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Memorandum

To: Lower Minnesota River Watershed District Board of Managers
From: Rinke Noonan, John C. Kolb
Re: Dredge Project Continuation: Hearing and Establishment
Our File: 25226-0007
Date: February 14, 2017

You asked that I provide an explanation of next steps in the dredge project proceedings. The District is proceeding under statutes section 103D.605 for establishment of a project modification to the existing dredge project. The modification includes improvements to the current management facility and changes in the basis of cost allocation for the project.

The Board has completed several preliminary steps in the project proceedings. Remaining steps are:

1. Submission of the project plan to BWSR and DNR for review and comment; and
2. Notice and conduct of a final hearing.

Based on current posture of the proceedings, I recommend authorizing submission of the dredge management plan, as updated, to BWSR and DNR with a request for review under section 103D.605. Upon completion of the agency review, the Board may proceed to notice and hold a final hearing.

Discussion:

In September 2015, the Board adopted a resolution initiating proceedings under statutes section 103D.605 to modify the previously established dredge project. The Board specified that it would follow the processes set forth in sections 103D.605 and 103D.715 – .731 as appropriate. Part of those processes include a determination of project benefits by the Board.¹

¹ The Board also directed, under statutes section 103B.251, that the dredge project be included as a capital improvement project of the District.

To assist it in its task of determining benefits, the Board engaged Clay Dodd to analyze the project and affected properties and to provide a report on special benefits. At its regular meeting in December, Mr. Dodd presented his report to the Board. The Board invited owners of property identified in Mr. Dodd's report to the meeting. The Board must now decide whether to proceed with the actions initiated by the resolution. Specifically: **does the Board want to proceed to establish a modification to the project that will enable allocation of some or all of the project costs to properties benefitted by the project or does the Board want to dismiss the proceedings and continue to fund the project through ad valorem taxes or other available funds?**

Proceedings for Establishment:

In its initiating resolution, the Board directed that the proceedings follow statutes sections 103D.605 and 103D.715 – .731 as appropriate. Sections 103D.715 – .731 deal with the benefit determination which is being assisted by Mr. Dodd. Section 103D.605 provides the procedural process for initiation and establishment.

Watershed Districts must follow section 103D.605 if (1) a project is to be constructed within the watershed district under an agreement between the managers and the state or federal government and the cost of the project is to be paid for in whole or in part by the state or federal government, but the rights-of-way and the cost of the project are assumed by the watershed district; or (2) the managers are undertaking all or a portion of the basic water management project as identified in the watershed management plan.

Here, the dredge project is a basic water management project identified in the watershed management plan. Additionally, the project is implemented under an agreement with the federal government wherein the federal government conducts the dredging, but the watershed district is obligated to acquire disposal sites and rights of way and pay for the management and disposal of the dredge materials. I have concluded, therefore, that section 103D.605 is an appropriate mechanism for establishment.

Section 103D.605 requires that a copy of the project plan, in this case the District's dredge material management plan, must be transmitted to BWSR and DNR for review and comment. BWSR and DNR must review the project plan, prepare reports on the project and transmit the reports to the managers.

After receiving the BWSR and DNR reports, the managers must set a time and location for a hearing on the proposed project. The project hearing notice must provide the time, date and location of the hearing, a description of the project, an estimate of project costs (including long-term operations and maintenance), and a description of the method by which the project costs

will be paid (to include assessments, ad valorem taxes, and any costs allocated to an affected municipality or the state).²

The District must publish notice of the hearing in a legal newspaper, published in each county where property is to be improved by the proposed project. The last publication must occur between 30 days and ten days before the project hearing. Additionally, the District must mail notice, at least ten days before the project hearing, to BWSR, DNR, municipalities entirely or partly within the project area and any owner of property subject to benefits assessment.³

The hearing is an evidentiary proceeding. At the hearing, the managers must hear all parties interested in the proposed project. After the hearing, if the managers find that the project will be conducive to public health, promote the general welfare, and is in compliance with the watershed management plan and the provisions of chapter 103D, the Board must, with appropriate findings, order establishment of the project.

Appeals:

Any party alone or jointly may appeal an order of the managers made in a proceeding relating to a project that determines: benefits; damages; the allowance of fees or expenses; a matter in the proceeding affecting a substantial right; or the establishment or refusal to establish a project in whole or in part. The appeal may be taken to the District Court or BWSR. An appeal of benefits is entitled to a jury trial and any amount determined on appeal will replace the amount from which the appeal was taken.⁴

If an appeal is taken from an order establishing a project, a trial of an appeal of benefits or damages from the proceedings must be stayed until the establishment appeal is decided. If the order authorizing the project is affirmed, a trial of an appeal of benefits or damages may commence.

The appeal must be filed within 30 days of the date of the final order.

Recommendation:

To continue in the proceedings, the Board should authorize its technical consultant to submit the dredge management plan, as updated, to BWSR and DNR with a request for review under section 103D.605.

Upon completion of the agency review, the Board may proceed to notice and hold a final hearing.

² It is possible that the Board could combine revenue authority in a single project. For example, if the Board determines that the project creates both general benefit, as it did in 1984, and special benefit, as it did in 1962, it may allocate project costs between an ad valorem component and benefit assessment component. I also note that recent bonding from the legislature will defray some expenses related to the project.

³ Failure to give mailed notice or defects in the notice do not invalidate the proceedings.

⁴ It is possible therefore that an appellant's benefits could increase or damages decrease on appeal.