

# Public Private Partnership (PPP)



**THE WHAT, WHY AND HOW**

# Definition of PPP



- Public Private Partnership, aka PPP or P3
  - An arrangement in which a private operator is hired by a public entity for all or most of the design, construction, operation, and financing of a public project
- Public entity's only major responsibility: to obtain funding for rental payments made to the private operator



# Advantages of PPP



- Speeds up construction timeline
- Increased efficiency by having engineer & contractor on same side
- Frees public entity from providing oversight for enormous amount of details of project

Best advantage of PPP:

- \* Allows Diversion Authority to leverage a slow revenue stream from the federal government with strong local revenues

# Legal Authority – Federal



- WARDA Bill § 5014



## Legal Authority – ND Law



- N.D. AG. Op. 2008-L-08 (2008):

“A public authority is given broad authority under N.D.C.C. ch. 48-02.1 to enter into agreements with private entities to facilitate constructing public facilities. This interpretation is supported by legislative history including the sponsoring senator’s statement that the chapter’s purpose is to enable a public entity to draw upon the private sector as the equity source of funding infrastructure development.”

# Legal Authority – MN Law



- MN law is more complex regarding water projects
- However, MN entities have power to enter into a PPP by a joint powers agreement relying on ND law



# Design-Build-Finance-Operate (DBFO)



- Variety of ways to structure PPP – DBFO contract seems best fit for F-M Diversion Project
- Used for projects that may take more than 20 years to complete, such as river diversion
- Private operator very involved in a DBFO contract
  - Responsible for all or most of the design, construction, operation, maintenance and financing of the project



# CCJWRD Has Jurisdiction Over Project Area



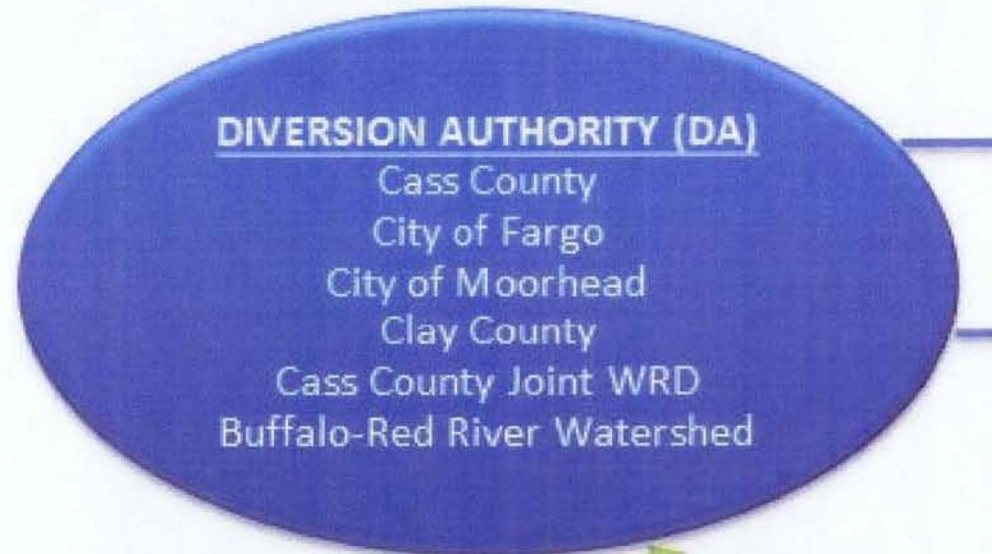
- PPP laws expressly provide:

"When a fee based facility is or will be situated in the jurisdiction of more than one public authority, or is or will be an interstate or international facility, the applicable authorities concerned may enter into a compact to delegate to one or more of the authorities or a board appointed by the various authorities the authority to exercise all of the powers, duties, and functions of the other authorities regarding the fee-based facility, including the authority to negotiate and administer the development agreement and any related lease and fee-based concession agreement. In addition, if all public authorities having jurisdiction over a fee-based facility concur, title to or authority over the facility may be tendered to the agree-upon authority of choice, which may at its option accept the title of authority to administer pursuant to the development agreement and this section."

N.D.C.C. 48-02.1-11 (emphasis added).

