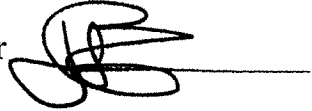




EAST DAKOTA WATER DEVELOPMENT DISTRICT

MEMORANDUM

TO: Executive Board, South Dakota Legislature

FROM: Jay Gilbertson, Manager/Treasurer 

DATE: June 6, 2017

TOPIC: The Future of the River Basin Natural Resource District Oversight Advisory Task

During its 2012 legislative session, the South Dakota Legislature created the Regional Watershed Advisory Task Force, and charged it with examining watershed-scale water resource management. The cumulative result of this effort was:

1. Senate Bill 153 in 2013, An Act to clarify, remove inconsistencies from, and revise certain provisions relating to the formation and operation of watershed districts;
2. Senate Bill 2 in 2015, An Act to provide for the establishment of river basin natural resource districts; and
3. Senate Bill 3 in 2015, An Act to provide for mediation of certain drainage disputes.

The first bill accomplished a much needed clean-up of the existing code regarding watershed districts, and the third bill provides a helpful service in dispute resolution. However, neither really deals with basin-scale water management. Senate Bill 2, now codified as South Dakota Codified Law (SDCL) Chapter 46A-19, created basin-scale entities, at least on paper, and created the 8-member River Basin Natural Resource District Oversight Advisory Task (RBNRD OATF) to advance the process.

Under SDCL 46A-19, the RBNRD OATF was charged with four specific tasks:

1. to establish specific boundaries for the newly established river basin natural resource districts (RBNRDs), using existing surveys or political subdivisions boundaries, but following as closely as possible the hydrologic patterns of the river basins (SDCL 46A-19-13);
2. to create a governing council structure utilizing three subdistricts of nearly equal population (SDCL 46A-19-14, -16);

3. to “work with the local governments in the Red River and Minnesota River Basin Natural Resource District to establish a pilot water management plan for the district that could be used as a guide for a water management plan in each of the remaining river basin natural resource districts” (SDCL 46A-19-13); and
4. to “review the provisions of chapter 46A-10A and determine which provisions need to be incorporated in legislation to assist in the implementation of this chapter” (SDCL 46A-19-15). Although not explicitly stated, this provision would suggest that the Legislature envisioned the Districts would play a significant role in local drainage water management, which is the focus of SDCL 46A-10A (County Drainage).

The RBNRD OATF developed DRAFT legislation defining the RBNRD boundaries and establishing governing councils during its 2015 Interim meetings, however the bills were never filed. Discussion and refinement of these issues continued during the 2016 Interim, and were presented to the 2017 Legislature as Senate Bills 9 (boundaries) and 10 (governance). Both bills were deferred to the 41st legislative day.

In September 2015, a subcommittee Task Force members met in Milbank, focused on a process for developing a pilot water management plan. Chairman Vanneman reported back to the full Task Force on October 16th, 2015, but no further action was taken with regard to a pilot water management plan.

Finally, at no point during its first two years of operation did the Task Force formally review, let alone discuss in any meaningful manner, the provisions of SDCL 46A-10A. Consequently, no recommendations were forthcoming.

Under SDCL 46A-19-15, the RBNRD OATF remains in effect until January 1, 2019. The terms of its original members have expired. On March 30th, 2017, the Speaker of the House of Representatives and the President Pro Tempore of the Senate repopulated the Task Force with a mix of new and former members for the final(?) two-year period.

Option 1: Suspending the activities of the Task Force now, and then formally repealing Chapter 46A-19 during the 2018 Legislative Session would seem the most direct route. Absent some additional guidance or direction to the RBNRD OATF, I am of the opinion that the net result will be another two interims worth of meetings (along with all the associated costs), but no substantive end product(s). Frankly, under a strict reading of the constraints articulated in SDCL Chapter 46A-19, I can envision no other outcome. Issues with watershed-scale water management and/or drainage will remain, but it will far

easy to explore other alternatives. So long as the RBNRD OATF (Plan A) exists, consideration of any potential Plan B option/ideas will be hindered.

Option 2: If the RBNRD OATF does continue, I believe that it is imperative that it be provided with some direction by the Executive Board. This would include, but need not be limited to, the following:

A. Sanction to ‘think outside the box,’ i.e., the constraints laid out in SDCL 46A-19, when considering possible future actions. As noted above, the total lack of any defined powers or authorities for the RBNRDs makes it practically impossible to develop a conceptual, let alone actionable, pilot project.

B. Direction to apply it’s efforts to the identification of potential water management pilot project(s), with an eye toward ones that might overlap with the provisions of SDCL 46A-10A. The single meeting of the Task Force subcommittee on this issue did provide, in my opinion, a foundation on which such efforts might be identified.

C. Clarity on how any potential pilot project costs are to be addressed. I have held informal discussions with several groups in the target study area (Red River and Minnesota River District), and one of the first questions that come up is how a pilot might be paid for. I believe that if a mutually beneficial program can be identified at the local level, raising the necessary funds would not present a significant obstacle. This would likely include support from my own agency. However, as this effort is one mandated by legislative action, I would presume that some degree of “state” financial support would also be expected.

D. Lastly, substantive proposals must be presented to the Legislature during the 2018 Legislative Session.

From 2012 forward, the East Dakota Water Development District has supported efforts by the Regional Watershed Advisory Task Force and the RBNRD OATF to identify options for watershed-scale water resource management. Our support for the overall concept has not weakened, but it might be time to reconsider just how best to move forward.