

Drainage Work Group Meeting Notes October 19, 2006

Attendance

Ron Ringquist, MVA; Craig Austinson, Blue Earth Co.; Gerald Amiot, MACO; Mark Nisley, Ag Policy Cmte., MN House; Bruce Kleven, Commodity Groups; Chris Radatz, MFBF; Scott Moen, FWLA; Matt Norton, MCEA; LeAnn Buck, MASWCD; Shannon Fisher, MRB/MSUM-WRC; Larry Gunderson, MPCA; Harlan Madsen, AMC/Kandiyohi Co.; Glenn Schafer, USDA-FSA; Greg Anderson, USDA-FSA; Bob Meier, MDNR, Ray Bohn, MAWD; Warren Seykora, MAWD; Kurt Deter, Rinke-Noonan; Allan Kuseske, MADI, NFCRWD; Dan Wilkens, MADI, SHRWD, RRWMB, RRBC; Joe Martin, MDA; Thom Peterson, MFU; Doug Thomas, BWSR; Al Kean, BWSR

Handouts Prior to or During Meeting:

1. Drainage Work Group Meeting Logistics and Agenda for 10-19-06
2. Drainage Work Group Meeting Notes for 9-21-06
3. Copy of email to Greg Anderson, FSA, with questions and concerns about CRP/CCRP/CREP along public drainage ditches sent 9-26-06
4. Revised final draft of Drainage Work Group recommendations for Drainage Records Modernization topic, dated 10-13-06
5. Revised discussion paper for subtopics a), b) and c) of Enhance Authority to Establish and Maintain Buffers general topic, including draft Drainage Work Group recommendations, dated 10-13-06
6. Revised discussion paper for subtopic a) Clarify the point of beginning for measuring required grass buffer strips” of Technical general topic, including revised draft Drainage Work Group recommendations, dated 10-16-06

Introductions and Agenda Overview

People in attendance introduced themselves. Doug Thomas provided an overview of the meeting agenda and objectives. It was suggested that Dave Weirens, BWSR, attend a Drainage Work Group meeting to talk about WCA agricultural exemptions.

Review of Meeting Notes for 9-21-06

No additions or corrections requested.

Discussions about CRP Questions and Concerns

Al Kean gave an overview of several questions and concerns provided to Greg Anderson, FSA, about CRP along public drainage ditches. Greg and Glenn Schafer provided explanations of FSA policies and procedures in this regard. Points of information included:

- CRP includes 30-some conservation practices, including CP-21, Grass Filter Strip, which can be up to 120 ft. wide, if warranted for water quality, and CP-22, Riparian Buffer.
- For land along a public drainage ditch, the ditch must be a perennial or intermittent stream to be eligible for CP-21 or CP-22. FSA/NRCS typically use DNR perennial and intermittent streams GIS layer to determine eligibility.
- Eligible land must be legally able to be cropped. An existing easement that prohibits cropping would make the land under easement ineligible. A question was asked if the

103E.021 allowance for haying of required grass strips would make the associated land eligible for the cropping criteria. CRP allows managed mowing and burning, but not harvest.

- Several versions of CRP since 1985, with somewhat different criteria.
- O.K. to put a conservation easement over CRP (e.g. CREP), if CRP requirements are met.
- May need state definition of conservation easement to include 103E.021 grass strips? It was suggested that BWSR might work with FSA to help develop a CRP Technical Note about piggybacking of conservation easements on CRP lands. If a landowner were to be penalized for a 103E.021 buffer strip implemented over CRP, that would affect damages to the landowner for the 103E.021 buffer strip.
- Conservation cover disturbed or destroyed by a ditch maintenance activity must be reestablished at no cost to the USDA. Both CRP and RIM require the participating landowner to be responsible for reestablishment of disturbed or destroyed cover.
- To avoid penalties to a landowner with a CRP contract along a public drainage ditch, maintenance of a ditch must comply with the CRP permissive and restrictive use policy and procedures, which prohibit work during the nesting / brood rearing season (May 15 – August 1, in southern MN and June 1 – August 1 in northern MN). Concerns were expressed about inconsistencies of application of this policy. Greg Anderson indicated that FSA would be interested to help address any inconsistencies in FSA determinations.
- CRP conservation plan must govern during the CRP contract. An easement must be subordinate during the contract period.
- It was agreed that BWSR should work with FSA to help clarify associated policies and bring back follow up information to the Drainage Work Group.

Enhance Authority to Establish and Maintain Buffers

Al Kean overviewed the 10-13-06 discussion paper for this topic, including proposed 103E.021 Subdivision 6. Incremental implementation of vegetated ditch buffer strips and side inlet controls. DWG discussion resulted in elimination of several sentences and phrases in the draft; changing “shall” to “may” in regard to appointment of an engineer; and the addition of references to watershed districts along with auditors, where applicable.

Discussion about draft clarifications of drainage law regarding the responsibility of drainage systems to restore vegetative or structural practices disturbed or destroyed by repair projects resulted in the following key concerns and decisions. The focus of this clarification must be tailored to restoration associated with repairs, such as on CRP or conservation easement land adjacent to a public drainage ditch. The need and advisability for proposed item (5) under 103E.315, Subd. 8. Extent of damages. was questioned. Use of the word “damages” in the proposed 103E.701, Subd. 7. Restoration of a practice damaged by a repair. was also questioned. Al Kean, Kurt Deter and Ron Ringquist agreed to further discuss and revise these proposed clarifications of drainage law before the next DWG meeting.

Clarification of Point of Beginning for Measuring Required Grass Buffer Strips

Al Kean overviewed the 10-16-06 discussion paper for this topic, including sketches of a hypothetical drainage ditch over time, spoil placement, and grass strip locations for different types of proceedings, ditch side slope and spoil placement design and routine repair. Much discussion about the point of beginning of the required grass strips.

- A concern is how best to relate the grass strip easement to the existing ditch easement for reasons of compensating the landowner for the grass strip easement and creating adequate records.
- It was suggested that the point of beginning should be the crown of the spoil, so that farming was set back 1 rod from the point(s) on the cross section where the ground slopes toward the ditch.
- Not certain what the perspective of all producer groups is in this regard.
- It was suggested that drainage law should be definitive about required buffer width (1 rod, and not allow variable width defined by drainage authority).
- It was suggested that measuring a 1-rod buffer strip outward from the crown of the spoil would likely promote drainage engineers designing the crown of spoil at the top of the ditch side slope to minimize the drainage ditch easement and buffer width.
- Some concern that spoil banks should be set back from the top of the ditch side slopes and/or flatter ditch side slopes used for reasons of slope stability and reduced ditch maintenance.

BWSR offered to redraft the proposed clarifications of Section 103E.021, Subdivision 1 to reflect the suggestion to measure the required minimum 1-rod buffer strip from the top of the ditch side slope, or the crown of the spoil bank, whichever results in the greater buffer width, and provide the redraft to DWG members well before the next DWG meeting to enable further coordination by DWG members before the meeting.

Next Meeting

The regular DWG meeting date of the third Thursday is November 16. Several DWG member organizations have annual meetings in mid November and it would be good to have one more DWG meeting before then. BWSR will canvas DWG members via email and identify an alternative date for the November DWG meeting. November 13 was a potential date discussed. The MNFB conference and training room is not expected to be available.