

LAW OFFICES OF
NASH, ZIMMER, WEAVER & GRIGSBY, PLLC

1700 WEST KOCH ST, SUITE 4
BOZEMAN, MONTANA 59715

DONALD A. NASH (1911-2003)
SARAH NASH ZIMMER
DAVID L. WEAVER
PAUL GRIGSBY

TELEPHONE:
(406) 586-0246
FACSIMILIE:
(406) 586-0021

February 21, 2014

Montana Fish Wildlife & Parks
Attn: Mike Vaughn
1400 South 19th Ave.
Bozeman, MT 59718

Re: Madison Dike & Drain District/ Montana Fish Wildlife & Parks Cobblestone
Enhancement Project

Mr. Vaughn:

My name is David L. Weaver and I represent the Madison Dike and Drain District Board of Commissioners (Board). The Board has instructed me to communicate to Montana Fish, Wildlife and Parks (MFWP) its appreciation for seeking the District's review and input in the Cobblestone Enhancement Project (Project). The purpose of this letter is to provide MFWP with an outline of the District's concerns regarding the Project as well as terms and conditions for the District's approval of the Project.

The Madison Dike and Drain District (District) was created in 1919 and operates under and may exercise all powers conferred upon it pursuant to Section 85, Chapter 8, MCA together with any other applicable provisions of Montana law, and pursuant to orders issued by the Eighteenth Judicial District Court. Accordingly, the District conducts business by and through its board of commissioners who are elected and/or appointed pursuant to Section 85, Chapter 8, Parts 3 and 8, MCA. The District was created for the purpose of constructing a levee and drainage canal system to control flooding in the Lower Madison River valley. Additionally, the District also operates and controls the irrigation headgate which diverts Madison River irrigation water into the ditch for the benefit of persons and members of the District owning water rights claiming this headgate as a point of diversion.

As with all proposed projects located within the District, the Board reviews such projects to determine whether the project will pose potential risks, now or in the future, to the integrity and functionality of the dike, drainage system and/or irrigation water conveyance. The Board has reviewed the proposed plans for the Project and met with the contractor, Matt Weaver of Five Rivers, Inc., who provided additional information regarding the nature and scope of the Project.

Subject to the following terms and conditions, the Board on behalf of the District hereby

approves the Project as set forth in plans and specification for the Project provided to the Board:

1. Any meander corners where the ditch bank is ten (10) feet or less from the toe of the District's dike or the District's east easement boundary must be rip rapped at MFWP's expense. If the ditch bank on any meander corner moves to within ten (10) feet or less of the District's dike or the District's east easement boundary in the future, the meanders must be immediately rip rapped at MFWP's expense.

2. Deciduous brush, shrubbery, or trees shall not be planted within the District's easement.

3. At all times during the Project, all equipment and materials used for the Project will be located within the ditch. Access on, over or across the District's dike for purposes of construction, moving or locating equipment, and/or material storage is prohibited unless MFWP notifies the District in advance of such proposed access and the District provides prior written approval, which approval shall not be unreasonably withheld. Approval for use of the District's access easement from Madison River Road to the project site for purposes of transporting equipment and or materials shall not be unreasonably withheld provided the MFWP and/or its agents provide advanced written notice of such use and agree to make any and all repairs to the access road caused by such use.

4. Any and all damage including, but not limited to scarring, resulting from the Project within the District's easements shall be restored to the condition in which it existed prior to the Project and reseeded. Such damaged areas and all newly seeded areas shall be monitored by MFWP and sprayed for weeds at MFWP's expense for a period of three (3) years from the date the Project is completed.

5. No large rocks, deadfall, or other obstructions shall be placed or otherwise located in the ditch.

6. No work on the Project may occur at such times as irrigation water is being diverted into the ditch and being conveyed through the ditch. The irrigation season is typically between May 1st and October 15th each year. In the event irrigation water is to be diverted into the ditch for any reason during the construction of this Project prior to May 1st, the District will notify MFWP no later than seven (7) days prior to diverting such water into the ditch. In the event irrigation water is to be diverted into the ditch for any reason during the construction of this Project after October 15th, the District will notify MFWP no later than October 8th of the continuing diversions of irrigation water into the ditch.

