

Drainage Work Group Meeting Notes February 22, 2018

11:00 a.m. - 2:00 p.m., Minnesota Farmers Union Building, St. Paul, MN

Attendance

John Kolb, Rinke Noonan; Tom Loveall, BWSR Brd.; Craig Austinson, MADI, Blue Earth Co.; Bill Thompson, MASWCD; Kale Van Bruggen, Rinke Noonan; Matt Detjen, Wright Co.; Chris Otterness, HEI; Ruth Simpson, MAT; Mark Ten Eyck, MCEA; Emily Javens, MAWD; Les Everett, UMN-WRC; Rob Sip, RRWMB; Tim Dritz, MAWD; Stu Frazeur, MNLICA; Doug Krueger, McLeod Co., MRCC; Randy Kramer, Renville Co., AMC; Jerome Deal, RRWMB; Dan Wilkens, RRWMB; Mark Dittrich, MDA; Harvey Kruger, HLWD, MAWD; Ron Harnack; Ron Ringquist, MVA; Alan Perish, MFU, MVA; Jennifer Berquam, AMC; John Jaschke, BWSR; Michelle Ulrich, CCWD; Darrell Gerber, MCEA; Elise Larson, MCEA; Mark Hiles, BWSR; Amanda Bilek, MCGA; Greg Knopff, Senate Analyst; Tim Gillette, BWSR; Al Kean, BWSR

Handouts prior to or during the meeting

- 1) Meeting logistics and agenda for 2-22-18
- 2) Meeting notes for 2-1-18
- 3) DWG - ADSABS Legislation Recs S1 S2 S3 S6 P4 F1 O1 - Draft 2-18-18.docx
- 4) DWG - RSDO - Chapter 103E Revisions - Draft 2-19-18.docx
- 5) HF-2876 Sec 103E715 Subd 4 clause (2) 2-9-18.pdf
- 6) HF-2867 5-18-17.pdf
- 7) SF-2419 5-21-17.pdf
- 8) DWG - ADSABS Legislation Recs S1 S2 S3 S6 P4 F1 O1 - Draft 2-21-18.docx
- 9) Potential Modifications to AgBMP Loan Program to Improve Financing Options for Buffer Implementation (MDA)
- 10) Flyer for RRWMB - RRBFDROWG 20th Annual Joint Conference, Mar. 21-22, 2018, Moorhead, MN

Introductions and agenda overview

All in attendance introduced themselves, including those who participated via conference call. Al K. provided extra copies and an overview of the agenda.

Approval of 2-1-18 meeting notes

Extra copies of the notes were distributed. Corrections or additions were invited. None were identified.

Share information about recent and upcoming drainage related events

- RRWMB - RRBFDROWG 20th Annual Joint Conference, Mar. 21-22, 2018, Marriot, Moorhead, MN
- Drainage Management Team meeting Jan. 18, 2018: working on 2-Stage Ditch and Bioreactor Fact Sheets; overview of the DMT was provided to the BWSR Board at Jan. 24 Board Meeting

Acceleration of Drainage System Acquisition of Buffer Strips (ADSABS)

Members of the DWG Legislation Subgroup met on Tuesday, 2-20-18. Al K. provided an overview of recent changes reflected in the DWG ADSABS recommendations document dated 2-21-18. These changes only involve addition in Recommendation O1 of reference to the Understanding Minnesota Public Drainage Law (UMPDL) document. The UMPDL would need to be updated prior to providing outreach about accelerating drainage system acquisition of buffer strips, along with an overview of Chapter 103E drainage law. This request by AMC and MAWD was supported by other DWG members. Because potential request of funding for outreach wouldn't be available until FY-19, BWSR has agreed to work on the update of the UMPDL in the coming months.

At the 2-1-18 DWG meeting, the DWG had endorsed recommended legislation for Recommendation S1, S2, S3 and S6 and recommended adding Recommendation P4 about the AgBMP Loan Program use for

ditch buffer strips to draft legislation. Staff at MDA have been working on language to revise [Section 17.117 Agriculture Best Management Practices Loan Program](#) to enable drainage authorities to serve as a borrower on behalf of the landowners represented in a drainage system to help finance ditch buffer strips (up to number of landowners represented times the current limit of \$200,000 per landowner). MDA will continue to work on this legislation. MDA indicates that the program has been appropriated a total of about \$75M to date, with an outstanding loan balance of \$47M and \$28M of cash on hand, as of 2-1-18. The current annual sustainable loan capacity is about \$11M per year for all categories of loans, with varying use and funding availability of the five appropriation sources. See [AgBMP Loan Program Biennial Status Report, October 15, 2017](#) for additional information.

Runoff and Sediment Delivery Option (RSDO) for drainage system repairs

Al K. distributed extra copies of the most current version of draft Chapter 103E revisions dated 2-19-18. All of the changes discussed and agreed to at the 2-1-18 DWG meeting regarding language in “green” font at that time have been incorporated into the “red” recommended revisions, in accordance with the notes for the 2-1-18 DWG meeting. Al provided an overview of those agreed-to changes.

The only remaining topic was Sec. 103E.728, Subd. 1a, para. (i) regarding conservation lands. Two alternative versions are shown in the 2-19-18 RSDO Chapter 103E revisions document. After some scheduling challenges, Al K. met with DNR and MCEA representatives on Wednesday, 2-21-18 to further discuss conservation lands. At that meeting, concern was raised that property owners should not be assessed / charged for runoff / drainage that is “natural”, based on the “Seidlitz” case law and “reasonable use” doctrine considerations.

There was much discussion about the applicability, or not, of the Seidlitz case and reasonable use doctrine to drainage system repair cost apportionment using a proposed new RSDO authority in drainage law that is much like the separate authorities provided to cities, counties, watershed districts, and other water management organizations for stormwater management cost assessment for actual, existing drainage. Also discussion about existing Section 103E.315, Subd. 6 and 7 authority regarding viewers assigning benefits to accelerated drainage and sedimentation above “natural”. The feasibility of being able to subtract out “natural drainage” and sediment from total drainage and sediment delivery in the RSDO prototype method was also discussed, including “presettlement” land use data such as the “Trygg maps”. Concern was expressed about the need for drainage authorities to consider site specific situations, as well as the practicality and defensibility of defining “natural” drainage and sediment delivery. Because there was not consensus about how to address natural drainage and conservation lands, and the full DWG would not meet again before the start of the 2018 legislative session, Al K. requested one more meeting of an RSDO Subgroup for this last remaining issue, which was supported.

HF-2876

Short discussion about the introduction of the draft language that the DWG had reviewed in October 2017, with support for Al K. to send another letter to Rep. Backer and others involved about the DWG conclusions and reasoning.

Public Waters and Drainage Guidance

The DNR reportedly has completed a final version of their guidance document, which is being completed internally, along with planning for associated distribution and training within DNR.

Legislator(s) inquiry about adding buffer strip alternative practices in Chapter 103E

There was not time available for the DWG to discuss this agenda topic.

Next DWG meeting:

Thursday, June 14, 2018, 11:00 a.m. - 2:00 p.m. at the MN Farmers Union, St. Paul, if room is available.