

Drainage Work Group (DWG) Meeting

December 8, 2022

Following the welcome and introductions, Tom Gile, Board of Water and Soil Resources (BWSR) gave an overview of the agenda. Information was provided about the following drainage-related events.

- MAWD Annual Conference: December 1-3
- AMC Conference: December 5-7
- MASWCD Annual Convention: December 12-14
- Drainage Conference: February 8-9

Outlet Adequacy

Tom gave an overview of the outlet adequacy document he prepared (as follows).

The DWG requests the Drainage Management Team (DMT) review and provide options for more detailed assessment of "Outlet Adequacy" during drainage projects (Drainage Projects as defined in 103E.005 Subd 11). We ask that this effort be done in coordination with membership from the DWG with a strong technical background. As options are developed early sharing with the DWG for early feedback as well as wider review during our 2023 meeting cycle would be preferred.

Key areas of assessment of outlet adequacy include but should not be limited to.

- *Hydrological return frequencies which should be assessed?*
 - *What supporting modeling is appropriate?*
 - *What conditions should be assessed?*
 - *What aspects of the hydrographs should be considered?*
- *Should assessment methods/criteria vary based on drainage system characteristics and receiving body characteristics (I.E. Tile or open channel systems vs riverine or basin receiving bodies).*
- *An effort to define the scope of what is evaluated on the system and receiving body.*
- *What, if any, aspects of 103E.015 are appropriate to consider specifically as a part of the "Outlet Adequacy" Assessment.*
- *Recommendations to validate "Outlet Adequacy" when water quality or storage features are proposed to demonstrate additionality of those features above and beyond what is needed for the improvement to stand alone.*
- *Add language on Climate Change/Extreme Weather.*
- *Possibly better definition to "Outlet Adequacy"???*

Technical DWG Subcommittee Members

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| • Joe Magner UM/MCEA | • Chad Engel (Moore/Drainage Authorities) |
| • Len Kremer IWL | • AMC |
| • Phillip Solseng (Friends of the MN River) | • DNR |
| • Myron Jesme (MAWD/RRWMB) | • MPCA |
| • Chuck Brandel/Jacob Rischmiller (ISG/Drainage Authorities) | • Rita Weaver, BWSR |
| • Chris Otterness (HEI/Drainage Authorities) | • MDA – Mark Dittrich |
| | • Landowner/Farmer perspective |

The intention is to move toward a set of recommendations made to the DWG. The tentative timeframe is to bring a substantive report to the DWG when we meet again in June.

Input from DWG members:

- Definition of outlet adequacy is a good idea. Not clear why we would want to be required to model our outlet for a flood event when designing the drainage system to a 10-year or less storm event. Why is this a requirement rather than consideration? Minnesota Statutes Chapter § 103E.015 was established for the drainage authority to use other funding mechanisms in the drainage proceedings. Where is the pot of money set aside to do the study for changes in statute that would be required versus what is now considered?
- What happens in the Red River Valley with technical papers may provide a model for early coordination.
- Watersheds function differently throughout the state. This is one of the problems in getting substantial change because of the complexity. We need solutions that work through the whole state.
- AMC may have someone that is a county employee that works more directly on drainage systems as a member of the subcommittee.
- The subcommittee should include somebody that works at the county or local level.
- In discussions at the MAWD drainage conference, attendees thought capacity and distance downstream from the outlet should be considered. There should be definition of the scope of what we look at.
- What is the definition of adequate? That is the first thing that needs to be addressed. There is no definition of outlet or adequacy in statute.
- Let's use facts. Take the emotion out of this and make it science based.
- Adequate doesn't mean no impact.
- Downstream doesn't mean from here to the Gulf of Mexico.
- BWSR staff would like a definition of adequate. Perhaps we make up a list of criteria that say if you meet these, then your outlet is adequate. Then we figure out if the model can make that determination. It may not be realistic to do.

Tom Gile will bring a revised document to the January meeting. He asked if this was a worthwhile effort.

