

Drainage Work Group (DWG) Meeting

January 11, 2024

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.

- AMC Drainage Conference from February 7 – February 8, Arrowwood, Alexandria
- MADL winter meeting February 21 – 22, Kelly Inn, St. Cloud

DWG Draft Legislative Report

Tom Gile gave an overview of the draft legislative report. There is a statutory obligation for the BWSR board to submit a report to the legislature. The BWSR board will act on the report on January 24. If the DWG can come to an agreement, the report will be from both BWSR and the DWG. If not, it will be a report from BWSR.

Introduction and Purpose

- BWSR staff time will be included for estimating the cost of the report.
- There is a need to acknowledge that work was done by more than just BWSR staff in developing this report.
- The word “partial” will be removed from the cover page and clarify the session law.
- The report was built around all the topics that were discussed. The drainage authorities’ powers report and the alternative repair cost apportionment option may not need to be included.
- Environmental groups believe that the report doesn’t answer the legislature’s question. It needs to reflect that in some way. Outlet adequacy hasn’t been defined.
- The report should indicate that there is more work to be done.
- The following language should not be included in the introduction or purpose, nor should it be in bold or highlighted: **It is important to note that there is not a consensus recommendation with respect to legislative action on 103E related policy at this time for “outlet adequacy” or public notice requirements for proposed public drainage activities, including a drainage registry portal.** The environmental groups think it is important to leave this sentence in the report to let the legislature know that there isn’t a consensus recommendation.
- Counties and watersheds believe there should be a summary of the work that was done, where there was agreement, and a note that there wasn’t consensus on the definition of outlet adequacy or a change to public notice requirements.
- Tom Gile will draft an executive summary.
- Chuck Holtman noted that the legislature’s charge isn’t focused. It is to evaluate and make recommendations. It would be helpful to include a more expansive summary of what has come from our work. In addition, state that the work has led to the following results and that there is consensus on some things that will be implemented through non-legislative means.
- The environmental groups do not want to see anything about legislative action in the report. There is a need for a clear statement about not getting consensus on anything. The legislature didn’t ask the DWG for legislative recommendations.
- Dave Weirens said that the legislature is asking the DWG to tell them what they might want to consider at the legislature. The legislature wants the DWG, through BWSR, to give recommendations.
- The DWG did reach consensus on some items in the outlet adequacy subcommittee that don’t need legislative action.
- Ray Bohn thanked the outlet adequacy subcommittee for the work they did. The report they put together told the DWG where there was agreement and helped define what the policy issues are that need to be discussed at the policy level. By the time the DWG got the report, there wasn’t time for

discussion. We are set to move forward in June 2024 on some of the issues that were laid out very well.

- Tom Gile stated that there are distinct differences in the opinions of what was in the outlet adequacy report. There was agreement that there were things that could be incorporated into the drainage manual.
- The report to the legislature should include context that describes the that the technical group was established, the report was received in December, and the DWG had inadequate time to consider the definition and application of outlet adequacy, therefore no consensus was reached on that item.
- Chuck Holtman said that the report to the legislature should include more content describing the efforts that occurred and the work that was done. Guard against saying that there wasn't progress. We have had good discussions but we aren't there yet.
- Mark Dittrich stated that the subcommittee worked hard on the outlet adequacy report. The committee found consensus on several things and had some frank and honest dialogue. The subcommittee defined terminus and the area it impacts. This is one of the best reports he has ever been involved with.

