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Special Meeting, Upper Reaches Project
February 7, 2007
Approved Minutes

A special meeting of the Wild Rice Watershed District Board of Managers was held on Wednesday, February 7, 2007, at the office of the District located at 11 Fifth Avenue East, Ada, MN. The following members were in attendance: Warren Seykora, Jim Wagner, Sr., Bob Wright, Joe Spaeth, Diane Ista and Jim Skaurud. Members absent: David Vipond. Also in attendance were: Administrator Dalen, Secretary Loretta Johnson, Publicist Tim Halle, Engineer Jerry Bents, Attorney Jerry Von Korff and interested landowners.

Chairman Seykora called the meeting to order at 9:35 a.m.

Jerry Bents provided a background of the Upper Reaches Project. The first component is the Wild Rice River as it passes south of Ada and westerly; second component formerly known as the Marsh River Ditch or old State Ditch 9 or Judicial Ditch #51 begins east of Ada at the diversion channel where it intersects with the Wild Rice River and flows northwesterly, circumventing Ada on the north side, then runs west where it joins the Marsh River; the third component begins at the end of J.D. #51 and runs westerly to the Anthony Church. The Marsh River Drainage and Conservancy District was formed in 1948 and in 1954 assessments were established at \$117,000 for this triangular portion within the areas described called the Upper Reaches Project, for the purpose of a repair project by the U.S. COE. The project was transferred to the Wild Rice Watershed District at the time of its inception.

Chairman Seykora stated that approximately one year ago an informational meeting was held regarding the financial condition of the Upper Reaches Project at which time the public agreed to have 100% of the benefits (\$117,000) assessed for a year. The reason for the meeting today is to discuss options to bring the project finances into a positive account.

Attorney Hanson arrived at 10:15 a.m.

Attorney Jerry Von Korff, Rinke-Noonan, gave a presentation on options and choices available to the District if they decide to make major repairs. Von Korff stated that he is here to give the board positives and negatives that are available and try to give a balanced view to provide the board to make those choices.

Currently the District has the existing project mechanisms: Chapter 103E Drainage Systems; Chapter 103D Watershed District projects; Projects transferred from conservation-flood control district of which the Upper Reaches was a conservation district project. Existing funding mechanisms include drainage special assessments (103E); Watershed project assessments (103D); and outside funding sources i.e. COE, DNR, Flood Control Grants, etc.

The primary mission of 103E statute provides for traditional agriculture drainage systems and funds are only collected from the market value benefit to farmland, there are not any general public special benefits. Statute 103D provides for Watershed District projects modeled after drainage systems. Projects transferred from conservation flood control districts created under Chapter 111, where benefits provided in that statute were reserved to the public, are very different from a drainage project, and an example is the Upper Reaches which was established under Chapter 111, but is no longer a statute and transferred to the Watershed District.

The current groundrules for the Upper Reaches Project are that: Benefits under Chapter 111 belonged to the public; repair profile does not have to match the as-built; repair goal is to maintain general efficiency of the project; and major repairs should be treated as a new project. An alternative funding mechanism would be to establish a Water Management District (WMD) like city stormwater charge system; has the authority granted by BWSR after a series of public hearings; the duration, amount and method of calculation limited to the express authority granted by BWSR and requires a District Plan Amendment. The Water Management District Statute (§103D.729) states that a watershed district may establish a water management district or districts in the territory of the watershed for the purpose of collecting revenues and paying the cost of project initiated under sections 103D.601, D.605, D.611 or D.730. A WMD is a tool for Watershed Management that focuses energy and resources on a specific geographic region; allows for focused analysis of area specific conditions or concerns; provides for targeted funding of projects and basic water management programs with purely local significance; and adds another fiscal tool to the Managers.

Von Korff stated that there are very substantial benefits to proceed with a WMD but there are also concerns that might cause people to oppose which include: that this is another way for government to get into my wallet!; that it's more open-ended; that the ability to challenge the charges in court are more limited. To address the concerns the public should know that the money is used for a project, which is still subject to court review, the maximum charges can be clearly stated in a plan amendment, the duration of authority must be limited and there are substantial cost savings because the benefits' litigation is avoided. Costs associated with litigation such as higher viewer expenses for determination or redetermination of benefits, possibility of two trials, one to jury, two trips to the Court of Appeals, expert witness costs and the fact that the citizen pays for his lawyer AND then gets assessed for District costs can be avoided with a WMD. However, there is a need for concurrence for the project and avoidance of opposition, because BWSR may not grant approval if there is a lot of dissention.

