

Drainage Work Group Meeting Notes August 16, 2007

Attendance

Dennis Distad, MACO; Craig Austinson, Blue Earth Co.; Ron Ringquist, MVA; Alan Perish, MVA, MFU; Henry VanOffelen, MCEA; Scott Moen, FWLA; Wayne Edgerton, DNR; Gary Botzek, MCF; Larry Gunderson, MPCA; Annalee Garletz, AMC; Mark Nisley, House GOP Research; Jeremy Geske, MFB; Chris Radatz, MFB; Jenna Duwenhoegger, House Env. Finance Cmte.; Greg Knopff, Senate Council, Research and Analysis; Greg Roiger, MASWCD; Jon Bohn, MAWD; Ray Bohn, MAWD; Kent Rodelius, PRINSCO, Inc.; Warren Seykora, MAWD, WRWD; Larry Kramka, DNR; Dan Wilkens, MADI, RRWMB, SHRWD; Bruce Kleven, Ag Groups; Paul Burns, MDA; Rep. Rick Hansen, District 39A; Al Kean, BWSR

Handouts Prior to or During Meeting:

1. Drainage Work Group Meeting Logistics and Agenda for 8-16-07
2. Drainage Work Group Meeting Notes for 6-25-07
3. Summary of Drainage Law Changes Effective August 1, 2007 (via email and hard copy)
4. Drainage Work Group Discussion Paper, Section 103E.227 (via email only)
5. Drainage Work Group Discussion Paper, Section 103E.805 (via email only)
6. Drainage Work Group Discussion Topics for 2007 (Draft)

Introductions and Agenda Overview

All in attendance introduced themselves. Al Kean provided an overview of the meeting agenda and objectives and information about Doug Thomas taking a new position as Administrator for the Rice Creek Watershed District. Al suggested that the 12:45 p.m. topic about understandings regarding the timeframe for additional DWG recommendations be combined with the 3:20 p.m. agenda topic regarding definition of the future meeting schedule.

Brief History and Status of Con-Con Land Rulemaking

Larry Kramka, DNR Assistant Commissioner, provided a brief history and overview of DNR rulemaking regarding determination of drainage benefits on Con-Con lands. He noted that DNR has had authority via Chapter 84A to determine drainage benefits on Con-Con lands since the 1980s, which essentially gives the Commissioner authority to overrule redeterminations done via Chapter 103E by the 7 counties having Con-Con lands. Only 1 ditch on Con-Con lands has been redetermined using 103E procedures since the 1980s. Circa 1991, the Legislature and DNR paid up drainage system assessments on Con-Con lands, but indicated that no further payments would be made until the benefits for the affected drainage systems were redetermined. When counties sued DNR regarding drainage system assessments on Con-Con lands, the courts acknowledged that drainage authorities must use 103E procedures and that the DNR can overrule these benefit determinations via authority in Chapter 84A, which can result in different assessments on Con-Con lands and drainage system assessment roles that don't balance. The courts indicated that the DNR must fulfill the required rulemaking. The draft rules are out for public comment and hearings have been held in a number of northern Minnesota locations. The proposed rules are relatively general. Within the Chapter 84A authorities and associated rules, DNR intends to work cooperatively with counties to determine benefits on Con-Con lands.

Discussion focused on the need for mass appraisal criteria that are mutually acceptable to the affected counties and DNR. Ron Ringquist noted that viewers have developed mass appraisal criteria for various conservation program lands, including perpetual conservation easements. There was discussion about a potential DWG role to discuss mass appraisal criteria and processes for unique land uses such as conservation easements. This discussion might relate to mass appraisal criteria for Con-Con lands.

Approval of 6-25-07 Meeting Notes

Al K. handed out extra copies of the subject meeting notes and asked if there were any comments or corrections. None were indicated.

Status of BWSR Work on Tasks Associated with Drainage Legislation

Al K. indicated that a contract is in the process of being signed with MN State University, Mankato to lead the development of Drainage Records Modernization Guidelines. MSU-M worked on the Public Drainage Ditch Buffer Study, including communication with drainage authorities that have modernized drainage records, during the past two years.