Definition and Application of Outlet Adequacy

- The report should include the purpose statement from the subcommittee.
- This sentence will be removed: "and would improve administration of the drainage code and reduce both the frequency and the complexity of litigation."
- The report should identify the policy issues so the legislature understands what we are grappling with.
- The report should clarify that the formation of the subcommittee predates the legislative mandate.
- How water quality is considered in outlet adequacy is a controversial issue that has not been discussed by the DWG.
- The subcommittee did have agreement on channel stability, what an outlet is, and the downstream extent. Those are important items to have in the report that need to be acknowledged.
- There was no consensus on a repeatable and defensible process to review channel stability.
- There was no consensus on whether a project with an unstable outlet could move forward.
- From a report standpoint, there is value in saying the subcommittee agreed on some things, there were a handful of other things that need more work, and there are bigger issues that were set aside and need more work. The DWG plans to address the outstanding issues from the technical subcommittee's report and determine the best way to move forward. The intention was to get the report and act. We have the report. We haven't been able to act.
- The environmental groups want to move forward with a complete picture, not small increments done piecemeal.
- More narrative would be preferable to a table to explain what has been accomplished on the outlet adequacy topic.
- A question was asked regarding how the process works once the report goes to the BWSR board. Tom Gile explained that a BWSR committee reviews the report and provides adjustment and direction. The BWSR board may make changes. As staff, we work to do the best we can to weave the information into the report and take the report through that process. The report may contain significant changes between this draft and what the BWSR board receives. Whatever goes to the BWSR committee and the BWSR board will be provided to the DWG.
- The list of topics needs further explanation and clarification. AMC is not comfortable putting labels on the terms or the agreement categories without more context. A list of topics would be appropriate, but not an opinion of where the DWG is on those topics.

- Rita Weaver stated that it would be better to make this section more generic. Some of the terms in the list won't mean anything to anyone. It would be appropriate to say that these topics were discussed, the subcommittee asked the DWG to work through them, and the DWG has not had time to do so. It should be noted that this is not an exclusive list.
- Myron Jesme stated that until 2008, there was no funding available to help fix outlets. The last 20 years significant progress has been made to stabilize outlets. The work that is being done is not being recognized at all. We are making strides.

Public Notice Requirements for 103E Activities

Modernization

- The way the opening paragraph is written, there is an attempt to divide public notice from a registry portal. The DWG was working on modernizing and broadening public notice. The work wasn't being split. We did an analysis of what was there for public notice. The idea for statutory revisions was to make the process easier to work with and to add clarity. There were public notice issues brought forward wanting changes for various reasons.
- The four bullets of recommendations are complex and confusing. It was suggested that the recommendations reflect that technical review has been done and work is needed to establish consensus.
- It was good to see that due process to interested parties was included. Interested parties are those who are directly impacted and have due process rights.
- Does current drainage statute create legal concerns or is it a matter of drainage law being complex and takes time to learn? Chuck Holtman explained that throughout the chapter the issue is complication and inconsistent notice requirements. There is ambiguity in "interested" or "affected". As an example, should notice be sent to everyone on a drainage system or just the 20 who are directly affected? If a landowner doesn't get notice, is that a process flaw that would require starting over? There is uncertainty. If we refine the statute, we should take the opportunity to address the ambiguity.
- Modernization doesn't seem to be the right description for the work that was done. Review, summarize, and potentially streamline were offered.
- There are possibilities for other issues to be discussed, including the way notices are done, as part of the DWG's future work. The reasons for the subcommittee was that there were issues to be addressed that were not being addressed in the "modernization" process. We went into the conversations at the subcommittee with a clean slate and with free reign to go wherever we wanted in the discussions.

Broader Notice

- The drainage registry portal bill was introduced in 2022 without any consideration by the DWG. From June of 2022 through February of 2023, the DWG discussed many topics as options other than a portal. It was announced that a bill for a drainage registry portal was again going to be introduced in 2023, whether or not there was DWG consensus.
- It was noted that MW would not support the following language being included in the report: 1) broad public notification earlier in the process potentially before a preliminary engineer's report (PER) has been filed and 2) a centralized information database for drainage activities maintained by a state agency.
- The report should state that there were multiple proposals recommended, that potential revisions to the 2023 bill language were discussed, and that no consensus was reached on a drainage registry portal bill.

