

Drainage Work Group (DWG) Meeting

October 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.

- Minnesota Water Resources Conference on October 17 and 18
- Storage program online meetings on October 30 and 31
- Minnesota Watersheds Annual Conference on November 29 – December 1
- Minnesota Watersheds Drainage Workshop on November 29

Clean Water Council Draft Drainage Policy Statement

Paul Gardner, CWC Administrator stated no work has been done on this statement. They will be reviewing comments at their meeting on October 27.

Notification Requirements and Recommendations Update

Tom Gile gave an overview of the Minnesota Watersheds (MW) and Association of Minnesota Counties (AMC) memo regarding notification and the proposed portal.

Comments:

- Drainage authorities have an obligation to our landowners.
- Environmental groups would like consistency in framework and terminology on drainage authority websites.
- Environmental groups believe that nothing in the memo helps them answer how downstream landowners can get information on drainage projects. Their concern is for people who reside downstream to weigh in on projects.
- Drainage authorities believe the memo lays out a meaningful proposal. There is willingness to talk about things that can be done to improve communication through email distribution.
- Environmental groups stated that previously drainage authorities did not want to increase their administrative burden. This proposal would increase administration. A portal would give agencies and interested parties access to information earlier in the process.
- Drainage authorities provide notice to large numbers of people. They get the information when a project starts. The law is written for consideration of landowners. Drainage authorities fail to see the need for a portal.
- Environmental groups believe that drainage authorities are drawing lines in the sand. The portal is a mechanism. Their intent behind the portal is solving downstream interests being brought into the process. It is necessary to get their input incorporated into the think of the people who are making decisions. We need more perspectives than the narrow interests of the drainage code.
- MnLICA asked if the environmental groups saw any benefit in agricultural drainage and if they knew the benefits. The environmental group response was that there are benefits to individual parcels. They are not saying all drainage should stop. But, as decisions are made, there are factors that should be on the table, not just a narrow implementation of one set of laws.
- The WDs in the Red River Valley all follow the drainage laws. For projects, they publish hearings on their individual websites and on the website of the Red River Watershed Management Board.
- Drainage authorities believe that the line in the sand was drawn when legislation was introduced that did not go through the DWG.
- Environmental groups believe there is benefit to centralized notice. Using individual websites would be cumbersome for drainage authorities. They believe we are at a fundamental impasse on the issues of benefitted parties, need for broad notice, and cumulative impact.

- Drainage authorities believe that the proposal promotes easy web access, which is more efficient than a portal. If there are DWG members that disagree with the proposal, we would welcome them to respond and explain their rationale for why a different approach would be better. The memo lays out our position. The proposal addresses the issues and provides a way to give better access to the general public.
- The environmental groups said they were not aware of the DWG when they made the decision to create a portal. It was not their intention to offend anyone or do an end around the DWG. Not everybody that is concerned about drainage knows about the DWG. They appreciate the document and would like to meet weekly until something is settled. It feels like the memo is a way to delay a decision.
- Drainage authorities continued to negotiate until the start of the 2023 legislative session. Then another version of the portal language went to the legislature. We are willing to discuss the issues, but at what point will the environmental groups just go back to the legislature with a proposal regardless of negotiation? We are trying to find aspects to enhance benefits of those who are interested. We are interested in enhancing notification as it currently exists. We can continue conversations. There is plenty of time before a report needs to be drafted and the legislature convenes.
- The agriculture groups believe that the DWG was circumvented twice by the environmental groups when portal language was introduced in the past two sessions. The ag groups support best practices for online notice. They represent landowners who are upstream and downstream of drainage projects. They have not yet experienced any landowners complaining about notification.
- Discussion was held regarding a small group meeting to discuss the issues. After a potential group was suggested, the environmental groups were not pleased. They believed that they needed a stronger representation. The proposed makeup would diminish or dismiss the opinions that need to be heard.
- Drainage authorities don't view meeting in a small group as a way to convince anyone of their position. This small group would provide an opportunity to have frank and honest conversations and get to something that is agreeable to everyone. The small group won't be helpful if there is no willingness to negotiate.
- The small group members will be Carly Griffith, Don Arnosti, Ted Suss, Brian Martinson, Jan Voit, Alex Trunnel (or a representative of the ag group's choice), and Randall Doneen. Tom will navigate the email chain.

Tom gave an overview of the concepts for notification section in 103E that he developed. He has spoken with some drainage authority staff that think updates would be helpful. He will further develop the concepts and have a draft document for review before the November DWG meeting.

Chuck Holtman gave a short explanation of due process. There are some places in the statute where more notice may be necessary to meet the doctrine of due process (acceptance of contract, abandonment, partial abandonment, and petition for outlet into an existing system). Discussion was held regarding whether due process applies only to tangible property rights or to the public's interest in water quality.

Runoff and Sediment Repair Cost Apportionment

Ashlee Ricci, Rice Creek WD and Chris Otterness, Houston Engineering, Inc. gave a PowerPoint presentation containing examples of how they have used an RDSO concept for assessments in their watershed in urban, rural, and urban/rural settings.

Outlet Adequacy Technical Committee Update

Rita Weaver gave an update on the work of the committee. They have had five in-person meetings. The draft report will be available before the November DWG meeting. The report will contain a table of issues that were agreed upon, somewhat agreed upon, and no agreement.

Definitions for outlet and adequate have consensus. It may be a recommendation for the definitions to be in statute, but the method to determine adequacy be included in the drainage manual. When outlet is defined, it will apply to every place it is used in drainage law.

Members were given a homework assignment to read 103E.261, Subd. 4 and 103E.015, Subd. 4 and be prepared to discuss these sections of statute at the November DWG meeting. It may also be prudent to discuss these with drainage authority legal counsels. There is foundational disagreement between drainage authorities and environmental groups on whether these statutes constitute part of outlet adequacy.

Next Meeting

November 16 in St. Cloud

The meeting adjourned at 2:00 p.m.

Meeting notes by Jan Voit