

Drainage Work Group (DWG) Meeting

January 12, 2023

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. Items of note and next steps are highlighted in gray throughout the document.

- Minnesota Corn Growers Association Annual Meeting: January 18
- AMC Drainage Conference: February 8-9
- Minnesota Association of Drainage Inspectors (MADI) conference: March 8-9

Outlet Adequacy Subcommittee

Tom Gile explained the document that he shared with the DWG shortly before today's meeting.

The Drainage Work Group will be creating a Technical Sub-Group consisting of a few DWG representatives with strong technical background to evaluate and provide recommendations to the full DWG regarding "outlet adequacy". The intention is to look at terms and methods used to evaluate outlets for drainage projects. This process may lead to a set of options and recommendations to the full DWG for consideration in an effort to provide a more repeatable and defensible process for evaluations and approvals by drainage authorities, in particular when outside funding is considered for the projects.

Key areas of evaluation 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" evaluation*
- *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 he improvement to stand alone*
- *Add language on Climate Change/Extreme Weather*
- *Possibly better definition to "Outlet Adequacy"*

Joe Magner (U of MN/MCEA)

Len Kremer (IKEs)

Phillip Solseng (Friends of the MN River)

Myron Jesme (MAWD/Red Lake WD/RRWMB)

Chuck Brandel/Jacob Rischmiller (ISG/Drainage Authorities)

Chris Otterness (HEI/Drainage Authorities)

Chad Engels (Moore/Drainage Authorities/RRWMB)

AMC (staff from Marshall and Lyon Counties)

DNR (TBD)

BWSR (Rita)

MDA (Mark/Jeppe)

MPCA (TBD/Ad hoc)

Farm groups (Tim Raddatz)

The intent is to have this group be a subcommittee of the DWG. The members of the Drainage Management Team that would be represented already attend the DWG meetings. Any recommendations that are developed by this subcommittee would be presented to the DWG. Discussions are still being held with MPCA to determine their membership. The list of ideas is not intended to be inclusive, just a starting point.

Input from DWG members:

- Is the intent to start these meetings soon and to have recommendations by the time the DWG meets again in the summer? BWSR response: yes.
- This group should not be limited to discussing outlet adequacy. A checklist for drainage project submittals should also be part of this. BWSR response: The subcommittee should focus on outlet adequacy for starters.
- The statute already covers what is required in Preliminary Engineer's Report (PER). Is the intent to deviate from what is already written? BWSR response: The intent is to determine if those documents provide the necessary framework for outlet adequacy and possibly refine the language in the drainage manual.
- Will there be an approach for differences of opinion? BWSR response: The intent is to have broad support for any recommendations that are made. Any disagreement will be contained in the report.

DNR Proposal and Discussion

Randall Doneen reported that DNR met with representatives of AMC, MAWD, and RRWMB on January 6. Discussion was held regarding the impetus behind the DNR's legislative proposal and what they are trying to do through early coordination to be more efficient. There is a willingness on the part of the DNR to continue to work on early coordination with a subcommittee of the DWG. It is important to continue to make progress on this effort. The DNR does not intend to introduce early coordination legislation this session.

Comments from DWG members:

- We look forward to getting this issue presented so everyone understands what's in front of us.
- We are interested in seeing progress, outcomes, and change. We have heard that a lot of the problem with DNR has to do with staffing. This is a budget year. We are concerned that if DNR doesn't get staffing this year, it will be another two and a half years before that happens.
- BWSR will find a way to have the capacity to staff subcommittees. These are important, substantive issues.
- MAWD is interested in looking at the staffing issue. Common complaints from our members is not a question of who to contact, but the lack of response from the DNR. We were asked to support a new position that DNR is asking for this year. At this point, we haven't talked to enough of our members about this. We will give the request serious consideration.
- MADI thanked the DNR for taking a step back and going through the DWG process. It shows good faith.
- This is a two-way street. Everybody is asking for more money. If county commissioners are an arm of the state, they should get help from everyone to get funding, too.
- Regulatory water work is funded through the DNR's water management account, which is in bad financial shape. Resources are stretched thin. The DNR hopes DWG members will support hiring another staff person.
- For the DNR, it made more sense to have early coordination so that all information is managed as the drainage project plans are developed and so they can be more efficient in their delivery with the resources they already have.
- There are some things already in the drainage manual regarding early coordination that should be explored. There should be a timeline and specific goals for the subcommittee.
- Feasibility studies are done on every petition for an improvement or repair. The problem with this proposal is the sideboards, that the drainage authority may not proceed unless group a, b, or c gives approval. That's where we fall off the track for cooperating. That's not the point of the drainage project.

