39th Drainage Engineers Conference

Panel Discussion

Panel Members:
Dana Boyter, DFO; Paul Courey, Courey Law Office; Garry Fischer, Land & Wildlife Mgmt.; Barry Sinclair, OMAFRA; Kenn Smart, K. Smart Associated Limited; Tim Oliver, Dillon Consulting Ltd.

Moderator:
John Spriet: We actually have six folks here and we still have an hour. We would ask that you come to one of the microphones and provide your name prior to asking a question.

Delegate:
Jim Harper: For DFO. I'm doing maintenance and the drain has to have DFO approval. If there a period of time when we can expect response?

Panel Member:
Dana Boyter: On what type of drain?

Jim: The type of drain that requires DFO approval for drain maintenance, so is there a period of time that we can expect a response, as a Drainage Superintendent, on what work area if there are any special requirements for the work to be done?

Dana: Is there a period of time that you can expect a response? Yes.

Jim: And the answer to that question is?

Dana: Yes, there's a period of time.

Jim: What period of time might that be?

Dana: What type of drain are you talking about?

Jim: An open ditch, an open channel.

Dana: You have to be more specific. An “A”, a “B”, a “C”?

Jim: A “D”.

Dana: A “D”.

Jim: Yeah. Is there any formula for determining that period of time?
Dana: Yes there is. It all depends on if you've done the habitat assessment and the impact analysis and you submitted that to us for review. If you have a complete package for me to review, it should be done with an authorization or a letter of advice should be ready in about two months.

Jim: Thank you.

Delegate:
Mike deVos: Dana this would be for you. If you have any information on the size of the water shed that the Newbury weir is practical, but is generally used in terms of how small the water shed might get?

Dana: No, not right now, but do you mean the size of the weir, or the size of the watershed or the flow?

Mike: More so the size of the water shed. It's how small the flow output becomes impractical to use that.

Dana: No, I have really nothing on that for you right here but I will definitely get it for you then. I've only used it myself two or three times and so I know there's probably better guidelines to use to make sure you're using the right one with the right size.

Delegate:
David Johnston: The Newbury Weir extension. If the fish are prepared to swim up the slope of 16 to 1 or 20 to 1, why couldn't that be incorporated right at the end of a culvert, for example, simplify things, keep the cost a little more in line and to some extent the use of the culvert in effect, supposing this is an open bottom restraint concrete culvert for example, would it not be possible to build the rock structure right at depth out of the culvert in effect have the cooling under the culvert and simplify it even more from the point of view of possible erosion on the ditch banks, drain banks and so on? Is that a reasonable suggestion for a situation for a particular situation?

Dana: You're building a new culvert, incorporate a weir?

David: No I'm suggesting when maintenance of a drain is being done and you're cleaning out the drain approaching an existing old culvert and part of the review would have been, or at least part of the design would be to incorporate the weir at the outlet of the culvert as opposed to a separate structure. I'm assuming you'll say there are certain situations where that could work.
Dana: Sorry – is this maintenance or new work? Like is a new culvert part of the report?

David: It is an old culvert. In my example it is an old ditch up to the culvert and beyond.

Dana: Depending. Either reset the culvert I guess if it needs to or . . .

David: Well as opposed to lowering the culvert to remove the perched culvert, I'm suggesting that the riff raft work and the stone work could be done at the end or outlet of that culvert and accomplish the same intent as the Newbury weir would be built as a separate structure. You could still be having the same slope approaching the culvert from the point of view of fish going up stream. Perhaps?

Dana: I think either one would work depending on the – again, I have applied it a few times but not enough to be definitely an expert on it.

David: Very well.

Moderator:

John Spriet: I think it would be higher at the culvert. I think you'd be up into the culvert as opposed to being level with the culvert. If you put the weir downstream . . .