- The environmental groups said that it was their understanding that the DWG would develop public notice requirements, including the portal. Those two bulleted items are the key components of the registry portal concept.
- The subcommittee was tasked to respond to the legislative mandate regarding public notice and to bring a recommendation to the DWG. The recommendation didn't have to be a portal. The directive in the legislation was that the evaluation include consideration of a portal. While the bulleted items are part of what is in the bill, they aren't part of the legislative language, especially the timeline that notice must be earlier than the PER.
- During subcommittee discussions, the last proposal from the environmental groups included the notice being at the time of the PER. They also made a request for an extended review period for a PER. There was no line drawn in the sand by legislature or anyone else that said DWG considerations had to be about whether notification could be before the PER. The report should only state that the subcommittee was to respond to the legislative mandate. The subcommittee had the ability to figure out how to address the issues.
- The environmental groups stated that subcommittee members were operating under policy constraints that prohibited them from considering any of the changes they wanted. That is part of the reason the subcommittee didn't come back with any recommendations.
- AMC, MW, and Corn Growers didn't have policy constraints. We had proposed and worked toward agreements on proposals that created a new public notice at a time that is not currently available. Leaving the last meeting, we were asked to consider the statutory review period and come back to the next meeting ready to discuss that issue. Assumptions were made that we were not willing to do things statutorily. Those assumptions were wrong. The environmental groups walked away from something that was meaningful.
- The DNR should be listed as a member of the subcommittee.
- The opening paragraph should include that there are notices in statute that are meant for the public as well.
- AMC expressed concern about the way the report denotes that the subcommittee disbanded without forwarding recommendations. We didn't disband. This was a charge put to the DWG and the subcommittee was meant to bring back recommendations. Recommendations were provided to the DWG that we believed would be discussed at a meeting on January 4, before the report was done. That didn't happen. The recommendation represents the 90% agreement we had before we stopped negotiating. There were no lines drawn in the sand or positions of non-negotiation until some subcommittee members decided not to continue discussions. Walking away and declaring discussions are over asserts an absolute and non-negotiable position. That is not reflected in the report.
- Ray Bohn stated that it is unfortunate that the environmental groups walked away from the negotiations. We had a drainage stakeholder meeting the day before the meeting was supposed to be held to discuss what our negotiating posture was going to be. Don't say we were negotiating in bad faith.
- Ted Suss said that Minnesota Watersheds adopted a policy position that essentially says no to negotiating. Lines were clearly drawn in the sand.
- The proposal that AMC, MW and Corn Growers put forth meets many of the objectives that the environmental groups laid out for us. It is a new notice and it is earlier than the public notice currently in statute. We understand it isn't as early as they want. Before we left our last in-person meeting, Don asked us to look at the review period and be prepared to come back and talk about it. This proposal met those objectives. There was agreement that other things would be laid on the table

and that the subcommittee would continue to work on early notice efforts. What happened in the 36 hours from when we met to when the environmental groups walked away?

- Don Arnosti responded that it doesn't take any action by anyone other than DNR to make this available. He doesn't feel that it is necessary for the DWG to weigh in on the proposal. We can take this up at the legislature.
- Ray Bohn replied that the subcommittee did not disband or fall apart. One of the parties walked away. There is no other way to characterize it.
- MW has not yet adopted legislative priorities for 2024. Ted Suss replied that he had an email with an attachment containing the legislative platform from a MW member. It is fair to state in the report that one side chose to stop participating in the subcommittee.
- Carly Griffith stated that the proposal developed by the environmental groups contained language about ways notice could be modernized at the time of the PER. In the introduction to their proposal, it stated that this was not a consensus recommendation, but a component of an increased minimum review period. She still supports modernized notice at the PER. It could be done outside of legislation even if there isn't an extended minimum review period.
- Brian Martinson responded that the legislative charge did not require the DWG to come to an agreement on a drainage registry portal. The charge was to evaluate and make recommendations on public notice. The DWG is not required to meet the conditions of one of the provisions in the registry portal bills that have been introduced by environmental groups in the past two sessions. What AMC, MW, and Corn Growers are proposing would be a new public notice. There is no current requirement that the public receive notice at the filing of a PER.
- The four items in the list of specific areas of evaluation of "broader notice" will be acceptable if "earlier than the PER" is removed.
- At present, there are no plans for the subcommittee to continue meeting.
- Randall Doneen stated that he did not have the authority to offer email notice through the DNR. The DNR could consider creating a gov delivery for notification at the PER stage. The agency still hasn't accepted that idea. Their big concern is the perception that by issuing the notice, they would be responsible for taking comments on the PER. That issue must be navigated within the DNR. He will report back on this issue.