- What is the timeline and status of this subgroup? BWSR response: Maybe DNR has some ideas. With the outlet adequacy subcommittee, that's a lot of groups to manage. DNR response: This is one where DNR can help.
- If a legislative outcome is anticipated, ideally, we would be ready to talk about proposals early in our meetings in June and have things finalized in November or December, which would set this up for next session. If DNR staffing capacity is an issue, it may be addressed during this year's budget session and likely needs support outside of the DWG process.
- Where is the landowner perspective in this discussion? There has been none to date. The staffing issue was never brought to us, it's a new thing we are hearing today. Whatever moves forward, the landowner perspective must be represented.
- The discussion with DNR, AMC, and MAWD concluded with DNR drafting a scoping document that would be provided to the DWG. Comments would be submitted to the DNR, and they would come back with a scoping document and establish the subcommittee when the DWG reconvenes in June. AMC and MAWD do not want to presume legislation is necessary. AMC and MAWD do not believe we are ready to meet during the legislative session.
- Since this is a potential legislative item, shouldn't it be ready to be on the table in June? BWSR response: If the group is having conversations on the side, it may take multiple meetings to digest what is presented. That is preferred.
- MAWD reiterated that in the past, there haven't been DWG meetings during the legislative session. People are going in too many directions. The best approach to this, to give good and full consideration to the issue, is to get the scoping document, and review it. Then come back in June and put together a group to hit the ground running. We were willing to do that with outlet adequacy. We don't want to rush it through. That is a mistake. We need to make sure we are educating our members so they can understand what we are agreeing to. RRWMB agreed that this approach allows us to be proactive and fall in line with our legislative process. We can work with our members so we can support whatever is developed going into 2024.
- The DNR does not want to wait until June to establish the subcommittee. They would like to get responses to the scoping document and identify participants as a starting point.
- Has the DNR met with the farm groups yet? DNR response: They have a standing meeting with them and that was where this topic was going to be addressed. The DNR is going back to meeting with the subcommittee and not moving forward with the legislation.
- The farm groups will be meeting next week at the MN Ag Expo in Mankato. There will be over 1,000 farmers in attendance. Policy development will be addressed at this event. They are going to ask about the DNR's proposal. DNR response: Should the message to them be that we are setting up subgroup and be great if you had participation?
- Input from those paying the bill and are most affected is needed. BWSR response: The message should be about the original proposal brought forward, that there has been robust discussion and debate about it, that a subcommittee will be created which will include landowners. The DNR is open to and intends to have that part of the conversation going forward. The conversations should be held between now and June.
- A question was asked about the timeline. Before we get to the point of meeting, a scoping document is needed. The DNR has to draft this document, so we know what the group is going to discuss.
- The ag groups are not getting their questions answered. It is critically important for DNR to meet with them and layout what has transpired.
- A conversation with ag groups will be helpful down the road. The DNR could have the same conversation they had with NGOs and with LGUs. Lay out what the proposal was, where it is now, and gather their input. That will be better for us to work on results.

- The DNR will take the lead on developing the scoping document. BWSR is willing to be the facilitator or organizer of meetings.
- The ag groups want direct conversations with DNR.
- If the landowners feel they are part of the process, it will be much easier to take something to the legislature. If landowners think they have been snubbed, we are all in trouble. The DNR needs to repair the deficiency of not talking to the farm groups. They are a critical element in this whole process, and they need direct contact.
- This is too important of a topic to just include it in a once-a-year meeting with ag groups. Rather than it being that the DNR checked the box for a meeting, it needs to be their own group invitation.
- Next steps: DNR will draft the scoping document. BWSR will route it through the DWG to get comments. The DNR was urged to talk to ag groups with or without the scoping document. Creating the subcommittee will happen after all these things transpire. BWSR will follow up with DNR.

