MINUTES

Regional Watershed Advisory Task Force

First Meeting
2012 Interim
Monday, July 23, 2012

Room 413
State Capitol Building
Pierre, South Dakota

The first meeting of the interim Regional Watershed Advisory Task Force was called to order by Representative Brian Gosch, Chair, at 9:00 a.m. (CDT), on Monday, July 23, 2012, in Room 413 of the State Capitol, in Pierre, South Dakota.

A quorum was determined with the following members present: Senators Jason Frerichs, Jim Hundstad, and Mike Vehle (Vice Chair); Representatives Brian Gosch (Chair), Spencer Hawley, Tom Jones, and Kim Vanneman; Messrs. Dennis Duncan, Mike Jaspers, Brad Johnson, Rick Sommers, and Paul Symens. Senator Russell Olson and Mr. George Vandel were excused.

Staff members present included Tom Magedanz, Principal Research Analyst; Dave Ortbahn, Principal Research Analyst; and Kris Schneider, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). The committee documents are available at the LRC website at http://legis.state.sd.us under "Interim Information – Committee Documents." For the purpose of continuity, these minutes are not necessarily in chronological order. This meeting was webcast live. The archived webcast is available under "Interim Information – Minutes and Agendas."

Opening Remarks

Representative Brian Gosch, Chair, welcomed everyone. His goal for the meeting was to obtain facts and set some goals that will fix the problems and provide direction for county commissioners.

The task force members introduced themselves and provided background information and their goals.

Mr. Tom Magedanz, LRC staff, announced that the agenda item entitled "*Basic Legal Principles Relating to Drainage, State Drainage Law"* was being moved to the next meeting because the presenter, Diane Best of the Attorney General's Office, was unable to attend due to a death in the family.

Mr. Magedanz stated that the task force was created during the 2012 Legislative Session by Senate Bill 169. Senate Concurrent Resolution No. 5 also recommended a study of drainage issues. The current task force members will serve until January 12, 2013. The task force will sunset on January 20, 2015. He also stated some possible topics that the task force may address.

Basic Physical and Scientific Background, Watersheds, Historical Comparison

Mr. Mark Anderson, Director, Rapid City, **Mr. Daniel Driscoll,** Chief Hydrologist, Rapid City, and **Mr. Ryan Thompson**, Hydrologist, Huron, representing the South Dakota Water Science Center (SDWSC), U.S. Geological Survey (USGS), gave a presentation entitled "South Dakota Climate and Streamflow Conditions, Watershed Delineation" (**Document 1**). They discussed scientific monitoring of water resources, and they noted that winters have not been as cold in recent years. They also described increased water levels and flows, with the largest increase in average flow in the United States occurring between the 90th and 100th meridian (Big Sioux River basin). The data shows that more precipitation and changing land use patterns are driving these changes.

Watershed boundaries and standards were explained. Since 2008, South Dakota's standard has been the digital Watershed Boundary Dataset (WBD) which can be subdivided into 12-digit hydrologic units. High-resolution hydrographic mapping using Lidar (light detection and ranging) is now available. Lidar data captures the earth's surface and can be used to build high-resolution elevation models (3-meter cell size). The USGS provides specifications for Lidar. A few counties and cities in South Dakota have paid to have their areas flown for imaging. The Eros Data Center stores the information. The website for SDWSC is http://sd.water.usgs.gov/. A concept paper entitled "High-Resolution Hydrographic Mapping Using Lidar-Derived Digital Elevation Models" was also distributed (**Document 2**).

In response to committee questions regarding the comparisons from 1976 to 2011 showing the amount of land covered by water in Day County, Mr. Anderson stated that they could provide the same comparisons for other counties. Chair Gosch requested that information for specifically Brown, Codington, Day, Hamlin, Kingsbury, Marshall and Roberts counties and any other counties east of the James River be provided.

Mr. Driscoll stated that every county has had its own hydrology study done through the USGS in cooperation with the SD Geological Survey and individual counties over the past few decades. These studies would show the aquifers within each county. He will provide information as to where these items could be found.

It was noted that location of culverts would also be beneficial information because culverts impact where and how fast water will drain.

Federal Drainage and Wetlands Issues, Requirements and Restrictions

Mr. Jeffrey Zimprich, State Conservationist, and **Mr. Gerald Jasmer**, State Resource Conservationist, Huron, Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, explained who NRCS is and what they do. A handout entitled "Conservation Briefing" (**Document** 3) was distributed. Mr. Zimprich and Mr. Jasmer explained how the 1985 Food Security Act (Farm Bill) has affected wetlands and NRCS responsibilities in wetland conversion and watershed management. An area must meet three criteria in order to be considered a wetland – have hydric (wet) soil, hydrophytic (water tolerant) vegetation, and saturation or ponding by water most years. In order to participate in the Farm Program, a

landowner must meet NRCS requirements relating to the protection of wetlands and erodible land.

