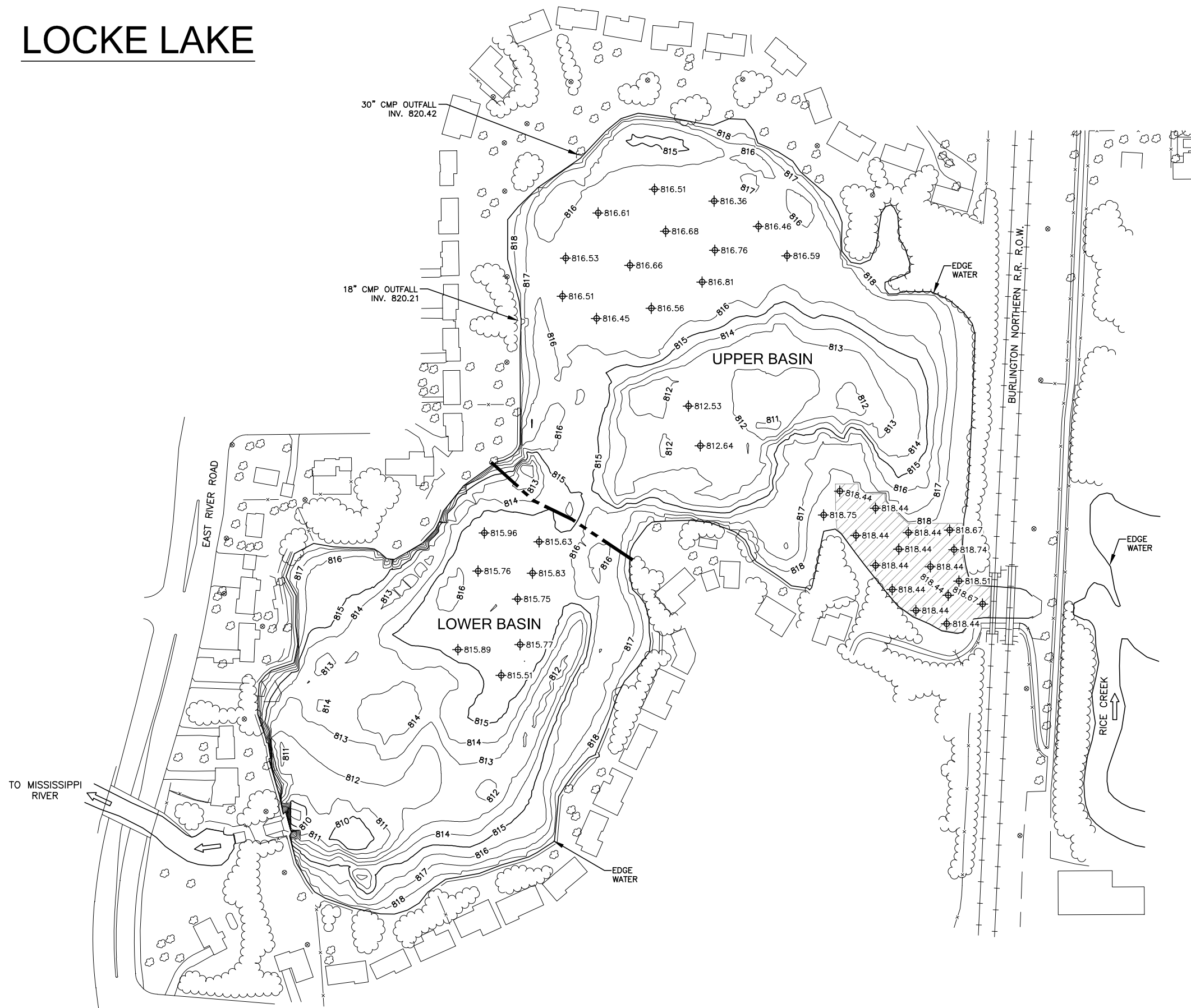
Estimated Sedimentation Volume and Rate

The estimated sedimentation volume to Locke Lake between May 2009 and May 2013 is 27,511 cubic yards. This equates to an annual sedimentation rate of 6,878 cubic yards per year. Previous estimated sedimentation rates from the 2009 survey range from 700 to 1,400 cubic yards per year. **Figure 3** shows the sediment thickness between May 2009 and May 2013.