David: Well I'm thinking of the example on the screen. I think it was a natural channel somebody had dug it out. It was quite deep and then maybe 20 or 30 feet away was the fairly large open culvert but it was a hard clay and stone bottom; I think the reference was, and so perhaps that's a type of situation that maybe got a culvert bigger than you need from the point of view of flow in the drain and you could afford to have the rock structure at the downstream end of the culvert, as opposed to building a separate structure 100 feet down from the culvert.

Dana: Separate weir.

David: Separate weir.

Dana: Yeah if everything was stable, depending on where you put it I don't see why where the position would matter as much as long as you back filled the culvert.

David: Thank you. Now the other issue is I think I mentioned it was made of broken concrete as opposed to perhaps broken stone for the subject of each individual assignment. I think that was mentioned wasn't it that it's okay to use broken concrete under certain conditions perhaps more as fill in to the weir or adjacent to the weir, but there shouldn't be anything
wrong with broken concrete if that's readily available as opposed to importing slightly more expensive material?

Dana: Well if someone else knows more about reconstituting concrete, I don't have the full story on that; I was talking to someone else about that earlier in terms of if there's something with that reconstituted concrete does it go through a process or kiln that you find in a quarry to take any... you don't want it to change the pH of the water with having that effect. So as long as it doesn't if it looks like natural stone then why not use it if has the rebar taken out of it and basically mimics natural stone, I don't see why you couldn't use it. But anything when it becomes more of a waste rock then backfill, then a bridge or culvert will be the best use for it; but if it mimics natural stone, then why not use it.

David: Very well, thank you. Now to change the subject. There seem to be some raised eyebrows with respect to getting rid of the beaver or any wildlife that's causing damage or injury or threat of injury to the landowner; and the issue was whether or not if it was a municipal drain, would it be the landowner only that would have the opportunity go get rid of the offensive wildlife or could it be the Drain Superintendent for example that has the responsibility under the municipality to look after the drain; and perhaps we could have a little discussion on that. It seems to me that as I understood it the law says that it's the landowner that would have the right to deal with a situation like that, and I think I would be right to say let it be the Drainage Superintendent or the Drainage Engineer or a neighbor or whomever, they certainly should get the approval of the owner of the land where the offense is taking place, such as the beaver dam or their cutting down somebody's favorite trees or whatever in order to make sure the landowner doesn't have the right to object after somebody goes in and removes the beaver. So I'd like some discussion about that aspect of it. Does the law specifically say the landowner as opposed to somebody that has responsibility for drains or trees or whatever?

Panel Member: Garry Fischer: At the end of my presentation there was a question from a gentleman over here and I misunderstood. The drain is the responsibility and is owned by the municipality. Technically, the landowner owns the land under it. So the municipality is really responsible to keep that drain open. The beaver dam is an obstruction so therefore the Drainage Superintendent can send the trapper in to remove the beaver and open the dam. Now, under the Ontario laws, trapper's laws, a trapper must have written permission to trap on a person's property. There are two reasons for that. First of all he's covered by a blanket liability insurance under the Ontario Trapper's Federation for liability, for him; that covers him so that the landowner is relieved of anything that happens to him while he is on that property, that's number 1. The second thing: The Ministry of Natural Resources has
to be notified where you are trapping. Now, if the municipality sends the trapper in, he does not have to have permission from the landowner because the municipal drainage act allows the Drainage Superintendent or his designate to go on the drain to remove obstructions. So you can get away with that. I just had interpretation of that just last week; so you don't have to have written permission from the landowner. However, let me point out--beavers just don't live on the drain alone; they usually migrate in from the swamps and adjacent areas. So the municipality, in this case the City of Ottawa, if I'm working on a drain and I notice the beaver's swamp 50 feet to 100 feet over here where the lodge is, most of the time we will remove the ones that are closest or adjacent to the drain; because you're only going to have to go back in six months again and remove the same problem. So in that case you should really contact the landowner, get written permission from him, whether the landowner wants to pay for it or not, your municipality has to pay for it because the municipality charges the landowner back assessment for drain maintenance anyway and that's a cost that's usually charged back to everyone on the drain is drain maintenance. Have I answered your question?

