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MEMORANDUM

Date: October 6, 2009

To: Bassett Creek Watershed Management Commissioners and Alternates

From: Charles LeFevere

Re: Joint Powers Agreement

The Commissioners identified as one of their goals to amend or update the Commission's joint powers agreement. I was requested to report on any housekeeping changes that the Board might consider.

The current joint powers agreement has served the Commission well over the years. I do not recall any times when the joint powers agreement has prevented the Commissioners from taking action that they thought appropriate.

There are a number of changes that could be made to shorten the document. For the most part, these are instances where provisions in the joint powers agreement merely repeat provisions of state law. As such, they may serve an educational purpose. However, there is the risk that if the law is changed, the joint powers agreement will have to be changed as well.

These changes would really be in the nature of editing the document rather than changing its substance. Therefore, unless the Commission has substantive changes that it wishes to make to the agreement, it may not be worth the effort to make changes that are merely a matter of editing because it may not be an easy matter to secure unanimous approval of these changes by all of the city councils of the members.

The following are changes that could be made that would shorten the agreement without changing its substantive provisions.

1. The opening paragraph entitled PREFACE could be deleted.
2. The next section of the agreement is entitled STATEMENT OF INTENT REGARDING AGREEMENT. This three-page statement could be deleted as well. Minnesota Rules,

Section 8410.0040 requires that joint powers agreements contain a statement of purpose consistent with Minnesota Statutes, Section 103B.201. However, Article II of the joint powers agreement entitled GENERAL PURPOSE meets this requirement.

3. Part of Article V, Subdivision 3 establishes procedures for public notification and notification of BWSR of vacancies and appointments. These matters are covered by state law. Therefore, this part of Subdivision 3 could be deleted.
4. Article V, Subdivision 5 also provides for filing of appointments and notification to BWSR of appointments and vacancies. Again, since this is covered by state law, it could be deleted.
5. Under the Powers and Duties of the Board, Article VI, Subdivision 5 contains a description that is slightly over one page long and simply repeats the process for adoption and review of plans that is described in state law and the BWSR rules. This subdivision could be deleted and substituted with the statement that the Commission will assume all responsibilities for planning and review of local plans of a watershed management organization under Minnesota law.
6. Article VII is entitled METHOD OF PROCEEDING. I believe that subdivisions 1 through 4 could be deleted. Subdivisions 2 and 3 relate to the succession of the duties and responsibilities of the Commission's predecessor, the "Bassett Creek Water Management Commission" and the transfer of its funds to the Commission, all of which has long since occurred and been completed. Subdivision 4 seems to me to be largely a description of a basic part of the planning process for water management.
7. Under Subdivision 5 of Article VII, the Commission is required to give 45 days' mailed notice of hearings on improvements to the city clerks. It would be helpful, for administrative purposes, if this section could be amended so that the notice period is consistent with the notices that are required under state law for hearings on plan amendments and projects that will be supported by tax levies. I do not believe we have missed this 45-day notice period in the past. However, this long period could result in a project being delayed. The requirement for notice of the hearing in the case of a capital project is only two successive weeks, rather than the month and one-half notice required under the joint powers agreement. Subdivision 5 also establishes some procedures and timing intended to allow cities to conduct hearings under Minnesota Statutes, Chapter 429 for special assessments in cases where cities intended to finance their share of projects by levy of special assessments. I do not believe that this has occurred in the past, and currently the Commission is funding all of its capital projects through an ad valorem tax levy. However, it is conceivable that such a process could be used in the future. Therefore, this language should probably be left in the agreement.
8. Some of the other terms of Article VII deal with the procedures for establishing contributions from member cities for capital projects and resolving disputes about those allocations. Since the Commission is currently funding all of its projects through ad valorem tax levies, these procedures have not been used. However, in the event the

Commission wishes to undertake a capital project in the future that is not approved by the county, it may be necessary to have these procedures in the joint powers agreement, and I would not recommend making a change.

9. Subdivision 12 of Article VII deals with review of local plans. This is perhaps more detailed than is necessary, and could be replaced by a reference to state law, which provides for review of local plans as well.

Finally, if revisions are made, I would probably recommend some minor editorial changes of text or language not affecting the substance of the agreement.