

COMMISSION FILE NO: 16-116-9 **DATE INTRODUCED:** September 12, 2016

INTRODUCED BY: Executive Director (Signature on File in the Office of the Commission)

REFERRED BY COMMISSION CHAIRPERSON TO: Policy, Finance, and Personnel Committee

RELATING TO: Authorization of a Public Hearing Regarding Proposed Amendments to MMSD Rules, Chapter 13, Surface Water and Stormwater, to Add the Estuary Reaches of the Kinnickinnic, Menomonee, and Milwaukee Rivers and a Reach of Indian Creek in Fox Point as Watercourses Where the District May Take Action to Abate the Regional Flood

SUMMARY:

The Commission is requested to authorize the Executive Director to hold a public hearing as required by Wis. Stat. Sec. 200.45(1)(c) regarding proposed amendments to MMSD Rules, Chapter 13, as shown in Attachment 3.

The proposed amendments would add the estuary reaches of the Kinnickinnic, Menomonee, and Milwaukee Rivers to the list of watercourses where the District may take action to abate flooding. The amendments would also add a reach of Indian Creek in Fox Point. Previously this reach was inadvertently omitted from Chapter 13.

In addition, the amendments would make three non-substantive corrections to the tables listing watercourses.

ATTACHMENTS: **BACKGROUND** ☒ **KEY ISSUES** ☐ **RESOLUTION** ☒
FISCAL NOTE ☐ **S/W/MBE** ☐ **OTHER** ☒ Attachment 1: Proposed Estuary Reaches;
Attachment 2: Indian Creek correction; Attachment 3: Proposed Rule Amendments

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COMMITTEE ACTION: _____ **DATE:** _____

COMMISSION ACTION: _____ **DATE:** _____

BACKGROUND

Authorization of a Public Hearing Regarding Proposed Amendments to MMSD Rules, Chapter 13, Surface Water and Stormwater, to Add the Estuary Reaches of the Kinnickinnic, Menomonee, and Milwaukee Rivers and a Reach of Indian Creek in Fox Point as Watercourses Where the District May Take Action to Abate the Regional Flood

To indicate where the District may take action to abate the regional flood, the District lists watercourses in the appendix to MMSD Rules, Chapter 13, Surface Water and Stormwater. “Regional flood” means the peak flow and peak elevation of water with a one percent probability of occurring during any one year (MMSD Rules, Sec. 13.03(11)). Chapter 13 contains six tables organized by major watershed. These tables name the watercourse, municipalities in the watershed, upstream and downstream termini, and total length. District staff refers to these watercourses as those where the District has “taken jurisdiction”.

The listing of a watercourse indicates that the District may take flood abatement action on the watercourse. Listing, by itself, does not affect any riparian property interest or guarantee any particular level of protection within any particular timeframe. Commission actions toward abating regional floods typically include approving watercourse management plans, budgeting for specific projects, and authorizing individual contracts for planning, design, construction, and maintenance.

Steps necessary for District to take jurisdiction for flood abatement

The steps relating to taking jurisdiction for flood abatement are in Commission Policy 1.01.15, Watercourse Policy, and MMSD Rules, Section 13. To amend a District Rule, the District is required to hold a public hearing (Wis. Stat. Sec. 200.45(1)(c)).

To add a watercourse, governmental units must first petition the District, according to MMSD Rules, Sec. 13.05. The petition shall contain, among other items, a description of flood risks and the extent and magnitude of flood losses.

After a governmental unit petitions the District, staff reviews the petition for consistency with Commission Policy 1.01.15. This policy identifies under what criteria the District may take jurisdiction for flood abatement purposes over a watercourse. The criteria vary depending upon the type of stream, but address potential for flood damage, multi-community tributary area, and if the District has constructed channel improvements.

Assuming the watercourse meets these criteria, the next step is for the Commission to hold a public hearing, as required by Wis. Stat. Sec. 200.45(1)(c).

After the public hearing is held, staff would then request adoption of the amended rule. As part of this request, staff will provide to the Commission a comment summary and a description of any changes to the proposed amendments. If the Commission adopts the amendments, then the amendments become effective upon publication.

