

Drainage Work Group Meeting Notes December 8, 2016

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

Attendance

Tom Loveall, BWSR Brd.; Stu Frazeur, MNLICA; Mark Morreim, MNLICA; John Thompson, MACATFO; Alan Perish, MFU, MVA; Goeff Kramer, RESPEC; Ruth Simpson, MAT; Mark Dittrich, MDA; Mark Hiles, BWSR; Sam Blackburn, MCEA; Justin Lee, MCEA; Jenna Greene, MCEA; Darrell Gerber, MCEA; Cole Rupprecht, MFB; Barb Huberty, LWC; Greg Knopff, Senate Analyst; John Kolb, Rinke Noonan; Les Everett, UMN; Kale Van Bruggen, Rinke Noonan; Mark Ten Eyck, MCEA; Todd Miller, MRCC; Kurt Deter, Rinke-Noonan; Ron Harnack, RRWMB; Jerome Deal, MAWD; Dan Wilkens, RRWMB; Laura Nehl-Trueeman, MnDOT; Jennifer Berquam, AMC; John Jaschke, BWSR; Ray Bohn, MAWD; Tim Gillette, BWSR; Al Kean, BWSR

Handouts prior to or during the meeting

- 1) DWG Meeting logistics and agenda for 12-8-16
- 2) DWG Meeting Notes for 11-10-16
- 3) Updated Drainage Work Group Fact Sheet 11-29-16 Draft
- 4) Clean Water Council, Policy Committee letter request to the DWG dated 11-17-16, re: Storage
- 5) DWG – Prioritized Discussion Topics List – Draft 11-28-16
- 6) DWG - HF-2011 SF-2029 and HF-2365 SF-2380 Summary of Discussions - Draft 11-18-16
- 7) DWG - SF-2451 HF-3956 - Discussion Paper - Draft 12-3-16
- 8) DWG – Runoff and Sediment Delivery Charge Option - Chapter 103E Revisions - Draft 12-4-16

Introductions and agenda overview

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

Approval of 11-10-16 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

- *MAWD Drainage Seminar*, Dec. 1, 2016, Arrowwood Conference Center, Alexandria, MN
- *AMC Environment and Natural Resources Policy Cmte.*, Dec. 5, 2016, Minneapolis, MN
- *MASWCD Annual Convention*, Dec. 5, 2016, Bloomington, MN
- *MNLICA Annual Conference*, Jan. 5-6, 2017, New Ulm, MN
- *RRBC 34th Red R. Basin Land & Water Int'l. Conf.*, Jan. 17-19, 2017, Ramada Plaza, Fargo, ND
- *Rinke Noonan, Wetlands and Drainage Seminar*, Feb. 13, 2017, St. Cloud

Updated Drainage Work Group Fact Sheet

Updated fact sheet includes a summary of DWG consensus recommendations adopted by the legislature in 2007, 2010, 2013, 2014 and 2016. Discussion and agreement about changing the heading “Membership” to “Stakeholders” for the table of involved organizations.

Clean Water Council Policy Committee letter to the DWG; and DWG priority topics list review

The CWC Policy Cmte. is asking the DWG to review, discuss and make recommendations regarding a draft policy about storage and alignment of drainage law and watershed planning objectives in Sec. 103B.801.

- DWG members would like more information about the CWC and Legislative Water Com. for context.
- This request will be added to the DWG priority topics list, but the DWG won't plan to discuss until after the 2017 legislative session.
- DWG members would like status information added to the DWG priority topics list.
- Transfer of drainage authority for improvements is a recent issue for Kanaranzi-Little Rock WD.

Drainage Management Team update

Tim Gillette and other DMT members indicated that the interagency DMT has begun a discussion about altered hydrology to seek better shared understanding of this topic including scope, recent studies, what's being done and current directions. Brief discussion about potential for the DMT to share associated technical information with the DWG in the future.

Summary of DWG Discussions and Conclusions for HF-2011/SF-2029 and HF-2365/SF-2380

The summary document dated 11-18-16 for both sets of bills reflects updates based on DWG discussion on 11-10-16 to serve as a report to the chief authors of the bills / legislature.

- HF-2011/SF-2029 proposed to add watershed based planning and implementation authority to Section 103E.011, Subd. 5 Use of External Sources of Funding.
- HF-2365/SF-2380 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.
- The DWG further discussed and agreed on the summary of discussions and conclusions for both sets of bills that had been introduced during the 2015 or 2016 legislative sessions.
- The DWG does not have consensus support for either set of bills as written, for a number of reasons outlined in the summary document.
- Discussion of HF-2365/SF-2380 identified a need for the DWG to look at Section 103E.351 Redetermination of Benefits and Damages, regarding the potential need to update and clarify.

Further Discussion about SF-2451/HF-3956

The draft discussion paper dated 12-3-16 reflects updates based on DWG discussion on 11-10-16.

- Bills would require outlet adequacy determination along with wetland determinations by a WCA LGU and a flowage easement downstream, for surface and subsurface drainage of agricultural land.
- It's not clear how this would apply to Chapter 103E drainage systems, but it seems to overlap.
- A strong preference for local controls by a WD, WMO or JPO for private drainage was reiterated.
- Not clear what criteria would apply to adequacy of the outlet and what expertise would be involved.
- Requiring a downstream flowage easement seems to enable the downstream landowner to veto any new drainage, effectively overruling the reasonable use doctrine based on case law in Minnesota.
- DWG does not have consensus support for this set of bills.
- A summary of DWG discussion and conclusions for these bills will be added to the summary for HF-2011/SF-2029 and HF-2365/SF-2380

Runoff and Sediment Based Drainage Charge Option in drainage law

The draft Chapter 103E revisions document dated 12-4-16 reflects updates to address the review and comments by Smith Partners PLLP. The intent was to review those comments and the updated revisions.

- Smith Partners generally supported the approach to create a relative runoff and sediment-based charge option for drainage system repairs, including associated process, and identified more sections of Chapter 103E that appeared to need some revision.
- Updated revisions reflect "charge" rather than "assessment" for this option, because it is not connected to a defined benefit (per MN Constitution).
- Discussion about contributing (charged) lands vs. benefited lands and any potential complications of two categories of lands.
- Discussed a perspective that permanent conservation land should not be charged or assessed.
- Established a subgroup to help with more detailed review of draft Chapter 103E revisions: Ron Harnack, Kurt Deter, John Kolb, Mark Ten Eyck, Greg Knopff, Ron Ringquist

Next DWG meeting: Thursday, January 12, 2017, 12:30 - 3:30 p.m. at MN Farmers Union building in St. Paul.