Next Steps

Tom Gile will remove sections 3 and 4 from the report. There is not a directive to file a report on the review of drainage authority powers.

Additional comments or specific language on the report should be submitted to Tom by noon on Monday, January 15. This will be a BWSR report, not a DWG report.

Next Meeting

June/July 2024, location TBD

The meeting adjourned at 2:06 p.m.

Meeting notes by Jan Voit

~~Minnesota Drainage Work~~
~~Group~~ Report to the Minnesota
Legislature

Commented [A1]: Suggested change to reflect that it is BWSR report. BWSR would be indicated as the author, and the DWG would be the subject, not (an) author.

~~Report to the Minnesota Legislature~~ Minnesota Drainage Work
Group

~~DRAFT FOR 1/11/2024 DWG MEETING~~

This report has been prepared for the Minnesota State Legislature by the Minnesota Board of Water and Soil Resources (BWSR) in partial fulfillment of Minnesota Statutes Chapter 103B.101, subdivision 13

Prepared by Tom Gile, BWSR Resource Conservation Section Manager, tom.gile@state.mn.us

Commented [A2]: Consensus not to use word "fulfillment." Suggest "pursuant to" or similar.

The estimated cost of preparing this report (as required by Minn. Stat. 3.197) was:

Total staff time:

Production/duplication:

Total:

Commented [A3]: Group discussed including in report some text about time spent by the group as a whole. MW/RRWMB, thru ED/Administrator/counsel/ managers/engineer contributed a great deal of time to the three matters addressed in the report. We can provide estimated hours/cost numbers if useful.

BWSR is reducing printing and mailing costs by distributing reports and information to wider audiences in digital, online formats. This report can be made available in alternative formats upon request.

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Introduction and Purpose

During the 2023 legislative session the following language was enacted (Laws 2023, Chapter 60, Article 5, section 21):

The Board of Water and Soil Resources (BWSR) and the Drainage Work Group (DWG) established under Minnesota Statutes, section 103B.101, subdivision 13, must evaluate and develop recommendations on the following subjects:

- *the definition and application of outlet adequacy as provided in Minnesota Statutes, section 103E.261; and*
- *public notice requirements for proposed public drainage activities, including a drainage registry portal.*

The Board must submit the report to the chairs and ranking minority members of the house of representatives and senate committees and divisions with jurisdiction over environment and natural resources by February 1, 2024.

The DWG was also directed to complete another task as provided in Laws of Minnesota Chapter 60, Article 1, Section 4d):

The Drainage Work Group must review a drainage authority's power under Minnesota Statutes, Chapter 103E, to consider the abandonment or dismantling of drainage systems; to re-meander, restore, or reconstruct a natural waterway that has been modified by drainage; or to deconstruct dikes, dams, or other water-control structures.

This report addresses each of the ~~specific~~ directives identified above and presents the DWG recommendation to the sunset language in 103E.729. **It is important to note that there is not a consensus recommendation with respect to legislative action on 103E related policy at this time for "outlet adequacy" or public notice requirements for proposed public drainage activities, including a drainage registry portal.** There is reasonable agreement that more time is needed to effectively bring forward any potential detailed policy recommendations.

Commented [A4]: As discussed, provide more general synopsis of all types of outcomes, not just the particular outcome of a recommendation for legislation.

