

## **Drainage Work Group Meeting Notes August 17, 2006**

### **Attendance**

Shannon Fisher, MSU-M WRC; Craig Austinson, Blue Earth Co.; Ron Ringquist, MVA; LeAnn Buck, MASWCD; Gary Botzek, MCF; Mark Nisley, Ag Policy Cmte. MN House; Larry Gunderson, MPCA; Wayne Anderson, MPCA; Wayne Edgerton, DNR; Thom Peterson, MFU; Chris Radatz, MFBF; Scott Moen, FWLA; Ray Bohn, MAWD; Warren Seykora, MAWD; Lee Coe, RLWD; Dan Wilkens, MADI, SHRWD, RRWMB, RRBC; Allan Kuseske, MADI, NFCRWD; John Corbid, Former Rep. District 1A; Jim Mulder, AMC; Mark Ten Eyck, MCEA; Doug Thomas, BWSR; Al Kean, BWSR

### **Handouts Prior to or During Meeting:**

1. Drainage Work Group Meeting Logistics and Agenda for 8-17-06
2. Drainage Work Group Meeting Notes for 7-20-06
3. Further evaluation of Impediments to 103E.021 and Voluntary Grass Buffer Strip Implementation, based on Public Drainage Ditch Buffer Study questionnaire responses, by MSU-M, WRC, dated 8-9-06.
4. Discussion paper, with draft Drainage Work Group recommendations, for 3 subtopics of “Enhance Authority to Establish and Maintain Buffers” general topic, dated 8-10-06.
5. Further evaluation of 103E.021 Grass Strip Measurements, based on Public Drainage Ditch Buffer Study questionnaire responses, by MSU-M, WRC, dated 8-9-06.
6. Discussion paper, with draft Drainage Work Group recommendations, for “Clarify the point of beginning for measuring required grass buffer strips” subtopic, dated 8-10-06.

### **Introductions and Agenda Overview**

People in attendance introduced themselves. Doug Thomas provided an overview of the meeting agenda.

### **Review of Meeting Notes for 7-20-06**

No additions or corrections requested.

### **Discussion of Questions to DNR from 6-15-06 Meeting**

Wayne Edgerton, DNR, provided explanation about the following questions asked at the 6-15-06 Drainage Work Group (DWG) meeting, and the DWG discussed.

- *Forest Legacy Program conservation easements – potential effects on drainage?* – Wayne indicated that easements to date have been acquired in southeast MN via a combination of federal and state funding. The appraisal and title review process should identify existing drainage easements and rights. These conservation easements should have no impact on drainage system maintenance. A question was asked if the Forest Legacy program conservation easements include language about existing public drainage systems. Doug Thomas indicated that the standard language for RIM Reserve easements was updated in this regard for CREP. BWSR will provide a copy of the RIM easement form to Wayne. It was suggested that the DWG might make a recommendation that Forest Legacy Program easements include standard language ensuring protection of existing drainage system rights.

- *When and why does or doesn't DNR pay drainage assessments for state lands on public drainage systems?* – Wayne indicated that the DNR is current on public ditch assessments on all but consolidated conservation (con-con) lands. DNR paid up ditch assessments on con-con lands in 19?? and indicated via written communication to the applicable county drainage authorities that it would not pay more until redeterminations of benefits were done on the associated drainage systems. Drainage systems on con-con lands in Aitkin County have been redetermined and DNR is current on associated drainage system assessments. The high cost and limited availability of viewers for redetermination of benefits for drainage systems in the other 6 counties with con-con lands, and the uncertain outcomes of redeterminations, were identified as critical issues. There was substantial discussion about if, or how, the DWG could help to address this topic. It was noted that the DWG has agreed to address the topic raised by DNR regarding ditch abandonment in the Metro. It was suggested that the DWG might establish a subcommittee, if the DNR Commissioner supports the DWG addressing ditch assessments on con-con lands. Wayne and Doug Thomas will communicate with the DNR Commissioner in this regard. It is expected that addressing this topic would require the DWG to continue meeting after November 2006. Concern was expressed that this topic not derail discussions and recommendations regarding ditch buffer strips.

### **Point of Beginning for Measuring 103E.021 Grass Strips**

Gary Botzek introduced former District 1A Representative John Corbid, who was asked by Rep. Rick Hansen to attend the DWG meeting. Mr. Corbid had coauthored legislation for the current 103E.021 grass strip requirement, and wanted to address the DWG before he had to leave the meeting for another appointment. Mr. Corbid indicated that he understood the intent of the Legislature was for the minimum 1-rod grass strips to be measured from the top edge of the ditch channel at the time of implementation of the grass strips, and the purpose of the grass strips to be to reduce ditch clean-outs and associated costs.

### **Drainage Records Modernization**

Al Kean presented a second draft of DWG recommendations for this topic, based on discussion at the 7-20-06 meeting. Substantial DWG discussions led to further revisions of the draft recommendations, including more emphasis on drainage records preservation. Al will incorporate into a third draft of DWG recommendations.

