

Drainage Work Group Meeting Notes

August 2, 2012

12:30 – 3:30 p.m.

Association of Minnesota Counties Building, St. Paul, MN

Attendance

Mark Dittrich, MDA; Tom Gile, Coon Cr. WD; Tim Kelly, Coon Cr. WD; Craig Austinson, Blue Earth Co.; Kurt Deter, Rinke-Noonan; Jerome Deal, MAWD; Ron Ringquist, MVA; Larry Kuseske, MAWD; Greg Knopff, Senate Analyst; John Thompson, Faribault Co., MACO; Tom Loveall, BWSR Brd.; Larry Gunderson, MPCA; Les Everett, UMN; Kyle Skov, BWSR; Ron Harnack, RRWMB; Tim Smith, USACE; Al Kean, BWSR

Handouts prior to or during meeting:

1. DWG – Meeting Logistics and Agenda for 8-2-12
2. DWG – Meeting Notes for 6-28-12
3. DWG – MN Drainage Law Analysis – Summary of Discussion Points DRAFT 7-23-12.doc
4. DWG – MN Drainage Law Analysis – Recs 4a and 5b Statute Revisions DRAFT 8-1-12.doc

Introductions and agenda overview

All in attendance introduced themselves. Al Kean provided extra copies and an overview of the agenda. He noted that the focus of the 2:15 agenda topic will be on statute language regarding Smith Partners Report Recommendation 4.a., for which the DWG seemed to have substantial support to address at the 6-29-12 meeting.

Approval of 6-28-12 Meeting Notes

Extra copies of the meeting notes were distributed. Corrections or additions were requested. None were indicated.

Overview of Conservation Drainage Field Day and Workshop, July 31 – August 1, Granite Falls

Mark Dittrich, MDA, provided a PowerPoint overview and handouts about this event, which was held near Granite Falls at the Prairies Edge Casino and at the farm of Doug Albin. The event drew substantial attendance of interested people. The first “Saturated Buffer” demonstration project in Minnesota was a highlight of the field day, which also involved a woodchip bioreactor, drainage water management, and streambank stabilization using the “toe wood – sod mat” approach. Dr. Dan Jaynes, USDA-ARS at Iowa State University, who is the leading current researcher for saturated buffers, was a presenter. The NRCS very recently adopted an interim conservation practice standard for saturated buffers, titled “Vegetated Subsurface Drain Outlet”. MDA, UMN, DNR, SWCD, BWSR and NRCS also were presenters.

Presentation and discussion about Corps of Engineers proposed Regional General Permit RGP-002-MN

Tim Smith, USACE Regulatory Branch, provided a PowerPoint overview of the proposed permit, which is about certain types of drainage activities on private lands. A key objective of this general permit is to simplify the COE permit process for these types of drainage activities within threshold limits, to reduce individual permit review workloads and accelerate the permit process (Individual Permit typically 60 – 120 days, goal for General Permit 45 – 60 days). The substantial amount of agricultural drainage activity in the region at this time has created a large COE workload. Tim noted that the St. Paul District COE does not use Nationwide Permit 40, which addresses agricultural activities, because the District prefers to create regional general permits that are better tailored to the landscapes within the District. A regional

general permit enables activity thresholds below which it applies, which can avoid many individual permits, avoid the need for a COE final jurisdictional determination, and provide associated clarity of authority for COE local project managers. Tim also noted that the proposed general permit does not change any agricultural exemption status or extend COE jurisdiction. A landowner could find out if work qualified for the RGP without an approved jurisdictional determination, but a preliminary jurisdictional determination, which can be done much faster, could help avoid delays. DWG member questions included the definition of “waters of the U.S.” (generally includes intermittent and ephemeral watercourses), whether or not soil disturbance caused by tile plowing constituted “fill” (generally no, but large tile might, due to volume of soil displaced), definition of “farmed wetland” in the RGP (generic language, not necessarily the same as USDA definition), and repair exemption. The COE has received a multi-page comment letter from the USFWS and anticipated additional comments before the deadline, which was extended twice to August 18, 2012.

Review of DWG Discussion Points documentation for 6-28-12 meeting regarding Smith Partners LCCMR Report Recommendations 4.a. – 4.d.

Al Kean requested any comments regarding the Summary of DWG Discussion Points draft document dated 7-23-12. None were offered.

Review of Draft Statute Language for Smith Partners LCCMR Report Recommendation 4.a.

Al Kean provided a document with the Smith Partners statute language and alternative draft DWG consensus recommendation statute language he had drafted to address this recommendation. The subject of this recommendation is authority to designate or redefine a Chapter 103E drainage system for which the records have been lost, destroyed, or are otherwise inadequate to define the engineering characteristics and location of the system. There was much discussion about the best word to describe the subject action of the recommendation (e.g. designate, redefine, reestablish, redetermine) drainage system characteristics. Rather than put the proposed authority in Section 103E.801 Consolidation or Division of Drainage Systems, it was discussed that the Repair section (103E.701), Repair Procedure section (103E.705) or the Construction Records section (103E.101) might be a better location for this proposed authority. It was agreed that this authority should include due process for notification of affected landowners and that drainage authorities should use all practical information sources to redefine the drainage system characteristics. Greg Knopff and Al Kean agreed to develop draft statute language to put in Section 103E.101 Drainage Proceedings and Construction Records for the next DWG meeting.

Next Meeting

It was agreed that the next meeting would be on the second Thursday in September, subject to the availability of a meeting room, and that Al Kean would use a Doodle Poll to identify DWG meeting dates for October and November.