

WATERWAYS

A Quarterly Publication of the Iowa Drainage District Association

Volume 4, 2008

Legislative proposals for 2009

These are the legislative proposals that IDDA members will be asked to approve at the upcoming annual meeting.

- 1) **Crep/Wetlands Funding** – The IDDA supports an increased state appropriation from the “Environment First” fund for the Crep/Wetlands program. Every dollar appropriated by the state is able to leverage four federal dollars. The current state appropriation level is \$1.5 million. IDALS has requested that the appropriation increase to \$2 million. The program currently has a waiting list of interested landowners. An increased state appropriation would allow increased construction of nitrate removal wetlands providing increased protection for Iowa’s water.
- 2) **Regulation of Wetlands** - The IDDA opposes any legislative proposal to empower the state of Iowa to regulate the dredging or filling of isolated wetlands. The dredging or filling of the majority of these isolated wetlands is already subject to review and regulation under provisions of the farm bill or local subdivision approval and building permit authorities. The state of Iowa cannot afford and ought not to divert precious resources toward creation of a needless regulatory bureaucracy.
- 3) **Wetland Structures** – Under the CREP program, landowners install wetlands to assist in the removal of nitrate from tile drained water. The CREP program requires that the landowner assume maintenance of these structures, once built. This responsibility has been an impediment to landowner participation in the CREP program. IDDA supports legislation that would allow drainage districts, on a voluntary basis, to enter into agreements with landowners that would provide for the maintenance of these or similar facilities. Such agreements would also provide for the allocation of converted wetland credits and

the disposition of the facilities once the agreement was terminated. These facilities would be an “improvement” under drainage law and would have to meet all the applicable statutory requirements.

- 4) **Ag Drainage Well Closure** – There are currently about 140 Ag drainage wells in active use – acting as direct chemical pipelines into drinking water supplies. IDDA supports an increased state appropriation for the Ag drainage well closure program. The state is requesting \$1.48 million for this program.
- 5) **Drainage/Flood Prevention** – The state is looking at a number of initiatives that involve drainage and flood control issues. These initiatives include; a) Research farm to understand the flow of water on certain practices - \$300,000 b) Cost share monies in targeted watersheds to build up and increase capacity in water retention basins and terraces - \$1.5 million c) Hydrology experts to assist with understanding and planning of water flow - \$150,000 d) Use of LIDAR technology for watershed and water management planning - \$300,000 The total cost of this initiative is \$2.25 million. IDDA supports this initiative.

Executive Director Notes

Most of this issue of Waterways is devoted to our annual conference next month. We have a great agenda planned and hope to see you there.

John Torbert

Waterways is a quarterly publication of the Iowa Drainage District Association. Comments can be directed to the association at:

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"Working for the mutual protection and benefit of Iowa Drainage Districts"

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CREP Field Specialists – Dennis Barrick, Charlie Kiepe, Jay Lynch, Lannie Miller, Bob Powers, Eddie Peterson, Ike Petersen and Mark Sandvik. (CREP field specialists work for IDDA under a contract administered by IDALS).

Christiansen loses re-election bid

IDDA president and Pocahontas County Supervisor lost his bid to return to the board of supervisors. What impact this will have on the IDDA board is unclear at this point as Ralph could choose to become an individual member of the association.

USDA gets it wrong on wetland determinations

The "Swampbuster" rules were enacted as part of the conservation provisions



of the 1985 Farm Bill. In general, the rules prohibit the conversion of "wetland" to crop production by producers that are receiving farm program payments. A farmer that is determined to have improperly converted wetland is deemed to be ineligible for farm program payments. But, an exception exists for wetland that was converted to crop production before December 23, 1985 – the effective date of the 1985 Farm Bill. Under the Swampbuster rules, "wetland" has 1) a predominance of hydric soil; 2) is inundated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, and; 3) under normal circumstances does support a prevalence of such vegetation. In other words, to be wetland, a tract must have hydric soils, hydrophytic vegetation and wetland hydrology.

Here, the plaintiff purchased the tract in issue in 1997. The tract had been farmed by the prior owner's tenant from 1972 to 1986, and was enrolled in the Conservation Reserve Program from 1987-1997. The plaintiff purchased the property in 1999, before the USDA determined that a portion of the tract was

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Annual Conference

December 5, 2008

Starlite Village Hotel • Fort Dodge, Iowa

7:45 a.m. Registration Opens

8:30 a.m. IDDA Annual Business Meeting

9:15 a.m. Dean Lemke, Director of Water Resources, Iowa Dept. of Agriculture and Land Stewardship; "Impacts of 2008 Iowa Storm Events on Flooding, Erosion and Conservation"

10:15 a.m. Dr. Matt Helmers, Iowa State University; "How Does Iowa Tile Drainage affect downstream flooding?"