Definition and Application of Outlet Adequacy

The drainage code specifies in 103E.261.4 that in order to authorize a new public drainage system or an improvement to an existing one, the drainage authority must determine that the "outlet" into which the system discharges will be "adequate." Neither of these terms is explicitly defined in the drainage code, leading to uncertainty and disagreement as to both the scope of what is to be assessed and what is sufficient to show "adequacy." Short of providing more clarity in the code itself, a common understanding among those in the drainage community as to the scope of the term "outlet adequacy," and a method to assess adequacy applied consistently by drainage engineers, ~~and~~ would improve administration of the drainage ~~code and reduce both the frequency and the complexity of litigation~~ related to drainage authority findings on drainage projects.

With this context, in October 2022, the DWG began discussions related to the use of Outlet Adequacy.

The DWG agreed to convene a technical subcommittee to examine the topic in more detail. The technical subcommittee consisted of 16 individuals selected by state agencies, drainage authorities, watershed districts, agricultural organizations, and environmental groups. The technical subgroup subcommittee was to look at

Commented [A5]: Suggestion in response to participant comment.

Commented [A6]: The technical subcommittee did a lot of work. The time and effort should be further described.

terms and methods used to evaluate outlets for drainage projects and if appropriate provide options and recommendations to make the evaluation of an outlet a more repeatable and defensible process. It was not until after this group had begun meeting that a legislative directive was passed to look at and report on outlet adequacy by February 1, 2024.

While a deadline for the technical subcommittee's discussion in 2023 was not originally envisioned, the Technical Subcommittee Report was provided to the DWG on December 12, 2023, for their review and consideration. Areas of agreement and disagreement are presented in the report, with the intent that all topics may be discussed further by the full DWG.

A technical report was delivered in December and the DWG has been reviewing the report and discussing next steps to the extent possible with limited available time.

As of the writing this legislative report, the DWG discussed the following items from the Technical Subcommittee's report: hydrograph duration, model calibration, approaches to modeling private drain tile, and if/how to model future conditions. Since there was consensus on these items at the technical subcommittee level, and the DWG supported the approaches laid out in the report, the expectation is that these items will be assessed in more detail and potentially added to the Minnesota Public Drainage Manual. While there is near consensus on these items not all members of the DWG have indicated they are ~~not~~ willing to move forward in considering application of those changes until they feel there is sufficient agreement on the larger assessment of outlet adequacy.

The DWG still has a list of items that need to be discussed from the subcommittee's report and other related topics as a result of outlet adequacy discussions. Examples of these include, but are not limited to: definitions, channel stability, water quality concerns, and software requirements. These types of items had some agreement at the technical subcommittee level, but left some questions open for further discussion at the DWG for any consensus recommendations to emerge.

While the DWG does not have specific 103E policy recommendations at this time, they intend to continue working on this topic and may have recommendations in the future.

It became clear that the level of involvement to address a topic of this magnitude in such a short period of time would be a challenge. As a result, there may be interest in continuing the discussion on other items (e.g., channel stability or other environmental impacts) in the future. The DWG plans to first address outstanding items in the technical subcommittee's report, then determine the best approach forward for addressing other outstanding topics.

Outlet adequacy topics evaluated by the Technical Subcommittee.

- Hydrograph Duration **
- Model Calibration **

Commented [A7]: We would encourage a more positive spin on this. The technical committee did have some recommendations that the DWG thought should be added to the drainage manual and there are items that the DWG agreed to continue discussing.

Commented [A8]: This sentence would bear a bit of elaboration.

Commented [A9]: The group discussed that this list would be meaningless to legislators. There was a rough consensus to focus on several of these. Our suggestion is to begin with a narrative of a couple of paragraphs supplied by Rita that describes in lay terms how the engineering tasks of assessing outlet adequacy are performed, i.e., what are the components of assessing and (broadly) what does each involve (modeling, etc). This would introduce some or most of the terms on the list. Then there could be a brief discussion of the status of the individual topics (i.e., replacing list with text) focusing on the more meaningful ones. The text would focus on describing the efforts/work done, and less on the specific outcomes regarding each individual topic.

