

Drainage Work Group (DWG) Meeting

June 16, 2022

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.

- 11th International Drainage Symposium. This will be held August 30 to September 2 in Des Moines, Iowa.
- Minnesota Association of Drainage Inspectors. This meeting will be held in mid-August, date and location to be determined.
- ISG event. Chuck Brandel reported that ISG hosted a bus tour of projects in Nobles and Jackson Counties on June 4. The focus was on wetlands and drainage improvements. Approximately 45 people attended.
- Red River Watershed Management Board (RRWMB). Rob Sip reported that the RRWMB held their monthly meeting in May. They are in the process of updating their governing documents and bylaws.

2021 DWG & COVID 19

Tom Gile explained that he has reserved a meeting room at the Minnesota Farmers Union for the remainder of the year. He is happy to explore other meeting locations. Since COVID, the meetings have been held by Microsoft Teams. There is interest in holding in-person meetings. Discussion works better in-person than virtually. Hybrid meetings would be difficult at the Minnesota Farmers Union. The Minnesota Pollution Control Agency (MPCA) or BWSR board rooms would be better options for having a hybrid meeting. When the DWG meets in-person there are between 20 and 50 attendees.

Discussion

- The Meeting Owl 3 interfaces with Microsoft Teams, Zoom, and WebEx. It is a great device for doing hybrid meetings. The camera moves 360° around the room. The cost is about \$1,000.
- There is so much value in meeting face-to-face. Hybrids don't work that well. Go back to in-person meetings. They are scheduled. If you can't be there, find an alternate. Do not allow a hybrid option.
- Change the meeting to a central location. There are meeting facilities in the St. Cloud area which would allow better attendance for those traveling from northern Minnesota. The Soil and Water Conservation District (SWCD)/Natural Resources Conservation Service office was a suggested meeting place.

The next meeting may still be held virtually. Options in the St. Cloud area will be explored. While in-person meetings are preferred, there are times when the virtual option is necessary. Tom Gile asked for patience as he works to find a consistent venue and explores varying options.

Potential DWG Topics and Prioritization

Tom Gile presented a list of potential discussion topics. (*The document is included as an attachment to these notes.*) They ranged from high to low priority. Discussion was held regarding each topic, as well as topics that should be added. The document will be updated and distributed to the DWG.

Outlet Adequacy

Adequacy of outlet is a challenging subject and will require substantial discussion. Key topics were presented. (*The document is included as an attachment to these notes.*) While there is good information in the Minnesota Public Drainage Manual (Manual), the information that is expected to be included in preliminary or final reports by state agencies is not always clear.

Discussion

- What does an adequate outlet mean and how far downstream does it extend? What is the potential of the project to significantly affect resources? How much more water is coming and what are the natural resource impacts? The review in the Manual mostly looks at flooding and whether culverts

are capable of handling additional flow. The environmental considerations are important, as well as early coordination and submittals.