11:00 a.m. Dr. Steven Taff, University of Minnesota, Dept. of Applied Economics; "Biofuels and Drainage – Some Large Scale Considerations"

11:30 a.m. Sponsor Presentations

12:15 p.m. Buffet lunch

1:00 p.m. Richard Leopold, Director, Iowa Department of Natural Resources

1:45 p.m. Adjourn



Registration Form

Annual Conference

December 5, 2008

Starlite Village Hotel • Fort Dodge, Iowa

Name _____

County/Company _____

Address _____

Phone _____ E-mail _____

Please use one registration form for each person attending. Registration cost is \$40 for IDDA members and \$50 for non-members. Registration fee includes morning coffee & rolls, noon meal, all conference handouts and conference gift item. Speakers and some sponsors are exempt from the registration fee. On-site registration will also be available. Registration refund requests must be in writing.

Send check, warrant or money order to:
Julie Fridolfson
IDDA Secretary Treasurer
Humboldt County Auditor's Office
PO Box 100
Dakota City, IA 50529

Questions – Contact IDDA Executive Director John Torbert at 515/221-1961 or jtorbertidda@mchsi.com. Please return registration form no later than December 1 (if possible) for purposes of meal count.



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Changes proposed in IDDA bylaws

At the IDDA annual conference on December 5, members will be asked to approve the following bylaws changes. The changes use a legislative format for drafting in that words that are lined through would be omitted and words that are underlined will be added. Only the sections shown below have proposed changes. The rest of the bylaws remain intact. None of the changes are of a substantive nature. They are simply designed to keep the corporate documents of the association in line with actual practice. Before each Article being changed is a brief explanation.

In this Article, the reference to the executive committee is changed to Board of Directors. IDDA has never had an executive committee. The word majority is removed in that all final actions of the board have to be by majority approval so the word is redundant.

Article I

SECTION II –CORPORATE OFFICES - The registered office of the Corporation required by the Iowa Non-Profit Corporation Act shall be initially as provided in the Articles of Incorporation subject to change from the time to time by resolution of the board of directors and filing of statement of said changes as required by said act. The principal office of the Corporation shall be located as per ~~majority approval of the Executive Committee annually~~ Board of Directors.

In this article, the names of the individual

membership categories are updated to reflect actual practice. Associate members would become individual members and sustaining members would become corporate members. Since this sections also deals with how dues are set, it is now included in the title of the section.

Article III

Membership/Dues

(B)—ASSOCIATE INDIVIDUAL MEMBERS - Engineers, attorneys, county officials and other interested individuals are entitled to become associate individual members of the Corporation. ~~Associate Individual~~ members do not have voting privileges.

(C)—SUSTAINING CORPORATE MEMBERS - Manufacturers, business, firms, corporations or associations are entitled to become sustaining corporate members of the corporation. Sustaining Corporate members do not have voting privileges.

SECTION III – DUES - Membership dues shall be determined ~~and set~~ by the Board of Directors.

In this Article, clarification to the election of directors section is made so that if there are nominations from the floor, those nominations have to be made by members entitled to vote on association business. Also, the membership does not elect the full board each year – just those members whose terms are expiring. Language in Section II and Section XI was removed in that it is redundant language covered elsewhere in the bylaws. Section VI clarifies that resignations must be submitted to the President.

Article V

Directors

SECTION I – ELECTION OF DIRECTORS – Members of the The Board of Directors whose terms are expiring shall be elected by a majority of the voting representatives present at the annual meeting from a slate submitted by the Nominating Committee.



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Nominations for the office of Director may be made by voting members from the floor.

SECTION II – NUMBER AND TERM OF OFFICE – The number of Directors shall be seven (7). Directors shall serve three-year staggered terms. ~~Directors shall be elected each year at the annual business meeting to fill the seats of directors whose terms are expiring.~~ The term for each director will commence on the first of January immediately following their election, reelection or appointment.

SECTION VI – RESIGNATION - Any Director of the Corporation may resign at any time by giving written notice to the President ~~or the Secretary-Treasurer~~ of the Corporation. A resignation of any Director shall take effect upon receipt of written notice or at such later date as shall be specified in such notice; unless otherwise specified therein. The acceptance of such resignation shall be necessary to make it effective.

~~SECTION XI – ORDER OF BUSINESS – At meetings of the Board of Directors, and at all such meetings of the membership of the Corporation, business shall be transacted in such order as the Board of Directors, from time to time, may determine by resolution:~~

In this Article, the language relating to committees is cleaned up. Language is added to allow non-IDDA members to serve on association appointed committees. The statutory reference is removed as it is outdated. Language is also added to state that once a committee’s work is done, the committee is dissolved.

ARTICLE VI

Committees

SECTION II – SPECIAL COMMITTEES – Special committees may be appointed by the President of Board of the Directors for designated purposes. Each special committee shall include at least three persons, all of whom shall be members in any of the three membership classes of the Corporation. Non-members of IDDA may also be appointed to special committees. ~~Committee members shall serve for a term of one year.~~ Each committee shall have the powers and duties delegated to it by the Board of

~~Directors from time to time, but such delegation of powers and duties shall not be broader than permitted by Section 504A.21 of the 1989 Code of Iowa, as amended.~~ Each committee shall fix its own rules governing the conduct of its activities as the Board of Directors may request. Once the designated work of the committee has been completed, the committee shall be dissolved.