Further, we would urge that a textual discussion of some or all of the listed topics be organized to reflect the three categories we've previously observed: technical elements of the outlet adequacy assessment on which meaningful progress has been made, technical elements that were not substantially advanced at this time, and subjects related to altering 103E to revise how the DA considers wetland, WQ, wildlife, GW, etc impacts.

- Storm Events *
- Definitions *
- Modeling Private Tile to reflect landscape conditions **
- Definitions *
- Evaluating Impact*
- Information needed for the FER/PER *
- Natural Channel Stability *
- Software used for modeling *
- Future Conditions **
- Cumulative Effects -
- Water Quality considerations tied to outlet adequacy -
- MN River Hydrology Assessment **
- Continued Education on Preliminary Engineering Reports to enhance documentation **

*Topics that warrant further DWG conversation.

** Topics which there is sufficient direction from the technical subcommittee for future DWG conversation potentially leading to recommendations or adjustments to the Minnesota Public Drainage Manual or other consensus recommendations on the topics.

-Areas that currently lack broad agreement among stakeholders which are unlikely to find significant common ground through DWG

Public Notice Requirements for 103E Activities

The legislative directive has been separated into two parts for the purposes of DWG deliberations and this report.

- 1) Modernization "to evaluate and develop recommendations on public notice requirements for proposed public drainage activities"
- 2) Broader Notice "to evaluate and develop recommendations on public notice including a drainage registry portal"

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Commented [A10]: There was discussion that modernization was not the right description for the work that was done. Review, summarize, and potentially streamline were offered. The intent, we think, is to clarify notice provisions, make them consistent, and provide a structure that allows methods or other details of notice to be adjusted over time through simple revisions. Perhaps "Clarifying and Aligning Notice Requirements"?

Modernization

As the code has been amended over time, these sections read differently and, in some places, are ambiguous in describing the form of notice, the timing of notice, and who is to receive notice. As a result, it can be administratively challenging to provide notice in a seemingly consistent and effective means, where inadequate notice may compromise due process to interested parties and risk the legal effectiveness of a proceeding. Administration of the drainage code would benefit by standardizing and bringing clarity to these many disparate notice provisions.

The DWG spent time on each agenda in the months of June through December 2023 as the DWG reviewed forms of notice definitions and their application in 103E. That assessment identified 37 different sections of 103E that specify some form of public notice for a matter before the drainage authority. The type of notice, timing of notice, and who receives notice is specific in each of these 37 sections of statute.

The DWG membership assessed each of the 37 sections that specify notice and sought to assess the forms and existence/extent of notice that are warranted given the impact of the associated drainage activity on the physical system and its taxation/assessment consequences. This effort was valuable for the members to better understand the scope of drainage authority actions that currently require some form of notification.

Commented [A11]: Correction.

Attorneys working with the DWG stakeholders also reviewed constitutional due process requirements so that modernization revisions of chapter 103E proposed by the DWG pass legal/constitutional muster for any future recommendations. The DWG's work on this topic started with identifying specific areas to be evaluated:

- Establishing a more adaptable and uniform set of definitions for notice.
- Establishing a more uniform timing for giving notice.
- Incorporating these definitions and this consistent timing framework into the 37 sections of statute that currently call for notice.

Based on the above identified areas of evaluation, the DWG developed the following recommendations:

- The DWG has shared a draft framework of definitions and a timing construct with a subgroup of the several attorneys who advise various participating members of the DWG.
- The DWG will consider adjustments to this notice framework from the legal group.
- When the framework has achieved consensus the DWG will begin reviewing its application to the 37 sections of chapter 103E, in order to develop a proposed set of statutory revisions.
- The DWG strive for consensus through this exercise and will bring forward future recommendations to the legislature to modify 103E accordingly.

