

LAKE COUNTY DRAINAGE PLAN

Lake County, South Dakota

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Lake County is located in east central South Dakota and is bounded by Moody County to the east, Minnehaha and McCook Counties on the south, Miner County to the west, and Kingsbury and Brookings Counties to the north. The county is composed of 8 municipalities and 16 townships. The 2000 census showed a total population of 11,276. The great majority of the unincorporated portions of the county are dedicated to agricultural uses.

Geologically, the entire county has been subject to glacial action at various times in the past. Some portions of watersheds have developed a more mature natural drainage pattern with a number of better defined streams. Areas distant from the defined streams have not had sufficient geologic time to develop a well-defined drainage pattern and those portions of the county are characterized by numerous wetlands and small lakes.

In the history of agriculture within the county it has been a common occurrence for farmers to drain wet areas in order to increase the productive capacity of their land. The drainage activity that enhances that farmer's productivity, however, almost always has at least some adverse impact on adjoining lands. The history of drainage law in South Dakota has been an attempt to balance the benefits of drainage against the potential impact on other lands.

State law recognizes that any rural land which drains onto other rural land has a right to continue such drainage if:

- (1) The land receiving the drainage remains rural in character;
- (2) The land being drained is used in a reasonable manner;
- (3) The drainage creates no unreasonable hardship or injury to the owner of the land receiving the drainage;
- (4) The drainage is natural and occurs by means of a natural water course or established water course;
- (5) The owner of the land being drained does not substantially alter on a permanent basis the course of flow, the amount of flow or the time of flow from that which would occur; and
- (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.

The law also notes that such provisions do not necessarily apply within municipalities, but if a municipality drains water onto rural lands lying outside the boundaries of the municipality, the municipality is subject to the above provisions, if adopted by the county.

In 1985, the South Dakota Legislature assigned counties the responsibility for drainage matters. South Dakota Codified Law 46A-10A authorized county commissions to develop drainage plans and implement regulatory measures. The Lake County Commission, therefore, has prepared this plan for the purpose of enhancing and promoting physical, economic and environmental management of the county; protecting the tax base; preventing inordinate adverse impacts on downstream properties; encouraging land utilization that will facilitate economical and adequate

productivity of all types of land; lessening governmental expenditure; and conserving and developing natural resources.

Drainage Board

State law allows that a county drainage commission may be appointed as a board of resolution to address drainage disputes. Since state law requires that any decision of a drainage commission may be appealed to the county commission and since most drainage disputes have the potential to become contentious, it is likely that many disputes may be appealed to the county commission. Therefore, the creation of a drainage commission may result in merely prolongation of the process.

Policy

The Lake County Commission shall serve as the drainage board.

Drainage Permits

The state drainage law (SDCL 46A-10A) also allows a county to adopt a permit system for drainage. Lake County realizes that any drainage has at least a small potential of having an impact on downstream properties.

Policy

Lake County will implement a drainage ordinance which includes a permit system for all drainage projects.

Vested Drainage Rights

SDCL 46A-10A also required landowners with existing drainage improvements on their property to record the location of such drainage with the Register of Deeds by July 1, 1992 in order for the drainage to be considered vested. Many drainage works were never filed, therefore, this drainage is not vested. Drainage work performed within a county, municipality, township or road right-of-way was exempted from the recording requirement.

Policy

Lake County will recognize vested drainage rights and consider all non-vested drainage to be the same as new drainage. New drainage constructed from July 1, 1992, to the effective date of this agreement is not required to be permitted.

Rights of Landowners of Dominant or Servient Estate

Drainage has always been a controversial issue, and the balancing of a dominant estate (upstream) landowner's rights to drain onto a servient estate (downstream) and the rights of a downstream landowner has long been a contentious issue. The Board acknowledges that judicial law in South Dakota has generally affirmed a landowner's right to direct drainage waters across a servient property when the waters are confined to a natural watercourse and do not spread across the servient property. The input of the downstream landowners is crucial, however, to determining whether the receiving water course is of sufficient capacity to contain the waters from the proposed drainage. While the county acknowledges that there may be many areas with adequate downstream watercourses, the only areas where it is likely that there will always be sufficient downstream watercourses are those in which the drainage will outlet into named streams delineated on the USGS topographical maps. State law also requires that directly affected landowners be notified when an individual proposes to change the drainage restrictions on property.

Policy

Lake County will require notification to downstream landowners and will encourage input from such landowners when drainage is proposed which would outlet in any location other than a natural watercourse of sufficient capacity to handle the additional water flows.

