

**Kennedy**

**&**

**Graven**

**CHARTERED**

Charles L. LeFevere  
470 US Bank Plaza  
200 South Sixth Street  
Minneapolis MN 55402

(612) 337-9215 telephone  
(612) 337-9310 fax  
clefevere@kennedy-graven.com  
<http://www.kennedy-graven.com>

Item 6E.

BCWMC 6-19-14

(Same as Item 5D from 5-15-14 meeting)

## **MEMORANDUM**

**TO:** Bassett Creek Commissioners and Alternates

**FROM:** Charles LeFevere

**RE:** Potential Dissolution of Bassett Creek Watershed Management Commission

**DATE:** May 6, 2014

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### **I. INTRODUCTION**

The current Joint Powers Agreement for the Bassett Creek Watershed Management Commission expires on January 1, 2015. A proposed form of amendment to the Agreement has been forwarded to the Cities for consideration. That amendment would extend the Joint Powers Agreement for another ten years. The City of Medicine Lake has indicated that they may not be willing to execute the Joint Powers Agreement Amendment. If they do not, the Agreement will terminate at the end of this year.

Because there is a good deal of work to do in preparation for a possible dissolution of the organization, the Commission may wish to begin preparation for such a dissolution in the near future.

The only guidance in the Joint Powers Agreement for procedures to be followed in the event of dissolution of the organization is found at Article X, which provides:

Upon dissolution of the Commission, all property of the Commission shall be sold and the proceeds thereof, together with monies on hand, shall be distributed to the eligible members of the Commission. Such distribution of Commission assets shall be made in proportion to the total contribution to the Commission as required by the last annual budget.

## II. WINDING UP - FINANCIAL MATTERS

Before distributing assets of the Commission to its members, the obligations of the Commission should be satisfied. Therefore, one step in this process will be to identify all outstanding contractual obligations of the Commission, including contracts with member cities, Hennepin County, the Metropolitan Council, the Board of Water and Soil Resources, Wenck & Associates, the University of Minnesota, staff and consultants, etc.

Staff should meet with Hennepin County to determine what will happen to taxes previously levied by Hennepin County for Commission projects. These could include taxes for projects that are certified in 2014 as well as taxes that continue to come in, as they are paid by taxpayers, for levies in prior years.

On October 21, 1999, The Commission adopted a resolution specifying the percentages that should be used for disbursing unspent flood control project funds to the Cities. A copy of that Resolution is attached. These percentages would not be the same as the percentages specified for dissolution of property generally under the current Joint Powers Agreement. Therefore, the Commission should consider reimbursing such flood control funds to the member Cities in accordance with the percentages in the Resolution.

## III. FUTURE WATERSHED MANAGEMENT

The area of the Bassett Creek watershed must be covered by a watershed management organization, which can take the form of either a watershed district or a joint powers organization. If the current Joint Powers Agreement is not extended, the County will form a watershed district - unless one or more new watershed management organizations are formed.

The Commission may wish to explore with the Board of Water and Soil Resources (BWSR) whether it would approve creation of one or more watershed management organizations without the City of Medicine Lake. If BWSR requires that the City of Medicine Lake be included in a watershed management organization, either the City of Medicine Lake would have to take on the responsibilities of a watershed management organization itself, or have a watershed district formed to cover only the city. Technically the law requires all of the area within the seven county metropolitan area to be included within the boundaries of a "watershed management organization" (either a watershed district or a joint powers organization). However, perhaps BWSR would consider the continuation of an organization without the City of Medicine Lake given the small area included within that city (less than ½ of 1% of the area of the watershed) and the high level of success of the Bassett Creek Watershed Management Commission over the years. If BWSR would not approve formation of a joint powers organization that left out the City of Medicine Lake under current law, the Cities could request special legislation authorizing formation of a watershed management organization without the City of Medicine Lake.

