

SURFACE WATER MANAGEMENT TASK FORCE

AND SUBCOMMITTEE CHAIRS MEETING

MARCH 3, 2005 MEETING MINUTES

FELTON/FARMINGTON CONFERENCE ROOM

KENT CONSERVATION DISTRICT – DOVER, DELAWARE

The Task Force was established by Governor Ruth Ann Minner on December 17, 2004 by Executive Order Number 62.

A meeting with the four subcommittee chairs was held prior to the full Task Force meeting to enable each chair to present a “dry run” of their presentations. In attendance were Jeff Bross, Finance, Stephanie Hansen, Governance, John Talley, Maintenance, John Hughes, DNREC Secretary, Lee Ann Walling, Governor’s Office, and David Athey and Bryan Pariseault, URS. Ms. Walling spoke on behalf of Jeff Seemans, Land Use, who was unable to attend.

Secretary Hughes expressed general agreement with the directions each subcommittee had taken (summarized below) and challenged each chair to assure their future recommendations address administrative matters and, more specifically, to demonstrate the value added by any new process.

The subcommittee chairs meeting adjourned for the regular meeting.

Task Force Members Present:

John Hughes (chair)	Secretary, DNREC
Senator David McBride	Chair, Senate Natural Resources Committee
Representative Roger Roy	Co-chair, Bond Bill Committee
Representative Joseph Booth	Chair, House Natural Resources Committee
Ralph Reeb	Director of Planning, DeIDOT
Robert Stickels	County Administrator, Sussex County
Chris Coons	County Executive, New Castle County
Charles Baker	General Manager of Land Use, New Castle County
Larry Irelan	New Castle Conservation District
Jared Adkins	Kent Conservation District
Paul Morrill	Town Manager, Delaware City
Scott Koenig	Director of Public Works, Dover
Stephanie Hansen	Richards Layton and Finger
John Talley	State Geologist, Delaware Geologic Survey
Paul Petrichenko	Natural Resources Conservation Service (Dover)
Eileen Butler	Delaware Nature Society
Jeff Bross	Duffield Associates

Task Force members not in attendance:

Senator Robert Venables	Co-chair, Bond Bill Committee
David Burris (for Robert McLeod)	President, Kent County Levy Court
Jeff Seemans	Blenheim Homes
Gary Stabley	President, Lewes Board of Public Works
Kash Srinivasan	Commissioner of Public Works, Wilmington
Rick Woodin	Homebuilders Association of Delaware

Non Task Force members also in attendance included Lee Ann Walling from Governor Minner's office; Lori Rigby and Janet Kilpatrick from the House of Representatives staff, David Singleton representing the New Castle County Executive, Kara Coats representing the City of Wilmington, Kevin Donnelly and Laura Herr from DNREC Division of Water Resources, and Robert Baldwin, Frank Piorko, Randy Greer, Mike Powell, Mike Brown, Jamie Rutherford, Elaine Webb, and Kathy Osterhout from DNREC Division of Soil and Water Conservation. Members of the public were also present.

Minutes from the February 17, 2005 meeting were approved without revision.

Secretary Hughes recapped the Task Force's time frame and stated that recommendations will need to be voted upon at the March 17 meeting.

Ms. Hansen presented the Governance Subcommittee's work to date. A matrix has been prepared with activities on one axis and agencies on the other. Identification of overlaps and gaps will follow. The Subcommittee is recommending the creation of a Surface Water Coordinating Council on a Statewide basis with membership potentially including DNREC, DelDOT, DEMA, conservation districts, counties, and local governments. The Council would determine policies and standards, establish guidelines for communication, and set priorities for 21st Century Funds expenditures. It would also set up the rate structure for a surface water utility and work with DNREC staff on watershed based planning. The Counties would be responsible for establishing procedures, implementing the Statewide policies, and determining the responsibilities of various agencies within the county. The intent will be to not supplant existing frameworks but to better coordinate.

Issues needing further discussion include appeal mechanisms for the fees, the necessity for a public entity to access private lands for maintenance activities or even capital construction, and buyouts. Ms. Hansen stated that the Governance Subcommittee feels reactive buyouts (after damage) should be legislated at the State level based upon FEMA guidelines but proactive buyouts (before damage) should be under the purview of a utility. The question of whether a utility would be given the power of eminent domain still needs to be determined. Also, a process is needed in which building permits cannot be obtained until stormwater management plans are approved.

Senator McBride asked how incorporated areas would be addressed. Ms. Hansen replied that they would be included and should not have the ability to opt out. Mr. Bross furthered by stating local governments could have their own utility.

Mr. Morrill asked if watershed plans would have the force of law similar to comprehensive plans. Mr. Bross thought the two would be symbiotic. Mr. Morrill also asked if the powers of eminent domain should extend to flood plains and riparian buffers. The general feeling was that they should. Mr. Morrill questioned if the concept of Equivalent Runoff Units (ERU's) take into account water quality. This has been discussed in subcommittee but a definitive answer has not been made. Finally, Mr. Morrill noted that a utility would need to pass the rationale nexus test and thought a county wide utility may fail as the connection between fees and benefits becomes more spread out. This is one of the major legal issues that still must be addressed.

Mr. Hughes stated that legislation will be needed to collect fees. He also noted that DNREC staffing capacity would need to be increased to assure Statewide consistency and the ability to adequately follow up.

