

REGIONAL WATERSHED ADVISORY TASK FORCE - 2012 INTERIM

Study Assignment

The Regional Watershed Advisory Task Force was created by SB 169 in the 2012 Legislative Session. SB 169 established the task force to operate until January 2015 and to address issues relating to watershed management, drainage, erosion, flood control, reclamation, and environmental protection and improvement of lands, soils, waters. The task force is to consider potential alternative organizational structures and entities to address such issues, including the proper role and structure for regional and local water and natural resources-related special purpose districts and local governments. The task force is also directed to review the role of special purpose districts and other state and local government entities with respect to drainage issues, including drainage management, resolution of drainage disputes, and recommendations for potential realignment of responsibilities for drainage matters.

The task force consists of fourteen members, including four members of the House of Representatives, four members of the Senate, and six members of the general public with backgrounds in natural resources law, science, or management; agriculture; or business. Current members will serve until January 2013, with new members appointed for a two-year term at that time. The Regional Watershed Advisory Task Force Chair is Representative Brian Gosch and the Vice Chair is Senator Mike Vehle.

Summary of Interim

During the 2012 Interim, the Regional Watershed Advisory Task Force met at the Capitol in Pierre on July 23, 2012 and in Brookings on September 25, 2012. The task force will hold a third meeting in Aberdeen on December 10-11, 2012.

July 23, 2012 – Pierre. The task force held its first meeting in Pierre and heard presentations intended to provide background information and information on federal law and federal agency activity and an indication of federal limitations and constraints on state and local action. Mr. Mark Anderson, Dan Driscoll, and Ryan Thompson of the US Geological Survey, Rapid City and Huron, gave a presentation entitled "South Dakota Climate and Streamflow Conditions, Watershed Delineation." 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 data showing that more precipitation and changing land use patterns are driving these changes. They explained watershed boundaries, standards, and mapping methods and discussed the kinds of data and information that are available, such as county hydrology studies.

Mr. Jeffrey Zimprich, State Conservationist, and Mr. Gerald Jasmer, State Resource Conservationist, Huron, Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, explained the role and activities of NRCS. They 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.

Mr. Jay Gilbertson, Manager, East Dakota Water Development District (EDWDD), Brookings, stated that part of his district's role is to provide technical assistance on drainage and watershed management. Mr. Gilbertson reviewed 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 with the current law, including the permitting process, fee amounts for drainage permits, and criteria for applications and evaluations.

The task force heard public testimony.

September 25, 2012 – Brookings. The second meeting of the task force was held in Brookings. Mr. Rick Warhurst, Ducks Unlimited Great Plains Regional Office, Bismarck, ND, discussed wetlands characteristics and functions. He said when it comes to wetlands people are generally either for them or against them. It was his view that prairie pothole wetlands located in South Dakota, North Dakota, and Canada are important to duck and other wildlife populations. He considers it the most dynamic and productive ecosystem in the world and the duck factory of the nation. He stated that wetlands are a unique wildlife habitat that supports water-based recreational activities, natural downstream flood control, a natural treatment and filtering system for polluted water, and a potential source of ground water recharge. Mr. Warhurst stated that it is sometimes difficult to determine whether land is wetland, cropland, or both, and he noted that the draining of wetlands increases nitrate concentrations and increases sediment and pollutants in downstream rivers.

Mr. Steve Naylor, US Army Corps of Engineers, SD Regulatory Office, Pierre, discussed the role of the Corps of Engineers in watershed management and drainage Issues. He explained that Section 10 of the Rivers & Harbors Act of 1899 gives the Corps authority to issue a permit before any work or structure in, over, or under navigable waters in the United States. In South Dakota navigable waters under Section 10 are the Missouri River, James River, Bois de Sioux River, Lake Traverse, Big Stone Lake, and the lower five miles of the Big Sioux River. The Corps also has authority under Section 404 of the Clean Water Act of 1972 to issue a permit before any discharge of dredged or fill material into the waters of the United States. The goal of that Act is to restore and maintain the

chemical, physical, and biological integrity of the nation's waters. Waters of the United States include all surface waters such as lakes, ponds, rivers, streams, and creeks, wetlands adjacent to these waters, and impoundments of these waters. Mr. Naylor indicated that Section 404 permits are not drainage permits, but impacts from drainage activities are sometimes indirectly regulated. Examples of projects that may need a Section 404 permit are drain ditches, drain tile installation, and excavation, cleanout, and maintenance of streams and levees constructed in floodplains. The limit of the Corp's jurisdiction is the ordinary high water mark for lakes, rivers, and streams and boundaries of wetlands.

