

**STATE OF MINNESOTA  
RICE CREEK WATERSHED DISTRICT  
DRAINAGE AUTHORITY FOR WASHINGTON COUNTY  
JUDICIAL DITCH 2 (HARDWOOD CREEK)**

The matter of the repair of Washington County Judicial Ditch 2	Petition for Repair (Minnesota Statutes Section 103E.715)
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1. The Minnesota Water Resources Board established the Rice Creek Watershed District by Order on January 18, 1972.
2. Shortly after establishment of the District, Washington County transferred jurisdiction to the District for all County and Judicial Ditches, including Washington County Judicial Ditch 2.
3. Throughout the District, public and private entities and landowners rely upon public drainage systems, including Judicial Ditch 2, to provide flood control and land drainage.
4. In urbanizing and developing areas of the District, the drainage systems provide trunk conveyances for stormwater.
5. Several communities within the District have planned their stormwater management around both the efficient function of these systems and around the natural buffering, storage and retention qualities of adjacent wetland and open spaces.
6. For example, the City of Hugo has developed its stormwater management plan and ordinances around the efficient function of Judicial Ditch 2.
7. The network of public drainage systems within the District is the primary means by which the District implements its statutorily mandated water quantity management function.
8. The District manages its public drainage infrastructure as a completely integrated and important resource of the District as a whole.
9. The District has financed periodic, routine maintenance of the drainage systems by District-wide, ad valorem tax levies since 1977.
10. The Washington County District Court established Judicial Ditch 2 in 1909 to restore and improve the channel of Hardwood Creek.
11. The main channel of Judicial Ditch 2 closely follows the original channel of Hardwood Creek, beginning just above Rice Lake traveling north, then west-southwest approximately 9.6 miles to its official end at 165<sup>th</sup> Street North in Section 7 of Hugo

Township.

12. The original alignment of Hardwood Creek then carries the flow of water the remaining 2.4 miles to the confluence with Rice Creek in Section 2 of Hugo Township.
13. As established, the ditch occupied a 66 foot right of way with four tributary branches designated numbers 1-4.
14. The ditch and its branches occupy a large wetland complex which constitutes the riparian corridor of Hardwood Creek.
15. In August 1987, general maintenance work consisting of removal of brush, fallen trees, logs, etc., was completed for selected reaches of Judicial Ditch 2.
16. In March 1988, the District approved additional limited ditch repair work on Judicial Ditch 2 and its branches. The repairs included removal of a large blockage within the main ditch, approximately 4½ miles down stream from Rice Lake, and the removal of an abandoned culvert just downstream of the point where Branch 4 entered the ditch.
17. Additional maintenance occurred in 1993, which included the removal of two large beaver dams in the excavation of accumulated sediment near 157<sup>th</sup> Street, approximately one mile north of Rice Lake.
18. Judicial Ditch 2 is in need of repair. A 1994 inspection report noted that the majority of the ditch system flowed through canary and sedge-grass wetland areas with vegetation encroaching on the banks and restricting flow. The report continued, "the absence of high ditch banks and presence of numerous beaver dams and timber deadfalls throughout the ditch system revealed that much of the land adjacent to the ditch will be flooded during times of high flow."
19. The 1994 report noted several additional conditions on the main channel which were restricting the flow of the ditch as well as generally poor conditions of all four branches of the ditch. The report noted generally poor maintenance, obstruction by sediment and vegetation, beaver dams, and improperly placed or inadequately sized private and public road crossing structures. The report recommended additional maintenance to correct the problems.
20. The conditions described in the 1994 report continue to exist on Judicial Ditch 2.
21. In 2001, the District located a design plan for the ditch and used it in conjunction with soil borings and other historical evidence to determine an as-built profile for the ditch. Prior to 2001, the District did not have an as-built profile to guide permit decisions and actions related to the ditch.

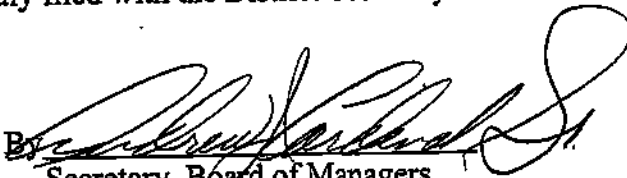
22. Because of the absence of a profile, regulatory actions by the District related to the ditch were informed by available flood insurance study records and interpolation of channel profiles based on existing culvert inverts. This method was used to set culvert elevations which now, based upon the determined, as-built profile of Judicial Ditch 2, serve to obstruct the flow of the ditch.
23. In its current condition, the ditch provides nowhere near the hydraulic capacity or efficiency which existed at the time of construction of the ditch.
24. The District, as drainage authority, has a statutory obligation to maintain drainage ditch systems under its jurisdiction and provide the repairs necessary to make the drainage system efficient but this repair authority must be exercised in accord with statutory constraints.
25. In performing this statutory obligation, the District, as drainage authority, must balance the "repairs necessary to make the drainage system efficient" with relevant natural resource considerations.
26. The District recognizes the need for public input to determine whether a repair should be accomplished.
27. Since 2000, the District has been involved in multiple litigations and regulatory actions related to the condition of Judicial Ditch 2. However, on no occasion has the District, as drainage authority, or any other party interested in the ditch, petitioned for the repair of the ditch.
28. The Board of Water and Soil Resources has recently remanded to the District a decision under the wetland conservation act, directing the District to determine a scope of repair of Judicial Ditch 2 that properly balance the necessary repairs and natural resources considerations.
29. The District possesses authority, under Minnesota Statutes Section 103E.705 to undertake to repair Judicial Ditch 2 on its own initiative upon receipt and acceptance of a written repair report showing that the ditch is in need of repair.
30. The District accepts the 1994 report which details the conditions of the ditch.
31. Likewise, because Judicial Ditch 2 is part of the trunk drainage system of the Rice Creek Watershed District, and because the District has, in the past, maintained the ditch through the levying of ad valorem taxes, the District is "an entity interested in or affected by the drainage system."

32. The District may petition itself for the repair of Judicial Ditch 2, as an interested entity, under Minnesota Statutes Section 103E.715.
33. Therefore, pursuant to Minnesota Statutes Sections 103E.705 and 103E.715 and any applicable provisions of Chapters 103B and 103D, the District petitions for the repair of Judicial Ditch 2.
34. This petition contemplates that the District will, after receiving appropriate information, determine: (a) whether a repair should be conducted; (b) if a repair is ordered, the extent of the repairs; and (c) what measures should be taken to minimize or avoid environmental impacts.

Dated April 10, 2002

By   
Chairperson, Board of Managers

The foregoing Petition was adopted and accepted by the Board of Managers of the Rice Creek Watershed District at its regular meeting on Wednesday, April 10, 2002, upon resolution offered by Manager Doerge, seconded by Manager Cardinal and approved by majority vote of the Board of Managers. The same being duly filed with the District Secretary on April 10, 2002.

By   
Secretary, Board of Managers