[10-minute break]

Drainage Registry

Ted Suss provided an overview of the meeting that was held on January 11 with MAWD and AMC. Concepts were discussed. There was no negotiation. MAWD and AMC laid out some thoughts on the bigger picture and some different perspectives on how this moves forward. The conversation was worth having. Initial reaction to the drainage registry proposal were that there isn't a problem and don't fix something that isn't broken. Also, that repairs could not be part of any language. In the revised language, non-petitioned repairs have been removed. The intent of the proposed legislation is construed differently by different readers. Our intent has been to have this reporting process as simple, non-intrusive, and as economical as possible. We do not intend to look at completed projects or those already in process. There are specific items that are being requested.

Carly Griffith explained that in addition to the letter that was sent, earlier correspondence was provided to show that they tried to reach consensus in April and address concerns about the extent of repairs, emergency repairs, and the perceived administrative burden. The record shows engagement with the DWG. The memo presented in August outlines their reasons for broader public notice at the petition stage to avoid later term project costs. The revised language addresses those concerns. They are interested in the consensus approach the DWG provides. The revised language includes removal of non-petitioned repairs and specifies what should be uploaded to the portal. They want to simplify the process and have everything in one place. They brought this for discussion to go through the consensus approach, but this is a budget session. They have reached out to MAWD and AMC and are happy to have other conversations.

Comments from DWG members:

- What is the necessity of the registry portal when we already report to DNR Area Hydrologist and BWSR. Why are we recreating the wheel? Environmental groups response: Many drainage authorities do a good job. Our collaborative has employed a part-time person for years to do outreach in the MN River Valley to get early knowledge of drainage projects and review the projects based on our view of impacts that may not be included. An example of two drainage projects in Faribault County were given, in which it is perceived that the drainage authority has not provided the requested information in a timely manner. The environmental groups are considering filing a petition for an EAW so they can figure out what is going on with the project, which will cause problems and accusations. That's why doing the registry is in everyone's best interest.
- Why not create a folder and do a Google search. This is requiring extra work for something that drainage authorities are already doing. BWSR response: That's part of the discussion, the level of work and effort required. That will be helpful to understand.
- A mockup of the proposed registry has been created and will be distributed to DWG members.

- There are a lot of notice requirements in the statute. Most are of no interest. Proponents would be happy to engage in a conversation with how the overall amount of notice requirements can be reduced. The public needs to know what is happening.
- The notice requirements in 103E should be reviewed, many of them are obsolete.
- Environmental groups receive semi-regular public inquiries outside of a local drainage authority's jurisdiction about a repair or petition. Their interest is in information already being submitted that can be put in a place that is broadly accessible.
- When MAWD and AMC met with environmental groups on January 11, the language wasn't discussed. Having a site where the public can easily search and retrieve information is subjective. Environmental group response: That language applies to BWSR
- The \$200,000 mentioned in the language wouldn't be sufficient for drainage authorities to update their websites. Environmental group response: That figure was provided by the legislature last year.
- The language was changed to specify that entries in the portal would be the responsibility of BWSR so it can be searchable. This is not extra work for the drainage authorities, but for the state agency. The idea is to simplify the process, so drainage authorities don't have to redo websites. This would be done by a central state agency through a centralized database, so the public doesn't have to find contact information.
- In over 30 years, MAWD has not received any complaints from landowners about their inability to access drainage information. Why not put your part-time person to work and do an analysis of drainage projects and how many of the are problems. Environmental group response: We have that list. It includes the name of the drainage authority, project name, copy of the petition, the PER, comment letters from state agencies, and in some cases the Final Engineer's Report (FER). That could be made available to the DWG.
- Instead of recreating the wheel, why not look at what is already sent to the DNR, instead of making us do it twice?
- One of the concepts is the ability to have more information before a PER to provide the ability to engage sooner. Some drainage authorities do this. What's the typical timeline between petition receipt and PER hearing. Professional engineer response: From petition receipt it could be six to nine months. The legal drainage system must be surveyed, landowners are verified, petition legality is determined. If everything goes fast, it's an 18-month process.
- If a notice or report is already going to a state entity, maybe they can do the work of making the information available. If it already goes to DNR, why add BWSR? MAWD and AMC based their comments on the August draft document provided by the environmental groups. The purpose of our suggestion was that we agree there are limitations to mail and newspapers notices. We would like to look at what some of our communities are doing and enhance and improve access to information and make it more publicly available. Counties have email and websites. We want to use them effectively. Environmental groups are on distribution lists. Our focus is on improving the public notice, modernizing what the statute already requires. Broadening notice requirements should be part of the early coordination discussion. Our members express concern that at the petition point, they don't know enough and are still trying to figure out what the project is. So, there is the argument that the PER is too late and the petition too early. We want to have this discussion with the early coordination conversation. We need to determine when an effective point is for a drainage authority to involve outside groups. It needs to be when they know enough to communicate and coordinate. Modernizing notice requirements and early coordination could be an enhancement of petition notice, or notice in between, or something else.
- Blue Earth County used to bring feasibility reports to the DNR, before a petition was submitted, to get input. That worked well and was cost effective. They were disappointed when the DNR said they