Drainage Across Watershed Boundaries

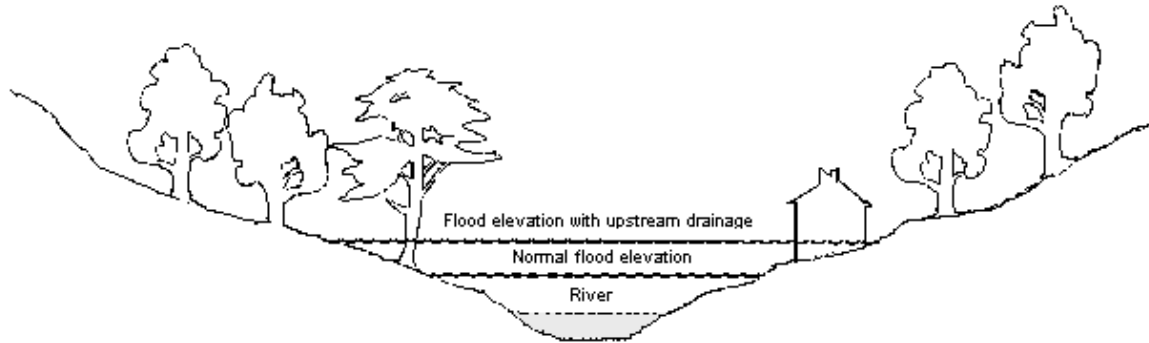
It is recognized that the transfer of drainage waters from one drainage basin or watershed into another may result in an inequitable burden on a property which did not previously receive any water from the first watershed.

Policy

Lake County will discourage the transfer of drainage waters from one drainage basin to another.

Value of Wetlands

Draining wetlands for agricultural and development purposes has been a common practice for many decades. Wetlands are perceived by some property owners as a liability but their destruction can result in an adverse impact at both the local and regional level. Wetlands should be recognized for their value in flood reduction, erosion control, water quality enhancement, and as fish and wildlife habitat.



Wetlands serve as natural water treatment plants. Vegetation and bacterial action within the wetland purifies water by holding and/or breaking down nutrients, sediments and pollutants before they percolate into the soil or are released into surface waters such as lakes and streams. Wetlands also serve as a major source of groundwater recharge by retaining precipitation so it can percolate into the water table. By storing runoff water wetlands help reduce the velocity of runoff water which aids in preventing soil erosion.

The storage capacity of wetlands also helps to reduce downstream flooding. Wetland buffers reduce the rate at which storm water reaches streams or lakes and decrease the total water volume reaching these surface features. When extensive drainage occurs within a watershed, flood levels and the frequency of flood events increase, and flood waters rise much more rapidly. Small individual projects may not have a detrimental effect on drainage but the cumulative impact of many actions can produce catastrophic events. All wetlands in a watershed assist in flood reduction but those within the flood plains are most critical in providing storage capacity for flood waters. Flood plain wetlands also are important to the recharge of shallow aquifers in Lake County.

There are also multiple benefits for wildlife habitat and recreation from wetlands. The areas provide food, cover and water for a variety of wildlife. Research has shown that wetland areas have a great amount of biodiversity and 35 percent of threatened or endangered species depend on wetlands for their survival. Wetlands also provide recreational opportunities for hunting, fishing, birdwatching or other activities.

Policy

Lake County will discourage the drainage of any wetland.

Existing Drainage Districts

Several drainage districts were formed during the early 1900's, consisting of underground tile systems or open ditches. Much of the old tile has deteriorated and is in such a state of disrepair that drainage sometimes no longer occurs. Collapsing tile has created dangerous situations where large holes form due to erosion. State law allows property owners to petition the county for repair on such districts and provides that the county assess the benefited owners to pay for the costs of improvements.

The drainage districts in Lake County are no longer operational. In some instances, the boundaries of a drainage district are not clearly delineated making it difficult to determine the benefited area for assessment purposes to finance planning, maintenance and construction work. The petitioners should provide information to delineate which property owners shall be subject to the required assessments.

Policy

Lake County will require that a petition requesting the county to undertake repairs on a drainage district, and before monies are assessed on behalf of such district, shall include a survey performed to identify the total acres that are benefited and subject to said assessments.

Coordinated Drainage Districts

State law provides a mechanism for landowners to submit a petition to create a new coordinated drainage area. The creation of larger-scale drainage projects could result in potential liability exposure for the county due to the greater volume of water which may be drained.

Policy

Lake County should move very cautiously in dealing with existing or proposed drainage projects, carefully identifying coordinated drainage areas and working with landowners to assess the costs, benefits and potential liabilities of drainage improvements.