The committee recessed at 12:02 for lunch and reconvened at 1:17 p.m.

Current Situation and Issues Relating to Drainage

Mr. Jay Gilbertson, Manager, Brookings, East Dakota Water Development District (EDWDD), stated that part of his district's role is to provide technical assistance regarding drainage. His PowerPoint presentation entitled "Rural Drainage in South Dakota" was distributed (**Document 4**). Mr. Gilbertson reviewed South Dakota drainage case law, the 1985 South Dakota drainage law – SDCL 46A-10A, and two county drainage ordinances. Only 18 of 66 counties have drainage controls. He noted several issues of concern with the current law, including the permitting process, fee amounts for drainage permits, and criteria for applications and evaluations. Projects that the EDWDD is involved with include: a Kingsbury County road crossing inventory; working with South Dakota State University (SDSU) on a pilot project studying the effects of agricultural subsurface drainage impacts on hydrology; and an SDSU demonstration of nitrate removal effectiveness of bioreactors for drainage water management.

Public Testimony

Mr. Lorin Pankratz, Sioux Falls, spokesperson for the Watershed Management Working Group within Ag Unity, presented information that the group had gathered concerning the state's current watershed management laws. One recommendation for change to SDCL 46A-10A is to have a state expert available as a resource for county drainage boards. Mr. Pankratz also suggested that the discussions not be limited to just tiling issues. The group is willing to help the task force in any way possible. Handouts included "Overview of the Watershed Management Working Group," "Flowage Easements by Larry Kunzler," "Neighboring States Comparison," "Minnesota Board of Water & Soil Resources/Drainage Work Group," and an email "Responses to questions from our group" from Chris Hays, SDSU (**Documents 5**, **6**, **7**, **8**, & **9**).

Mr. Erling Podoll, Aberdeen, provided history of drainage activity in Day County dating back to 1948. He stated that water drainage is for private gain at public expense. He suggested that the task force look at SDCL 46A-10A-70 as it refutes the rest of the drainage code. He also stated that people need to be acquainted with the soil survey maps. He shared a copy of his "Guest Editorial from August 5 and 6, 1998" (**Document 10**).

Mr. Doyle Karpen, Jefferson, Union County Commissioner, stated that the after the flooding last year, they took aerial images of the county at a cost of $20,000 to see what damage was done. He asked that the Legislature provide a template on dealing with drainage issues so that all they need to do as a commission is "fill in the box." He suggested that the task force learn about the 404 permit process from the Army Corps of Engineers. He also commented that the USGS sees the water on the surface, but would like to know what is under the surface also.

Mr. Norval Matzner, Stickney, voiced concern over drainage issues in Aurora County. His family has farmed the same land since 1883 and did not have an issue. Today, of the 800 acres they farm, 278 acres are consistently flooded. He asked that SDCL 10-6-33.21 and 10-6-33.22 be clarified to allow assessed valuation reductions on flooded lands sooner than three years. He asked that the Department of Game, Fish and Parks and the federal Department of Interior work with farmers to allow for drainage during high water levels into lakes that they control. A copy of his concerns along with an aerial photo were distributed (**Document 11**).

Mr. Brad Preheim, Centerville, Manager of the Turner-Lincoln-Clay Water Development District, gave an overview of the district's projects – large flood-control dams along the Vermillion River (not implemented because of various red tape and funding issues); building small retention ponds; working with a group of landowners on a dike system, however the dike association has no authority to enforce maintenance of the dikes; cleaning debris out of the river. He stated that none of these are the answer on their own – we need to fix the laws that are not working. He supports a watershed-wide boundary and comprehensive water plan for the area. He suggested that Lake Thompson be drained at certain times of the year. He also believes the cost of a drainage permit needs to be more than the $100 that is currently allowed.

Ms. Angela Ehlers, Presho, South Dakota Association of Conservation Districts, stated that the task force is dealing with water management issues not just drainage issues. She suggested talking to the Corps of Engineers about the 404 permit system, the Environmental Protection Agency on water quality issues, and the state climatologist about long-term projections and trends for the state and nation. She agreed with earlier testimony that land use changes impact water management. She also recommended that the watershed district law be streamlined and clarified.

Mr. Patrick Garrity, Yankton, Planning Director for Yankton County, stated that as of June 1, 2012, Yankton County has adopted and is implementing a drainage ordinance. He gave an overview of the process they are using, and he discussed the imaging systems they have used. He asked the task force for better ways to have cooperative relationships with other counties on drainage matters and suggested having a state hydrologist or state engineer available as a resource to review permits as needed. Mr. Garrity would like to see the control of drainage issues left with counties.

