

**Minnehaha Creek Watershed District**

**REQUEST FOR BOARD ACTION**

**MEETING DATE:** September 13, 2018

**TITLE:** Approving and Accepting a Petition to Impound Judicial Ditch 2 – Six Mile Creek Drainage System Waters

**RESOLUTION NUMBER:** 18-096

**PREPARED BY:** Anna Brown

**E-MAIL:** abrown@minnehahacreek.org

**TELEPHONE:** (952) 641-4522

**REVIEWED BY:**  Administrator  Counsel  Program Mgr. (Name): \_\_\_\_\_  
 Board Committee  Engineer  Other

**WORKSHOP ACTION:**

<input type="checkbox"/> Advance to Board mtg. Consent Agenda.	<input type="checkbox"/> Advance to Board meeting for discussion prior to action.
<input type="checkbox"/> Refer to a future workshop (date): _____	<input type="checkbox"/> Refer to taskforce or committee (date): _____
<input type="checkbox"/> Return to staff for additional work.	<input type="checkbox"/> No further action requested.
<input checked="" type="checkbox"/> Other (specify): Approval at the September 13 Board Meeting	

**PURPOSE or ACTION REQUESTED:**

In order to facilitate the installation of a carp barrier at Highland Road in Minnetrista/Carver County, the following actions are requested:

- Approve the petition drafted on behalf of the Board to impound Judicial Ditch 2 – Six Mile Creek (JD2)
- As drainage authority, accept the petition to impound JD2
- Direct Wenck Associates to prepare a hydrological report assessing the impact of the impoundment

**PROJECT/PROGRAM LOCATION:**

Six Mile Creek at Highland Road in Minnetrista, Carver County

**PROJECT TIMELINE:**

September 27, 2018: Review of engineer’s report and public hearing

October 11, 2018: Consider authorizing the impoundment

**PROJECT/PROGRAM COST:**

N/A

**PAST BOARD ACTION:**

May 11, 2017 – Authorization to request funding from Lessard Sams Outdoor Heritage Council (17-036)

March 8, 2018 – Authorization to award design contract for carp barriers (18-021)

## **SUMMARY:**

In September of 2017, the Lessard Sams Outdoor Heritage Council recommended the Six Mile Creek-Halsted Bay (SMCHB) Habitat Restoration Project for \$567,000 to the Minnesota State Legislature. The funding bill was approved by the legislature and the grant period began on July 1, 2018.

The SMCHB Habitat Restoration project will restore 2,488 acres of deep and shallow lake habitat through the management of invasive common carp. The strategy for reducing carp concentrations below the threshold where they damage ecosystems is three-fold:

- Adult biomass removal
- Aeration of shallow lakes to prevent successful carp reproduction
- Barriers to prevent carp movement between waterbodies and assist with removal

In March of 2018, the Board awarded a contract with Wenck Associates to design the four barrier facilities proposed in the Lessard Sams work plan. The Board will be briefed on the design at the September 13 meeting.

One of the proposed barriers is located in the portion of Six Mile Creek that runs through Six Mile Marsh, between Mud Lake and Halsted Bay. Halsted Bay contains more than ten times the concentration of carp that causes ecological damage, and presently these carp move freely through Six Mile Creek to Mud Lake and Parley Lake. As such, a fish barrier preventing carp from moving upstream from Halsted Bay is a critical component of the management strategy. That barrier is herein referred to as the "Highland Road carp barrier".

Between North Lunsten Lake and Halsted Bay, Six Mile Creek has the status of a public drainage system designated as Judicial Ditch (JD) 2. The MCWD is the drainage authority for JD2 and responsible to manage the system according to the drainage code (Minnesota Statutes Chapter 103E) to provide drainage for the benefit of upstream lands. Section 103E.227 allows a landowner over which a drainage ditch passes or a public authority to realign a drainage channel, do work in the channel or place a structure in it, provided the work does not impair the drainage function of the system. The Highland Road carp barrier, as an in-channel structure, will have a small but perceptible effect on upstream water level and therefore is subject to Board approval under 103E.227. As directed in 103E.227, the following procedures must be adhered to in order to place an impoundment in a drainage ditch:

1. A petition must be filed with the drainage authority including the location of installation and concept plans, and the source of funds to be used for the project;
2. If the petition meets the statutory requirements, the drainage authority accepts it and directs its engineer to prepare a report to assess the hydraulic effect of the proposal;
3. After the engineer files its report with the Board, notice is given and a public hearing is held;
4. If after hearing the drainage authority finds that the proposal is of public or private benefit and will not impair the utility of the drainage system or deprive affected landowners of its benefit, it authorizes the work.

In this case, the MCWD Board of Managers is both petitioner and petitionee, and as such there will be an additional step at the September 13 meeting in which the Board first must accept the drafted petition in order to then commence the ditch proceeding.