David: I believe so. So if your municipality contacts the bona fide trapper that's going to follow the rules then the landowner will automatically be contacted by the trapper.

Garry: He should, he should. He doesn't have to if he's working on the drain. If he's working within the right of way of the drain, the trapper is authorized to go in if he has the permission from the Drainage Superintendent to go in and remove that obstruction. He can remove them. But to try to keep the peace still within the trapping community, all right? Because normally trappers in season go around and sign up landowners. So it's only out of courtesy that you do that. In most instances we do it, okay? Because the landowner usually asks us "While you're here can you go and look after some raccoons in my barn? Skunks, and so on and so forth, or I've got more beaver problems in the back 40." That's usually the way it develops. So it's only a courtesy thing but the Drainage Superintendent has the right to send that trapper in to remove the obstruction.

David: I suggest as a Drainage Superintendent that maybe it's a little more serious; and what happens if the lady has moved from the city to the country and she loves beavers; as long as anybody steps on their property along the drain to remove her pet beaver, I think you'd make the front page the next day, so I would suggest it is necessary, law or not, but for a certain somebody to have spoken to that landlord.

Garry: That is right.

David: Thank you.
Delegate: 
Bill Dietrich: I have a couple of questions mainly for Kenn, in relation to the Holland Marsh project there. The first one is the cost of that project I think you estimated at 14 million and that will be split up between publicly owned and privately owned properties. I believe you said about 6 million will be assessed to private land owners. Of that, I was wondering if you could give the audience kind of an estimation of how the breakdown of those costs would be to those property owners between the 65,000 acres upstream and to the farmers within the Holland Marsh. What share of costs will they be paying? And secondly, I was wondering, in this project, if it ever goes to construction, you’ll be applying for a grant through the Ministry of Agriculture and Food for I assume the Agricultural portion of that assessed project, which of the 6 million dollars, that could amount to, if it is agricultural, of that 6 million we are looking at about 2 million in grants and would that be spread out over a few years or would you just use up Sid’s budget all in one year?

Panel Member: 
Kenn Smart: Well, I’ll answer your first question first, and then the second. The percentage breakdown between the marsh farmers and what we will call the high land farmers would be 75% to the marsh, and 25% to the highland. There was no detail method that kept me, as there is no for any assessment. It was a gut feeling. I considered what the costs would be afterwards – was that a fair percentage difference between a highland farmer and a marsh farmer considering the purpose of the work, who is benefiting, what portion of the work serves the highlands so It was a gut decision as it is supposed to be. I settled on 75/25 and that was affirmed went it went through the 76 court. With respect to the grant – Sid and I have talked about the grant on a number of occasions on the marsh. I think it is recognized that it may very well be a special amount. I know Sid is trying to, at least I gather he is always trying to think of what the requests will be each year and whether there is any surplus and whether there is any mechanism to give funds before bylaws are passed. I know he has gone to bat on that issue. He has attempted, but I don’t think he’s been successful so far but I think he’s still pursuing it. In terms of the actual bills – if the province wasn’t able to pay it all at once; and I think that’s what they would like to do. They would like to give the municipality the full sum at one time. Whether that’s a special amount, I don’t know. You’d have to ask Sid about that but if they aren’t able to do that, we anticipate the billings to the people will be straddled every other year, so it could be four different billings to the people. Theoretically, the grant could be less than, well it was 2.1 million in 2006. It is probably now closer to 2.4 million, and maybe by the time it is constructed, it could be even higher or not. It could be half a million or more spread out over four different periods. You know, a little bit more than half a million. We
haven’t finally decided. The final decision hasn’t been made, but I think the province is trying to find a way to get some money in the project now if they can. We wish that hundreds beside OMAFRA had the same opinion and we really feel there should be many other federal and provincial agencies prepared to inaudible.

