

# **Basic Principles Relating to Drainage Law**

**Regional Watershed Advisory Task Force  
September 25, 2012**

# Drainage:

- ▶ Broad definition– Any flow of water–rivers, streams, creeks.
  - ▶ Municipal storm water drainage
  - ▶ Surface water drainage on agricultural land
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# Surface water drainage:

- ▶ "waters from rains, springs, or melting snows which lie or flow on the surface of the earth but which do not form part of a watercourse or lake."
- ▶ Chief characteristic: inability to maintain identity and existence as a water body.
- ▶ *Gross v. Connecticut Mutual Life Insurance*, 361 NW2d 259, 266 (SD 1985);  
*Anderson v. Drake*, 123 NW 673, 675 (SD 1909).



APR 14 2009

# State drainage law

- ▶ Similar to other states.
  - ▶ Based on court cases (“common law”).
  - ▶ Civil rule.
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# Civil rule:

- Easement to accelerate and hasten flow of waters & cast them upon “servient estates lying lower” in the same natural course
- Provided the waters do not collect in “unusual or unnatural quantities” and
- Provided that the waters cannot be cast into another basin.

*Johnson v. Metropolitan Life Ins.*, 22 N.W.2d 737 (S.D. 1946)

## Drainage (not civil?):

- ▶ Express easements to retain or release water.
  - ▶ Trespass.
  - ▶ Prescriptive rights.
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# Before 1972:

- ▶ Disputes resolved by courts.
  - ▶ Drainage district projects and assessments by counties.
  - ▶ Little or no federal involvement.
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# Since 1972:

- ▶ Clean Water Act—since 1972 (Corps and EPA).
  - ▶ Swampbuster—since 1985 (USDA).
  - ▶ SDCL ch. 46–10A—since 1985 (counties).
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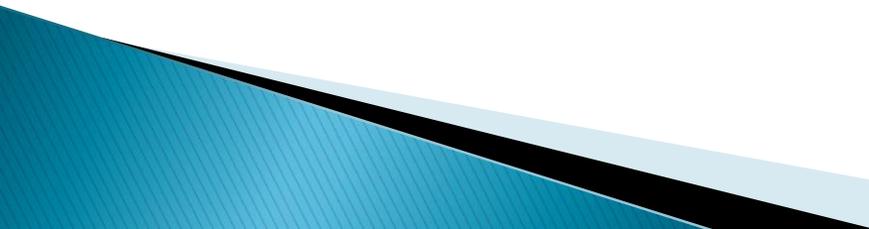
# 1985 Act – County authority

- ▶ Ordinances, resolutions, orders, regulations.
  - ▶ Drainage plan.
  - ▶ Drainage projects.
  - ▶ Designated drainage areas.
  - ▶ Dispute resolution.
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# County actions “must embody the basic principle that drainage is permissible” if:

1. The land receiving drainage remains rural.
2. The land being drained is used in a reasonable manner;
3. It does not create “unreasonable hardship or injury to the owner of the land receiving drainage”;
4. It is “natural and occurs by means of a natural water course or established water course”;
5. It “does not substantially alter on a permanent basis the course of flow, the amount of flow, or the time of flow”
6. “No other feasible alternative drainage system is available that will produce less harm without substantially greater cost to the owner of the land being drained.”

SDCL 46A-10A-20

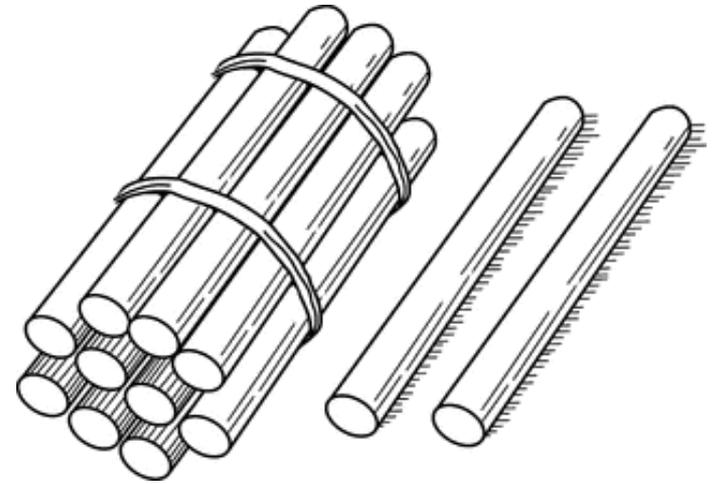


# Regardless of county action:

- ▶ Landowners may “drain the land in the general course of natural drainage by constructing open or covered drains and discharging the water” into:
  1. Any natural watercourse,
  2. Any established watercourse
  3. Any natural depression whereby the water will be carried into a natural watercourse,
  4. Into an established watercourse
  5. Into a drain on a public highway, conditioned on consent of the board having supervision of the highway.

SDCL 46-10A-70

# Post-1985



- ▶ Drainage is subject to
  - Duty to neighbors (“civil rule” as now codified).
  - Express easements given to others. (FWS, DU, etc)
  - Federal permits & requirements (Swampbuster or §404 permits)
  - County permits and requirements.