Commented [A12]: "Subgroup" suggests a certain formality of having been tasked by the DWG. In the present case, the attorneys who have been engaged in the DWG are looking at it - no formal structure.

Commented [A13]: Suggestion.

Broader Notice.

Notice requirements for proceedings under the drainage code focus on landowners, who pay for and benefit from drainage systems, and public agencies tasked to oversee drainage activity that may have an impact on the state's natural resources. Some, including those who may be downgradient of a drainage system and those with a generalized interest in environmental resource protection, indicate that broader interested public may desire an awareness of drainage system proceedings in a way that allows them to participate meaningfully in such proceedings.

During the 2022 legislative session a bill was introduced to establish a "Drainage Registry Portal". The language requested a searchable electronic database of all documents initiating proceedings and non-petitioned repairs under Minnesota Statutes chapter 103E. This bill was introduced without ~~consensus consideration by~~from the DWG. The bill was not adopted by the legislature.

Commented [A14]: Per discussion.

After the legislative session, this subject was on each DWG meeting agenda in the months of June 2022 through February of 2023 (excepting December 2022). The DWG discussed many options including statutory notice requirements, reports to state agencies, repairs, early coordination, drainage authority websites, email notification through drainage authority websites, and email notification through a state agency process.

Commented [A15]: Suggested as followup to discussion.

Revisions were discussed on the bill's language; however DWG consensus was not achieved. A revised bill was introduced during the 2023 legislative session but was not adopted.

During the 2023 Legislative session, the legislature directed the DWG to consider public notice requirements for proposed public drainage activities, including the concept of a drainage registry portal as an element of public notice for proposed drainage activities.

Commented [A16]: More accurate factual restatement of legislative directive.

General conversation on this subset of topics has been around notice for Drainage Projects (as defined in 103E) and re-establishment of records under 103E.

When it became apparent the scope of the Notice Modernization assessment was quite expansive the Drainage Work Group formed a subgroup-subcommittee to discuss public notice requirements for proposed public drainage activities as well as the drainage registry portal concept of early public notice. The subgroup-committee included representatives from Association of Minnesota Counties (AMC), Minnesota Association of Watershed Districts (MAWD) Minnesota Watersheds (MW), Minnesota Center for Environmental Advocacy (MCEA), Friends of the Minnesota River Valley, and Minnesota Corn Growers Association, and the Minnesota Department of Natural Resources.

The subgroup-subcommittee was tasked to seek to develop a proposal for DWG consideration regarding a drainage registry portal or alternative public notice format to respond to the legislative directive mandate to evaluate the two key components of the proposed drainage registry portal 1) broad public notification earlier in the process potentially before a preliminary engineer's report (PER) has been filed and 2) a centralized information database for drainage activities maintained by a state agency. That CThe subcommittee met four times in November and December 2023. A set of recommendations was developed, but several members ceased participation in the subcommittee meetings, the recommendations were not discussed and the subcommittee discontinued meeting, and disbanded without bringing forward a set of recommendations.

Commented [A17]: Consensus at DWG that (1) and (2) should be deleted in favor of reference to specific text of legislative directive. Text here is a further suggestion.

Identify specific areas of evaluation to the relevant topics.

Commented [A18]: "discontinued meeting" wording had consensus at DWG.

Modification of notice to include web-based or electronic notice or to create a centralized database.

Commented [A19]: We'd suggest that part of the confusion regarding this list of four items is that the tense is unclear: are these items that were evaluated, or that the DWG is suggesting as appropriate for future evaluation? Edit to be clear that this is what was discussed.

Timing of broadened notice earlier than the PER.

Duration of notice (would specific notice duration provide greater opportunity for comment and feedback?).

Information which that should be made available via notice.

Provide recommended next steps for each topic.

DWG consideration of ways to advance web-based or electronic notice.

Commented [A20]: The proposal from AMC, MW, and Corn Growers should be related in some fashion, if simply to communicate to the legislature the extent of what was put on the table for discussion.

