

Drainage School: How to Understand the Laws Impacting Drainage Decisions

Wednesday, August 26, 2020
9 – 11:30 a.m. (EDT)
Zoom – Online Conferencing

Program Agenda

9-9:30

Legislative Update/Status Report

Jeff Cummins, *Indiana Farm Bureau*

This presenter will provide an update of legislation passed during the 2020 session of the Indiana General Assembly that impacted permitting requirements for drainage and flood control projects at the state and local level. The focus will be on bills relating to local control of watercourses, user fees, erosion control ordinances, IDEM permitting fee increases, and levee reconstruction. A status report will also be given on the Stormwater Task Force Update/Progress along with Joint Waterways Permitting.

9:30-10:15

River Basin Commission Update

Sen. Rick Niemeyer, Rep. Doug Gutwein,
Scott Pelath, Exec. Director-Kankakee River & Yellow River Basin Dev. Comm.

Following a major reform to the Kankakee and Yellow River Basin Commission in 2019, more counties are now interested in forming joint drainage management commissions. But there are challenges. During this discussion, we'll take a look back at how legislators were able to get HEA 1270 passed and how implementation has been going over the last year. We'll also ask our panelists to reflect on how they get counties with varying interests and concerns to compromise and work together.

10:15-10:45

Interactions Among Overlapping Drainage Jurisdictions

Kendell Culp, *Indiana Farm Bureau*, Vince Urbano, *Jasper Co. Surveyor*,
Dan Blaney, *Blaney & Walton*

Basin Commissions, drainage boards, joint drainage boards, county government and conservancy districts can all have authority over aspects of drainage. Many times these different local authorities have intersecting or overlapping jurisdictional authority. Hear how officials strive to work together collaboratively to solve drainage issues and provide for ongoing maintenance.

10:45-11:15

WOTUS Update/Maui Case

Fred Andes, *Barnes & Thornburg*

The foundation of the Clean Water Act is that it prohibits the discharge of any pollutant into navigable waters from any point source. But what about when those pollutants travel through groundwater or some other nonpoint source?

In *County of Maui v. Hawaii Wildlife Fund*, plaintiffs argued that the County was impermissibly discharging pollutants from four wells that they owned into the Pacific Ocean without a permit. The County argued that the law didn't require them to have a permit because the discharges were into groundwater and not into navigable waters.

On April 23, 2020, the Supreme Court issues their ruling on this case. This discussion will examine the case, the holding and what the Court's ruling means for the Clean Water Act going forward.

We'll also discuss the Water of the U.S. rule as issued by the EPA this year and how that changes the dynamics for federally regulated waters.

11:15-11:30

Boucher and Swampbuster

Michael Cooley, *Allen Wellman McNew Harvey, LLP*

After a decades long dispute with the Natural Resources Conservation Service over a wetlands determination, the Boucher's secured victory in a 2019 decision by the 7th Circuit Court of Appeals. The court overturned the NRCS determination on the Boucher's farm which had been made several years after Mr. Boucher removed nine trees from his property. After a 2002 site visit, an NRCS representative suspected the ground where the trees had been removed to be a wetland and made an initial determination. This session will discuss the Court's key concerns with the NRCS decision, it's holding and what it means for Swampbuster determinations going forward.