

Drainage Work Group Meeting Notes November 13, 2006

Attendance

Warren Seykora, MAWD; Ray Bohn, MAWD; Annalee Garletz, AMC; Craig Austinson, Blue Earth Co.; Rep. Jean Wagenius, District 62B; Sheila Vanney, MASWCD; Henry Van Offelen, MCEA; Matt Norton, MCEA; Dan Wilkens, MADI, SHRWD, RRWMB, RRBC; Kurt Deter, Rinke-Noonan; Jeremy Geske, MFB; Allan Kuseske, MADI, NFCRWD; Ron Ringquist, MVA; Harlan Madsen, AMC/Kandiyohi Co. (via phone); Doug Thomas, BWSR; Al Kean, BWSR

Handouts Prior to or During Meeting:

1. Drainage Work Group Meeting Logistics and Agenda for 11-13-06
2. Drainage Work Group Meeting Notes for 10-19-06
3. Draft discussion paper for Reporting (compliance and enforcement) topic, dated 11-6-06
4. Consolidated Recommendations for Clarifications of Drainage Law, dated 11-7-06
5. Draft discussion paper for Technical subtopic: Clarify procedures and maintenance responsibility under Section 103E.227, dated 11-9-06
6. Draft discussion paper for Technical subtopic: Clarify procedures for removal and partial abandonment under Section 103E.805, dated 11-9-06

Introductions and Agenda Overview

People in attendance introduced themselves. Doug Thomas provided an overview of the meeting agenda and objectives. He noted that consensus recommendations of the Work Group will need to be agreed to in December, in order to move those recommendations forward in the legislative process, including the budget process. Doug also noted that BWSR has begun discussions with FSA to help develop clarifications of FSA policy related to CRP along public drainage ditches.

Review of Meeting Notes for 10-19-06

No additions or corrections requested.

Reporting, Compliance and Enforcement Topic

Al Kean overviewed the discussion paper dated 11-6-06, including draft recommendations to add in 103E.705, Subdivision 1 Inspection, a minimum 5 year inspection period where no violation of Section 103E.021 is found, or annually where a violation is found, until it is corrected.

Following are points raised during the associated discussions.

- It was noted that some watershed districts have landowners along a drainage system provide the first cut for inspection, including use of an inspection card that is mailed to the drainage authority.
- Annual inspection of all drainage systems by the drainage authority is not realistic in jurisdictions where there are many hundreds of miles of public drainage ditches.
- Need balanced emphasis on all the reasons for inspection, not just for buffer strips.
- Most landowners are in compliance and want violators to also come into compliance.
- Keep “regular basis” in the drainage law for tile drainage systems, which typically need less inspection than open ditches, and limit the suggested 5-year minimum for inspections to open ditches.

- Must be careful not to limit drainage authority inspections.
- MADI has been working to develop guidance and forms for drainage inspectors for quite some time. John Kolb being called up for military service has been an impediment to moving forward with this effort.
- It was suggested that a subcommittee of the Drainage Work Group help develop a Drainage Inspector Manual, with or without the recommended update of the MN Public Drainage Manual and drainage system BMP section.
- A question was asked about use of a Penalty Order for violations of 103E.021 to get restoration. It was noted that drainage authorities must notify violators to restore, can do the work and charge to the violator, and can increase the assessment for ditch repairs to violators of 103E.021.
- It was suggested that the draft clarification of drainage law include annual inspection until the year after a violation of 103E.021 is corrected.

Consolidated Recommendations for Clarification of Drainage Law

Al Kean introduced this document as a compilation of all of the DWG recommendations to date regarding clarification of drainage law. Following are discussion points.

Section 103E.021, Subdivision 1.

- General agreement that it is good to include and separate differing buffer strip width requirements before and after a given date.
- Concern about the potential strip of land between an original ditch easement boundary to the current top of the ditch side slope, as the point of beginning for the required buffer strip, for which a drainage system easement would be purchased.
- Farm Bureau membership recently supported 1-rod ditch buffer strips measured from the top of the ditch side slope, but not from the crown of the spoil bank.
- A question was asked about requiring native perennial vegetation. David Tillman was suggested as a point of contact at the UMN. BWSR will look into what types of mixes are currently being used by drainage authorities to balance needs for erosion control quickly and maintenance long-term.

Section 103E.021, Subdivision 6.

- It was suggested and agreed that the “and” in “and maintain the efficiency of the drainage system” be changed to “or”.
- Still need more clarification of the point of beginning and width of the buffer strip.

Section 103E.315, Subdivision 8 and Section 103E.701, Subdivision 7.

- It was suggested and agreed to change “on, or adjacent to,” to “adjacent to”.

Technical, Subtopic c) Clarify procedures and maintenance responsibility under Section 103E.227

Al Kean distributed copies and overviewed a discussion paper dated 11-9-06 for this subtopic, which had been suggested by BWSR at an earlier DWG meeting. This section of drainage law is often used for wetland restoration projects on public drainage systems. Problems with project coordination and drainage authority approval sometimes occur, because this section did not envision rerouting of a drainage system around a wetland (Section 103E.701 Repairs, Subdivision 6. Wetland restoration and mitigation), or coordination of repair funds with outside sources of funding (Section 103E.011 Drainage authority powers, Subdivision 5. Use of external sources of funding). This includes definition of responsibility for maintenance. The referenced

subdivisions were added to drainage law years after Section 103E.227. As a result, Section 103E.705 Repair procedure, sometimes must be awkwardly used in conjunction with 103E.227. The draft clarifications of this section would add rerouting as an applicable use, clearly keep maintenance responsibilities for the rerouted tile or ditch with the drainage authority and clearly enable the drainage authority to use drainage system repair funds, if appropriate.

Because there was inadequate time for detailed review and discussion of this subtopic, it was tabled to a future DWG meeting.

Technical Subtopic d) Clarify Procedures for Removal and Partial Abandonment under Section 103E.805

Al Kean distributed copies and overviewed a discussion paper dated 11-9-06 for this subtopic, which had been suggested by BWSR at an earlier DWG meeting. This section of drainage law is often used for wetland restoration projects on public drainage systems. Although the title of this section clearly indicates two different purposes, the text does not clearly indicate that a petition can be for either or both of these purposes. The draft clarifications would address these problems.

A suggestion was made to provide clarification in drainage law for partial reduction of drainage system assessments related to incremental land use changes, such as wetland restoration.

Because there was inadequate time for detailed review and discussion of this subtopic, it was tabled to a future DWG meeting.

Drainage Work Group Fact Sheet

It was suggested that a fact sheet and status report about the Drainage Work Group be prepared for upcoming annual meetings of the MFB, MFU, MAWD, AMC and MASWCD. Al Kean and Doug Thomas agreed to prepare a fact sheet and to provide PowerPoint presentations, as appropriate. Al will also update the consolidated draft recommendations to reflect discussion at this meeting.

Next Meeting

December 15 a.m. or December 11 a.m. were identified as potential dates for the next meeting, which is expected to be the last meeting of the DWG before consensus recommendations are moved forward. Al Kean agreed to further explore DWG member availability and identify the date, time and place.