Remaining Volume

The design elevation within the upper basin to determine the remaining capacity is elevation 815.0. The previous engineer's report suggests this elevation is "conservative" in that the minimum water depth will be approximately 5-feet at the normal summer elevation. Based upon the 2009 survey the remaining volume capacity below design elevation 815.0 for both the upper and lower basins was estimated at 44,136 cubic yards. The remaining volume capacity for Locke Lake after the 2013 analysis is 16,625 cubic yards.

LOCKE LAKE

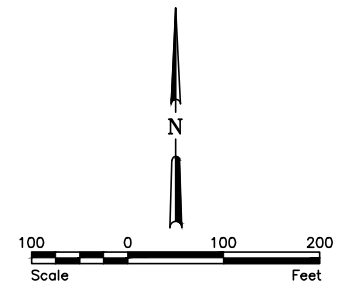


NOTES

- LOCKE LAKE (02-0077) BATHYMETRIC SURVEY COMPLETED BY RICE CREEK WATERSHED DISTRICT AND RAMSEY CONSERVATION DISTRICT ON MAY 6, 2013 AND DATA PROVIDED IN AUGUST 2013.
- BENCH MARK: NE CORNER OF EAST RIVER ROAD BRIDGE ELEVATION 827.14
VERTICAL DATUM: NAVD 88
- LAKE ELEVATION: 818.94 (MAY 6, 2013)
- LARGE SEDIMENT DELTA OBSERVED AT INLET OF LOCKE LAKE. UNABLE TO SURVEY THESE AREAS WITH SONAR. AT THE TIME OF SURVEY, DEPTH IN THIS AREA VARIED FROM 0.25-1 FT. SEDIMENT WAS PRIMARILY FINE SAND, WITH SOME SILT AND ORGANIC MATTER.

LEGEND

- TREE LINE
- BUILDING
- RAILROAD TRACKS
- CONTOUR
- SPOT ELEVATION
- UPPER AND LOWER BASIN BOUNDARY
- NO SURVEY DATA PROVIDED ESTIMATED BOTTOM ELEVATION 818.44



S:\5555-217_Locke_Lake_Sediment_Analysis\CAD\Analysis\5555217-ROTTOM_MAY_6_2013_AUG_2013_delta.dwg Bottom_May6_August_data_Save_Date:9/18/2013 9:57 AM Plot_Date:9/18/2013 10:03 AM (dlittner)

					Maple Grove		Drawn by DJL	Date 9-18-13	LOCKE LAKE RICE CREEK WATERSHED DISTRICT	CURRENT BOTTOM ELEVATIONS RCWD SURVEY MAY 6, 2013 PROJECT NO. 5555-217	Figure 2 35
No.	Revision	Date	By		P: 763.493.4522 F: 763.493.5572	Checked by GSB	Scale AS SHOWN				

CONCLUSIONS AND RECOMMENDATION

The estimated annual sedimentation rates based upon the 2009 analysis ranged from 700 to 1,400 cubic yards per year. This range is five times lower than the estimate annual sedimentation rate (6,878 cubic yards per year) based upon the 2013 analysis. These results suggest that flood flows increase substantially the sedimentation rate.

If a sedimentation rate of 1,400 cubic yards per year is assumed and the remaining volume of 16,625 cubic yards is remaining, an additional 12 years is needed to reach the design elevation of 815.0. Using the estimated sedimentation rate of 6,878 cubic yards per year (estimate by the 2013 survey), an additional 2 years is needed to reach the design elevation 815.0. As water levels drop, residents may express concern about the accumulation of sediment as it becomes visible. These recommendations are assuming a normal summer water level of elevation 820.0.

We recommend that the Board of Managers begin a discussion about their desire to complete a dredging project on Locke Lake and that the lake be resurveyed in 2 to 3 years just prior to the development of plans should the Board decide to dredge the lake.

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Registered Professional Engineer under the laws of the state of Minnesota.



Mark Deutschman
MN Reg. No 41259



Greg Bowles
MN Reg. No 41929

5:15 Follow-up on Manager Haake's request for video conferencing per the open meeting law



400 Second Avenue South
Suite 1200
Minneapolis, MN 55401
(612) 344-1400 tel
(612) 344-1550 fax

www.smithpartners.com

MEMORANDUM

TO: Rice Creek Watershed District Board of Managers
FROM: Louis Smith, Chuck Holtman
RE: Minnesota Open Meeting Law: Use of Interactive Television
DATE: October 17, 2013

Previously, we were asked to advise the board of managers as to whether a manager could participate in board meetings while out of state by means of the "interactive television" provision of the Minnesota Open Meeting Law (MOML). Minn. Stat. §13D.02.

