Model Watershed District Rules & Guidance for the Red River Basin

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Overview:

• Why Model Rules

• Surface Drainage & Flood Mitigation

• Subsurface Drainage

• Permitting Procedures, Fees & Financial Assurances

• Enforcement
Why Model Rules

• Rulemaking Mandate in Watershed Law

• RRWMB Rules & Regulations Committee

• Survey - Value of Update and Common Approach

• Model Rules as a Resource, Not an RRWMB Mandate
Surface Drainage & Flood Mitigation

• Engineer advice on local watershed concerns

• Policies:
  o Preserve capacity in public drainage systems
  o Preserve channel integrity, limit sediment transport
  o Protect structural integrity of public drainage systems
  o Prevent unassessed lands from draining into public systems
Surface Drainage & Flood Mitigation, cont.

- Regulation: clarity about what requires a permit
  - Any change affecting surface flows
  - Excavating channel, grading, installing tile
  - Installing tile inlet, diking, expand capacity of outlet
  - Any work in or over a public drainage system
Surface Drainage & Flood Mitigation, cont.

• Exempt:
  o Maintenance
  o Replacing 50 feet of tile or less
  o Emergency work
  o Ordinary agricultural cultivation
Surface Drainage & Flood Mitigation, cont.

• Permit Criteria:
  o No unreasonable increase to flows (peak or volume)
  o No connection of unassessed lands into public system
  o Mitigate downstream impacts from flow changes
  o Erosion and sediment transport control
  o General: no adverse impacts to flows, water quality
  o Specific provision for dikes
Subsurface Tile Drainage

- RRRA Basin Technical and Scientific Advisory Committee (BTSAC):
  - Uncontrolled subsurface drainage potential to increase local and regional flooding

- Policies:
  - Minimize downstream flooding
  - Maximize soil storage and agricultural productivity
Subsurface Tile Drainage, cont.

- Regulation:
  - Mandate outlet controls for new tile systems
  - Two Year Notice* - Retrofit existing systems with outlet controls
  - Land owner education, cost share
• Permit Criteria:
  o Control water table within 1 ft of surfact over 80% of area
  o After harvest, open controls, maximize detention capacity
  o Once freezing, can close controls
  o Remain closed until spring flood conditions recede

• Consider other trigger conditions to address localized flooding
Subsurface Tile Drainage

• Impact of tiling on public drainage systems, other watershed impacts?

• Cost/benefit of outlet controls?
  – Flood mitigation;
  – Production value
Permitting Procedures, Fees & Financial Assurances

• Value of detailing procedures

• Policy – protect water resources without undue burdens

• Application Submittal
  o No regulated work done without a permit
  o Landowner signs application
  o On District’s form – 15.99 clock
  o Permission to enter property
  o Permit approval v. issuance
Permit renewal
- Request before permit expires
- Balancing landowner convenience and delay problems
- Indefinite renewals if substantially commenced
- Deny renewal if material change in circumstances
- Rule changes; one free renewal, more if substantial progress

Permit assignment
- ‘Runs with land’ – change of ownership
- Track permit compliance with transfer
- Substitute financial assurance

- **General Permits**
  - Low risk activities, but desire to set standards
  - Make record of work occurring
  - Exercise jurisdiction if violation of standards

- **Delegation of permit decisions**
  - District administrator
  - Reconsideration by board of managers
Reconsideration

- Importance of findings in event of challenge
- Koontz v. St. Johns River Water Mgmt District
- Require reconsideration before any appeal
- Important to track deadlines – Section 15.99

- **Permit Fees**
  - Authorized to recover actual costs of inspection, analysis
  - Use of fee schedule
  - Government agencies exempt from fees

- **Financial Assurance**
  - Key means of assuring compliance
  - Bond, letter of credit, cash escrow
  - Setting correct amount is critical
Enforcement

• No fines (Administrative penalty orders)

• Inspections – investigations of noncompliance

• Authorized entry on property (with limitations)

• Compliance orders by staff
  o Due process concerns
  o Board delegation of authority to staff (limits)
  o Violation or imminent violation + water resource threat
  o Effective for 10 days
  o Due process hearing, perhaps a special meeting
Enforcement, cont.

• Alternative “Notice of Probable Violation”

• Hearing before Board of Managers

• Compliance order, with findings

• Enforced in district court

• Recovery of enforcement costs

• Property owner, contractor liability
Questions?