

Drainage Work Group Meeting Notes November 10, 2016

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

Attendance

Tom Loveall, BWSR Brd.; Randy Kramer, AMC; Craig Austinson, Blue Earth Co.; Ron Ringquist, MVA; Greg Knopff, Senate Analyst; Mark Ten Eyck, MCEA; Steve Colvin, DNR; Alan Perish, MFU, MVA; Rob Sip, MDA; Jill Bathke, USACE; Michelle Ulrich, CCWD; Allen Wold, BdSWD; Les Everett, UMN; Ruth Simpson, MAT; Chris Otterness, HEI; Dan Larson, MRCC; Todd Miller, MRCC; Kurt Deter, Rinke-Noonan; Ron Harnack, RRWMB; Jerome Deal, MAWD; Ray Bohn, MAWD; Dan Wilkens, RRWMB; John Kolb, Rinke Noonan; Kale Van Bruggen, Rinke Noonan; Laura Nehl-Trueman, MnDOT; Wayne Anderson, MPCA; Tim Gillette, BWSR; Al Kean, BWSR

Handouts prior to or during the meeting

- 1) DWG Meeting logistics and agenda for 11-10-16
- 2) DWG Meeting Notes for 10-13-16
- 3) DWG - HF-2011 SF-2029 and HF-2365 SF-2380 Summary of Discussions - Draft 11-3-16
- 4) DWG - SF-2451 HF-3956 - Discussion Paper - Draft 11-4-16
- 5) DWG - RSBDAO - Chapter 103E Revisions - Draft 10-7-16
- 6) PUBLIC NOTICE: 2017 NWP in MN/WI draft Corps proposal and conditions - 14 October 2016
- 7) MDA Brochure (Trifold, agency information)
- 8) MDA Financial Assistance Programs (double trifold)

Introductions and agenda overview

All in attendance introduced themselves. Al Kean offered and invited remembrance of Larry Kuseske, who recently died in a car accident. Larry was a long-time, dedicated member of the Sauk River Watershed District, MAWD and the DWG. Al provided extra copies and an overview of the agenda.

Approval of 10-13-16 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 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
- *Rinke Noonan, Wetlands and Drainage Seminar*, Feb. 13, 2017, St. Cloud

Corps of Engineers Nationwide Permits Reissuance and St. Paul District

Jill Bathke, USACE St. Paul District, provided a verbal overview of the public notice handout issued 10-14-16 and open for comment until 11-28-16. Some key points and discussion included:

- The St. Paul District (SPD) had not previously used USACE Nationwide Permits (NWPs) (which are general permits), but rather had used Regional General Permits (RGPs) only.
- The SPD proposes to adopt 42 of 52 NWPs and revoke 10 inapplicable NWPs within MN and WI by March or April 2017. Expands general permits and specificity some.
- No change in jurisdiction. Doesn't involve waters of the U.S. rule issue.
- Some minor changes in application, but still use joint application. Processing to be streamlined some.
- RGP-3 and RGP-4, which are used and liked for utility and transportation projects, will be retained, and RGP-2, which has been used very little in four years, will be revoked.

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

Handout 3) above was prepared by Al K. to document DWG discussions about these bills and serve as a draft report to the Legislature.

- It was recommended that the summary for HF-2011/SF-2029 note that these bills did not get a hearing.
- In the summary for HF-2365/SF2380, the discussion / conclusion about case law should be more definitive, reference the discussion about applicable case law in Chapter 2 of the updated MPDM, and be higher in the summary of discussions and conclusions list.
- A question and discussion about use of the terminology in the MPDM “minor” repair (generally pursuant to Sec. 103E.701 and sec. 103E.705) and “major” repair (generally pursuant to Sec. 103E.715).

Updated MPDM and Drainage Records Database Template now available

Tim Gillette, BWSR, reported that the updated MPDM is now available on the BWSR website in a Wiki format. DWG members and others are encouraged to review / use and note the place for comments at the bottom of pages. A question was raised about the disposition of the 1991 MPDM. DNR to remove from its website. BWSR will investigate where to store for reference.

A Drainage Records Database Template, and updated Drainage Records Modernization Guidelines, are now available on the Minnesota GeoCommons on the MnGeo website. Free, but drainage authorities must agree to publish drainage system hydrographic data back up to a statewide database on the GeoCommons. Outreach for both of these to include MAWD and AMC annual meetings, and more in 2017.

Updates about DWG Subgroup Meetings

Public Waters and Drainage Subgroup – Met on 11-2-16 and had spirited discussions about the DNR draft guidance document. Comments are due back to Steve Colvin, DNR, by Thanksgiving. Concerns expressed about basis in law, and statewide consistency, recognizing regional differences in landscapes.

Ad hoc Communications Exploratory Subgroup – Met on 11-9-16 and discussed what might be realistic for the DWG to do to share knowledge and perspective to help member organizations develop communications involving drainage, recognizing that individual organizations will control their own publications.

Background and Discussion about SF-2451/HF-3956

Al K. had provided a draft discussion paper, including the bill language, information about the reasonable use doctrine and some initial questions and considerations.

- Discussion about the circumstances that motivated these bills. Reasonable use doctrine applicable.
- Noted that a WD or WMO with applicable rules (official controls) could have addressed the issue.
- Not clear if, or how, this would apply to Chapter 103E drainage, but appears to create overlap.
- Not clear what criteria would apply to adequacy of the outlet.
- Concerns that these bills force WCA determinations, even if no wetlands involved. Time and workload.
- Applicability to agricultural land, but not urban land noted.
- Strong concerns that requiring a downstream flowage easement enables downstream landowner veto of any new drainage, effectively eliminating the reasonable use doctrine.
- ND and Iowa (besides SD) reportedly also have civil law rules that could be investigated further, but are believed to provide for ag drainage.

Runoff and Sediment Based Drainage Assessments Option in drainage law

Al K. noted that Smith Partners, PLLP is conducting a legal review of the 10-7-16 draft revisions of Chapter 103E prepared by him in consultation with Greg Knopff to enable this option for drainage system repairs. This legal review is through the BWSR grant to the RRWMB for the prototype method development, which included this task. On 11-8-16, Al; Greg Knopff; Ron Harnack, RRWMB; Chuck Fritz, IWI; and Charles Holtman, Smith Partners PLLP, had a conference call to discuss a number of questions Smith Partners had about the prototype method and 10-7-16 draft revisions of Chapter 103E to enable a relative runoff and sediment delivery based option for drainage system repairs.

- Discussion about Smith Partners review as key input to help update the draft Chapter 103E revisions.

Next DWG meeting: Thursday, Dec. 8, 2016, 12:30 -3:30 p.m. at MN Farm Bureau in Eagan, and discussed meeting on the second Thursday in January (Jan. 12, 2017) preferably at MN Farmers Union.