- Is there a way to make requests or information submitted more uniform for reviewers? This is not about debating what is needed but ensuring that what is provided is sufficient.
- The Department of Natural Resources (DNR) is doing a better job on the permit side regarding outletting into public waters. It is important for the drainage authority (DA) to have the engineer model the public water into which the project is outletting.
- This subject is really a challenge. The statute specifically says what should be analyzed. Often comments are submitted on something that is not covered by statute. When those comments must be considered, the engineer gets criticized by the petitioners and the DA for doing something not required by law.
- What is the extent of the outlet? The Manual says that the outlet is whatever downstream reaches might be increased by the discharge. Typically, when these projects are done, there is not consideration far enough downstream. Consideration of cumulative effects is not done. While the project discharge is considered in the subwatershed, consideration of other projects that are being or may be done are not considered. In the Total Maximum Daily Load for the Minnesota River in the Lower Minnesota River watershed, there was a lot of research about sediment load. Information developed by MPCA clearly showed that frequent discharges (1 ½ and 2-year events) created most of the total suspended solids load. MPCA based their sediment reduction strategy on lowering the discharges for those events to meet water quality standards. That is a critical environmental impact.
- There are benefits to discussing this subject. In the environmental considerations, are the 1 ½ and 2-year events required?
- How can water quality and erosion be considered without modeling the 1 ½ and 2-year events? It is important to determine how to get consensus for all the considerations.
- How is the “what and where” of the outlet defined? In the Manual, there are places where it seems that the outlet is the end of the drainage system and in other locations it is the receiving body for the system. Is it the same thing for tile? How far do you look up or downstream? Does it make sense to make a definite break between the outlet of a system discharging into a public water as an open channel or a tile system?
- In an open channel, do we start measuring when the channel is bankfull or half full? Obviously, it cannot be determined when the channel is dry. Does it depend on the last rainfall or a dry or wet spell? What is considered normal? It just seems like a hard thing to nail down. Where do you start? In the spring there are no adequate outlets anywhere.
- What should the assumed baseline information be when models are run? Those are things that very likely get sent to the Drainage Management Team (DMT) or a subgroup of the DWG.
- Whatever is done regarding outlet adequacy must be repeatable and defensible. Outlet adequacy should not be a debate about which things need to be considered.
- Anytime there is rainfall in excess of the designed system, there is flooding. There must be an understanding of flooding and what causes it, too. Systems designed for a 10-year event cannot contain the rainfall from a 100-year rainfall.
- Consideration should be given to real, on-the-ground situations within basins and ditch systems. There could be a work session on it or maybe send it to the DMT.
- We need to avoid turning the discussion into “what about this or that?” Scenarios aren’t all encompassing and there is the possibility of essentially killing a project due to nitpicking. There must be specific components.
- The DMT is a mostly science-based operation rather than policy. If questions are referred to them, is there a way to include people that are not just state agencies and ensure that other drainage participants are represented before it comes back to DWG?

- What is the goal? Engineers are required to make determinations and follow the law. Is it the group's goal to come up with new information and persuade information change?
- DAs feel that they are putting together packages to answer required questions. Maybe we need to create a structure and make a legislative recommendation of things that need to be done and ways to demonstrate efficient administration of drainage systems. Maybe interest groups or the DNR won't need to ask questions if everyone is on the same page.
- What we need to do is define the issue. Is it really that different groups have differing understanding of criteria, or that criteria should be something different, or that something additional should be included? The statutory criteria are being considered and that's part of the work DAs are doing. Then there are these additional considerations that aren't part of the statutory criteria or there are people who feel they should be. The cumulative effect or how far downstream does come into play. Is there a proposal to look at any potential project within a certain area that must be modeled? What direction is this going? If there's a proposal or some specific change that is needed, the deficiency needs to be defined, rather than studying what is already in the statute.
- It doesn't seem like the system is working for everyone at the local level. With climate and rain events what they are, it is not certain that historic modeling is keeping up with changes on the land and helping us to address those issues. Cumulative effect is what we hear. Coming with questions that need to be addressed at the 11th hour costs landowners and counties more money. We don't have effective communication on the front end to know what is happening. Downstream landowners are asking for help to advocate. It causes frustration at the local level when comments are brought from people late in the process. There is not a realization locally that a project costs money for people at the bottom of the watershed. The people at the bottom see the cumulative effect. Water respects no boundaries. Climate isn't predictable. There is no consistency in modeling across the state, which makes it hard to check those boxes. We can do better on communication. Put the notification systems in place. We can do that so people can subscribe and find out on the front end.
- The Manual contains considerations before drainage work is done. The first nine items are vague or open to interpretation. What is that approach, so we know the DA did consider the environmental impacts before drainage work is done? How was it considered? What is the consideration process? The discussion should be focused on that.

Tom Gile stated that he is not convinced everyone sees eye to eye about what should be considered in determining an adequate outlet. That's part of the dilemma. Each entity seems to interpret and view things differently. It would be helpful to develop a framework to alleviate the differing understanding of what is necessary or the information submittal requirements. There are many things to consider. Is the project going to happen? Does it address downstream conditions without additional costs to petitioners and the system? There are some folks who believe this is what the law says and want to fight about it. Discussing outlet adequacy would be an effort to try to understand what should be considered so it isn't an argument, debate, or question about whether the DA looked at this the right way. The hope is to avoid conflicts and better serve everyone.