The central question is whether the public is willing to entrust the District with a more flexible authority so that it can solve water problems without major costly and prolonged litigation over who should pay. A WMD allows charges to extend more broadly, water is everyone's problem.

Steps for implementation of a WMD are:

- Determine the appropriate boundaries
- Decide whether you want charging authority
- Determine the nature and extent of charges that you want to impose
- Conduct local hearings
- Adopt plan amendment
- Obtain BWSR approval

Jerry Von Korff took questions from the audience. Administrator Dalen asked if there would still be the cost of determination of benefits when using a WMD and Chairman Seykora asked if there are the same restrictions. Von Korff stated that special assessments are not used; rather it is a charging benefit, which is much more flexible and is comparable to a city imposing sewer or water charges.

Manager Ista stated that the Upper Reaches needs to be repaired, but the public feeling is why do the repairs unless you fix the major problem which is controlling the water that comes down. The Managers would have to determine something for retention for up above first so that the controversy would be cut down. Administrator Dalen agreed that retention is a big issue to slow the water down, and the local share has not been addressed. He asked if a WMD could be used to fund a retention area. Mr. Von Korff stated that the District would need to look ahead at the things they would like to do and then put that authority into the Water Management Plan; it would allow you to view water as a bigger problem than just whose land it is falling on or whose land it is coming from. Manager Ista stated that the District would need multiple WMDs rather than just one, the plan would have to be very precise, and that would mean that the District would be encouraged into having more than one WMD where this could be utilized.

Administrator Dalen stated that there has been some discussion by landowners who would like a redetermination on Project #9 and costs for a redetermination on both the Upper Reaches and Project No. 9 could range up to ½ Million. Dalen asked Von Korff if there was any way that he could determine the costs for establishing a WMD. Von Korff stated that until the District is able to provide quite solid numbers and a recommendation on how the charging is done, the public will be skeptical. The district would have more flexibility using a WMD, as to what is fair. Manager Wright asked how you protect the right of the individual property owner with a WMD. Von Korff stated that a WMD is a funding mechanism, the landowners decision for the right not to repair can be appealed to District Court or BWSR.

Engineer Bents stated that Watershed District Statute 103D does not include a redetermination of benefits and asked what the Watershed District could do to change this. Von Korff stated that the District should request that MAWD support a request to state legislators to change the Statute. Manager Ista stated that landowners and Managers want to cut the cost to residents as much as possible; the challenges and going to court could be avoided with a WMD; we can save the taxpayers money by doing a WMD, it would give the District good points to stand on. Ronnie Guttormson asked if it is possible for landowners to stay out of the project and who would pay the costs for the redeterminations. It was stated that landowners on the ditch system pay for the costs. Manager Ista stated that the District could possibly have ten different WMDs and they would not need to bring in all of the controversy; therefore there would be a need for major planning and how each would be incorporated.

Brian Borgen stated that the Upper Reaches Project is several thousand dollars in the deficit and asked who would pay that difference and also asked if the new project would be cleaned to its original condition. Chairman Seykora stated that the District would be initiating a new project, and would encompass an area defined along with the new project, however the discussion today is how to fund the Upper Reaches.

Tim Halle asked if you placed a new project over the Upper Reaches, can you expand the project. Jerry Von Korff stated that yes, this is possible. Von Korff also stated that the District would probably authorize Engineer Bents a policy guidance on how to determine the area defined by the Project.

The definition of consensus was asked. Mr. Von Korff stated that it not a legal question. An audience member asked if the District has the authority to make the entire watershed district into a WMD. He felt that it would be wrong to allow this. Mr. Von Korff stated that a WMD type of project is not allowed to run amuck. Concern of the audience was that a WMD project made it more difficult to oppose. Von Korff stated that the project can be challenged in both systems and landowners still would have the right to challenge the project. Manager Ista stated that there is no intention of the Board to go to a district wide WMD: it would be very hard to get a consensus, but you can't rule out everything. The Mangers need time to digest the information and it will all go through public scrutiny. Jerry Von Korff stated that there is always the need to get BWSR approval before anything is approved.

There being no further questions, a motion was made by Manager Spaeth and seconded by Manager Ista to adjourn the meeting. Carried. Chairman Seykora adjourned the meeting at 12:10 p.m.



Diane Ista, Secretary