weren't going to do that anymore. Based on what the DNR wants, it would be recommended to drop BWSR from the proposal and replace it with DNR. DNR is asking for early coordination. Reporting to one entity rather than two would be easier for the drainage authority and may satisfy what DNR wants in early coordination.

- Budget appropriation happens this session. The unanswered question is at what point is there sufficient information for the early coordination piece? The main idea of the drainage registry is broader public notice. Is it easier or more reasonable to centralize notice at DNR?
- From the landowner, farmer perspective, consolidating this within DNR will strike fear in the heart of the farmer. The ag groups have a fundamental challenge with this proposal overall.
- There is benefit in providing information to both DNR and BWSR.
- Minnesota Land Improvement Contractors of America does not want to see repairs included. The letter comes from a negative standpoint and makes them suspicious of what's going on. Farming is an integral part of MN. We should not look just at negatives. We need to remember there's crop health, organic matter, a whole bunch of things.
- Don Arnosti stated that the environmental Groups have a spreadsheet that contains a list of projects for which they may pursue an EAW. When asked if that could be shared with the DWG, he replied no. Ted Suss said that they do have a spreadsheet with information they will share. They have already done this work and now are asking for a special law to do what they are already doing. Environmental group response: It is important to think of members of the public that are affected by increased pattern tile drainage, climate change, and increased flooding events during the farming season. This notification is for people like that. We represent those voices at times. They should be able to participate in the process and have a voice in the decisions.
- DNR notification has been a long-standing problem. DNR has attempted to make that clear. Many times, the notification goes to the commissioner or director. There wasn't a specific place to send the information and it went to people who don't work on it. The staff who work with this wouldn't see the information for three weeks. Regional mailboxes have been created to submit the material. The DNR still is not getting 100% compliance. They should receive notification of the PER, FER, reestablishment of records, and repairs if it affects public waters. When is the right time to engage? There could be some benefit by letting DNR know when a petition is filed. DNR is not interested in taking on more work, but they also are not adverse to being a repository.
- We used to have early coordination before we got the petition. That has gone by the wayside.
- Many watershed districts have a good relationship with DNR, and many of the area hydrologists don't know what's going on with the proposal for early coordination. Maybe the idea of having the "super hydrologist" or drainage person would be beneficial in more ways than one.
- This conversation is good and helpful. The environmental groups have said several times that they want to pursue legislation because this is a budget year. The legislature passes budget issues any year. We shouldn't feel pressure to pass this just because it is a budget year. We need to discuss early notice and set requirements for response times or things of that nature. If we give notice to an agency and we don't hear back until the public hearing, that's not helpful. Just throwing more information out isn't a solution unless there is a way to understand the intentionality to make it beneficial to the process. That is part of early coordination, not separate public notice. We need to focus on the most significant projects – new systems or improvements, not repairs.
- Perhaps the DNR doesn't need legislation to do early coordination. If a county approved a petition tomorrow and sent it, that would instigate early coordination. The DNR could engage and by the time of the PER, they would have 75% of the plan understood. If the process would start there that would be a big step forward.
- The idea is to work on how to integrate some back and forth.