Multipurpose Drainage Management (MDM)/Water Quality and Storage Program

MDM has a clean water focus. Past projects have included wetland restorations, wetland creations, and installing side water inlets. The grant program requires that the DA work with a SWCD. There have not been any issues with that relationship. There is approximately \$800,000 available for this round of applications. He encouraged DWG members to consider applying. Historically, the use of the funding has been hit and miss. Often the requests don't amount to more than the available funds. There have been instances where the requests have been less than the available funds. It is challenging to successfully advocate for continued support of this program if we are not able to utilize the funds. When it is available, the Request for Proposals (RFP) will be sent to the DWG. It goes to the BWSR Board at their June meeting. The RFP will be released soon

after that and close this fall. It is structured similarly to the way it was last year. The eligibility criteria are listed in the RFP.

It was suggested that pattern tile should be an eligible practice because they are water storage projects. Drainage water management projects should be eligible. How do we get farmers and landowners to participate? How do we build acceptance of the eligibility of pattern tile practices?

During the RFP period for the Water Quality and Storage Program, seven applications were submitted requesting about \$4M. The results will be presented to the BWSR Board. The awardees will be notified after the June BWSR Board meeting. BWSR staff will be meeting internally to discuss changes to the program and for clarification before next year's RFP is finalized. Feedback on the RFP is welcome. The revised RFP will need BWSR Board approval.

This is the program that was awarded \$1M for a pilot grant program. 103E drainage projects were not eligible because BWSR staff could not determine consensus on how to include them. It was determined that the best course was to see what types of projects were submitted through the RFP and see what could be done in the future since the funds were so limited. BWSR staff is not sure that a change could be made for the next RFP.

Comments were made that 103E projects should be included in the storage program. If those were included, there would be likely be more interest from DAs. Having more applications would demonstrate to the legislature that continued funding would make a difference.

BWSR staff expressed concern on how the 103E drainage projects would be separated from what is done with the grant funding. Looking at the additionality of the requirements and the public value has been done with other programs. It is not that difficult. But BWSR must start somewhere. This would be something for the DWG to consider before the next RFP.

Discussion was held regarding the possibility of water storage in sloughs and unnamed lakes in anticipation of spring runoff. This type of project could be eligible if the additionality could be described. With the limited funds, the planning couldn't be covered, only the design, construction, and easements. Concerns were expressed regarding pattern tile as a project, as well as dewatering and the effect on organisms living in a slough. The intent would be to lower the slough 25% to 30%, not dewater. Speaking with a Clean Water Specialist about the concepts was encouraged.

Bills Introduced This Session

Thirty-one comments on the proposed drainage registry were submitted by various DWG stakeholders. Comments ranged from general comments from members to specific detailed letters from organizations representing larger groups.

- 1 comment is in support of the bill
- 15 comments clearly state opposition
- 11 Comments did not "Clearly oppose" but were general comments of concern
- 21 comments ask for DWG review and vetting
- 1 comment asks for prompt DWG review during the session
- 1 comment specifically says DWG review should follow normal DWG schedule
- 1 Comment with Concerns on Drainage Proceedings
- 25 Comments on Drainage Repairs being impeded/delayed
- 12 Comments Concerns with redundancy in notice

Tom Gile explained that there clearly is interest in having the DWG spend time on this subject. It will be on the agenda for several meetings this year. DWG members were encouraged to be prepared for discussion. It is likely to be an emotional and challenging subject. We need to keep the discussion productive and recognize that there are broad viewpoints.

Ted Suss, Executive Director of the Friends of the Minnesota Valley (Friends) explained the purpose and intent of the bill. The Friends is a group of people that meet once a week to discuss a variety of issues with the intent of solving problems, raising questions, and sometimes causing problems. After a petition is filed and a preliminary engineer's report is done is often when the public is first aware of a project. People come to the preliminary hearing, are concerned, and raise objections. The question of why they weren't notified sooner in the process is raised. The people raising concerns come late in the game. That is the motivation that triggered Friends to ask for legislation to create a public drainage registry. Once the legislature adjourns, all bills are dead. The language of this bill is dead. If reintroduced, it will be redrafted. There is a tremendous opportunity to assist in the DWG. The intent is not to create an administrative bureaucracy, it is to make it possible for people with concerns to learn about a project as early as possible in the process and go to the appropriate people and discuss those concerns. When concerns are addressed at the final hearing stage, projects can change significantly. The drainage registry creates a vehicle to hear about projects earlier in the process. If issues are addressed earlier, money is saved. Frequent comments about the registry are that it is another administrative responsibility on the staff of the DA and creates another step in the process. The Friends have a staff person that calls every DA in the Minnesota River basin and asks them if there are any new petitions filed or engineering reports submitted. Those conversations take time for staff and Izaak Walton League (IWL) staff. It would be a lot less work to have a simple, one-stop registry, where administrators can link to a portal to find out what is happening. There are a lot of concerns around the issue of repair that can be addressed in a calm and respectful conversation. The language gives a starting point for conversation and a structure from which to talk.