One requirement of that statute is that the member participating remotely be in a location that is "open and accessible to the public." The Minnesota Supreme Court decision in *Quast v. Knutson*, 150 N.W.2d 199 (Minn. 1967) ruled that the phrase "open to the public" as used in a section of the MOML means "within the territorial confines" of the public body. For this reason, we advised that a manager's participation in a meeting from an out-of-state location, by Skype or other form of "interactive television," is not permitted under the MOML.

The board has asked us to review that prior advice in light of Minnesota Department of Administration (MDA) Advisory Opinion 13-009, issued on March 19, 2013. The MDA is the state agency responsible to implement the MOML and is given statutory authority to issue advisory opinions interpreting the statute. Minn. Stat. §13.072.

This opinion was requested by the City of Cohasset, Minnesota, to address an allegation that a city council member had violated the MOML by participating in a council meeting from an out-of-state location via Skype. The MDA opined that there had been no violation, stating:

[T]he plain language of the statute does not forbid a member of a public body from "attending" a public meeting at a location "open and accessible to the public" outside of the entity's geographic area.

As we noted when the MDA opinion was issued, we find its conclusion questionable in light of the holding of the Minnesota Supreme Court in the *Quast* case. There is no indication that the MDA considered or was aware of *Quast* or earlier Minnesota Supreme Court decisions cited in *Quast*. An MDA opinion is advisory and does not supersede the decisions of the Minnesota courts. *Quast* remains the law.

However, we conclude that the MDA opinion does establish a good faith basis for the board to reason that a manager's participation from an out-of-state location under §13D.02 does not violate the MOML. Section §13.072 states that an MDA advisory opinion "must be given deference by a court or other tribunal." If the Supreme Court were faced now with the same question as decided in *Quast*, it could reason that its prior decision was made in the absence of

guidance from the implementing agency and that deference to the MDA opinion, as the legislature directs, is sufficient now to decide *Quast* differently.¹

We also note the further language of §13.072, which is relevant to the board's consideration of its course of action:

Members of a body subject to chapter 13D ... that acts in conformity with a written opinion of the [MDA] commissioner [are] not liable for fines, awards of attorney fees, or any other penalty under chapter 13D. A member of a body subject to chapter 13D is not subject to forfeiture of office if the member was acting in reliance on an opinion.

Under the MOML, the sanctions for a violation of the statute are: (a) a civil fine of \$300 imposed on the public official; (b) an award of attorney fees to a party that sues the public body for the violation; and (c) for three violations, the public official's forfeiture of office. Minn. Stat. §13D.06. The cited text immunizes the managers and the District from all three of these sanctions if the board has acted in reliance on an MDA opinion.²

The Minnesota Supreme Court also has ruled that a violation of the MOML does not vacate a decision made by the public body at the offending meeting. *Sullivan v. Credit River Twp.*, 217 N.W.2d 502, 507 (Minn. 1974). Therefore, if a lawsuit were brought challenging the board's use of interactive television from a manager's out-of-state location, it is likely that the only remedy would be the court's declaration that a violation had occurred.

Finally, we remind you that a manager's participation by interactive television must meet a number of conditions:

- The District must give notice of the regular meeting location and of each site where a manager will be participating by interactive television.
- All managers must be able to hear and see one another, and hear and see all discussion and testimony at any location at which at least one member is present.
- Members of the public at the regular meeting location must be able to hear and see all discussion and votes of all managers.
- At least one manager must be at the regular meeting location.
- Each location at which a manager is present must be open and accessible to the public (i.e., in a public location).

¹ The court also might consider that the passage of nearly 50 years since *Quast* is not irrelevant in interpreting a part of the statute that specifically concerns the ability for technology to compensate for physical absence.

² Reliance may not be protected if an advisory opinion states that "the principles stated in [the] opinion are not intended to provide guidance to all similarly situated persons or government entities." Minn. Stat. §13.072, subd. 2. Advisory Opinion 13-009 does not contain this disclaimer.