Review of drainage authority powers

Drainage system management in Minnesota is evolving to incorporate the concept of “multi-purpose” management, where systems are modified or designed to include water quality, groundwater protection, water conservation, habitat enhancement and similar elements. To accommodate this evolution, it is necessary that the statutory powers given to drainage authorities by the legislature include those needed to incorporate multi-purpose concepts into their management actions. This includes certain powers to modify natural and previously constructed water resource systems in ways not previously contemplated under the drainage code.

The DWG was directed to review a drainage authority's power under Minnesota Statutes, Chapter 103E, to consider the abandonment or dismantling of drainage systems; to re-meander, restore, or reconstruct a natural waterway that has been modified by drainage; or to deconstruct dikes, dams, or other water-control structures.

At the first full DWG meeting, a small group of legal advisors offered to assist in what the group determined to be a legal assessment exercise. The 103E citations related to the powers and authorities referenced were organized into one document and a draft was then circulated to the full membership for review. A few minor clarifications were added, based on members feedback. The final document was shared with the DWG on August 4th with concluding discussions by the full DWG on August 10, 2023. The final document is attached in the appendix.

Identify specific areas of evaluation to the relevant topics.

Legal review of the respective authorities and powers under 103E

Provide recommended next steps for each topic.

No additional steps are needed at this time.

Alternative Repair Cost Apportionment Option

Until five years ago, the drainage code specified that all costs to repair and maintain a public drainage system are assessed against property benefited by the system, in proportion to benefit, as benefit was determined when the system was constructed, or subsequently was redetermined by formal proceedings. This means of allocating repair and maintenance cost may not aligned with the concept of multi-purpose drainage system management. Each landowner has a general incentive not to destabilize the downgradient public system, and not to contribute excessively to the deposit and buildup of sediment within the system. However, this means of allocating cost may not inherently creates incentive for landowners to hold water on their land, reduce rates of discharge from their land, or limit the movement of soils or sediments into the system and downstream. Allocating repair and maintenance cost according to contribution to the repair and maintenance need can

provide such incentives and, with developing technology, this allocation can be done inexpensively and with a fair amount of precision.

In 2018, the Drainage Work Group recommended the addition of 103E.729 to the drainage code to provide for an alternative methodology to assess repair costs. This methodology is optional and at the sole discretion of the drainage authority and is currently sunset on July 31, 2024.

The recommendation came from the DWG using the Consensus Report/Non-Consensus Report option.

All members required to move a Consensus Report forward with an option for non-Consensus members to provide their own report was obtained at the December 14, 2023 meeting.

This proposal has consensus of the following DWG Stakeholders required to move forward with the Consensus/Non-Consensus report option: MN Watersheds, Association of MN Counties, MN Center for Environmental Advocacy, MN Corn Growers, MN Soybean Growers, MN Farmers Union, MN Farm Bureau, BWSR, DNR, MPCA, MDA, MNDOT.

The DWG reviewed the language and discussed the option further including a presentation from a Drainage Authority and their engineer who have used repair assessment costs.

The DWG is recommending extending the sunset date for an additional 5 years until July 31, 2029, to allow more time for additional drainage authorities to consider its use.

Identify specific areas of evaluation to the relevant topics.

The DWG considered the following options.

- 1) Let the provision expire with the existing sunset date.
- 2) Repeal the sunset entirely.
- 3) Extend the sunset for an additional 5 years from July 31, 2024 to July 31, 2029.

Provide recommended next steps for each topic.

Through the Consensus Report and Non-Consensus report option the DWG recommends the sunset provision be adjusted for an additional 5 years through July 31, 2029.

The DWG will provide the following proposed language for this change:

103E.729 APPORTIONING REPAIR COSTS; ALTERNATIVE OPTION.

Subd. 9.Sunset.

This section expires on July 31, ~~2024~~2029.

Appendix

- A) Add Drainage Authority Powers Document
- B) DWG Fact Sheet
- C) DWG Process Summary.

DRAFT