

Drainage Work Group (DWG) Meeting

December 14, 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 Watersheds (MW) Annual Conference from November 28 – December 1
- MW Drainage Workshop on November 29
- Association of Minnesota Counties (AMC) Annual Conference from December 4 – December 6
- AMC Drainage Conference from February 7 – February 8 in Alexandria

Consensus Recommendation Refresher

Tom Gile gave an overview of the consensus recommendation process. If an entity cannot live with the recommendation, they must be able to articulate why. The goal is always to move to consensus.

The consensus process was established by the DWG, which included all the entities represented, including the environmental groups. Ted Suss stated that he is participating under protest of the consensus process/rules that are being implemented.

Mark Ten Eyck stated that MCEA could not recommend anything that has been presented in the Outlet Adequacy report. Tom Gile responded that a report from the DWG doesn't imply that there is a recommendation to change statute or policy. The goal today is to work toward what a report from this group will include.

Brian Martinson replied that the consensus process has been discussed at almost every meeting for the last two years. Suddenly, there are organizations that are offended. If that was the case, the conversation should have happened before this meeting. We should try to find issues we can reach consensus on and make recommendations. The DWG was ahead of the legislature on the adequate outlet issues in establishing the outlet technical group. The technical group final report has just recently been submitted to the DWG. It is not a failure of the DWG that we haven't reached consensus. That may not be satisfactory to some members, but we can let the legislature know what has been done and that we will continue our work.

Mark Ten Eyck stated that the DWG failed to define the question and that it couldn't be answered by the subcommittee without legal questions being answered first. Brian Martinson replied that we have the information from the subcommittee's report and the DWG can make an informed decision. It might be necessary for another focus group to be formed to address other issues.

Dave Weirens said that BWSR has had internal conversations about the consensus model. They will consider it again over the winter months. Everyone should understand that there are no perfect models and should be mindful of what is being asked because the outcome of a new model may not be accepted any better than what is done now. If BWSR makes a recommendation for change, it will come back to the DWG.

Runoff and Sediment Repair Cost Apportionment

Tom Gile explained that this is an option for a drainage authority to use (M.S. Chapter 103E.729). It is not a requirement. When it was enacted, the legislature added the sunset recommendation of July 31, 2024. The sunset date was not a recommendation of the DWG. The DWG is asked to consider making a recommendation to extend the sunset date to July 31, 2029.

He also explained that there was consensus from the DWG in 2108. However, a member voiced opposition to it and the legislature sent it back to the DWG. That is when the consensus process summary was drafted. When RDSO was resubmitted to the legislature in 2019, it followed the consensus process that was established by the DWG.

Allen Wold stated that he could not live with extending the sunset deadline for RDSO. All the other groups present or online stated that they could. Tom will generate a consensus report on this topic. It is not the DWG's responsibility to generate a report for those who are in opposition.

Outlet Adequacy

There have been two meetings to discuss issues (hydrograph duration, calibration, software, and modeling drain tile, a Minnesota River basin assessment, and training) within the outlet adequacy report. There is general agreement on these topics.

The purpose of training is to continue conversations so that people become more aware of what information is reviewed when determinations are made and to consider new and emerging technologies.

It was the opinion of environmental group representatives that there may be two or three things they could agree on in the report, but training isn't one. They believe that there is fundamental disagreement on what the considerations for outlet adequacy should be.

It was noted that there has been training on drainage issues in conjunction with the Minnesota Public Drainage Manual (Manual) and that MCEA was part of the consensus recommendation for that.

It was the opinion of the environmental groups that their technical representatives on the subcommittee wanted more consistent standards. They also believe that the consensus column in the report is misleading. One of the biggest concerns of their representatives is the non-transparency of modeling software. They believe the table suggests a much greater level of consensus than there is in reality.

Tom Gile responded that the intent of the report is to drive deliberations at the DWG. He noted that there were no issues with the report at the subcommittee. If there were concerns, the time to bring them up was at the meeting. The members were asked multiple times for input, but none was given.

Julie Blackburn asked if the intent of the recommendation was for agency training or consistent agency review standards. Rita Weaver explained that the intent is for consistent review by agency staff, no matter what region of the state. There isn't consistency now.

It was stated that the DWG never had a conversation with the legislature about their directive. They came up with this idea and we've started working on it. There are some major sticking points. The DWG report doesn't have to say that the issues have been resolved. The report can say that we will work on them in the future to try to reach consensus. Eight months wasn't enough time to get everything done.

It is the DWG and BWSR's responsibility to report to the legislature. Mark Ten Eyck responded that there were a lot of problems at the subcommittee. The answer to most of their concerns was that "it's not in statute" and the items were placed in the parking lot. It would be better to tell the legislature nothing than to have something memorialized in the Manual without agreement.

Don Arnosti stated that there is extreme dissatisfaction with the people he represents with the discussion of outlet adequacy being constrained rather than dealing with all the related issues in statute. Outlet adequacy was reduced to a narrow scope.

Tom Gile stated that he did not expect that addressing outlet adequacy would be easy or that it would be a one-year effort. He thought it would take up to three years. There are major differences from technical and policy perspectives. But he doesn't want the good work that was done by the subcommittee to be lost. Rita Weaver responded that we have spent eight months working on items on which there was some level of agreement. We started where there was agreement on the two places in statute where outlet adequacy is mentioned. Coming to consensus will take time. Three years may be optimistic.

