



SouthDakota

Legislative Research Council

Regional Watershed Advisory Task Force Minutes

**Second Meeting
2014 Interim
September 24, 2014**

**Room 413
State Capitol
Pierre, South Dakota**

The second meeting of the interim Regional Watershed Advisory Task Force was called to order by Representative Brian Gosch, Chair, at 10:15 a.m. (CDT), on Wednesday, September 24, 2014, in Room 413 in the State Capitol in Pierre, South Dakota.

A quorum was determined with the following members present: Representatives Brian Gosch (Chair), Dennis Feickert, Leslie Heinemann, and Spencer Hawley; Senators Jason Frerichs, Tom Jones, and Mike Vehle (Vice Chair); and Dennis Duncan, Mike Jaspers, Paul Symens, Mike Traxinger, George Vandel, and Kim Vanneman. Member excused was: Senator Jim White. Staff members present included David Ortbahn, Chief Research Analyst; Roxanne Hammond, Legislative Attorney; Stephanie Gruba, Research Analyst; and Rena Ortbahn, Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). This meeting was recorded by South Dakota Public Broadcasting. The committee documents and archived recording are available at the LRC website at <http://legis.sd.gov> under "Interim – Agendas, Minutes and Committee Documents." For the purpose of continuity, these minutes are not necessarily in chronological order.

Minutes

REPRESENTATIVE HEINEMANN MOVED, SECONDED BY SENATOR VEHLE, TO APPROVE THE MINUTES OF JULY 24, 2014. The motion prevailed unanimously on a voice vote.

Subcommittee Reports

Standardized Disclosure of New Drainage Projects, Tracking of Drainage, and Infrastructure Activity Subcommittee: Senator Mike Vehle, Representative Leslie Heinemann, Senator Tom Jones, and Mr. George Vandel.

Senator Mike Vehle, Chair, provided an update on the subcommittee's activities.

The subcommittee has been reviewing draft legislation that would provide technical assistance in matters relating to drainage regulations and that would establish a statewide drainage tracking system. Senator Vehle said they were advised by staff of the Department of Environment and Natural Resources that it would take \$1.5 million, including salaries and travel for 15 FTE's, to implement these programs. The subcommittee is undecided as to whether DNR or another agency would conduct the project.

Senator Vehle reviewed the subcommittees suggested changes to draft legislation that would establish a uniform county drainage permit application form (**Document #1**). He said the committee is undecided as to whether it should be a drainage permit or a drainage disclosure; and on whether watershed districts or county governments should implement the program.

Senator Vehle said that Mr. Larry Janes, SD One Call had provided the subcommittee with an overview of the One Call program requirements as they relate to drainage projects.

Mediation and Dispute Resolution Subcommittee: Mr. Dennis Duncan, Senator Jim White, and Mr. Mike Traxinger.

Mr. Dennis Duncan, Chair, reported that the subcommittee is working on Mediation and Dispute Resolution draft legislation. The legislation would apply both to drainage projects being planned and drainage projects already in place, allowing mediation for affected parties.

The mediation program would be placed within the Department of Agriculture. The department would set forth the administrative rules. The draft legislation requires that all affected parties be notified of initiation of mediation, including governmental entities, since drainage on private property may affect governmental infrastructure and public safety. He said the language is not punitive in that unintentional failure to notify all parties will not prevent mediation.

Mr. Duncan said time frames allow for flexibility and a swift mediation process so as to not impede farmers or ranchers and to avoid issues such as missing a crop cycle. He thinks the draft legislation has drawn a good balance between allowing public access to information and protecting information that a party needs to be keep confidential, as provided by law.

Finally, Mr. Duncan said the legislation allows for the intervention of parties that aren't the initial participants in the mediation. Mediation allows parties to intervene if they feel they will be or are impacted by a proposed or existing drainage project and it allows opportunity for a better public airing in support or opposition.

Mr. Mike Traxinger said mediation and dispute resolution is a valuable resource to individuals and entities in the process of working through drainage issues and in preventing future disputes. The subcommittee wanted the mediation to be low cost and not to slow up the process. He said the determination of who is actually impacted is not easy; and that combining the notice and the ability to intervene may prevent future problems.

Mr. Traxinger said bringing the proposed mediation in line with current mediation programs could allow access to federal funding. Time frames within the draft mirror those in existing Department of Agriculture mediation programs. Although not drafted to be mandatory, he believes the department, through the administrative rule process, can make it mandatory.