Discussion

- By law, the DA must publish notice about improvements in the newspaper or through other methods. These are local issues. DAs are following the law. This is redundant. This bill had no senate companion. Was there an attempt made to have a co-author in senate? Ted Suss explained that he has been involved in public notice his entire career. He is aware that DAs are publishing locally. He had no doubt that there was compliance with the law. The Friends are concerned about downstream impact and cumulative effect. In the interest of getting concerns raised and addressed before an extensive amount of money is spent on engineering, it is well worth the extra work of posting to an online portal. It will result in a greater level of public information. Friends had preliminary commitment from a Republican senator. The idea was to have the registry be a nonpartisan issue, which is good governance. When the conversation started to go sideways, the Republican author withdrew his support. The Friends are not trying to turn this into a partisan tit for tat. The Republican author felt that the DWG should discuss the bill before it was introduced. The Friends are very committed to having bipartisan authorship. They could have had it introduced in the Senate and heard, but this is where we are today.
- There are people downstream affected by water who aren't watching what is happening. The drainage registry would increase the scope of the notice so people with concerns can raise them earlier in the process.
- The repair component has people frustrated. In particular, the language requiring a 30-day notice for doing repairs.
- The DA provides notice to benefited landowners - everyone in the drainage system, plus public notice, plus a report to the DNR for preliminary engineering. Why doesn't BWSR or DNR post a dropdown category on their website instead of asking the DA to do extra work? Why is there this attempt at recreating something that is already there? The people in the drainage system are notified.

Tom Gile read the bill language.

- For many reasons, repairs are done without a petition. The biggest issue with the registry is that repairs are included. Most of the time repairs are done immediately or within a week.
- Minnesota Center for Environmental Advocacy and IWL have heard from others about the concerns with the repair language. It is reasonable that the language needs to be addressed. They have interest in doing that. The language is something that they understand could change, particularly regarding repairs.
- Part of the DWG task is mutual understanding of this language. There are strong opinions about repairs. Could putting information on a statewide available portal be a good idea if we remove some of the other notice requirements that exist? There doesn't appear to be push back around the drainage registry for notification of proceedings for improvements, laterals, or new projects. It would be helpful to hear if there is a way we can have petitioned repairs in this or not and non-petitioned removed.
- Before we go too far, the distinction between petitioned proceedings and non-petitioned repairs is a good distinction to make. It is not definite that anyone is ready to say that a centralized repository of information is necessary. Let's start with what happens currently, what are the statutory requirements, and how can we adjust them to make sure the public is able to access data and be fully informed based on the system that is in place. There isn't a proposal for that, but we would like everyone to be open to that as part of the conversation.
- We don't want to be accused of not supporting transparency in government. As part of this, we are promoting public involvement outside the local area. There needs to be a safeguard for petitioners. There are plenty of projects where someone comes in with proposals at the 11th hour that are helpful, right, and good. There are also projects that have been delayed because of this. All those costs are on the petitioners' bond. When others participate, can we look at protections on the petitioners' bond so that not just anyone can direct the engineer to do more work, putting that bond at risk?
- There are challenges with adequate outlet and the drainage registry. Where does it end? How do we define this and pull out what is and is not important in this process?

Tom Gile stated that the intent of this discussion was to get through a backdrop of the proposed language. More time will be committed to this subject at future meetings. Several people have asked to be made aware of future DWG meetings. There are many good comments in the chat box. He will see if there is a way to export those and distribute them.

Next Meeting

The next meeting is scheduled for Thursday, July 14 from 11 am to 2 pm in person at Minnesota Farmers Union.

The meeting adjourned at 4:05 p.m.

Meeting notes by
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