

Minnesota Association of Watershed Districts (MAWD) Summer Tour. MAWD has scheduled their 2016 Summer Tour for June 22-June 24, 2016 in Winona. The office has already made hotel and event reservations for Managers Hanson, Van Amburg, and Fjestad.

BRRWD Rules. The Managers have copies of the draft Rules for review, and we might need to schedule a special meeting to complete their review. Once the Managers have approved a final draft, the office will distribute the Rules to BWSR and other governmental agencies for the mandatory 60-day review and comment period. The BRRWD must also hold a public hearing before adopting the new Rules.

Meeting Recess. At 8:50 PM, Chairman Van Amburg recessed the meeting to allow time for all parties to arrive for the BRRWD's discussion of the Fargo-Moorhead Diversion Authority's (DA) Joint Powers Agreement (JPA). At 9:00 PM, Van Amburg called the meeting back to order.

COE FM Diversion. The Board and audience entered into an extended discussion regarding the issue of the BRRWD's participation in the DA's revised JPA. Albright gave a brief history of the development of the 2016 JPA document, and the Board's deliberations about the BRRWD's involvement with the new JPA. Several 6-Entities meetings have been held to discuss the JPA revisions, including BRRWD questions about financial obligations, roles, and responsibilities. The six entities associated with the JPA include the City of Fargo, Cass County, Cass County Water Resource District, (North Dakota), the City of Moorhead, Clay County, and the BRRWD (Minnesota). Following a meeting with Attorney Norgard on 05/10/16, it appeared that the BRRWD was not going to participate in the JPA, and Albright alerted John T. Shockley, Attorney, Ohnstad Twichell, who represents the City of Moorhead and has been responsible for the JPA revisions, so that he could revise the document accordingly. Albright also noted that the DNR released their final Environmental Impact Statement (EIS) on 05/16/16. The next phase of DNR involvement with the Diversion project will be permitting.

Chairman Van Amburg discussed the history of the BRRWD's involvement with the Diversion project and the previous JPAs, starting in 2008. He pointed out that in his opinion, the Board's participation in the JPAs was not a show of support for the Diversion project, but was an attempt to have input in the process. Albright noted that the DA hopes that all the entities will have signed the new JPA by mid-June.

Van Amburg asked if any citizens from the BRRWD wished to make a statement. Robert Zimmerman, Engineer, City of Moorhead, related a conversation he had with City of Moorhead Mayor Del Rae Williams regarding the BRRWD's participation in the JPA. Zimmerman said that Mayor Williams would encourage the BRRWD to continue to be a part of the Diversion project process. He noted that the City and the BRRWD have had a good working relationship over the years, and the City would value the BRRWD's expertise regarding project permitting, mitigation, etc. The COE will be scheduling meetings with the DNR on the permitting process, and Zimmerman hoped to have input from Albright and Jones regarding that process. He added that the City supports the BRRWD's continued involvement in the Diversion project.

Brian Berg, Clay County Administrator, commented that the Clay County Commissioners will act on the JPA tomorrow. He encouraged the BRRWD to stay engaged in the Diversion project development as the "water experts" for Clay County.

Landowner Paul Krabbenhoft discussed the BRRWD's involvement with difficult water decisions since the 1975 flood. He asked the Board to continue to be part of the DA and to represent all of the Clay County citizens. He thought both the Cities of Fargo and Moorhead needed the BRRWD's "voice" on these water issues.

Manager Kobiela asked Attorney Shockley who would get the BRRWD's vote if we don't sign the JPA and are subsequently dropped from the DA. Shockley thought it would go to the City of Moorhead. Then the

City would have three votes and Clay County would have two. Shockley explained that the JPA's intention is to maintain the balance between North Dakota and Minnesota.

Albright pointed out that the JPA states that "it is in the best interest of their constituents to establish a permanent JPA entity to provide flood protection for the Fargo-Moorhead metropolitan community." He feels that considering the "best interest of their constituents" is a useful way for the Board to judge the merit of their decisions.

Frank Gross, Clay County Commissioner, stated that the BRRWD, as the Clay County "water authority", is a vital part of the Diversion project development. He noted the Commission appointed three of the BRRWD Managers to represent the County on water issues, and it is very important that the BRRWD continue to be a part of the JPA.