If it appears that creation of a watershed district to cover the Bassett Creek Watershed is the only likely possibility, the Cities other than the City of Medicine Lake may wish to consider entering into a joint powers organization for surface water management activities outside of the procedures of the Metropolitan Surface Water Management Act. Such an organization would

not have the powers or the responsibilities of a watershed management organization under Minnesota Statutes Chapter 103B. However, it could undertake a number of activities such as:

- Continue project reviews on an advisory basis, at least until a watershed district is formed and operating.
- Continue monitoring and testing activities of waters in the watershed.
- Maintain the XP SWMM and P8 models for surface water management.
- Provide the Cities with professional assistance.
- Serve as a platform or organization for addressing sub-watershed issues among the Cities.
- Assist in applying for and securing grants to the Cities.
- Undertake public education activities to satisfy MS4 requirements of the Cities.
- Undertake joint projects to meet TMDL obligations of the Cities other than the City of Medicine Lake.

If the Watershed District is willing, such an organization could serve as a formal or informal technical advisory committee for the Watershed District. In any case, the organization could serve as a liaison from the Cities, monitor the activities of the Watershed District on behalf of the Cities, serve as a more effective lobbying force on Watershed District matters, and the like.

If the Cities wish to continue to have some joint responsibility for the flood control project, that could be undertaken by a new joint powers organization, to which the member cities might transfer flood control project funds received in the dissolution of the BCWMC.

#### IV. NEXT STEPS

Preparing for and dissolving the Commission and addressing continuation of some part of the Commission's activities and functions will be a substantial task and will involve considerable commitment of staff resources and tax dollars. This expenditure may prove to be unnecessary if, in fact, the City of Medicine Lake elects to execute the Amendment extending the Joint Powers Agreement. The Commission may wish to send a formal request to the City of Medicine Lake asking the City to indicate whether it will or will not execute the Joint Powers Agreement Amendment by a specified date (perhaps by the next Commission meeting), after which the Commission will begin the work of preparing for its dissolution.

The Commission may wish to consider forming a new committee and charging it, or some existing committee, with identifying all issues relating to dissolution and making recommendations to the Commission.

Commission staff could be directed to identify all outstanding contracts and obligations of the Commission and all anticipated incoming revenues. Staff should also be directed to identify all ongoing activities of the Commission such as monitoring and testing of surface waters, the continuation of which may be in the public interest until a new watershed management organization is formed.

The Board may wish to direct staff to meet with the Pollution Control Agency to consider how it will proceed with existing categorical TMDLs and possibly whether it would be willing to specify individual TMDL obligations to the City of Medicine Lake in case the other Cities decide that they wish to respond to those obligations collectively.

Staff could be directed to begin discussions with Hennepin County about how it will handle future incoming tax revenues.

Staff could be directed to identify all Commission activities or categories of activities to determine whether they should simply be terminated, should be continued as a Commission obligation, or should be addressed in some other way.

## V. PARTIAL LIST OF MATTERS TO BE CONSIDERED IN DISSOLUTION

The following is a very preliminary list of matters that should be considered in dissolution. The current year funding for a number of these activities will be completed by year-end, but the member cities may wish to consider finding ways to support them in some other way.

- CAMP funding

- WMWA funding

- Maintain P8 and XP SWMM models

- Advisory project reviews

- River Watch funding

- Categorical TMDLs

- Capital Improvement Projects ordered by the Commission but not completed (e.g. Shaper Pond, Twin Lake, Briarwood/Dawnview)

- Capital Improvement Projects commenced but not yet ordered (e.g. 2015 Main Stem Restoration project, 10<sup>th</sup> Avenue to Duluth Street)

- Capital Improvement Projects for which payments to cities are not yet complete (e.g. Plymouth Creek, North Branch)

- Joint efforts in public education

- Grants in process (e.g. 2012 Main Stem Project)

- Flood Control Project inspections

- Watershed Map Contract

- NEMO funding

- Termination of insurance coverage

- Disposition of County tax levy monies received but not yet expended and monies to be received

- Met Council WOMP station contract