Chair Gosch said the Department of Agriculture will have opportunity to review the draft prior to the next task force meeting. He thinks there is broad support for intervention.

Mr. Duncan responded to task force questions. He said mediation is voluntary; it's a process to assist with disputes. The mediator looks at the petition for intervention, decides whether it's

appropriate, and determines whether a party can intervene. He said the only people bound by a mediation agreement are those that are party to the mediation. If you're not a party to the mediation, you have the right to go to court and get an injunction. If the affected landowner can't make mediation and the project is in works, that doesn't take any of the landowner's legal rights away.

Mr. Duncan said that mediation can accommodate multiple parties. He said they did not want time restriction requirements in the mediation process to create an artificial barrier to legitimately accomplishing the landowner's right to improve his or her property. In terms of fees, Mr. Duncan believes a person intervening should pay similar to what other parties are paying; but, in his opinion, it's a policy issue.

Water Management Entities and Districts, Water Management Assets, and Funding of Best Practices Research Subcommittee: Senator Jason Frerichs, Representative Spencer Hawley, and Mr. Mike Jaspers.

Ms. Kim Vanneman, Chair, said the subcommittee has no legislation proposed at this point; just thoughts and concepts.

Ms. Vanneman referred to a map of Hydrologic Subbasins in South Dakota (**Document #2**). The subcommittee is proposing nine river basin natural resource districts, with division lines based on existing river basins, as close as possible down to the section line level. Each district would be governed by a council.

They suggest that a comprehensive water management plan for each district be developed first. The plan would cover multiple areas, including drainage. Once the comprehensive plan is developed, then decisions could be made on professional and financial support needed; hiring authority would be given to the councils; and there would be a transfer of authority from the counties to the districts. She said to allow the districts to get off the ground, they should be granted taxing authority. Ms. Vanneman added that the districts should use a standardized disclosure or permitting process and that enforcement is a gray area.

A council would be elected for each district. The subcommittee suggests each district be divided into thirds, based on population. Representation would be elected from each subdistrict during the general election. Elected representatives would provide a direct linkage to constituents. The terms would be four years, staggered, with compensation determined by each district.

Ms. Vanneman suggested any district taxing authority be capped at ½ mil. She said this figure was based so that very small districts would have enough money. She said the districts should also have special assessment taxing authority to fund bigger projects.

Ms. Vanneman said since their proposal involves a lot of changes, they recommend it be accomplished in a legislative two-step process. She said the 2015 session should enact legislation establishing the nine river basin natural resource districts, with the subdivision representation concept; and ask for tax authority. The 2015 Legislature should also establish an advisory task force. The task force would help insure an ongoing, fully implemented project

over several years. She said the task force would make the final decision as to where the district lines would be drawn and how the subdistricts would be established. Final legislation would be drawn up in 2016, so that people could be elected with duties starting in 2017. Seed money would be important to get them off the ground.

Representative Spencer Hawley said they will not ask for seed money until 2016.

Senator Jason Frerichs said giving the districts authority to do and to fund projects is crucial. It will be a change from what exists presently. He especially likes the concept of a water management plan. Senator Frerichs said with the transition to districts, ongoing participation and advice from the counties is needed.

Mr. Mike Jaspers said the main reason favoring the river basin concept, is that water doesn't respect political boundaries. The subcommittee looked at other states and this is updated model that is used across the country. He said it's an opportunity to set up a government entity in South Dakota that can facilitate and be proactive in areas of not just drainage but total water management. He said the districts will enable people to work together collectively so that drainage is done right with the producers being in control versus gravity being in control.

Senator Vehle said it is a bold idea that changes things and he likes the idea of a continuing task force.

Representative Hawley said a broad spectrum of governmental agencies was involved in the discussions leading to the development of the proposed districts.

Ms. Vanneman said that draft legislation will be completed shortly.

Retention Pond Concept Subcommittee: Representative Gosch, Representative Feickert, and Paul Symens.

Representative Brian Gosch, Chair said the subcommittee is looking at creating a multiple use retention or detention pond as a pilot project. It would mainly be used for flood control and recreational use and could possibly help with agricultural commerce.

He said they have identified a potential location, dependent on whether the owner is willing to sell the dam site and grant easements to the site. If not, they will pursue another location.