It is envisioned that the Minnesota Public Drainage Manual will be updated using a separate lead author and review committee for each major chapter, similar to how the original document was developed. The major chapters include Legal and Administration, Engineering and Environmental, and Viewing and Appraising. Al has talked to lead authors of the original 1991 version and potential new lead authors including Arvid Wendlund, who is semi retired and not able to take on this role again, Kurt Deter and Jerry Von Korf, Rinke-Noonan, Inc.; Lawrence Woodbury, Houston Engineering; and Ron Ringquist, Viewer. It is anticipated that sole source contracts will be needed with lead authors. Al is working on this.

BWSR is coordinating with other agencies (DNR, MPCA, MDA) regarding creation of the Drainage Assistance Team. It is anticipated that this team will be substantially involved with development of the new drainage system BMP chapter of the updated MN Public Drainage Manual. Discussion focused on the need for the Drainage Assistance Team to have effective interagency expertise and cooperation, including connection to the University of Minnesota.

Al mentioned that he is coordinating with FSA to begin meeting to follow up on the recommendation of the DWG for BWSR to work with FSA to clarify CRP policies regarding program lands along drainage ditches and help achieve more consistent application. The products of these discussions will be brought back to the DWG as they develop.

Review of Discussion Topics Remaining from 2006 and Potential New Topics for 2007

The draft lists provided in the notes for the 6-25-07 meeting were discussed, clarified and vetted. The following draft topics were eliminated:

- Trees over tile (103E.081, Subd. 2a and 2b, which were added in 2005, address this topic.)
- Tile outlets into public drainage systems (This was determined to not be a priority topic.)
- Forest Legacy Program and drainage systems (This topic was addressed by the DWG in 2006, including use of the RIM easement language that safeguards drainage system rights.)

Some topics are expected to be addressed via the Drainage Records Modernization Guidelines and/or the update of the MN Public Drainage Manual, including the new drainage system BMP chapter. The DWG intends to stay informed about these developments. Other topics are also

considered primarily informational for the DWG. A few new topics were also added. Following is an updated list of potential DWG discussion topics for 2007 / 2008. Because the DWG did not have time to prioritize these topics, it was agreed that Al K. would send the updated list to DWG members via email to seek prioritization input.

- Clarify Section 103E.227 Impounding or diverting a drainage system
 - *Address rerouting of ditch or tile*
 - *Clarify maintenance responsibilities and joint funding*
- Clarify Section 103E.805 Removal of property from and partial abandonment of a drainage system
 - *More clearly define the two separate or combined purposes*
- Urban drainage ditches
 - *Review experience to date regarding use of 103E.812 Transfer of all or part of a drainage system*
 - *Consider other issues regarding transfer or abandonment*
- Native vegetation
 - *Review and stay informed about implementation of 2007 legislation*
 - *Stay informed about other programs, projects and issues regarding native vegetation*
- Incremental adjustment of drainage system assessments for long-term land use change such as permanent easements or development
- Review repair project considerations for drainage systems with no repair history, including WCA, Swampbuster and Section 103E.015 Considerations before drainage work is done
- Types and effectiveness of drainage management practices for ag production, flood damage reduction, water quality and wildlife habitat
 - *Stay informed about new drainage system BMP chapter of updated Minnesota Public Drainage Manual, development of new Drainage Assistance Team and drainage management options*
- Coordination of drainage system authority between counties and watershed districts and for joint county ditches
- Costs and funding for redetermination of benefits
 - *Become more informed about mass appraisal process for conservation easements and other special types of land use*
 - *Consider costs where little or no new lands are assessed*
- Responsibilities for installation and repair of private crossings
- Alerting new land buyers to public drainage system right-of-way (*may be addressed by Drainage Records Modernization Guidelines*)
- Water quality use classifications and public ditches
 - *stay informed about work of interagency group addressing this topic*
- Tax assessment on drainage ditch buffer strips
- Drainage system connectivity to water bodies in relation to transfer of exotic species

Meeting Schedule

It was discussed and agreed that the DWG would meet monthly on the second Thursday from 12:30 p.m. to 3:30 p.m. Chris Radatz scheduled the MFB meeting room for these dates through December.