At the September 13 Board Meeting, staff are requesting the Board take steps one and two above: approve the petition, accept it, and direct the engineer to prepare a report. Steps three and four will be complete at subsequent meeting in September and October.

**RESOLUTION**

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**RESOLUTION NUMBER:**    18-096

**TITLE:**            **Approving and Accepting a Petition to Impound Judicial Ditch 2 – Six Mile Creek Drainage System Waters**

WHEREAS, pursuant to Resolution 14-047 the MCWD Board of Managers has identified the Six Mile Creek-Halsted Bay (SMCHB) subwatershed as a priority area for focusing District planning activities and coordination efforts with subwatershed partners; and

WHEREAS, in September of 2017, the Lessard Sams Outdoor Heritage Council recommended the SMCHB Habitat Restoration project for \$567,000 in funding, and prepared a bill for legislative approval reflecting the same;

WHEREAS, in March of 2018, the Board approved a scope of work with Wenck Associates to design barrier facilities at four locations in the SMCHB subwatershed, including one to be located adjacent to Highland Road in Minnetrista between Mud Lake and Halsted Bay (Highland Road Barrier);

WHEREAS, a portion of Six Mile Creek, including the portion in which the Highland Road Barrier will be located, is a Judicial Ditch (JD2), and the MCWD is the drainage authority for JD2;

WHEREAS, the MCWD Board of Managers as drainage authority will follow the procedures outlined in Minnesota State Statute 103E.227 to ensure that the Highland Road Barrier does not deprive any lands served by JD2 of the benefits of the public drainage system;

**NOW, THEREFORE, BE IT RESOLVED** that the Minnehaha Creek Watershed District Board of Managers approves the petition to impound Judicial Ditch 2 – Six Mile Creek drainage system waters, and authorizes the Board President to execute the petition;

**BE IT FURTHER RESOLVED** that the Minnehaha Creek Watershed District Board of Managers accepts the petition to impound Judicial Ditch 2 – Six Mile Creek drainage system waters as drainage authority over said drainage system;

**BE IT FINALLY RESOLVED** that the Minnehaha Creek Watershed District Board of Managers directs Wenck Associates, as District Engineer, to prepare a report assessing the impact of the proposed impoundment and file the report with the Board.

Resolution Number 18-096 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_.  
Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: \_\_\_\_\_.

\_\_\_\_\_  
Secretary

Date: \_\_\_\_\_

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To the Secretary,  
Minnehaha Creek Watershed District

**PETITION TO IMPOUND JUDICIAL  
DITCH 2 - SIX MILE CREEK DRAINAGE  
SYSTEM WATERS**

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1. The Minnehaha Creek Watershed District (“District”) is the drainage authority under Minnesota Statutes §103E.005, subdivision 9, for Judicial Ditch (JD) 2 - Six Mile Creek. Pursuant to Minnesota Statutes §103E.227, the District submits this petition to install and maintain an impoundment on JD2, within the City of Minnetrista, Carver County, for its own consideration.
2. The District will impound JD2 by installing and maintaining a fish barrier (the Highland Road Carp Barrier) that will protect upstream water resources from invasive common carp, restoring 2,488 acres of deep and shallow lake habitat.
3. To facilitate implementation of the Highland Road Carp Barrier, Petitioners must impound portions of Six Mile Creek located on or across the following properties:

<b>Property Description</b>	<b>Property Owners</b>	<b>Address</b>
Unplatted parcel between Highway 7 and Highland Road	Douglas and Ann Segner	8230 State Hwy No 7 Minnetrista, MN 55375
Highland Road Right of Way at Six Mile Creek	City of Minnetrista	N/A
Creekview Business Park outlot	Creekview Investments, LLC	Unassigned – PID 3211724110002

4. Attached to this Petition and labeled as **EXHIBIT A** are plans and specifications for the proposed impoundment developed by Wenck Associates.
5. Attached to this Petition and labeled as **EXHIBIT B** is a map of the properties likely to be affected by the impoundment of drainage system waters. The properties likely to be affected are those riparian to JD2 where Wenck Associates, through hydraulic modeling, has determined that the barrier may result in a water level elevation increase for events below the 24-hour, 100-year precipitation event.
6. The District agrees to be responsible for the cost of installation and construction of the barrier as well as the engineering and legal costs associated with this Petition. No drainage system funds are requested to acquire necessary land rights or construct the project.

7. The District has consulted with the Division of Waters, Department of Natural Resources, and determined that a public waters permit is required to install and maintain the barrier. An application for a public waters work permit has been submitted. The District requests that approval of this impoundment be conditioned on issuance of a public waters work permit.
8. The District will acquire, in writing, all property rights, rights-of-way, or flowage easements necessary before installation.

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by:

\_\_\_\_\_, President

*Sherry Davis White*

On behalf of the Minnehaha Creek Watershed District

15320 Minnetonka Blvd.

Minnetonka, MN 55345