Issues with this project are whether it should be a retention pond or a detention pond; DNR permits would need to be sought and approved; and requirements are different for different purposes, for example fishing versus flood control. He said it's difficult to combine all the aspects into one project.

Mr. Paul Symens commented about the difficulty with combining flood control, recreational benefits, and fish and wildlife benefits into a single retention pond project.

Representative Dennis Feickert said it's an opportunity for everyone to work together and look for a location for these retention ponds. Mr. Jaspers said if everyone works together to build a successful prototype, it will pave the way for others.

Ms. Vanneman said if the proposed river basin districts were given special assessment authority, they could help with potential drainage problems.

Mr. George Vandel commented that if drainage projects made use of onsite retention ponds, it could help with potential drainage problems.

Senator Vehle questioned who decides when and how much water to let out. Representative Gosch said detention ponds drain naturally. Retention ponds would have a spillway and a control gate that someone would control. Ms. Vanneman suggested these decisions could be part of the proposed councils' overall management plan.

Chair Gosch recessed the committee at noon and reconvened it at 1:15 p.m.

Public Testimony regarding subcommittee reports

Mr. Jay Gilbertson, Brookings, East River Development District (ERDD), likes the concept of river basin districts. He thinks it's a good idea to take a year to develop a water management plan and make decisions on the role and function of the districts. Mr. Gilbertson thinks that issues needing to be addressed are the transfer of existing county drainage permits to the districts, and permits versus disclosure.

Asked how the ERDD would interact with a new river basin district, Mr. Gilbertson said, it would depend on the function of the river basin districts. He said that ERDD might be a resource to help in the planning and development of river basin districts.

Mr. Michael Elsen, Hecla, South Dakota said as a producer and a landowner he'd like to see the river basin districts formed, after which a permit or disclosure system could be developed. If disclosure passes, it would need enforcement. He thinks mediation is a good idea and would like to see some funding for retention or detention ponds.

Mr. Michael Held, Huron, South Dakota Farm Bureau, said his organization is in favor of river basin districts and is willing to work with the task force to make it work. He said it will not be easy to transition to government by river basin districts. He thinks mediation is excellent and will help in decreasing the cost of disputing water issues.

Mr. Held said the SD Farm Bureau does not favor a statewide drainage tracking system because of the costs and issues of landowner and property rights. The Farm Bureau is not in favor of uniform county drainage permits at this time. He said it's premature to be discussing the pros and cons of disclosure versus permits and suggested starting with the river basin district development and then decide what programs to add.

He said the Watershed Advisory Task Force was originally formed to address the excess water problems in northeast South Dakota. He is hopeful that river basin districts can address this original problem.

Representative Hawley asked for Mr. Held's input on the subcommittee's proposal to: establish the river basin districts in the 2015 session; creating a working task force to make decisions in the interim; and transferring authority from the counties to the river basin districts in the 2016 session. Mr. Held agreed and said this will be a significant transition for landowners, counties, and lots of entities.

Mr. Held said that seventeen counties presently enforce drainage permits, leaving forty-nine that don't. He said would be significant opposition to state-mandated drainage permit system, it would be a radical change.

Mr. Matt McCaulley, Sioux Falls, SD Corngrowers, thinks the task force is going in the right direction with water management. He said the task force has put together a solid mediation proposal. It does not include mandatory mediation, which the Corngrowers support, but does give options which his organization should be able to support.

Mr. McCaulley believes ag groups would kill a standardized permit process and asked the task force to consider standardized disclosure instead.

Referring to Document #2, Mr. McCaulley foresees problems in effectively dividing the Sioux River basin district into three subdistricts of about equal population.

Mr. Traxinger said the permit process provides opportunity for the public to comment. Presently not all counties have a drainage permitting process. He asked how the public can have a hearing or forum without a permit.

Mr. McCaulley thinks that disclosure of drainage projects would allow a landowner to put forth their plans and allow people to contact that landowner. It opens up communication. He said the plans could be publicized through websites, email lists, etc. Requiring as-built filing would be a move towards statewide disclosure. Once that's up and running, then the task force might decide permits are needed. Corngrowers believe disclosure of projects is in the best interest of the state. He said the issuing of permits is a political issue and a huge policy decision. He brought up enforcement, wondering whether anyone ever checks the existing county permits.

