

Drainage Work Group Meeting Notes October 13, 2016

12:30 - 3:30 p.m., Minnesota Farm Bureau Building, Eagan, MN

Attendance

Tom Loveall, BWSR Brd.; Craig Austinson, Blue Earth Co.; Mark Ten Eyck, MCEA; John Kolb, Rinke-Noonan; Alan Perish, MFU, MVA; Larry Kuseske, MAWD; Mark Hiles, BWSR; Allen Wold, BdSWD; Beth Wold; Cole Rupperecht, MFB; Barb Huberty, LWC; Debbie Rynda, Viewer; Bryan Murphy, Viewer; Les Everett, UMN; Wayne Anderson, MPCA; Ray Bohn, MAWD; Greg Knopff, Senate Analyst; Ron Harnack, RRWMB; Jerome Deal, MAWD; Dan Wilkens, RRWMB; Ron Ringquist, MVA; Ruth Simpson, MAT; Laura Nehl-Trueeman, MnDOT; Kale Van Bruggen, Rinke Noonan; Chris Otterness, HEI; Michelle Ulrid, CCWD; John Thompson, Faribault Co., MACATFO; Mark Dittrich, MDA; Joe Smentek, MSGA; Tim Gillette, BWSR; Al Kean, BWSR

Handouts prior to or during the meeting

- 1) DWG Meeting logistics and agenda for 10-13-16
- 2) DWG Meeting Notes for 9-15-16
- 3) HF-2011 / SF-2029 Draft DWG Discussion Paper, 8-7-16
- 4) HF-2365 / SF-2380 Draft DWG Discussion Paper, 10-7-16
- 5) DWG - Runoff and Sediment Based Drainage Assessments Option (RSBDAO) - Chapter 103E Revisions Draft 10-7-16

Introductions and agenda overview

All in attendance introduced themselves. Al Kean provided extra copies and an overview of the agenda.

Approval of 9-15-16 meeting notes

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

Share information about recent and upcoming drainage related events

- *Buffer Science and Design Symposium*, Sep. 16, 2016, UMN, St. Paul; *Buffer Field Trip*, Sep. 17
- *MAWD Drainage Workshop*, Dec. 1, 2016, Arrowwood Conference Center, Alexandria, MN
- *RRBC 34th Red R. Basin Land & Water Int'l. Conf.*, Jan. 17-19, 2017, Ramada Plaza, Fargo, ND

Further Discussion about HF-2011 / SF-2029

- These bills proposed to add watershed based planning and implementation authority to Section 103E.011, Subd. 5 Use of External Sources of Funding.
- The motivation for these bills is not known by DWG members.
- The DWG had previously avoided overlap of drainage law with water planning law when recommending updates to Sec. 103E.015 Considerations Before Drainage Work is Done.
- Current Sec. 103E.011, Subd. 5 implicitly includes planning and implementation within the watershed of a drainage system for the three defined purposes. Therefore, the DWG does not agree that there is a need to revise this subdivision.
- Also discussed an alternative revision to clarify planning and implementation authority in Subd. 5 and water storage / detention as a purpose. No DWG collective support, because planning and implementation are implicitly included in current Subd. 5, and because storage / detention can use external sources of funding based on the existing purposes in Subd. 5.

Further Discussion about HF-2365 / SF-2380

- These bills proposed to enable updating of drainage system benefits based on land values for some petitioned repairs for which costs are limited to drainage system benefits on record (Section 103E.715, Subd. 4 (a)(2)).

- These bills originated from legal problems encountered in the Bois de Sioux Watershed District in regard to redetermination of benefits and damages for JD-14 in Traverse County and subsequent repair petitions for other drainage systems.
- The DWG does not support the drainage law revision in the proposed bills for several reasons:
 - there is significant history of drainage law changes leading to the current provisions, that seem to enable petitioners and drainage authorities to initiate major repairs;
 - reluctance to enable avoiding redetermination of benefits and damages to address outdated determinations of benefited lands and benefits that often can more fairly assess the costs of repairs;
 - case law indicates drainage authorities have an option to use Section 103E.715, Subd. 4, para. (a), clause (1), which does not limit repair costs to the benefits on record, for all petitioned repairs; and
- Other alternative revisions of punctuation to help clarify Section 103E.715, Subd. 4, or references to “original drainage system proceedings”, were not supported. Discussed revising all references to “original” *proceedings, construction or benefits* throughout Chapter 103E at the same time.
- Also discussed the need to review and discuss Section 103E.351 Redetermination of Benefits and Damages, because that is where the problems in the Bois de Sioux Watershed District originated.

DWG Subgroups planning to meet

- The DNR has provided a draft of its updated policy guidance regarding public waters permitting in Section 103G.245 and permission in Section 103E.011, Subd. 3, as it applies to drainage involving public waters. Therefore, the DWG Public Waters and Drainage Subgroup is planning to meet and discuss the draft on Nov. 2.
- The DWG exploratory Communications Subgroup plans to meet on Nov. 9.

Interagency Drainage Management Team (DMT) update

- The DMT met in July and Sep., including discussion about the MN Nutrient Reduction Strategy, MPDM update, DWG updates, runoff-based drainage assessments, adequate drainage and adequate outlet.
- Some DWG questions and discussion about DMT goals for more common technical understandings about drainage.

Runoff and Sediment Based Drainage Assessments Option in drainage law

- Briefly overviewed the purposes and discussed the characteristics and scope of this option and the prototype GIS method developed by the International Water Institute (IWI). Some questions and reminders that this option is focused on drainage assessments for repairs and would not be an alternative method to redetermine benefits. It doesn't determine benefits, only drainage system repair assessments, based on relative runoff and sediment delivery to the drainage system.
- Began discussion about draft revisions of Chapter 103E to enable this option that were drafted by Al Kean, including limited consultation with Greg Knopff, Senate Analyst, and other DWG members. Through the BWSR grant agreement with the RRWMB enabling the IWI to develop the prototype GIS method, Smith Partners, PLLP, attorneys are also in the process of providing independent review and comment on the draft revisions.
- Significant discussion about the potential to pilot the prototype method for some real repair projects before recommending revisions to drainage law. However, there was not agreement about the necessity for this, if/how it could be funded, or authority in drainage law to do this without revisions to drainage law. There are existing provisions in Section 103E.315 Assessment of Drainage Benefits and Damages, Subd. 6 (c) about accelerated runoff and increased sedimentation as a basis for outlet benefits.
- Discussions to continue.

Next DWG meeting: Thursday, Nov. 10, 2016, 12:30 -3:30 p.m. at Minnesota Farm Bureau in Eagan.