

BUTTE COUNTY DRAINAGE PLAN

Butte County is located on the west side of South Dakota and is bordered by the states of Montana and Wyoming on the west side, Harding and Perkins Counties on the north side, Meade County on the east side, and Lawrence County on the south side. The 2000 census showed a total population of 9094. The majority of Butte County is dedicated to agricultural use.

Butte County is in the Great Plains physiographic province. The relief is gently sloping to strongly sloping in most parts of the county. It is steep in rough, broken areas on the outer hogback of the Black Hills in the southwestern part of the county, the sides of scattered buttes and ridges, and the sides of entrenched stream valleys. About two-thirds of the county is drained by the Belle Fourche River. The northeastern and north-central parts are in the Moreau River drainage system. The natural drainage from west to east in well-defined streams and rivers leaves Butte County with no real drainage problem.

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 implemented regulatory measures. The Butte 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

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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 a prolongation of the process.

Policy

The Butte County Commission shall serve as the drainage board.

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 or township road right-of-way was exempted from the recording requirement.

Policy

Butte County will recognize vested drainage rights and consider all non-vested drainage to be the same as new drainage.

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

Butte 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

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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

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

FUNCTIONAL DRAINAGE DISTRICTS

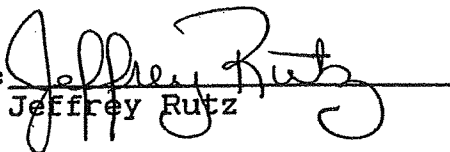
1. Butte County is responsible for drainage related to road ditches, and natural waterways and drains.
2. Belle Fourche Irrigation District is responsible for drainage concerns related to their canals, laterals, pipelines and constructed water drainage structures.
3. Redwater Irrigating Association is responsible for 100 foot ditch right of way outlined in by-laws.

PROCEDURES FOR DRAINAGE DISPUTES

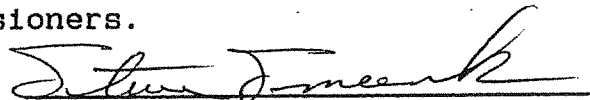
1. Bureau of Reclamation and Natural Resources Conservation Service personnel are available for technical assistance related to engineering and soils.

2. Drainage disputes between landowners should be resolved, according to law, between those parties involved.
3. Any drainage concerns shall be directed to or coordinated with the proper parties as defined above.
4. Any drainage problems that cannot be resolved will be appealed to the Board of County Commissioners.

Attest:


Jeffrey Rutz

12-3-02


Chairperson