Comments from DWG members:

- This effort needs to produce results. We are not in a good place. Status quo is not acceptable by anybody. Conflict and people coming late to the process are not good for anybody. There needs to be sincere effort to straighten out technical aspects, so everyone understands and assists in the decision-making process, so at the end of the process, we are living with good results and regionally based solutions. The agencies need to be behind this.
- We are forced to talk about this now because of the DNR drafting legislation that hasn't been vetted through the DWG. It would be helpful to know where the problems are and what they are. We've asked but have never gotten an answer. Coordination is not a problem in the Red River Valley. It would be good to hear other stories about the problems in the state and how we can make things better without adding new laws. If a drainage authority is not complying, they should be. Maybe it is a good step to have that discussion before a statutory language change in Minnesota Statutes Chapter § 103E.015.
- BWSR believes the agencies are getting behind this. They want to have a deliverable out of this. Each person in a state agency likely reviews adequate outlet differently. The way it is now is difficult for reviewers.
- There is value in our experts developing a better understanding of each other and having open channels of communication.
- The Red River Valley mediation agreement is an example of where change did occur. A change in legislation wasn't needed. We can show that our projects account for water quality and water

quantity. They qualified for Clean Water Funds. People shouldn't have preconceived notions that legislative changes are needed.

- The DNR wants a product that can be useful.

BWSR Water Quality and Storage Update

Rita Weaver gave an update on the BWSR Water Quality and Storage Program. When this began, BWSR held a series of meetings to determine what this program could look like. In this funding round, they received almost \$4M in requests, had \$1M available, and awarded about \$850K. There is \$1M available for next year. The program is still in a pilot phase. The priority areas for this program are the Minnesota River Basin and Lower Mississippi River Basin. For the second phase, projects within the priority area will be assigned points.

BWSR is hoping that there will be an increase in funding for this program for FY24. Minnesota Statutes Chapter § 103E projects were not eligible for funding in the pilot. If BWSR gets an increase in funding, they want to reevaluate how to do that. They intend to schedule a series of meetings in the spring to get feedback for changes in FY24. Discussion won't be held at the DWG regarding this topic.

[10-minute break]

DNR Proposal and Discussion

Randall Doneen, DNR encouraged people not to get too hung up on the language, but to understand the concept. The language is not solid at all. They are still making revisions internally. They are interested in what people think of the language and what they are trying to achieve.

The concept is early coordination and where that can occur in statute. What the DNR has been observing is that in some cases, they get through the Final Engineer's Report (FER) and issues are still not resolved with the design or potential environmental impacts. Because of this, the proceedings are delayed. The DNR is looking for a formal point, prior to the Preliminary Engineer's Report (PER) being developed, where they could engage on a project and strengthen how the environmental considerations are incorporated into drainage projects. The DNR envisions a public meeting prior to a drainage authority directing preparation of the PER. Then, the DNR and other agencies can hear what the petition is requesting, what areas are concerning, issues to address, where water flow is proposed, and other environmental considerations. The agencies would highlight the ones that are particularly important for the engineering report to address. The technical panel would generate a report as a scoping document for the PER. Then, the project would be much more complete and only minor feedback would be needed for the FER. This would be an additional process step in an already process heavy proceeding. Early coordination needs to have significant benefits for all parties. There must be certainty that the drainage authority would get in information that needs to be developed so time and energy is focused and efficient. That way, there would be less of the post FER considerations to be worked through. This process also brings in other agency expertise. The DNR wants to ensure that before a project moves forward, these concepts are included. They want to formalize early coordination, strengthen environmental considerations, and ensure that other agencies have input.

The DNR has had individual conversations with MCEA, IWL, Minnesota River Coalition, AMC, MAWD, and MASWCD. The feedback received includes: do we need a statute change? How big is the problem? Perhaps there could be a pilot project. They heard that drainage projects have had issues that are really big and maybe there is a scale issue. They heard concern about the public meeting and the requirements to have it, additional resources would be required, agencies' ability to attend the public meeting and generate the report, the added timeframe for the report, and additional work involved. They also heard that it doesn't contain broader notification.