- The environmental groups appreciate this conversation and are open to continue conversation. They regret that it wasn't happening six months ago. It is a conundrum to hear that early coordination is not scoped and is not going to get off the ground for another six months. It is a lot harder to pass legislation that requires funding in a non-budget year. We need to find a way to have substantive discussions in the coming weeks and months and come to some agreement.
- Have any of the environmental groups reached out to drainage authorities and asked if they are open to early coordination? Environmental group response: As we put the spreadsheet together, we contacted every county and watershed district in the MN River Basin. We feel we have given local folks an opportunity to give us feedback, but we didn't ask specifically about early coordination.
- The public notice piece can support early coordination, but some things are separate, especially having one central location for the broader public.
- New legislation for some bad actors is not the answer. Environmental groups got everyone's attention by bringing the portal legislation. At a minimum as this moves forward, talk to constituents. Be more transparent and get folks involved early. Our DNR staff does a nice job of throwing up red flags early on if they see issues.
- The group hasn't heard much from the professional engineers who are central to the 103E process. They have a significant obligation to follow statute. They are the project designers. What are the expectations regarding early coordination? We don't need armchair engineers thinking they are suddenly part of the project design team. It is hard to know what level of involvement they are looking for. DNR response: There are two different universes here. One is a well-laid out plan that involves people out front. The DNR is looking for consistency to match what is done in the Red River Basin. Early coordination in the Red River Valley is the template that could be adapted to a different region using the same principles.
- In the Red River Basin process, DNR is contacted when a 103E project overlaps a public waterway. If the project doesn't involve public waters, DNR isn't contacted until the PER. The DNR may or may not have comments. It is unclear what you are looking for in southern Minnesota. Having something like the Red River Valley doesn't answer the question.
- Because of mediation agreement, the Red River Basin is focused on flood projects, drainage coordination, and communication enhancement. They have technical papers for drainage and are happy to provide more information about both of those processes.
- Instead of legislation, modernization of notice systems would be good. BWSR is the place to go because they have a better reputation than DNR. Wouldn't it be better to have a central location rather than two groups keeping information close to the vest? Let's start with modernization of notice requirements.
- The environmental groups believe a centralized location brings more equity for broad public notice, rather than engaging at a confrontational stage. There would be mutual benefit for those who participate in the DWG. They would like to continue to have conversations about the public registry bill this session. They don't care about whether the portal is hosted by the DNR or BWSR. They are looking at it as a government agency having the job to provide easy access for members of the public to know what's happening.

Tom Gile asked if everyone was open to some level of continuing the conversation around this subject.

- MAWD did not know if they were interested or not. Perhaps it would be best to bring this back to the group one more time in early February. That gives time to discuss with our members. RRWMB would like to do outreach with their membership.
- The farm group representatives thought there were great ideas today. We share many of the same goals. Modernization of notification would be beneficial. There were good ideas about

ways to do that. With the drainage registry legislation being introduced last year, it will be hard to get to a spot for agreement. They have policy that opposes the drainage registry that could be adopted at their convention next week.

- RRWMB adopted policy that opposes the original version of the registry, but they are here to work together.
- Environmental groups still want information on major repairs.
- Drainage authorities are not in favor of having petitioned repairs included.

Next steps: DWG members will discuss the revised language with their constituents. Comments on the revised language are to be submitted to Carly Griffith by the end of the day on February 3. The DWG will meet again on February 10 at 11:00 a.m. for further discussion of this topic.

The meeting adjourned at 2:06 p.m.

Meeting notes by Jan Voit