- “To the extent practical,” a public body must allow the meeting to be “monitored electronically” from a remote location. The person making the connection may be required to pay for “documented marginal costs” that the District incurs as a result of the additional connection.

c: Phil Belfiori, Administrator

5:25 Discuss revised language for public hearing scripts

From: Chuck Holtman [<mailto:Holtman@smithpartners.com>]
Sent: Tuesday, October 22, 2013 3:31 PM
To: Phil Belfiori
Subject: Public Hearing: role of managers

Phil:

At the last board meeting, there was discussion at the end as to how managers should participate in public hearings. You asked me to look at the notation at the bottom of Mgr Preiner's public hearing script: "Note!! Refrain from asking other managers for their opinions or thoughts in response to comments made during the hearing."

I would propose that you replace that note with the following counsel to the chair:

- During the public hearing, managers may ask questions of staff making presentations and of commenters, in order to clarify testimony.
- In addition, if a member of the public asks a question and a manager believes that a response from District staff or a District consultant can readily resolve the question or enrich the testimony, the manager may ask the chair to have the appropriate staff member or consultant speak to the question. The chair may exercise her judgment as to whether to allow for this colloquy.
- However, managers' expression of their positions and general discussion concerning [the subject of the public hearing] should be avoided during the public hearing. Board discussion will occur after all members of the public have had a chance to speak and the public hearing has been closed. It may occur at the same or a subsequent meeting, as the board decides.

Chuck

Charles B. Holtman
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5:40 Discuss Bridget Osborn Citizen
Advisory Committee application

APPLICATION FOR MEMBERSHIP
CITIZEN ADVISORY COMMITTEE (CAC)
RICE CREEK WATERSHED DISTRICT

Name: Bridget Osborn

Address: 2014 Pleasant View Dr.

City/State/Zip: New Brighton, MN 55112

County: Ramsey Email: bosborn@hrgreen.com

Phone #'s: Home: NA Work: 651-659-7773 Cell: 608-863-0299

Are you a resident of the RCWD? Yes, Years: 1 No

Membership Category(ies):

- Soil & Water Conservation District Supervisor
- County Board Member
- City or Town Official
- Sportsmen's Organization Member
- Agriculture
- Citizen
- Other: _____

Qualifications: (May include education, occupation, volunteer experiences, etc.)

BS: Geology & Geological Engineering (Dec 2009); 3 years of Brownfield experience at HR Green, Inc.; 2.5 years of Water Resources Engineering experience at HR Green, Inc. including stormwater permitting, BMP design, public involvement, & storm sewer design.

Civic, Professional & Community Activities: (past and present)

ACEC (American Council of Engineering Companies) Emerging Professionals Chair - 1.5 years

Reasons for wanting to serve on this committee:

I have worked with multiple watershed districts in the past, and I thought this would be a good opportunity for me to understand how they function internally.

Other comments:

Thanks for the opportunity! I hope I can get involved and help make a difference!

Signature: Bridget Osborn Date: 10/24/13

Return form to: Rice Creek Watershed District
4325 Pheasant Ridge Drive NE #611
Blaine, MN 55449

kaxtell@ricecreek.org
Fax: (763) 398-3088
Phone: (763) 398-3070

5:50 Project /program updates:

- Discuss possible BWSR Targeted watershed grant application for the SW Area



Targeted Watershed Demonstration Program

Request for Interest

October 28, 2013



About the program

In 2013, the Minnesota Legislature passed a law requiring the Minnesota Board of Water and Soil Resources (BWSR) to award grants to local government units organized for the management of water in a watershed or subwatershed that have multiyear plans that will result in a significant reduction in water pollution in a selected subwatershed. Priority in making grants must be given to the three to six best designed plans each year.

Based on this legislation, BWSR created the **Targeted Watershed Demonstration Program** and is seeking nominations for three to six project watersheds to participate. Eligible watersheds are those where the amount of change to achieve a water quality improvement is known, the types of actions required to achieve those results have been identified, and a significant amount of those actions can be implemented within a four-year timeframe.

Priority will be given to watersheds where there are current water quality impairments or priority water resources near the tipping point of becoming impaired. Proposed watersheds should have the threat to the water resource clearly identified, a thorough understanding of the pollution sources and pathways within the watershed, and baseline water quality data against which change can be assessed. Preference will be given to watersheds that are 10 or 12-digit Hydrologic Unit Codes. While protection of high quality resources is important and a critical part of the Clean Water effort, this program focuses on demonstrating water quality improvements, not on sustaining high quality systems.

Clean Water Funding Amount

Up to \$12,000,000

General Requirements

25% cash match: Match includes cash from landowners, non-profits, local and federal units of government, or private entities. In-kind landowner services are not considered match for this program.