Mark Ten Eyck stated that everything the environmental groups wanted to have addressed was put into the parking lot and never got attention. No report is better than submitting the subcommittee's report.

Randall Doneen supports the DWG continuing to work on outlet adequacy. He appreciated that there is some acknowledgement of channel stability and geomorphology. The issue is that it is difficult to separate hydraulics and hydrology from environmental considerations. If hydraulics and hydrology are changed, there are environmental considerations. We aren't at a good place with this now.

Tom Gile stated that wordsmithing on the report had to stop and the report needed to be completed. We know there is more work that needs to be done. The DWG needs to react to the report. We can do that here or we can ask the courts to rectify the issues. We can have small group conversations and trust that the information will be brought back to the DWG for consideration.

It was suggested that the report have a lead-in summary that states the DWG did not reach consensus, describe the process that was followed, points of agreement and disagreement, describe what is being put into action and recommended to be added to the Manual, and state that there are no statutory recommendations.

Don Arnosti stated that he is concerned about the complacency with which people on the DWG seem to take the impacts of drainage on public resources. The DWG needs to try harder. There is urgency for drainage to have less environmental impacts. The technical and committee work needs to be done year-round.

Dave Weirens replied that RDSO was the last consensus recommendation from the DWG. That took three years. That was a walk in the park compared to the complexity of the current issues. You need a reality check on expectations. BWSR must consider the implications of our time to this process. BWSR isn't set up or funded to have a full-time person to address drainage. Rita Weaver said that the urgency is February. We need information for Tom to move forward to write the report.

Chuck Holtman clarified that if there is a technical consensus, then the subcommittee report is an accomplishment that has value. If there is technical consensus to address conveyance, capacity, and channel stability in a drainage project, that is a useful piece of what BWSR and the DWG can say we've done. The legislature asked us to do something that doesn't make any sense. The legislature has defined outlet adequacy in the statute – used it in theory with an intent. It has a meaning.

Mark Ten Eyck stated that he doesn't agree with what is in the statute. The best consensus that could be stated is that we didn't have enough time to get this done. Carly Griffith stated that conveyance, capacity, and channel stability are key areas of non-consensus.

Stu Frazier asked that the report state the number of hours spent by the subcommittee and that it reflects the work that has gone into it. He also expressed that he and others are going to continue implementing BMPs, doing drainage water management, installing cover crops, and offering BMP loans. Don't say that we aren't doing anything.

Doug Krueger stated that he doesn't just attend these meetings. He is still working as a drainage authority getting repairs and improvements done, 1W1P, and other things. Don't say that we are not even taking the environment into consideration. We are trying to find money for storage, bank stability, and other BMPs. If you are serious about this, we can't be us and them. He is not interested in the people in the legislature telling us what to do.

Don Arnosti responded that he was not trying to imply that people aren't doing work or maybe even good work. Indicators show that there are impaired waters and increased nitrates. There is not enough environmental protection when it comes to drainage.

Brian Martinson said that he thinks the DWG is serious about these topics and that a report can be written. It can start by stating what the legislature asked us to do, what we've been working on, the progress made, things left to do, and what we intend to keep working on. It makes sense to address what was in the Minnesota Watersheds memo about water quality considerations. We can form a subcommittee to explain what is being done now and explore whether there is a desire to do something differently. If we must agree that environmental considerations must be done under a certain title or word, we are wasting time.

Notification of 103E Drainage Actions

Broad Notification of 103E Actions

Tom Gile gave an overview of the concepts developed for the 103E notification section. The intent is to improve notice components in the statute.

Comments:

- Chuck Holtman stated that the framework makes sense. He is hopeful that one step in the process will be working on clear, ordinary writing.
- Kale Van Bruggen said that the changes would need vetting to determine if they would pass constitutional muster. The statute needs to address the property, not the person.
- Often letters are returned to drainage authorities because they are not aware that land was sold and there is no mechanism to find the landowner(s).

Drainage Registry-like Concept and Subcommittee Deliberations

- There are two options being considered. Because the DNR gets notice, a system through them is one option. The other is a drainage authority option.
- There is no consensus on when notification should be given.
- Randall Doneen stated that the DNR gets reports already. Internally, they think there may be concerns raised if the DNR is giving notice about a drainage project. That would be a hurdle. It may be something that should be done at the local level.

Next Steps

Tom Gile will share a draft report with the membership by January 2. Comments on the report will be due by January 5. A revised draft will be sent to the membership as quickly as possible and the report will be the topic of discussion for the January 11 DWG meeting.

Ted Suss would like the DWG to ask all the agencies to whom the reports are submitted to put together an interagency committee to see how many could be combined or eliminated.

Mark Dittrich stated that the Outlet Adequacy Subcommittee was one of the best things he has ever participated in. The process allowed for open, honest conversation to define terms and talk about issues. It is a solid report and he was glad to be part of it.

Don Arnosti wanted the topic of year-round DWG meetings on the agenda for the January meeting.

Next Meeting

January 11, 2024 in St. Cloud

The meeting adjourned at 1:58 p.m.

Meeting notes by Jan Voit