- Al indicated that MSU-M communications with drainage authorities that have modernized their drainage records indicate a cost range of about \$50K - \$100K, depending on the number and miles of drainage systems under their jurisdiction, the level of detail of modernized records developed and the availability of GIS expertise.
- Local Water Management Challenge Grants have helped fund many of the drainage records modernization efforts to date, as listed in the Public Drainage Ditch Buffer Study.
- Jim Mulder indicated that counties are to receive funding for updated land records management software. BWSR will seek more information about this.
- It was suggested that DWG recommendations could include a date for completion of guidelines and possibly a goal date for implementation by drainage authorities.
- BWSR will estimate funding needed to develop these guidelines.
- A recommendation for state funding to accelerate cost-share of drainage records preservation and modernization could be added by the DWG.

## **Enhance Authority to Establish and Maintain Buffers**

Shannon Fisher provided an overview of further evaluations by MSU-M of drainage authority responses to the Public Drainage Ditch Buffer Study questionnaire regarding impediments to implementation of 103E.021 and voluntary grass buffer strips. Key impediments identified included:

- Costs for redetermination of benefits and damages and acquisition of permanent easements, as well as loss of cropland associated with implementation of 103E.021 grass strips.
- Concerns about the need for additional weed control, and low or no interest in hay from grass strips by renters of land for row crops.
- A significant number of drainage authorities identified grass strips only being required when viewers are appointed to be an impediment.

Key impediments identified in regard to voluntary buffer programs and the relationship with 103E.021 grass strips included:

- Absentee landowners who have a focus on annual cash flow and minimizing the number and complexity of rental contracts and other agreements.
- The number of voluntary programs, with differing eligibility requirements and implementation processes.
- Maintenance of drainage ditches in relation to requirements, costs and responsibilities for maintenance of conservation lands, such as CRP, CCRP and CREP.
- Property taxes.

A question was raised regarding if, or who, is responsible to replace conservation program lands when additional right-of-way is needed for a drainage ditch improvement? A related question was in regard to responsibility for reestablishment of vegetation impacted by placement of spoil from a ditch clean-out. Al Kean indicated that federal and state conservation programs look to participating landowners as responsible for maintaining conservation program lands and vegetation. These programs generally will only pay for initial establishment of vegetation. Al recently talked to FSA staff about pertinent CRP policies, but needs additional clarification regarding current policies for both CRP and RIM. These questions will be components of future DWG discussion topics. The question about reestablishment of vegetation is also addressed in the discussion paper for the first three subtopics under this general topic (handout 4.).

Al Kean provided a very brief overview of the discussion paper entitled “Enhance Authority to Establish and Maintain Buffers”.

*Subtopic a) Clarify/enable authority to appoint viewers for determination of damages for ditch buffers without having to do a full redetermination.* – Drainage law does not provide a clear way for drainage authorities to determine damages for ditch buffers without appointing viewers, which also triggers 103E.021 grass strip requirements.

*Subtopic b) Clarify authority to use ditch maintenance funds for ditch buffer implementation.* – Ditch maintenance funds can be used for erosion and sediment control to maintain the efficiency of the drainage system, which could include ditch buffers. However, because drainage law requires the appointment of viewers for land rights acquisition by the drainage system for ditch buffers, this would trigger the 103E.021 grass strip requirements.

*Subtopic c) Piggybacking of permanent ditch buffer easements with federal and state conservation programs.* – Again, land rights acquisition for permanent ditch buffer easements requires the appointment of viewers, which triggers 103E.021 requirements. Some drainage

authority attorneys do not allow the drainage authority to pay damages to restore vegetation damaged by ditch spoil placement on conservation program lands.

Interpretation of drainage law is substantially vested in drainage authority attorneys. A primary way for the state to enable more consistent interpretation of drainage laws is through clarification of the law. Al presented a draft of a proposed new 103E.021 *Subdivision 6. Incremental implementation of vegetated ditch buffer strips and side inlet controls*. He also very briefly introduced a proposed new 103E.315 *Subdivision 8. Extent of damages* and 103E.701 *Subdivision 7. Restoration of conservation practices damaged by repairs*, to clarify drainage law in regard to these subtopics.

Because time was short, further discussion of these subtopics was tabled until the September meeting.

### **Point of Beginning for Measuring 103E.021 Grass Strips**

Handout 5 above was not discussed, due to lack of time. However, it was noted that drainage authorities reported various interpretations of the point of beginning for measuring 103E.021 grass strips. Al Kean provided a very brief overview of handout 6. A key issue is whether or not drainage authorities are, or should be, required to obtain additional grass strip easement area if the top edge of the channel is moved landward by a ditch improvement, a repair involving resloping of ditch banks or, more commonly, the placement of spoil along the top edge of the channel during ditch cleanout to the dimensions of record (i.e. for a repair that does not require the appointment of viewers).

Discussion of example ditch and spoil bank cross section sketches considered if, or how, the top edge of the ditch channel moves from the time of the original ditch construction. One perspective was that the horizontal location of the top edge of the channel is only defined by the original ditch construction, as shown in the Minnesota Public Drainage Manual. Another perspective was that the location of the top edge of the ditch for measuring the required minimum 1-rod grass strip moves whenever there is a proceeding that appoints viewers. Still another perspective was that the required minimum 1-rod grass strip should always be measured landward from the crown of the spoil bank. Because time had run out, further discussion was tabled until the September meeting.

Next DWG meeting: Thursday, September 21 at MN Farm Bureau in Eagan.

There was discussion and general consensus that the September meeting should be longer (9:00 a.m. to 1:00 p.m.), to provide more time for the DWG to reach consensus recommendations for the topics on the agenda.