It is the DNR's opinion that the language changes "strengthen" Minnesota Statutes Chapter § 103E.015. It is a necessity to have early coordination and the legislation is laid out nicely.

Comments from DWG members:

- Is the DNR going to bring this forward? If it is your intention, is it going through the governor's budget process? There will be an FTE impact. Is there a plan for consultation with the ag groups on this? They are absent of the people you have reached out to. DNR response: Whether this goes forward depends on this conversation. The agency approved it to go to the governor's office. The governor has encouraged agencies to figure out what people think about it. It is unique to have the opportunity to have stakeholder input. There is still an open question about the bill. This issue is important to address. We haven't spoken to ag groups. We have an intention to schedule those meetings. There is a standing legislative meeting with commissioner's office and ag groups. We realize that additional resources are needed from the agency perspective. Those will be important to note if it gets to legislation. We are trying to increase our water management shortfalls that would be directly related to this.
- At this point, there has been no outreach from the DNR regarding the pre-session meeting with the ag groups. DNR response: Jason Garms is the main contact for the DNR, and it is on the to do list.
- With this report, are you saying it is a requirement of the drainage authority to meet the requirements in this report, or the petition can't move forward if not vetted? DNR response: The report would identify those things that absolutely have to be in the report, recommendations, and considerations in other facets. How you go about it can be variable. There will be some latitude in how the drainage authority addresses this. We are seeking consistency in how these are considered. Some drainage authorities do well, some don't.
- Is this something like outlet adequacy where the goal posts keep moving and achieving the requirements are unattainable? And all the agencies must agree to this? A drainage project is for the landowners. These are the people that pay. It is their livelihood. Who is going to pay for this? The landowners don't see a return on investment for this. DNR response: We don't see consistency because drainage authorities and engineers pursue these. We need to shore it up and be consistent. The hope is that this process would save time and money, not adding a lot of expense.
- The DNR attended the Minnesota Association of Watershed Administrators (MAWA) meeting. When will we hear answers to the questions that were raised at that meeting? The MAWD Lobbyist and Executive Director met with Commissioner Strommen and Assistant Commissioner Meier about what was going to happen with this legislation. They assured us that unless there is some agreement, nothing is going to happen. Why was this taken to the governor's office when that has not traditionally been done in drainage issues? Why do you keep insisting on saying that you will move forward with legislation? What you are doing is endangering the whole work group process. That blows up everything that has been established. Why should we waste our time in meetings like this discussing something you would take to the legislature anyway? You need to be careful about what you are saying. What the DNR is doing is undermining the process and the credibility of the process. DNR response: I don't know what I have said that has indicated that the DNR is going to bring this to the legislature. That is not the intent. The reason for hesitancy is that I don't control what my agency puts in front of the legislature. We are engaging in the process as it was intended, and fully support the DWG process. We will report back to Commissioner Strommen and Assistant Commissioner Meier. They make recommendations. They are waiting for this feedback.
- AMC and MAWD met with the DNR on November 11 for one and a half hours. There are two things that are problematic from that discussion. The DNR made it clear that any proposed legislation would be vetted through the DWG, yet I heard you say that the agency has approved it to go to the legislature. We also suggested that you meet with ag groups. That was 27 days ago, and nothing has happened. Putting meeting with ag groups on a to do list is not in your best interest. DNR response: Why is it perceived that the DNR is not bringing this to the DWG? The DWG works on consensus, and

we wanted to bring this to the group before the legislative session. Response from BWSR: In listening to the conversation, there is concern from DWG members about the timing with the assumption or belief of this leading into the legislative process. I appreciate that you are here, but additional, earlier outreach would have been better. DNR response: The agency makes a call for proposals before the legislative sessions. This is the process by which they are considered within the agency. The commissioner's office decides which ones will be considered. This proposal made it through that. The governor said talk about it. We will see what ends up in session.

