

Drainage Work Group (DWG) Meeting

August 10, 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.

- Minnesota Association of Drainage Inspectors (MADI)/Auditors fall meeting: August 16-18 at the Holiday Inn in St. Cloud
- Open House at Farm America near Waseca on August 16

Notification Requirements and Update

Breakout sessions were held to prioritize drainage project notification that has the most impact to hydrology and those that have the highest cost.

Comments:

- There are inconsistencies in the statutory language: affected, likely affected, website, mail, timing, and who gets notice.
- There is a big difference between benefitted parties and interested parties.
- It is not known if this discussion will lead to added notice requirements or if it will improve perceived weaknesses in current notification implementation.
- Having the notice information in a table format would be beneficial.
- There is concern with making changes when there is no clear need.
- Landowner engagement is necessary through the notification process.
- MCEA was concerned that the discussion with the DWG would take the place of working through a subcommittee. They believe there has been a lot of discussion on the need for greater transparency in the drainage process. They believe that there are members of the DWG that think it isn't reasonable for the greater public to be noticed. MCEA believes there is a need for drainage notice requirements to be modernized and that they put forth a model which was positively received by state agencies. MCEA believes discussions have already taken place at the legislature confirming that there is a transparency gap in the notice requirements.
- Ray Bohn stated that he was not aware of the legislature discussing notice requirements or the drainage registry. There was no discussion about the drainage registry portal at the legislature in a public setting or privately with drainage authorities. The hearing on the bill in the House was short and only one or two legislators commented on it. The first time drainage authorities saw the language that is directing the work of the DWG was when the bill was passed.
- Brian Martinson stated that there was one public hearing on the drainage registry portal. A couple of legislators made points in favor. There were other legislators that offered differing opinions in that hearing. The DWG held one meeting that was skewed based on the proposed legislation that was brought forward independent of the DWG. The legislature directed the DWG to study notice requirements, which will include a discussion of the portal. There was no directive to drive the discussion in one particular direction.
- MCEA does not want to lose the momentum from the discussion that was held last year.

Drainage Authority Powers Status Update

Lukas Croaker gave an update on the Drainage Authority Powers document that he drafted. The comments he received following the July meeting were to incorporate M.S. Chapter 103E.075 and 103E 701 Subd. 1 into the document. No other changes were recommended and it was the consensus that this document meets the legislative directive. There may be discussion at some point of adding real world examples.

Outlet Adequacy Technical Committee Update

Rita Weaver, BWSR explained that the committee has been focusing on M.S. Chapter 103E.015, Subd. 1 (4), flooding characteristics. They are looking at water quality from the view of tying it to what the drainage project's impacts would be to the existing outlet and whether changes would make erosion worse. The group agrees that they do not have the expertise to address concerns about water quality such as nitrogen, sediment, or phosphorus. A draft report, written from her perspective, was sent to the committee for review and comment. They will meet again on September 5 to review the draft report. This report, when finished, will be presented to the DWG for discussion.

Comments:

- No outlet is adequate during a flood.
- Sediment, phosphorus, and nitrogen were not considerations when the drainage law was written.
- The list of committee members will be distributed to the DWG.
- The committee talked through their concerns and identified items that need further discussion.
- The committee is looking at the 5-, 10-, 25-, and 50-year events. They have agreed on these: terminus – end of proposed project and from the terminus to the point where there are no impacts from the project.
- The committee is still working on a draft definition of adequate outlet.
- There has been lengthy discussion about model validation and calibration.
- Rather than being prescriptive, the recommendation will likely be a more detailed explanation from the engineer about the statutory steps that are already being followed and providing a uniform way to report that information to the drainage authority. Basically, adding an opinion and approach in both the Preliminary Engineering Report and the Final Engineering Report.
- MPCA has representation at the meeting, but there has not been a deep discussion about water quality.
- There is a statutory definition for stable.
- The appendices will include the recommended processes.
- Time is of the essence and having a draft recommendation for the definition of adequate outlet would be good for the September DWG meeting.
- Having an approach will not alleviate all appeals. But it will likely be considered more favorably by a judge, given there will be an approach that contains a thoughtful product that can be explained.
- Legislators listen to people they align with and/or trust. If the DWG agrees on something, legislators will know that a group they know and trust has vetted the idea.
- Points of disagreement will be provided in the report.

Runoff and Sediment Repair Cost Apportionment

The RDSO legislation has a sunset date of July 31, 2024.

Comments:

- AMC is not opposed to extending the sunset date and keeping the option.
- Chuck Holtman explained his involvement in the development of the language. While it is a departure from the typical way repairs are done, it hasn't been used. Nothing has occurred to erode the reasons that were noted for establishing the option. There is nothing in statute that requires the option.
- MCEA believes it is worthwhile to keep the option available.
- The resulting language was a compromised based on the language being defeated the first time it was introduced. Let it sunset.
- Having the language in statute doesn't hurt. It is an option that took a lot of work to develop.

- While pilot projects weren't done, there was an independent study. That study will be distributed to the DWG.
- The Rice Creek Watershed District has been using this method for many years. In M.S. Chapter 103D, this process is referred to as a water management district. Counties do not have the authority to use this process unless the RDSO remains in statute.
- RDSO is basing repair costs on a causation method, rather than benefits.

Storage Program

Rita Weaver explained that she would like to focus the storage program funds in lieu of improvement projects. However, there is no current way to value the cost of storage. BWSR will be issuing a Request for Proposals in the next month or so to model those efforts. The difficulty is that if storage is incorporated into a drainage system, it would be viewed as an improvement.

Comments:

- It appears BWSR is viewing improvements as causing damage. It should be understood that an improvement is good for everyone – the drainage system, landowners, and the environment.
- We need to sell storage as a benefit of drainage.
- The DWG should take time to see the multipurpose drainage management presentation given by ISG at the Minnesota Watersheds Summer Tour.

Next Meeting

September 11 at the MNDOT Contact District 3 St. Cloud Office and Training Center

The meeting adjourned at 1:57 p.m.

Meeting notes by Jan Voit