In this Article, language referring to the officers of the association is modified. When the bylaws were first drafted, the secretary/treasurers position was established as a member of the board of directors and an elected county official held that position. However, since IDDA hired a full-time executive director, the secretary/treasurers position has become a hired staff position. These wording changes clarify that change. Further, the language is changed so that the election of IDDA officers will take place at the first board meeting following the annual conference. This gets away from the somewhat cumbersome process of trying to elect officers and conduct an annual meeting at the same time.

ARTICLE VII

Officers

SECTION I – NUMBER – The officers of the Corporation shall be a President and a Vice President ~~and a Secretary-Treasurer.~~

SECTION II – ELECTION, TERM OF OFFICE AND QUALIFICATIONS – The officers of the Corporation shall be chosen annually by and from the Board of Directors, by majority vote, ~~and such election shall take place immediately following the annual membership meeting.~~ Election of officers shall take place at the next regularly scheduled Board of Directors meeting following the annual meeting. Each officer shall hold office for a term of one year or until a successor shall have been duly chosen or until death or resignation. All officers shall be Directors.

SECTION III – SUBORDINATE OFFICERS AND AGENTS – The Board of Directors may appoint an Executive Director and such other officer or agents as it may deem necessary or advisable from time to time, to hold office for such period as approved, and have such authority and perform such duties as the Board of Directors from time to time may determine. The Board of Directors may delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective terms of office, authorities and duties. The employment of an Executive Director shall be by written employment agreement and the duties of such Executive Director will be enumerated in a written job description.

The Board, at its first meeting of each calendar year, shall, upon the recommendation of the executive director, appoint a secretary/treasurer. The secretary/treasurer shall have the responsibility for maintaining all of the financial and investment records of the corporation, processing payroll, filing the appropriate tax forms and keeping minutes of all Board of Directors meetings, and other such duties as may be required by the Executive Director or the Board of Directors.

In this article, the changes are to clean up some less than clear language.

ARTICLE VIII

Duties of Officers

SECTION I – PRESIDENT – The President shall be the Chief Executive Officer of the Corporation and, subject to the supervision and control of the board of



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directors shall have general and complete management and supervision of the operations of the Corporation, and shall perform all duties incidental to the office of President and be responsible for the executive of all directives and resolutions of the Board of Directors. The President shall have authority to sign in the name of the Corporation all official documents, including checks, which may be necessary to the business of the Corporation. The President shall insure that the Corporation adheres to its intended purposes and shall represent the corporation when required or requested by other agencies. The President shall insure that the Corporation adheres to its intended purposes and shall act as the presiding officer at all meetings of the Board of Directors, Executive Committee and Special Committees with the exception of the Audit Committee.

The President, if there is a duly appointed Executive Director, shall not be the Chief Executive Officer of the Corporation. The President shall relinquish these duties described in Section III of the Article described as to the Executive Director, responsibilities and/or authority.

In this article, the reference to the corporate seal is removed. There is no necessity for having language in the bylaws referring to something we do not have.

ARTICLE X

Miscellaneous Provisions

~~SECTION I – CORPORATE SEAL - There shall be no corporate seal.~~



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wetland. In spite of that determination, the plaintiff removed some woody vegetation in 2000 because it was a nuisance to the plaintiff's farming operation. USDA determined that the plaintiff had "converted" 0.9 acres of wetland. However, the plaintiff claimed that the tract had been cropped before December 23, 1985, thereby making it prior converted cropland. Also, the plaintiff introduced evidence that a drainage tile had been installed before December 23, 1985 and that the tile, along with a road ditch, removed the wetland hydrology from the tract. But, USDA believed that the tile was not functioning as of December 23, 1985 because woody vegetation existed.

The plaintiff's expert civil engineer, however concluded that if the drainage tile had been plugged, when the USDA broke the tile during the on-site investigation, the resulting hole would have filled with water from further up the tile line. But, that did not occur. So, the plaintiff argued that the drainage tile coupled with the installation of a road ditch

removed the presence of wetland hydrology from the tract. USDA disagreed, claiming that the presence of hydrophytic vegetation, by itself, demonstrated that wetland hydrology was present.

The court didn't buy the USDA's argument. The court noted that the statute clearly specifies that a "wetland" has three separate mandatory requirements; 1) hydric soil; 2) wetland hydrology and; 3) hydrophytic vegetation. In addition, the court determined that the USDA reached its conclusion by disregarding evidence contrary to its experts that were relevant to the issues involved.

Accordingly, the court ruled that the USDA hearing officers "final" determination must be overturned as arbitrary and capricious, and abuse of discretion, or, contrary to the law. As for attorney fees, the court stated that it would reserve the issue for consideration upon a specific application for attorney fees. *Source – Roger McEowen, Center for Agricultural Law and Taxation, Iowa State University.* ♻

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