Jay Nord stated that he was not against flood protection for Fargo-Moorhead, but he didn't think it should be accomplished by flooding a new area so that they can continue to build in the floodplain south of Fargo. He took issue with the statement that if the BRRWD doesn't sign the current JPA, the citizens of Moorhead won't be represented. He pointed out that they already have two representatives: the City of Moorhead and Clay County. Nord observed that the BRRWD is the only representation that Wilkin, Otter Tail, and Becker County has, and if we vote to approve the JPA, it is a vote against the rest of the BRRWD. He stated that there didn't appear to be any advantage for the other BRRWD constituents to be involved in the JPA. Van Amburg commented that he viewed the Board's role on the DA in part as an advocate regarding easements and drainage issues. Nord thought that the BRRWD will still have influence over the project through permitting. He listed impacts he feels the Diversion project will cause in the upstream areas of the BRRWD. Van Amburg thought that it was the BRRWD responsibility to remain involved and not hand over our responsibilities to the other JPA members.

Manager Anderson asked Attorney Shockley which agency exercised the use of eminent domain for the inlet structure in North Dakota. Shockley explained that the Cass County Joint Water Resource District acts as the land agent for the North Dakota entities, and they initiated the eminent domain proceeding. Shockley also discussed a number of changes that were recently made to the JPA, and noted which portions of the project the COE will implement. The local entities will be responsible for the Diversion channel and the in-town levees and any mitigation actions, such as a ringdike for the City of Comstock. The BRRWD would also have a seat on the land management and finance committees with jurisdiction over mitigation, including flowage easements, cemetery issues, etc. He noted that the BRRWD would also now be getting a full voting position on the DA, which we do not have currently.

Anderson commented that the DA's easement/land acquisition budgets do not reflect current land values. Shockley pointed out that having a position on the DA would allow the BRRWD to provide input/influence regarding this type of mitigation issue.

Van Amburg commented that it appears the JPA has been revised to give the Minnesota entities the flexibility we need to be involved with the project. Shockley explained that the DA had attempted to limit project liability for the local Minnesota entities with the revised JPA. We would not be responsible for capital construction costs. Any monies for construction costs would come from the State of Minnesota Legislature appropriation, not to exceed \$100 million. The DA takes on the risk of non-appropriation, so if the Minnesota Legislature decides not to fund the project, the DA has assumed that risk. The finance plan has taken into account the DNR percentage identified in its report, or about 2% cost/benefit ratio to Minnesota. Maintenance costs would be split at the same rate, while operation costs would be determined according to the operation plans, which at this point is unknown. Shockley also talked about how DA voting, committee membership, and Chair and Vice Chair rotation would be changed to give the BRRWD and the other Minnesota entities more influence.

Van Amburg observed that if built, the Diversion project will be in operation for many years, and the BRRWD should be involved with the operation and maintenance process. He observed that the BRRWD did not receive our many awards by being afraid of controversy and challenges.

Manager Fjestad introduced North Dakota State Senator Larry Luick, who discussed his concerns about the Diversion project's impact on the upstream staging area in Wilkin and Richland Counties. He said that there is a "huge fight" taking place on the North Dakota side of the Red River regarding the use of eminent domain to obtain properties for the inlet structure, and this same thing can happen in the Minnesota staging area. Senator Luick questioned if this is the best design to provide a legacy of water management for our "basin". He discussed some suggestions for upstream retention sites and other agricultural practices that could mitigate flooding in the F-M area and would be a better solution than the current Diversion project design. He encouraged the communities/agencies/local governments to work together to find a better flood mitigation plan, which might not cover everything the Diversion project hopes to achieve, but would have fewer negative effects and be a more workable solution. He also stated that North Dakota is becoming more reluctant to fund the current Diversion plan. The recent eminent domain proceedings raised concerns about possible law suits, etc., in response to the current plan.

Van Amburg pointed out that the idea of creating retention/detention far upstream in the watershed has been researched and was found not to be the answer in reducing the large flood events. The DNR EIS also stated that upstream retention won't work. He also noted that improved farming practices are beneficial, but as an alternative to the Diversion project, they are not enough to make any significant impact to flood reduction. Senator Luick did not think that the retention/detention option has been studied in depth.

Albright asked Senator Luick how much funding the State of North Dakota has currently appropriated for the Diversion project. Senator Luick said that to date, North Dakota has committed approximately \$570 million, including \$120 million for internal levees within the City of Fargo. Attorney Shockley noted that there are a number of Cass County and City of Fargo sale taxes in place to fund the local costs for the project. The Federal share is \$450 million, adjusted for inflation. Shockley gave a detailed explanation of the project funding and contracting strategy.

Jared Nordick discussed the retention benefits of agricultural drain tile/controlled drainage structures.