- The DNR started out having stakeholder meetings and gathering feedback. That feedback isn't reflected in the proposal. That along with all the outreach not being completed builds on the need to slow down and address our concerns with this approach. We have heard from you that the DNR is doing this. Essentially, from the DNR's perspective, there is a need to formalize early coordination (not sure AMC would agree) and that you are seeking consistency on how the environmental considerations in Minnesota Statutes Chapter § 103E.015 are handled. These are two different issues. The way this addresses Minnesota Statutes Chapter § 103E.015 is in addition to early coordination work. There are examples of early coordination with varying levels of success. We have talked to some of our members that have tried to do outreach and early coordination. In at least one example, that resulted in a petition being withdrawn because it was clear it would be more difficult to move forward. We want to work on early coordination and figure out solutions that will help the process work smoothly. What we have in front of us will add time, complexity, and cost. DNR response: Your comments are well received. It was November 2020 when we first brought this concept to the DWG. Jason Garms' attendance at the standing legislative meeting is out of our hands. The framework for the legislation is good, but maybe it needs wordsmithing.
- Thank you to the DNR for providing thoughts, stepping forward, and bringing this up. The bill is probably not the way everyone likes it. These issues have to be on the table and discussed. It took several years in the Red River Valley to reach agreement. This is part of the process. As far as return on investment, I understand how the drainage code works. There is a cost-benefit analysis. If it's not positive the project can't go forward. There are costs downstream that should be considered in a drainage project's return on investment.
- There is a major flaw in this proposal regarding funding which shifts the cost of the engineering to before the petition is received. Drainage law doesn't provide a funding mechanism until after the petition and bond are received. How can any of the engineering be done? DNR response: That is not the language we are moving forward with. There has to be the bond and signatures have to be in place before the report is generated.
- This is not the way to vet through the DWG process. Within the agency you drafted legislation and then you came to us to discuss the language. That's NOT early coordination. That's really the problem. It goes both ways, but obviously not in St. Paul. This proposal creates more money for attorneys and environmental groups to sue. If you make these considerations a requirement, any group can say they can sue over their issues. I would like to see this proposal disappear until we get through the process. Petitioners are not going to pay for this. Minnesota Statutes Chapter § 103E.015 was set up to allow outside funding for drainage projects. The costs for this should not be borne on one or two landowners to do a study on an outlet. If you want more analysis, you, IWL, and MCEA should put money in a pot. Then we can talk. For this session it should disappear. DNR response: You are saying that we should put this aside and allow the adequate outlet conversation to occur.
- We could accomplish a lot with figuring out the adequate outlet definition. A lot of people were taken aback by the early coordination discussion. There have been some conversations, but we are feeling caught off guard seeing legislation without communication. DNR response: We first brought this up in November 2020, having conversations with DWG and MADI.

- There are inconsistencies in the proposed language. A detailed hydrology analysis would be subject to a person's opinion and perspective. I don't know how to define it or how it would be helpful to an engineer developing a project. I also have an issue with the addition of the 90-day time period. Minnesota Statutes Chapter § 103E.215 requires the drainage authority to schedule a hearing and appoint an engineer within a certain period. These inconsistencies aren't minor. They need to be thought through quite a bit before moved forward. DNR response: These are points we will consider. We have already dropped the language proposed for Minnesota Statutes Chapter § 103E.202 completely.
- From the meetings I've attended, I do see how this is being done by the DNR is within the procedures of DWG. They brought the language to group in good faith and began explaining their intent in 2020. This proposal is an important recognition of the impact on state resources that drainage projects have and interest in DNR to prevent problems that come up early in the process for streamlining and consistency. There are some procedures that need to be addressed. The notice requirements are not defined. BWSR response: Within the scope of this group, the intention is to share ideas and have conversations about them. The concerns that I have heard are less about bringing something to discuss, than the level of awareness that legislation was coming and the outreach around it. In past conversations it was never implied that there would be impending legislation. This group needs to be a safe place to have this conversation. We want to have and expect some hard conversations in this group.
- The issue is that instead of the DNR bringing something in good faith to get consensus, they threaten taking a proposal to the legislature.
- Words have consequences. If the DNR is not going to the governor with this, then they need to correct that. BWSR response: Communication around this potential legislation has created more angst than anticipated. Clearly this is not ready by any stretch to go to the legislature.
- Using the word criteria carries a connotation of a standard. We can't develop a standard without having the adequate outlet definition.
- The DNR stated that if this legislation doesn't go forward, they are interested in a pilot project. The process is not working now.
- Comments sent to Tom Gile will be shared with the DNR.