Mr. Bross distributed a spreadsheet on behalf of the Finance Subcommittee. Although preliminary, the Subcommittee had estimated current annual needs throughout the State for drainage construction (prorated over the next five years) and maintenance at approximately \$75 million. He thought another \$8 million should be added to reflect Secretary Hughes' concern related to DNREC staff. These costs are not a request for new money but in many cases is money already being spent. The Subcommittee is seeking to identify costs that are being displaced. Mr. Bross stated that the Subcommittee thought tax ditch organizations should be subsumed over a certain time period by a utility. The Subcommittee is also looking into longer term costs over a 20 year time period.

The Finance Subcommittee feels that a utility would need the ability to sell bonds and, reiterating the Governance Subcommittee's recommendation, must have an appeals process. They are recommending seed money be authorized from the Bond Bill Committee.

Representative Booth asked where the \$5 million figure for tax ditches in Sussex County was derived. Mr. Irelan said that it is the current Sussex Conservation District request for funding. Mr. Piorko clarified that tax ditch organizations in Sussex County raise about \$500,000 annually from their members for routine maintenance but the \$5 million figure reflects the difference between what is being done and what the needs really are. Mr. Bross and Mr. Irelan stated that the needs are increasing due to higher demands and environmental regulations.

It was observed that tax ditches rarely increase their fees. Mr. Hughes countered that each tax ditch organization is very different and thought benefits are not evenly distributed as home owners in the upper reaches of a watershed derive fewer benefits than those in the lower areas.

Mr. Baker noted the similarities between tax ditch organizations and home owner maintenance groups. Mr. Bross thought a utility could supplant the portion of home owner organization fees that go towards to stormwater issues.

Mr. Morrill asked of utility fees could be collected on county tax bills and was told yes. He further asked about non-payments and the potential need to place liens. Mr. Hughes stated that that process would be determined at the State level.

Mr. Coons said he was generally comfortable with the process being discussed. It is equitable and sustainable. Mr. Petit de Mange said Kent County was discussing establishing a maintenance district with the Kent Conservation District but those discussions are on hold pending completion of the Task Force. He is concerned about the time it may take for Task Force recommendations to be acted upon or implemented. When asked by Secretary Hughes if he thought Kent County would buy into the process, he said he thought it would.

Representative Roy questioned permitting issues specifically regarding the Corps of Engineers. Ms. Hansen thought a utility would coordinate those issues. Representative Roy wants to assure that another level of bureaucracy is not being created. Secretary Hughes agreed but noted that Federal and State permitting must be done.

Mr. Koenig asked how road and impervious areas would be addressed. He also questioned the mandating of pond maintenance such as grass cutting. Mr. Stickles furthered the question by asking who would be in and who would be out of utility.

Ms. Herr, responding to Representative Roy's earlier question, said some maintenance activities are already exempt from permitting and a general permit was in the process of being prepared to guide stream clean out projects needed in New Castle County. Mr. Piorko said that an agreement is in place with the Corps of Engineers for certain types of work. Mr. Piorko also sought to answer Mr. Koenig's question by acknowledging the need to account for what is already being spent. It would not make sense to take money away from an organization to simply return it later. Mr. Reeb stated that DelDOT is currently spending tens of millions of dollars annually and would be interested in increased benefits of a new process.

Representative Roy brought up the question of prevailing wage rates and said the issues would certainly come up on the floor of the General Assembly. Mr. Ireland thought all drainage work was currently being done at the highway rate, not heavy construction.

Mr. Talley presented the Maintenance Subcommittee's work to date. Basically the components of a utility already exist but better oversight and coordination is needed specifically in the areas of planning, design, construction, inspection, and operations and maintenance. A utility should incorporate conservation design and green infrastructure objectives. They will be looking into stream clean out problems and issues related to dams at their next meeting. Secretary Hughes said a dam safety program has been established but it is currently unfunded.

Secretary Hughes read aloud Governor Minner's Executive Order and asked if the Task Force had addressed the charges. In some areas it has but in others a sharper focus is needed. Aquifer recharge has not been addressed to date.

Ms. Walling spoke on behalf of Land Use Subcommittee Chair Jeff Seemans. That Subcommittee has been discussing the existing Sediment and Stormwater Regulations and what they can and cannot do. She noted these regulations apply to new development only and the Subcommittee is looking into what additional legislation may be needed.

Ms. Butler asked how TMDL issues will be addressed. Mr. Greer stated the State already has the ability to adopt TMDL recommendations.

George Haggerty from New Castle County Special Services passed out a summary of the three phases of activities that occur during the conversion of land and the problems associated with each. These phases are design, construction, and maintenance. The Maintenance Subcommittee will be making recommendations based upon these at their next meeting.

Secretary Hughes asked if there were any questions from the audience. There were none.

Mr. Donnelly responded to an earlier question about how well water quality will be addressed by a new process. He thought the Task Force may not have time to address the “nuts and bolts” of this but a better process would result in improvements to water quality. Mr. Ireland noted the EPA consent orders currently in place in the State and whether Task Force recommendation could help address these. Mr. Donnelly said probably not as separate reporting is needed.

The meeting adjourned.

Next Task Force Meeting: Thursday March 17, 2005 at 9:00 a.m.
Subcommittee Chairs will meet at 8:00 a.m.

Future Task Force Meetings: Thursday March 31 2005 at 9:00 a.m.

The March 17 meeting will be at the Delaware National Estuarine Research Reserve just south of Dover. Locations for future meetings will be announced in advance.