Applicant Eligibility

Eligible applicants include Watershed Districts, Watershed Management Organizations, and Watershed-based Joint Power Organizations. Counties, Soil and Water Conservation Districts and formal partnerships of these organizations with a hydrologic watershed contained wholly within the partnership boundary are also eligible to apply. Applicants must be working under a current state approved and locally adopted water management plan.

This is a demonstration program, and as a result, the four pilot areas that are participating in the Minnesota Department of Agriculture's Water Quality Certification Program are not eligible for this initial FY2014 funding request.

Targeted Watershed Nominations

To nominate a watershed in your area, provide a written response to the following questions. Written responses are subject to a five-page limit (watershed maps are not included in the page limit).

- 1) Why would the proposed watershed and its associated water resource be a good candidate for this demonstration program?
 - a. Define the water quality concern to be addressed and the needed reduction in pollutant loadings.
 - b. Describe land use/land cover, hydrologic connections, soils, topography and ownership patterns within the watershed.
 - c. Identify the specific comprehensive local water management plan, TMDL study and implementation plan, or Clean Water Partnership diagnostic study and implementation plan that this watershed is identified in. Include the plan title, section and page number (weblink if one exists).
 - d. Describe how action items in the plan listed above address the water quality concern in the identified watershed and will lead to significant pollutant reductions, and
 - e. Provide a map that outlines the proposed watershed, monitoring locations and all jurisdictional boundaries.
- 2) Describe the extent to which water quality and quantity monitoring has occurred to date in the proposed watershed.
 - a. Include a table that details the monitoring location(s) along with the year(s), month(s) and parameters monitored.
 - b. Describe any plans to monitor this watershed in the future.
- 3) Describe the breadth of the knowledge your organization has about the pollution sources and pathways within this watershed.
 - a. Describe the methods and results of inventory and source targeting done to date, or that are in progress, to identify the most critical pollution sources or risks within the watershed that are responsible for causing impairments or threats to the surface water quality.
- 4) Describe the level of landowner/occupier interest and willingness to participate in implementing actions that is known.
 - a. What evidence supports the conclusion?
- 5) Describe the expected financial and technical resources available to the proposed watershed (local, state, and federal) and the relevant experience within the watershed area to successfully demonstrate a significant reduction in water pollution.
 - a. Include an estimate of cost that will be requested from Clean Water Funds.
 - b. Describe what other technical resources would be needed locally to implement this project.

Submittal

All responses must be electronically delivered to: BWSR.Grants@state.mn.us and must be received no later than 4:30 p.m. on December 13, 2013. Late responses will not be considered. The burden of proving timely receipt is upon the responder.

Evaluation

- 1) All nominated watersheds submitted for consideration will first be screened by BWSR staff based on responses to questions #1-5. The screening range for the response to each question will be 0 -20 points. Maximum score per request is 100 points.
- 2) Watersheds that are deemed candidates for final selection (as recommended by BWSR staff) will then be invited for an interview with the Selection Committee to answer additional questions (to be provided to candidates ahead of time). In addition to questions #1-5, the criteria that will be used during the interview process includes 1) the amount of existing local effort occurring within the watershed, 2) significance of the water resource, 3) efforts of proposer to address the long-term sustainability of soil and water resources within their jurisdiction, 4) a systematic way to address non-point water quality issues can be demonstrated and 5) commitment of other agencies, non-profits, and private interest.
- 3) 3-6 watersheds will be selected by the Board of Water and Soil Resources based on recommendations of the Selection Committee.

*The Selection Committee will be made up of representatives of the Minnesota Board of Water and Soil Resources, Minnesota Pollution Control Agency, Minnesota Department of Natural Resources, Minnesota Department of Agriculture, and the Minnesota Department of Health.

Timeline

- October 28, 2013 - Nomination period begins
- December 13, 2013 - Nomination deadline at 4:30 PM
- January – February 2013 - Interviews
- March 27, 2014 - BWSR Board selects watersheds
- May 23, 2014 - Work plan submittal deadline
- June 1, 2014 - Grant execution deadline

Questions

Questions concerning submittal of a watershed will be taken via a webinar on November 5, 2013 from 10:00 a.m. to 11:00 a.m. Additional questions may also be submitted by email to cwfquestions@state.mn.us. Responses will be posted on the BWSR website weekly through December 9th.