Mr. Paul Lepisto, Pierre, SD Division Izaak Walton League of America, said surface and tile drainage are going on at a rate never seen, and needs to be correctly regulated. He said water knows no boundaries and doesn't follow county lines therefore a county basis doesn't make sense. He is in support of standardized permits. He urged the state to be proactive and not wait until the development of the river basin districts.

Mr. Lepisto supports the development of river basin districts.

Mr. Larry Janes, Rapid City, SD One Call, asked the task force, when developing either disclosure or permit system, to require that anyone putting in drain tile report it to One Call. He

said this is an issue of preventing damage – that an excavator installing a new phone line, for example, can accidentally pull up a quarter to a half mile of drain tile.

Mr. Janes said that One Call laws have existed since 1993. Any underground facility that conveys water, once it enters public right of way, is required to register with Once Call.

Answering questions, Mr. Janes said that anyone planning an ag land drainage project that involves digging over 18 inches in depth, is required to notify the One Call program prior to digging. He said the information One Call maintains is confidential.

Ms. Angela Ehlers, Presho, SD Association of Conservation Districts, said the association supports the concept of river basin districts, because all the resources need to be considered together. She said water doesn't recognize political boundaries; cities have to be involved in the process.

Ms. Ehlers commented that, as the task force considers building retention ponds, the task force needs to find a way to maintain them. She said we are really good at building things and then letting operation and maintenance find its own way. Ms. Ehlers pointed out that there are over 100 state-owned dams that are presently listed as needing maintenance.

She left the committee with this quote "If you want to make small changes, change how you do things, if you want to make big changes, change how you see things". And she thinks river basin districts are big changes in how we see and look forward to the future.

Mr. Herman Lier, Groton, South Dakota thinks there is too much water standing in the Aberdeen area and wants the task force to solve the problem.

Mr. Lier said he remembered, when he was young, that sloughs would flood and then the water would go down the river, and a farmer could go out and farm the land. Now the rivers have been dammed or closed, stock dams hamper drainage, water has backed-up and is standing. The standing water in sloughs is stagnant, smells, and supports mosquitoes. He said spraying for mosquitoes doesn't touch the problem. He gave an example of a park being ruined and six sections of land still under water.

Representative Gosch agreed there is a standing water problem which creates an overwhelming mosquito problem.

Mr. Leon Fredrichs, Forestburg, Sanborn County Conservation District, asked what is the difference between a disclosure and a permit? Senator Vehle responded that for a permit a person submits an application to a government body; either it meets the criteria or not. He said with a disclosure, the person fills out the information, submits the plan – no permit to it. Everyone then can know what you're planning to do; all the information is out there. He said presently some counties have permits and some have nothing.

Mr. Fredrichs said in Sanborn County they came up with a permit system, but the problem is you can't control water once it crosses the county line. He thinks the mediation process proposed by the task force will save a lot of time.

Subcommittee plans

Chair Gosch asked the each subcommittee chair to talk about their future plans.

Senator Vehle said the subcommittee on drainage issues has three draft bills on the internet that can be looked at (July 24, 2014 meeting). The subcommittee is split on whether proposed legislation should be for standardized permits or disclosures, so they will talk more on that. The approval of other agencies will be revisited, including counties and townships.

Representative Gosch said the Mediation and Disclosure subcommittee will try to schedule a meeting in Pierre with the Department of Agriculture to discuss mediation.

Ms. Vanneman said based on the comments today, she feels the water management subcommittee is on the right track. LRC is drafting a proposal for the subcommittee. It will be sent to subcommittee members, reviewed, and then LRC can post it online.

Representative Gosch said the retention pond subcommittee is looking at starting a retention or detention pond at some location. They are waiting to hear back from a landowner, and then will proceed accordingly.

Development of recommendations for public comment

Chair Gosch also requested that draft legislation be provided to interested parties prior to the next meeting, so that all can come prepared to discuss the proposals. He asked the subcommittees to notify LRC of any scheduled meeting.

Next Meeting

The next task force meeting is scheduled for November 24 at 8:30 a.m. in Pierre.

Adjournment

REPRESENTATIVE FEICKERT MOVED, SECONDED BY REPRESENTATIVE HEINEMANN, THAT THE MEETING BE ADJOURNED. The motion prevailed unanimously on a voice vote.

The Chair adjourned the meeting at 2:21 p.m.