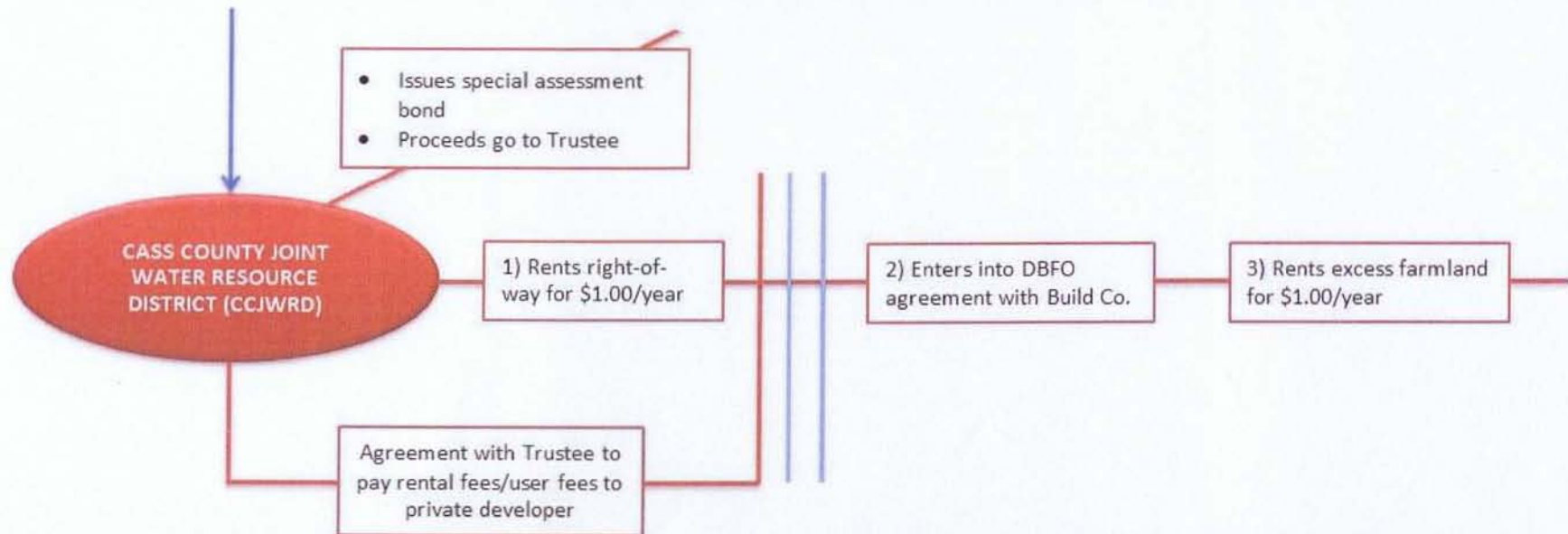


# Role of Diversion Authority

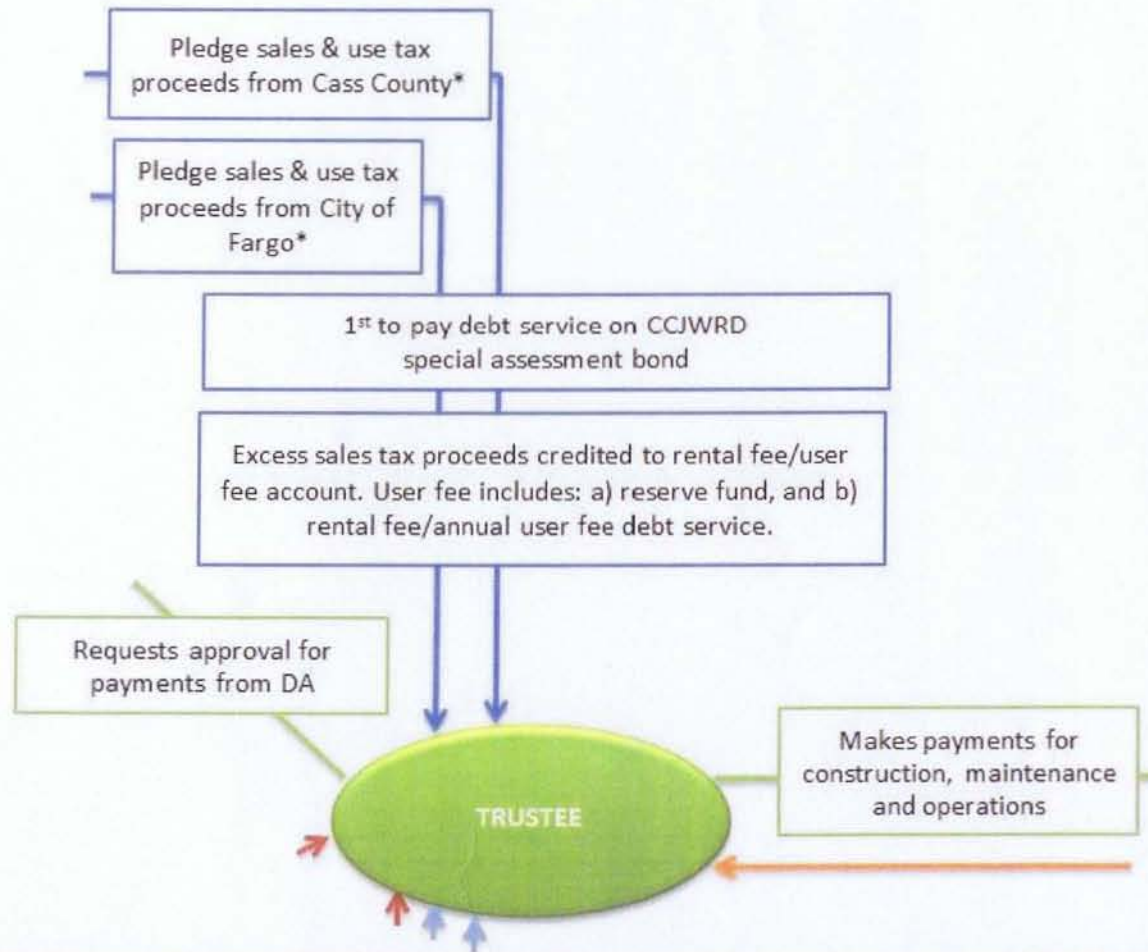


Assigns authority for DBFO contract to CCJWRD pursuant to Joint Powers Agreement, whereby DA gives consent to policy decisions & leaves administrative issues to CCJWRD

