

Drainage Work Group Meeting Notes October 12, 2017

12:30 - 3:30 p.m., Minnesota Farmers Union Building, St. Paul, MN

Attendance

Tom Loveall, BWSR Brd.; Craig Austinson, MADI, Blue Earth Co.; Kale Van Bruggen, Rinke Noonan; Chris Otterness, HEI; Alan Perish, MFU, MVA; Steve Colvin, DNR; Ruth Simpson, MAT; Cole Rupprecht, MFB; Amanda Bilek, MCGA; Allison Wolf, MCEA; Thom Peterson, MFU; Ben Stanley, Senate Counsel; Janelle Taylor, House Research; Michelle Ulrich, CCWD; Lisa Frenette, RRWMB; Allen Wold, BDSWD; Bill Thompson, MASWCD; Gloria Johnson, MnDOT; Les Everett, UMN-WRC; Greg Knopff, Senate Analyst; Ron Ringquist, MVA; John Thompson, Faribault Co., MACATFO; Bob Hiivala, Wright Co., MACATFO; Jerome Deal, MAWD; Dan Wilkens, RRWMB; LeAnn Buck, MASWCD; Mark Hiles, BWSR; Don Buckhout, BWSR; Tim Gillette, BWSR; Al Kean, BWSR

Handouts prior to or during the meeting

- 1) Meeting logistics and agenda for 10-12-17
- 2) Meeting notes for 9-14-17
- 3) DWG - CWC Policy Committee Request - Discussion Paper - Draft 10-6-17
- 4) Section 103F.715, Subd. 4 - Market Value Option to Update Benefits - JT 10-4-17
- 5) DWG - MCEA Draft Text to Exempt Conservation Land from RSDCO 10-8-17
- 6) DWG - RSDCO - Proposed Alternative Language - John K & Kale VB 10-8-17
- 7) DWG - RSDCO - Chapter 103E Revisions - Draft 10-8-17
- 8) Handout from Bill Thompson, MASWCD, for discussion at 10-12-17 DWG meeting, re: DWG Response to CWC Policy Committee Request

Introductions and agenda overview

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

Approval of 9-14-17 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

- Governor Dayton's [*25 by 25 Water Quality Town Hall Meetings*](#), July 31 - Oct. 5, 2017
- Interagency *Drainage Management Team* meeting Sep. 21, 2017
- *MACATFO Drainage Committee Mtg.*, Sep. 27, 2017, Holiday Inn, St. Cloud, MN
- *UMN Water Resources Conference*, Oct. 17-18, Rivercenter, St. Paul, MN
- *MN Viewers Association seminar* re: Improvements, Nov. 2, 2017, Jackpot Junction, Morton, MN
- *2017 Drainage Research Forum*, Nov. 15, 2017, Iowa State University, Ames, IA
- MN Association of Townships, *Annual Conf.*, Nov. 16-18, 2017, Rochester, MN (Sustainable Water)
- *MAWD Drainage Workshop*, Nov. 30, 2017, Arrowwood Conf. Center, Alexandria, MN
- Rinke Noonan, Wetlands and Drainage Seminar, Feb. 15, 2018, St. Cloud, MN

Drainage system acquisition of ditch buffer strips and alternative practices

Al K. introduced Don Buckhout, who was recently rehired by BWSR on a post retirement option to serve as project manager and facilitator for this legislative directive and the associated report to the legislature by February 1, 2018. Don further introduced himself and his relevant experience, and provided an overview of the project status. A Project Advisory Committee (PAC) is being established and has a meeting scheduled for Tuesday, Oct. 31. Additional interested members were invited to serve. The first PAC meeting will focus on definition of impediments to drainage system acquisition of buffer strips and alternative practices. PAC meetings are also being planned for mid-November and early December.

CWC Policy Committee request to the DWG regarding storage and drainage

Al K. provided an overview of the draft DWG discussion paper dated 10-6-17 (Handout 3)), which reflects DWG discussions at its 9-14-17 meeting regarding requested comments on the Policy Cmte. 2016 Draft Policy Statement and recommendations regarding alignment of drainage law and watershed planning objectives of 1W1P. Al asked if members considered this version ready to finalize. Concerns were expressed by two members. One proposal was to include a recommendation for more requirements in drainage law regarding adequacy of the outlet, which was a topic of considerable discussion during development of the updated Minnesota Public Drainage Manual in 2016. There was not consensus support for this proposal. It was suggested the DWG response document acknowledge this fact. Another proposal was to strengthen a recommendation for more funding and emphasis on watershed scale demonstrations of multipurpose drainage management. Also further discussion about the challenges of timing of drainage projects with watershed planning and financial assistance for multipurpose measures. Al K. will follow up to consider modifications of the draft comments and recommendations for further DWG review.

Rep. Backer request to consider draft language regarding petitioned repairs and benefit/cost test

Handout 4) was drafted for Rep. Backer to address the ongoing concern in the Bois de Sioux Watershed District (BDSWD) about the benefit/cost test in Sec. 103E.715, Subd. 4(a)(2) for a petitioned repair by at least 26% of benefited property owners. The proposed language would allow indexing up of drainage system benefits based on market land values. The DWG had determined in 2016 that the drainage authority can use Sec. 103E.715, Subd. 4(a)(1) that doesn't require a benefit/cost test, to order a petitioned repair, regardless of the number of petitioners. The BDSWD promotes petitions for repairs, but their legal counsel and board are not comfortable using Subd. 4(a)(1). There was no consensus to support the draft language. Al K. will consider how best to respond to Rep. Backer.

Runoff and Sediment Delivery Charge Option for drainage system repairs

The approach for adding this option to drainage law for repairs only discussed to date in Handout 7) would distinguish benefits based assessments and the relative runoff and sediment delivery based charges option for repair cost apportionment throughout drainage law. Rinke Noonan attorneys presented an alternative approach in Handout 6) to add a runoff and sediment delivery option in drainage law by only modifying Sec. 103E.728 Apportioning Repair Costs, starting a new subdivision with "Notwithstanding other provisions". They note that 103E.728, Subd. 1 speaks about Subd. 2 and Subd. 3 as exceptions. Also, the repair charges authorized in 103E.728, Subd. 2 for landowner violations of the buffer strip requirement or a county soil loss ordinance are called an additional "assessment" in Subd. 2(a). Drainage law uses the terms "assess" and "assessment" to refer to both benefits and costs of drainage systems. The proposed alternative language also limits the scope of the types of repairs for which a runoff and sediment delivery option for apportioning repair costs could be used. Most of the hearing and related process language in a new subdivision is essentially the same in Handout 6) as in Handout 7). However, the proposed alternative would refer to Section 103E.095 for appeals, rather than 103E.091, which raised concerns. More review and discussion is needed regarding this proposed alternative, for which there was limited time to review before the meeting. Handout 5) is draft language proposed by Mark Ten Eyck to exempt conservation lands from repair cost apportionment. Mark was out of town and could not attend the meeting to discuss the proposed language. After limited discussion, Al K. indicated that he would need to discuss with Mark and would table the topic to the November DWG meeting.

Next DWG meeting: Thursday, Nov. 9, 2017, 12:30 - 3:30 p.m. at the Minnesota Farmers Union, St. Paul.