Delegate:
Art Jahns: Just to add to that a little bit – Sid tried to basically (inaudible) sources to put towards this fund, so he’s allotted six million, I believe it is. If there was a little less than six million, that surplus could go there so it wouldn’t impact anybody. That’s what he’s trying to do. But, it was unsuccessful this past year because we don’t have a by-law passed.

Kenn Smart: I might add to Paul’s comments about perhaps the DFO should consider as a public agency, sub section 26 – I would be very interested, personally.

Delegate:
Jim Bartlett: I’ve got a question for Barry. I would like to know if there is any impact of a pipeline crossing a property. Is that any impact on the property class tax rate?

Panel Member:
Barry Sinclair: I can’t think of a situation where it would. If the property is still farming, I’m thinking, on the surface. You’re talking about a pipeline below ground?

Jim: That’s right: an underground pipeline going through farmland. Just in our area there’s been multiple pipelines going side by side and now the one right of way that I’m familiar with is something like 160 feet wide. It’s quite a swath going through the property and I wondered if in the future this may have any impact on the way the property is taxed. Will this pipeline easement be looked at as a utility corridor or anything?

Barry: I guess that is an option, and if the pipeline corridor would result in a lower tax, I can see people trying to pursue that, but I don’t know the details of pipelines. There is a special property class for pipelines, but I’m not sure how it compares to farmland. So if we think of something underneath, where you can still basically farm on top of it, then I’m not sure it would really impact that much.

Jim: So the pipeline classification for land use – would that pertain to buildings and their above-ground?

Barry: No, it would just be the corridor itself. My understanding of pipeline is really for hydro corridors, railway tracks, that type of thing, so it is a
special way they are taxed because municipalities are still trying to get a certain amount of tax from most properties that are out there so if they’re privately owned, they call them pipeline corridors basically so they’re treated differently. Whether something underneath the ground would be considered that, I’m not sure. It’s an area to investigate.

Delegate:
Jeff Dickson: I have a couple of questions. One for Tim. When you go to an On Site Meeting, do you like to take one of your staff with you to do the recording of those minutes, or do you, to save some costs, use municipal staff for that purpose?

Panel Member:
Tim Oliver: Where municipal staff are willing to bring somebody along, in the case of Chatham-Kent where I do the majority of my work, they have union analysts, but they also have 6, so they have a number of drainage analysts who attend the on-sites and record those minutes. In other municipalities where they don’t have that luxury, I either have to bring somebody along. In some cases I haven’t done it and tried to gather the minutes from my own discussions with land owners and prepare my own thing but that, from my experience, sometimes I’ve done that because in those particular cases I have put a summary of the minutes in my report, and then they were my interpretation of the discussions in the meeting. Certainly, it would be best to have someone do that. In the case of other municipalities, when I bring someone along, I have never been questioned why. To expand on that, if I was going to have someone else assisting me with the work on the drainage meeting, it would be to work as well, beyond the purpose of recording minutes.

Jeff: You alluded to the fact that sometimes you include a summary of those in your report. Do you distribute those minutes to the attendees at that meeting or do you simply record it and make it available for those who request it?

Tim: They are in the report of the schedule, whether that’s a summary of the minutes, or, if it’s in the case of as I mentioned, Chatham-Kent, it’s an analyst who records the minutes, those are actually included in the report as well, and from what is stated in those minutes, the person who made that statement is so indicated in the minutes. From my experience, I have not had report that I can think of where the minutes were challenged or someone made a statement to the effect that it was untrue what was put in those minutes. From what I can see, it had an advantage, because things that may have been said at the meeting that were then said different in front of the drainage board or council regarding the incident of the report. I’ve gone back to the minutes and said this is not what was said at the site
meeting. I’ve incidences like that, so I’m in support of putting them in the report.

Jeff: Thank you. I have a question for Paul with respect to the public and how public is public. Have you had gentleman from the CTA is gone, but with respect to abandoned railway lines purchased by the municipality and used as a trail for ATV’s, snowmobiles, walking, whatever the case may be, and you were to be an engineers to prepare a report of that, would that still be considered public under section 26?