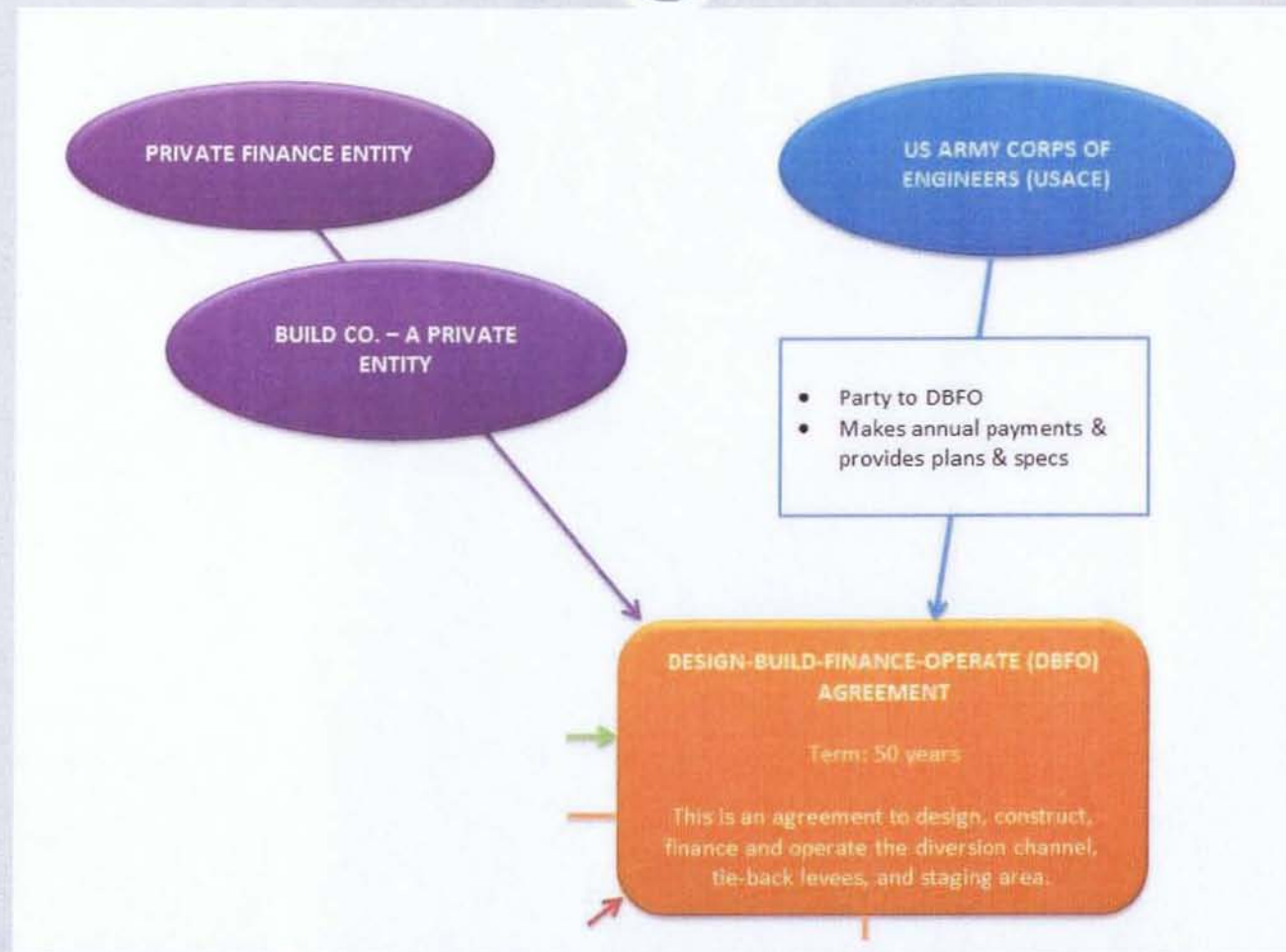
# Role of CCJWRD







# Role of Build Co. & USACE





# DBFO Contract – Key Terms



## SUMMARY OF KEY AGREEMENT TERMS:

- 1) Security to complete the project in a timely manner
- 2) Professional engineering oversight by DA & CCJWRD engineers
- 3) Build Co. assumes the risk of non-appropriation by Congress/USACE
- 4) Build Co. granted the ability to rent out any farmland for extra income
- 5) Indemnification issues need to be resolved
- 6) Rental agreement provisions to be reviewed once every five years