BACKGROUND (Cont'd)

Authorization of a Public Hearing Regarding Proposed Amendments to MMSD Rules, Chapter 13, Surface Water and Stormwater, to Add the Estuary Reaches of the Kinnickinnic, Menomonee, and Milwaukee Rivers and a Reach of Indian Creek in Fox Point as Watercourses Where the District May Take Action to Abate the Regional Flood

Estuary Reaches

For the estuary reaches, the District received a petition from the City of Milwaukee dated July 14, 2016, to take jurisdiction of the estuary reaches of the Milwaukee, Menomonee, and Kinnickinnic Rivers. District staff has reviewed this petition and concluded that listing is appropriate because the estuary reaches receive flow from multiple jurisdictions and the reaches have a significant potential for flood damage.

The U.S. Federal Emergency Management Agency (FEMA) maps areas subject to the regional flood. FEMA maps indicate that, in total, approximately 119 structures are within the boundaries of the regional flood. The City of Milwaukee, in its July 14, 2016 petition, estimated total potential flood damage to be in the range of \$67 million, based upon how a one-foot inundation would damage structures and their contents and disrupt use, employment, and recreation.

Attachment 1 shows the estuary reaches proposed for taking jurisdiction, while the following table shows their length.

Estuary Reach	Additional Length (miles)
Kinnickinnic	2.4
Menomonee	2.2 (Main Stem) 0.6 (Burnham Canal) <u>0.9 (Menomonee Canal)</u> 3.7 Total
Milwaukee	3.2
Total	9.3

Indian Creek

For Indian Creek in Fox Point, the description of District jurisdiction needs to be corrected to add the portion between East Dean Road and North Manor Lane, north of North Indian Creek Parkway. The District completed a watercourse management plan in 1998, before adoption of Chapter 13, and completed construction work along Indian Creek in 2007. This work included the reach between Dean Road and Manor Lane, but Chapter 13 was not updated at the time of the work. The correction of this inadvertent omission adds 1,900 feet of jurisdiction for this reach of Indian Creek, as was contemplated by the watercourse management plan.

Attachment 2 shows the Indian Creek correction.

BACKGROUND (Cont'd)

Authorization of a Public Hearing Regarding Proposed Amendments to MMSD Rules, Chapter 13, Surface Water and Stormwater, to Add the Estuary Reaches of the Kinnickinnic, Menomonee, and Milwaukee Rivers and a Reach of Indian Creek in Fox Point as Watercourses Where the District May Take Action to Abate the Regional Flood

Corrections

To the Menomonee River, Mainstem, Upstream Terminus, change “Ozaukee” to “Waukesha”.

To the list of municipalities in the Kinnickinnic River watershed, the following communities need to be added for completeness: Cudahy, Saint Francis, and West Milwaukee.

In the title to Table 4, the word “and” needs to be inserted between “Milwaukee River” and “Tributaries”.

Next Steps

The next step is a public comment period, including a hearing. The hearing must occur at least 30 days after publication of the hearing notice. If the Commission approves the hearing, then publication of the hearing notice will occur in early October, and the hearing will occur in early November. The earliest possible date for adoption is the December Commission meeting. When adoption is requested, staff will provide the Commission with a comment summary and a description of any changes to the proposed amendments. If the Commission adopts the amendments, then the amendments become effective upon publication. The currently proposed amendments are shown in Attachment 3.

RESOLUTION

Authorization of a Public Hearing Regarding Proposed Amendments to MMSD Rules, Chapter 13, Surface Water and Stormwater, to Add the Estuary Reaches of the Kinnickinnic, Menomonee, and Milwaukee Rivers and a Reach of Indian Creek in Fox Point as Watercourses Where the District May Take Action to Abate the Regional Flood

RESOLVED, by the Milwaukee Metropolitan Sewerage Commission, that the Executive Director is authorized to hold a public hearing as required by Wis. Stat. Sec. 200.45(1)(c), regarding the proposed amendments to MMSD Rules, Chapter 13, as shown in Attachment 3.