Panel Member: Paul Courey: Well, it’s not a railway in fact, because there are no rails there and it’s not land owned by the railway because the municipality bought it. So, now we’re talking about a piece of municipal land. It’s not a road, but it’s akin to a public works yard or a landfill site or anything else a municipality owns. So let’s think about the definition of a public utility and see if we can find a slot to put this in. What did you say it was? An ATV trail or something?

Jeff: Snowmobile/walking/hiking/ATV. A trail.

Paul: There’s no works constructed there. In section 26 contemplates a public utility definition. In section 1, talk about things that are built there. A trail is something akin to a pipeline that’s been constructed? I don’t know.

Jeff: Basically, the trail is the remnants of the railway on built up land but with all the cinders, rails and ties removed, so if the situation was such that if there was a significant fill area, and the overpack would be 20 feet deep and because of the significant costs to open that and replace that trail, it was more costly in fact to directional drill, that is the sort of situation I was alluding to.

Paul: Well, maybe that’s the catchall phrase at the end of the definition for similar works for the convenience of the public. I know how you can find out. Put in an assessment and see what happens. It seems pretty boarder line to me. Certainly, if you took a railway right of way and put a waterline or sewer line down it you would have used section 26. So really, the only question is, is the trail a similar work?

Jeff: Thank you. Garry – you had indicated something about a bona fide trapper. Is there an association that trappers belong to so that if a Drainage Superintendent wants to hire one of these qualified individuals, so you’re not getting, for lack of a better word – my apologies - a “redneck”. Is there such a list?
Panel Member:
Garry Fischer: Yes, there is. First of all, most trappers; pretty well all trappers now are members of the Ontario Fur Managers Federation located in Sault Ste. Marie. The administration was changed a few years ago from MNR. MNR doesn’t issue the licenses anymore, but you still come under the jurisdiction in terms of regulations and so on and so forth. The best thing you can do is try to get in touch with the local Ministry of Natural Resources office. I know that is difficult because they’ve really cut back and so on but go on the Ontario Fur Managers website and you can key in information and they will tell you what trappers are listed in your area and which ones do nuisance animal removal on a year round basis. Some trappers don’t want to do it. They just do it for fun and in the winter time and so on. They’ve been decimated as I mentioned in my presentation. There are not many of them left anymore. Very very few trappers from the province of Ontario are full time like we are. Very very few.

Jeff: Thank you very much.

Garry: Just a comment if I may with regards to cutting rail lines and so on. We just did some work in the Ottawa area recently for the pipeline when they put two lines in and they did cut the Canada Trail which was one of the original trails they did years ago- Rails for Trails kind of thing. They actually cut the trail and put the pipe in. They closed the trail down and had public signs up. They didn’t go underneath it; they went right through it.

Kenn Smart: You mean it stayed as an open cut until they had finished. It was actually a blockage.

Garry: Yes, they blocked it for a period of time. They did it very quickly though.

Kenn: But after they were finished?

Garry: It was all restored.

Kenn: Do you know who the costs were assessed?

Garry: I’m not sure, because again, I think the City of Ottawa owns a portion of – I’m not sure if they own it or not, but I think it’s part of the Canada Trail’s network so I don’t know what jurisdiction it falls under.

John Spriet: We did a job that involved Beckwith Township and the Canada Trail and we didn’t go through it because the drains stopped short of it and didn’t have a grade outlet pipe under it but I assessed the Canada Trail as I would assess another corridor. It wasn’t much money.
Delegate:
John Boyd

I don’t have any questions. I’m here on my own as an Ontario Land Surveyor, but I’m also the President of the Ontario Association of Land Surveyors and I would like to thank the organizers and the presenters for a very good program. Very informative. There are not many Ontario Land Surveyors still practicing drainage engineering as well, but I’m going to check around and see how many are, and certainly mention that they should come to this because it was a very good presentation. Thank you very much.