Mr. Tom Magedanz, Legislative Research Council, Pierre, South Dakota, presented information on South Dakota's system of water and resource-related special purpose districts and discussed special purpose governments relating to water and natural resources. These include water development districts, water project districts, irrigation districts, water user districts, watershed districts, sanitary districts, drainage basin utility districts, conservation districts, and regional recycling and waste management districts. He also provided historical information on the development of water-related special purpose districts, the impact of the Pick-Sloan Missouri Basin Program, and the replacement of conservancy subdistricts with water development districts.

Ms. Diane Best, Assistant Attorney General, South Dakota Office of the Attorney General, Sioux Falls, South Dakota, discussed the principles of drainage law and South Dakota's drainage statutes. Her presentation included definitions of drainage and surface water drainage, and she discussed the principles of drainage law including common law, case law, and civil rule. She also discussed practices in South Dakota before the federal Clean Water Act of 1972, the impacts of federal legislation, and South Dakota's 1985 county drainage statutes (SDCL 46A-10A).

Mr. Ron Gillen, Brosz Engineering, White Lake, South Dakota, discussed his professional experience in dealing with drainage projects and disputes. He stressed the need for technical support and the importance of scientific and engineering information as the foundation for drainage activities and projects. He supports local control in drainage matters and is interested in ways of handling potential disputes locally out of court so that litigation on drainage questions is used as a last resort. He noted that drainage and engineering studies and modeling for particular watersheds are important tools in dealing with drainage problems and issues.

The task force heard public testimony.

December 10-11, 2012 – Aberdeen. The task force will hold a third meeting on December 10 in Aberdeen with a tour of affected areas scheduled for December

11 in the Aberdeen area. The tentative agenda will include presentations by the State Climatologist, Dr. Dennis Todey of SDSU; Dr. Chris Hay of SDSU on drainage practices and watershed and drainage management issues; Mr. Clark Moeckly of the Upper Crow Creek Watershed District; and presentations by Brown, McCook, Roberts, and Yankton counties on their experiences with drainage regulation and drainage issues. The task force will also hear public testimony and consider draft legislation that was requested at the second meeting.

Listing of Legislation Adopted

The task force requested that legislation be drafted on the following topics and will take action on the drafts at the December meeting:

- Clarify, update, and remove inconsistencies from the current watershed district law (SDCL Chapter 46A-14).
- Establish a uniform, statewide drainage permit application that includes a means of tracking drainage information and activity.
- Establish a method of tracking drainage and drain tiling activity and permits on a statewide basis.
- Provide a source of technical expertise and assistance for use by local governments on drainage and watershed management issues.
- Authorize an informal drainage dispute resolution process such as the use of referees or mediation to be attempted before a dispute goes to court.

Summary of Meeting Dates and Places and Listing of Committee Members

The task force met in the State Capitol in Pierre on July 23, 2012 and in Brookings on September 25, 2012. The task force will hold a third meeting in Aberdeen on December 10-11, 2012.

Members of the committee include Rep. Brian Gosch (Chair), Sen. Mike Vehle (Vice Chair); Senators Jason Frerichs, Jim Hundstad, and Russell Olson; Representatives Spencer Hawley, Tom Jones, and Kim Vanneman; and Mr. Dennis Duncan, Mr. Mike Jaspers, Mr. Brad Johnson, Mr. Rick Sommers, Mr. Paul Symens, and Mr. George Vandel.

Committee staff members are Tom Magedanz, Principal Research Analyst; and Kris Schneider, Legislative Secretary.