Registry Response – Thoughts on Timeline

Tom Gile explained that he received a response to the drainage registry from MAWD and AMC this morning. He thanked those organizations for providing a response despite hosting conventions the last two weeks. He presented a summary of the document.

Brian Martinson explained that AMC and MAWD wanted to be responsive. AMC did some outreach to members about what practices are happening beyond current statutory requirements. There are many different approaches, with some counties going above and beyond statutory requirements. MAWD and AMC would like to have the opportunity to gather information and share it with our membership. We have concerns about doing this statutorily, but we do have interest in improving processes. We want to share and promote best practices with our members. We would like to invite proponents of modernizing these efforts to talk about your perspective with our members and continue to build support. The document presented is what we were able to coordinate together. We worked quickly to mesh our ideas so we could offer something in writing to the group.

Tom will distribute the document to the group. It will be discussed at the January meeting. Comments from DWG members:

- Thanks to those involved with this. AMC adjourned from the annual meeting about 27 hours ago. To get everything vetted, I appreciate staff and others making this happen.

- Thanks to AMC and MAWD for the jointly prepared statement. I will look at it between now and January and discuss it with those I represent.
- We are looking for a comprehensive solution. The ones that create the most problems, do fewer best practices. We are talking about notification. We need to find a way that the people who create the problems are included in this.
- Offices and counties have varying levels of staff. It is important to investigate new opportunities, educate, and offer what is being done that maybe hasn't been considered by other counties or watershed districts. As drainage authorities, we are not necessarily advocates or opponents of a drainage system. We are managers and decision makers on a process. Landowners and their representatives are important to us. We are maintaining systems on their behalf. It is necessary for them to weigh in.
- At the MAWA meeting, the DNR got an earful. The primary theme from the administrators is that we don't seem to have these problems since we are following the law. I have to believe there are fewer bad than good. Let's find out who needs assistance. That helps everybody. The bulk of drainage authorities are doing a good job, what about the 5% or 10% that aren't doing this? We need to do a better job educating to ensure everyone knows what they are supposed to be doing. Don't punish us because we are doing a good job.
- We incorporate BMP plans for projects. If there is no funding to do BMPs, that doesn't make us bad. We put our best foot forward. BMPs aren't always affordable. If there was more funding, more people would step up to the plate.
- There is a reluctance at the Capitol to pay anything toward drainage and it is perceived that landowners should pay for everything. There is more and more desire by the public about environmental issues, how do we get financial assistance for that?
- With these "criteria" somebody should be funding that, not me, just because you want to see a feature on my acres.
- The drainage registry language that was introduced was not because anybody was violating any law. Current law doesn't do what they want a future law to do. How do we increase notice to those who have a legitimate, vested interest in what's happening? We need to meet those needs with the lowest cost.
- The registry portal has nothing to do with BMPs. It has no cost. All we want is the drainage authority pushing a button and saying they received a petition. Every other business controls their pollution. They are not subsidized by the general fund. Ag shouldn't get a free ride.
- The proposed bill was going to give \$250K to BWSR to do the portal. It's not just the push of a button. Right now anyone can register with a county and get notice of petition submissions.

Tom reminded everyone of the need to be very intentional in our conversations with this group regarding potential bills, early coordination, and outlet adequacy. There is definite tension.

Next Meeting

Thursday, January 12, 11 am to 2 pm in person and virtual at Minnesota Farmers Union.

The meeting adjourned at 2 p.m.

Meeting notes by Jan Voit