Mr. Roy Gjerde, Vienna, a flooded Clark County farmer, stated that the wetlands need to be managed. He favors drainage and flood control projects to reduce flooding and increase productivity and feels that we need a statewide drainage and flood control system. A copy of his letter dated June 18, 2012, was distributed (**Document 12**).

Mr. Dick Howard, Pierre, South Dakota Association of Towns and Townships, suggested that counties, townships, watershed districts, and other affected local governments be invited to a meeting to discuss their role in water management along with other elected local officials. He noted that township and county roads are damaged by flooding and by ditching in highway rights-of-way.

Mr. Luke Miller, Watertown, 1st District, spoke about his experiences with working with eleven counties on their water issues. Having a drainage plan is a key component. He feels that the Lidar technology will helpful. He asked that a model be developed for the approval or denial of drainage permits as some county officials serve in several capacities. He believes the counties want local control. He sees issues with the existing cap on drainage permit fees and is concerned with how a county can put an undue burden on someone downstream.

Mr. Bob Wilcox, Ft. Pierre, South Dakota Association of County Commissioners, responded to task force questions regarding the use of watershed boundaries versus county boundaries for drainage and watershed management. He stated that the counties are evenly split, with the main issue being local control. Counties need expertise to deal with issues.

Task Force Discussion and Planning

Chair Gosch asked for input from the task force members on additional information they would like to have and asked them to narrow the focus to three to five areas.

Chair Gosch asked to see additional information on the water table levels for the past couple decades, especially for Day County.

Mr. Rick Sommers stated that the Department of Environment and Natural Resources (DENR) has a list of historical lake levels back to the early 1990's. He would like to see that data.

Mr. Dennis Duncan suggested hearing from affected landowners and different governmental units on their experiences with the root causes of the drainage issues. He suggested asking Mr. Ron Gillen of Broz Engineering to share his expertise on the matter. A letter dated June 26, 2012, was shared with the task force (**Document 13**).

Mr. Mike Jaspers suggested hearing from the Army Corps of Engineers, from other public entities regarding the state dam system, and from School and Public Lands and the Department of Game, Fish and Parks (GFP) on how they are impacted.

Representative Tom Jones commented that everyone needs to be included in the discussions. He would like to see copies of the drainage ordinances from Brown County (which was repealed) as well as Yankton County's newly adopted drainage ordinance.

Mr. Brad Johnson commented that the Corps of Engineers has done numerous studies on the Big Sioux River that would be helpful for the task force. He also suggested asking Mr. Garland Erbele, Water Rights Program, DENR, to give a presentation on water levels in Day County.

Mr. Paul Symens commented that he hears from counties that they cannot afford to do anything because they do not have the money. SDSU is doing an impact study on the loss of 100,000 acres that is underwater and the counties do not collect any taxes on that land. He would like an assessment of costs and impacts if we do not act and if nothing is done.

Senator Jason Frerichs would like to hear from the Red River Basin Commission and the Bois de Sioux Watershed District in Minnesota.

Senator Mike Vehle stated that the task force needs to hear from the Ducks Unlimited group as they want to keep the wetlands. The U.S. Fish and Wildlife Service and GFP also play a part in these decisions.

Senator Jim Hundstad stated that the Department of Agriculture, GFP, and DENR all have ideas. We need to dedicate the next meeting to trying to select three or four topics on what we are going to solve and to determine what the solutions are.

Mr. Johnson suggested that items such as how do we mediate disputes, the permitting process, and creation of a database of experts be part of the next meeting's discussion.

Chair Gosch stated that there will be a review of the existing South Dakota drainage statutes at the next meeting.

Senator Frerichs commented that he agrees that there needs to be a state watershed map and software. He suggested that the task force focus on governance issues on a regional basis and noted that some statutes need to be streamlined.

Mr. Sommers commented that perhaps a system similar to child support referees could be created to help counties on drainage matters. There could be designated experts in the field for drainage and hydrology, and contested issues could be handled by an unbiased person not on the county commission.

Senator Hundstad stated governance is an issue and that Mr. Gilbertson had a lot of concerns with SDCL 46A-10A that should be addressed. The statute needs to be cleaned up and made more explicit.

Next Meeting Date

Chair Gosch stated that the next meeting date and location will be determined via e-mail. Possible locations are Aberdeen, Brookings, or Watertown to allow for more public testimony and possible touring of affected areas.

Adjournment

Representative Vanneman moved, seconded by Senator Frerichs, that the meeting be adjourned. Motion prevailed on a voice vote.

The chair adjourned the meeting at 4:55 p.m.

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