7. Meander banks in the ditch must be designed and constructed so that any increase in water flow that exceeds the normal irrigation and/or drainage flow levels will flow over the top of the meander banks and will not follow the meanders.

8. Sediment traps will be designed and constructed in the Project and located at the downstream end of the Project upstream from irrigation diversion structures which mitigate sediment impact on down ditch irrigation and irrigation equipment.

9. If MFWP is required to apply for a permit from the U.S. Army Corp of Engineers (USACE) to construct the Project, MFWP shall provide the District with a copy of its USACE permit application within five (5) days after it is filed. MFWP permit application shall authorize the USACE to provide the District with copies of all public notices issued by USACE in compliance with the laws and rules administered by USACE. Within five days after MFWP's permit application is granted or denied by USACE, MFWP shall provide the District with a copy of the final permit issued or the USACE decision denying the permit.

10. If MFWP is advised by the USACE that MFWP does not need a permit to construct the Project, MFWP shall provide the District with a copy of the USACE's written determination.

11. In the event of an emergency or the need to notify the District for any purpose as provided herein, MFWP shall be deemed to have satisfied such notice provisions if it contacts Commissioner Shawn Wilcox at 4995 Madison Road, Three Forks, Montana 59752, phone (406) 285-4223, and sends an e-mail to Commissioner B Elfland at belfland@favranches.com.

12. To facilitate continued communication between MFWP and the District regarding Project construction issues, MFWP shall, at least five (5) days before construction of the Project begins, provide the District with the name, mailing address, e-mail address, and telephone number for the MFWP's representative who can be contacted about Project construction issues and concerns. In addition, MFWP shall provide the name, mailing address, e-mail address, and telephone number of the contractor responsible for construction of the Project at least five (5) days before construction begins. If there is any change in the Project or the contractor responsible for constructing the Project after construction of the Project begins, MFWP shall notify the District within twenty-four (24) hours of any and all such changes.

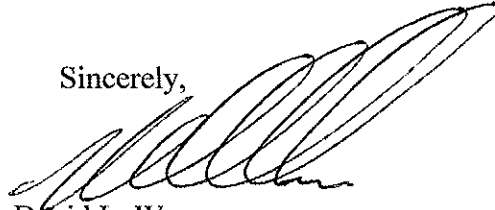
13. The Board reminds MFWP that this project is taking place in an irrigation and drainage ditch and as such, MFWP should be aware that flow rates and water levels will vary greatly. The risk of loss or damage to the Project including, but not limited to erosion, exists and is to be fully assumed by MFWP and is not the responsibility of the Board, the District, water right owners, or members of the District.

The Board hopes the terms and conditions set forth above are agreeable to MFWP. I or the members of the Board would be more than happy to meet with MFWP or the contractor to further review and discuss the concerns and conditions set forth above. In the event the proceeding terms and conditions to the District's approval of the Project are not agreeable to MFWP, please advise me at your earliest opportunity. In the event changes or modifications are made to the Project, the District reserves the right to withdraw its approval of the entire Project.

In granting its conditional approval of the Project as set forth above, the District in no way waives any right it might have to bring an action against MFWP, the contractor and/or any other person or entity involved in the Project to prevent risk or potential risk, now or in the future, to the integrity and functionality of the dike, drainage system and/or irrigation water conveyance or to recover damages for any and all injury to the dike, drainage system and/or irrigation water conveyance caused by MFWP, its agents, employees or contractors.

Please contact me or Commissioner Wilcox with any questions you may have regarding this approval.

Sincerely,

A handwritten signature in black ink, appearing to read 'David L. Weaver', written in a cursive style.

David L. Weaver

cc:

District Commissioners

Holly Brown, District Court Judge

Matt Weaver, Five Rivers, Inc.