Manager Anderson observed that Shockley has done a good job explaining the entities' roles/responsibilities itemized in the JPA. He commented that it's up to the Board to decide if we want to take on the obligations expected of us, including easement acquisition in the upstream staging area in Minnesota. His main concern is that there isn't enough money allocated for easement acquisition in the project budget. If the BRRWD is forced to use eminent domain to acquire easements because there isn't enough money in the budget to offer the landowners a fair value for their property, he questioned how that would impact the BRRWD's reputation with all landowners in the future. Anderson also commented that if the DNR holds the COE to the same standards for a high hazard dam as they do other entities, the DA will probably not get a permit for the project. The COE has already indicated that they don't actually need a DNR permit for the dam. He questioned if the BRRWD should be drawn into a dispute between the COE and the DNR.

Albright agreed that the JPA does a good job of spelling out the BRRWD's responsibilities. If we sign the document, we will need to follow through with the agreement. Attorney Norgard noted that once a condemnation board sets a value with the first eminent domain proceeding, it will basically set the value of the rest of the disputed easements. She explained that in North Dakota, landowners' legal fees are always paid for them in an eminent domain proceeding, but in Minnesota, in most cases, landowners have to pay those costs. Attorney Norgard said that we won't know what land values will be until the first appraisal is completed. The line item in the budget for easement acquisition is only a place holder and hasn't actually

been determined yet. She advised the Board not to base their decision regarding JPA participation on the estimated budget allocation for easements.

Manager Larson stated that Fargo-Moorhead needs a flood diversion project. He explained that he knows people on both sides of the Diversion project issue. After much deliberation, Larson said he could not be a part of an organization that could potentially use eminent domain to acquire property for the Diversion project as it is currently designed, especially so people can continue to do the wrong thing and build in the floodplain.

Chairman Van Amburg asked if the Board was ready to vote on participation in the JPA. Albright commented that there is probably nothing more that could be changed in the JPA document, and that it would be of no benefit to delay a decision. Van Amburg agreed that the DA has allowed the Board sufficient opportunity to comment on the document. He asked for a motion and a roll call vote for the record. Manager Kobiela commented that the Board's discussions about the JPA always end up being about the Diversion project, and not the JPA. This entire issue has become divisive, and she felt that every future decision the Board would be asked to make involving the Diversion project would devolve into the same lack of consensus and inaction. Attorney Norgard stated that approval of the JPA brings with it responsibilities that the BRRWD must undertake, and if we are found to be in default of the JPA, there will be consequences. **Motion** by Anderson not to sign the JPA. **Seconded** by Fjestad. The roll call vote was as follows: **In favor of the motion:** Larson, Fjestad, Affield, Kobiela, Hanson, and Anderson. **Not in favor:** Van Amburg. **Approved.**

Clay/Wilkin J.D. 1 Diversion. Attorney Norgard will review the petition and provide a determination of its validity.

Legislative Update. Albright provided the Managers with a legislative update from the BRRWD's Lobbyist, Joel Carlson, for their review.

MAWQCP. Don Bajumpaa, District Manager, Wilkin SWCD, has acquired more funding from the Minnesota Department of Agriculture to continue the Minnesota Agricultural Water Quality Certification Program (MAWQCP). Bajumpaa has agreed to reimburse the BRRWD for some of the costs for the Landowner Forums the BRRWD hosted this spring. The time frame for the pay request is 01/01/16-05/31/16, and the amount is \$2,648.21.

Buffalo River Restoration, Phase 2. HEI submitted Pay Request No. 3 and Change Order No. 2 for Selling Brothers, Inc. The pay request is for \$14,462.32, and the change order increases the contract by \$9,942.50 for seeding, riprap, mulch, and erosion control. **Motion** by Hanson to approve the referenced pay request and change order. **Seconded** by Larson. **Approved.**

BWSR Listening/Discussion Sessions. BWSR is hosting series of listening/discussion meetings for County, SWCD, and Watershed District staff to discuss a variety of water management topics. The meeting in our area will be held in Moorhead on 07/06/16 from 8:30-11:00 AM.

Project No. 23, Becker C.D. No. 15 Repair. Kraig Nelson has requested the installation of a field inlet culvert/approach in Section 11, Audubon Township, on the north side of the ditch along C.R. No. 104. The existing crossing further to the east has failed and there not an adequate access to the field on the north side. Jones recommended a new 24" dia. x 40' CMP and some fill to construct the approach. The opinion of probable cost is \$3,500-\$4,000. **Motion** by Hanson to authorize the proposed repair. **Seconded** by Anderson. **Approved.**